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2
3 **IN THE CIRCUIT COURT OF THE STATE OF OREGON**
4 **FOR MULTNOMAH COUNTY**

5 THE STATE OF OREGON,

No. 20CR50067

6
7 Plaintiff,

8 v.

RESPONSE TO DEFENDANT'S MOTION
FOR A NEW TRIAL

9 ALAN SWINNEY

10 Defendant.

11 Defendant has moved the court to vacate the jury's guilty verdicts, and the judgement of
12 this court. Defendant bases this request on a misplaced reading of the discovery statutes
13 contained within ORS 135.805-135.873 and a misapplication of ORCP 64B(4). For the reasons
14 discussed below, none of the defendant's arguments are well taken and the court should deny the
15 motion.

16 **SUMMARY OF FACTS**

17 In August of 2020, the defendant engaged in two separate criminal episodes in downtown
18 Portland that involved hundreds of witnesses, videos, and photos that documented multiple
19 criminal violations by the defendant. Police did not intervene during the two separate criminal
20 episodes and all investigation occurred after the events were concluded. The reports that were
21 submitted to the District Attorney's Office in August and September of 2020 were reviewed.
22 The case was submitted to the grand jury and the defendant was indicted on September 11, 2020.
23 Prior to trial, the state met with the defense and allowed the defense to review the entire paper
24 file and digital evidence contain in the case. Additionally, in an abundance of caution the district
25 attorney provided the defense with all of the reports associated with defendant's associate who

1 was charged with crimes from the same date as defendant's first criminal episode. Prior to trial
2 the state requested a copy of the police reports from the investigating detective after a list of
3 defense witnesses were interviewed. Those reports were reviewed and all of those reports were
4 provided to the defense. A Multnomah County jury then convicted the defendant on October 6,
5 2021 after a multiday trial. A Presentencing Investigation Report was produced after trial and
6 prior to sentencing. Upon receiving and reviewing the report, DDA Vasquez and DDA
7 Schweitzer learn about the existence of two additional reports relating to the event. These two
8 reports were under different case numbers (PPB #20-260284 & PPB#20-802393) and contained
9 information that would have greatly benefited the state during the trial and prosecution of the
10 defendant. The reports will be submitted directly to the trial court and defense counsel due to the
11 discovery protective order on this case.

12 **ARGUMENT**

14 I. THE ADDITIONAL REPORTS DO NOT CONSTITUTE A DISCOVERY 15 VIOLATION AND CONTAIN EVIDENCE OF NEW ADDITIONAL CRIMES

16
17 Oregon discovery statutes contained in ORS 135.805-135.873 require the state to turn over
18 the "names and address of the persons whom the district attorney intends to call as a witness" as
19 well as the written, recorded, or memoranda of statements of such persons. Further the state is
20 required to turn over information that tends to exculpate the defendant, information that negates guilt or
21 punishment, and information which would impeach a person that the state intends to call as a witness. The
22 information contained in the additional reports details additional crimes of the defendant and would have
23 provided the basis for additional criminal charges of the defendant. Specifically, the reports would have
24 allowed the state to bring charges of Assault 2 and charges of Unlawful Use of a Weapon with a Firearm.
25 These charges would have created much greater sentencing liability for the defendant. The reports do not
26 contain exculpatory information as the information contained in the report only further proves the

1 defendant's violent conduct. Finally, the persons named in the reports were not known to the district
2 attorneys prior to Pre-Sentence Investigation, thus the state never "intended to call" them as witnesses per
3 ORS 135.518(a). Had the district attorneys known of the existence of the reports prior to trial, the
4 defendant would have been indicted with additional crimes and the witness would have been called to
5 testify at the defendant's trial.

6 II. ORCP 64B(4) REQUIRES THAT THE NEWLY DISCOVERED EVIDENCE BE
7 "MATERIAL FOR THE PARTY MAKING THE APPLICATION"

8
9 The additional reports do not benefit the defendant and would only be "material" to the
10 state. ORCP 64B(4), the authority relied on by defendant, allows a new trial only upon "newly
11 discovered evidence, material for the party making the application." The Supreme Court has set
12 out six elements that must be met for post-trial discovery of new material to warrant the grant of
13 a new trial under ORCP 64B(4):

14 "evidence that may justify a court in granting a new trial must meet the following
15 requirements:

- 16 (1) It must be such as will probably change the result if a new trial is granted;
17 (2) It must be such as, with reasonable diligence, could not have been discovered before
18 or during the trial;
19 (3) It must be such that it cannot, with reasonable diligence, be used during trial;
20 (4) It must be material to an issue;
21 (5) It must not be merely cumulative;
22 (6) It must not be merely impeaching or contradicting of former evidence."

23 *State v. Arnold*, 320 Or 111, 120 (1994).
24

1 The Defendant can point to nothing in the reports that is material to any issue of
2 relevance that would benefit the defendant, is not cumulative of existing discovery, or that would
3 “probably change the result” if a new trial is granted. As such, the court should deny defendant’s
4 motion.

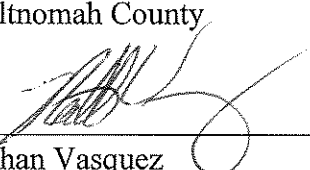
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6 **CONCLUSION**

7 The court should deny defendant’s motion for a new trial. The reports identified by the
8 Pre-Sentence Investigation do not constitute a discovery violation and represent only new
9 information from which the defendant could be charged with additional crimes. The reports do
10 not meet the requirements of ORCP 64(B).

11
12 Dated this 28th day of December, 2021.

13 Respectfully Submitted,

14 MIKE SCHMIDT
15 District Attorney
16 Multnomah County

17 By 
18 Nathan Vasquez
Sr. Deputy District Attorney

Certificate of Service

I certify that on December 28, 2021 I caused the foregoing response to Defendant's Motion for a New Trial to be served upon the parties hereto by the method indicated below, and addressed as follows:

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/s/

Nathan Vasquez, OSB 014437
Deputy District Attorney