Response Deadline: May 4, 2022 at 4:00 p.m. (Prevailing Eastern Time)
Hearing Date and Time: May 11, 2022 at 11:00 a.m. (Prevailing Eastern Time)

PILLSBURY WINTHROP SHAW PITTMAN LLP
31 West 52nd Street
New York, NY 10019-6131
Telephone: 212-858-1000
Facsimile: 212-858-1500
Leo T. Crowley
Patrick E. Fitzmaurice
Kwame O. Akuffo

Counsel for GUC Recovery Trustee

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
JCK LEGACY COMPANY, *et al.*,	:	Case No. 20-10418 (MEW)
Debtors.[1]	:	(Jointly Administered)

GUC RECOVERY TRUSTEE'S OBJECTION TO PROOF OF CLAIM NO. 2725 FILED BY ALBERTO COLT-SARMIENTO ON THE MERITS

THIS OBJECTION SEEKS TO DISALLOW AND EXPUNGE PROOF OF CLAIM NO. 2725 FILED BY ALBERTO COLT-SARMIENTO ON THE MERITS.

William A. Brandt, Jr. in his capacity as trustee (the "**GUC Recovery Trustee**") of the JCK Legacy GUC Recovery Trust created under the GUC Recovery Trust Agreement (the "**Trust Agreement**") and the confirmed *First Amended Joint Chapter 11 Plan of Distribution of JCK Legacy Company and its affiliated Debtors and Debtors in Possession* (the "**Plan**") [Docket No. 879], by and through undersigned counsel, files this objection (the "**Objection**"), and pursuant to section 502 of title 11 of the United States Code (the "**Bankruptcy Code**") and Rule

[1] The Debtors in these chapter 11 cases and the last four characters of each Debtor's tax identification number are: JCK Legacy Company (0478) and Herald Custom Publishing of Mexico, S. de R.L. de C.V. (5UZ1). The location of the GUC Recovery Trustee's service address for purposes of these chapter 11 cases is: 110 East 42 Street, Suite 1818 New York, NY 10017.

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3007 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rule**"), seeks entry of an order (the "**Proposed Order**") in the form attached as **Exhibit A**, disallowing and expunging Proof of Claim No. 2725 filed by Alberto Colt-Sarmiento ("**Mr. Colt-Sarmiento**") on the merits.

I. INTRODUCTION

1. On March 3, 2022, the Court issued a decision, determining, *inter alia*, that Mr. Colt-Sarmiento timely filed a general unsecured claim and the claims agent then assigned Proof of Claim No. 2725 to Mr. Colt-Sarmiento's claim. This objection addresses the merits of Mr. Colt-Sarmiento's tort claims for defamation, false light invasion of privacy, intentional infliction of emotional distress, negligent infliction of emotional distress, and negligence.

2. Mr. Colt-Sarmiento asserted these claims against the Tacoma News Tribune (the "**News Tribune**") after the newspaper reported on his criminal trial in which he was convicted of second-degree murder and other charges. Mr. Colt-Sarmiento bases his claims on a March 10, 2018 article in the News Tribune that states, among other things, the records of the trial included evidence that: "[H]e [Mr. Colt-Sarmiento] exchanged text messages with his co-defendants the day of the murder that read "'KILLKILLKILL' and 'well smoke em.'" Mr. Colt-Sarmiento claims that the News Tribune defamed him because he did not send the messages "'KILLKILLKILL' and 'well smoke em,'" that the messages were not sent on the day of the murder, that the messages were not relevant to the crimes he was charged with, and that the phrase "'KILLKILLKILL'" is a lyric from a co-defendant's favorite rap song.

3. All of Mr. Colt-Sarmiento's claims lack merit. The News Tribune's reporting was true and is covered by the fair reporting privilege as an accurate summary of Mr. Colt-Sarmiento's trial. Additionally, the subject article does not portray Mr. Colt-Sarmiento in a false

light and, as a matter of law, does not rise to the level of extreme or outrageous conduct to support an emotional distress claim.

4. For these reasons, Mr. Colt-Sarmiento's claim should be disallowed and expunged.

II. JURISDICTION AND VENUE

5. This Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334.

6. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b).

7. Venue is proper in this district under 28 U.S.C. §§ 1408 and 1409.

8. The predicates for the relief sought herein are section 502 of the Bankruptcy Code and Bankruptcy Rule 3007.

III. BACKGROUND

A. The Debtors' Bankruptcy Case

9. On February 13, 2020 (the "**Petition Date**"), The McClatchy Company, a corporation organized under the laws of the state of Delaware, and certain of its affiliates (the "**Debtors**"), filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The chapter 11 cases have been jointly administered for procedural purposes, and some cases remain pending.

10. On May 21, 2020, the Bankruptcy Court entered an *Order Establishing Bar Dates for Filing Proofs of Claim and Approving Form and Manner of Notice Thereof* (the "**Bar Date Order**") [Docket No. 485], and set July 10, 2020, at 5:00 p.m. (E.T.) ("**Bar Date**"), as the deadline for creditors to file proofs of claim against the Debtors. Notice of the Bar Date Order was mailed and also published in *The New York Times* as required by the Bar Date Order. *See* Docket Nos. 485, 513.

11. On September 25, 2020, the Bankruptcy Court entered an order (the "**Confirmation Order**") confirming the Plan, which became effective on September 30, 2020 (the "**Effective Date**").

12. The Plan and the Confirmation Order provide for the establishment of the GUC Recovery Trust pursuant to the Trust Agreement on the Effective Date, at which time the GUC Recovery Trustee was appointed to administer the GUC Recovery Trust. Confirmation Order at 11; Trust Agreement, § 2.1; Plan, § 6.20.

13. Under the Trust Agreement, the GUC Recovery Trustee is authorized to review, object to, settle and resolve all general unsecured claims filed against the Debtors' estates. Trust Agreement, § 6.1. The GUC Recovery Trustee is also authorized to represent the Debtors' estate before any court of competent jurisdiction on matters concerning the GUC Recovery Trust, *id.* at § 2.2(m), to enter into any agreement that is consistent with the Plan, the Confirmation Order, and the GUC Recovery Trust, *id.* at § 2.2(u), and to take any action that is reasonably necessary to administer the GUC Recovery Trust and the Plan. *Id.* at § 2.2(aa).

B. Factual Background

1. Events Leading to Mr. Colt-Sarmiento's Convictions

14. The following facts are taken from an appellate decision affirming Mr. Colt-Sarmiento's convictions for various crimes. A copy of the decision is attached as **Exhibit B**. Mr. Colt-Sarmiento was convicted of second-degree murder, two counts of first-degree assault, and second-degree unlawful possession of firearm in the Superior Court of Pierce County, Washington (the "**Superior Court**"), all stemming from the fatal shooting of Elijah Crawford. *See* Ex. B. at 1.

15. Mr. Colt-Sarmiento was a member of a gang known as Varrio Sureno Lokotes and had been messaging with a member of a rival gang (known as 18th Street), Eddie Contreras. *Id.* The messages grew adversarial and on November 1, 2015, Mr. Colt-Sarmiento messaged Contreras and challenged him to a fistfight. *Id.* The next day, Mr. Colt-Sarmiento messaged Contreras again and "the two men agreed to meet that night for a fistfight without weapons." *Id.* Prior to the scheduled fight, Mr. Colt-Sarmiento met with three affiliated gang members at one member's residence. *Id.* There, one displayed a gun, which Mr. Colt-Sarmiento saw. *Id.* Mr. Colt-Sarmiento and the other gang members left the residence in his truck with the gun and drove to the location of the scheduled fistfight. *Id.* at 2.

16. Contreras brought friends to the fistfight location as backup, including Mr. Crawford. *Id.* When they arrived, Mr. Colt-Sarmiento was standing outside of his parked truck. *Id.* When Contreras started walking, Mr. Colt-Sarmiento said, "'You talking shit, huh?'" *Id.* Mr. Colt-Sarmiento then signaled to a gang member he arrived with, who was in the bushes nearby, by calling his nickname "'Mobster.'" *Id.* "Mobster" ran out of the bushes toward Contreras and his friends, including Mr. Crawford, and shot at them with the gun. *Id.*

17. When the shooting began, Mr. Colt-Sarmiento "stood there without ducking to take cover" and one witness testified "that it was is if he knew what was going on." *Id.* Mr. Crawford was fatally shot in the back and died at the scene. *Id.* Based on these facts and other evidence introduced at trial, Mr. Colt-Sarmiento was convicted of second-degree murder, two counts of first-degree assault, and second-degree unlawful possession of a firearm. *Id.* at 3.

2. Tacoma News Tribune Article

18. On March 10, 2018, the News Tribune published an article (the "**Article**") about Mr. Colt-Sarmiento's criminal proceedings in the Superior Court. A copy of the Article is

attached as **Exhibit C**. The Article reported that "Alberto Colt-Sarmiento, 25, was sentenced Friday in [the] Superior Court to 60 years, 10 months in prison in the 2015 fatal shooting of Elijah Crawford." Ex. C at 2. The Article also reported that "Colt-Sarmiento did not fire the gun that killed Crawford, but prosecutors said he was key in orchestrating the fight. He [Mr. Colt-Sarmiento] exchanged text messages with his co-defendants the day of the murder that read, 'KILLKILLKILL,' and, 'well smoke em,' court records show." *Id.*

3. Complaint Against News Tribune

19. On April 3, 2020, Mr. Colt-Sarmiento filed a complaint (the "**Complaint**") in the Superior Court against the News Tribune. A copy of the Complaint is attached as **Exhibit D**.

20. The Complaint alleges that the Article falsely states that "[H]e [Mr. Colt-Sarmiento] exchanged text messages with his co-defendants the day of the murder that read 'KILLKILLKILL' and 'well smoke em.' Court [sic] records show . . . ." Exhibit D at 2. Mr. Colt-Sarmiento asserted that these statements were allegedly false because he did not send the messages, which were instead sent by a co-defendant. *Id.* The Complaint also asserts that these statements in the Article were false because the subject text messages were not sent on the day of the murder and did not have any relevancy to the crimes charged. *Id.* The Complaint also alleges that the Article's statements were false because "KILLKILLKILL" came from a co-defendant's favorite rap song by the Chicano rap artists "Rascal." *Id.* at 2-3. Finally, the Complaint alleges that the News Tribune falsely, intentionally, and recklessly published the Article. *Id.* at 3.

21. Although some claims are grouped and pleaded in the alternative, the Complaint appears to assert four claims: (a) defamation, (b) false light invasion of privacy, (c) intentional infliction of emotional distress, (d) negligent infliction of emotional distress, and (e) negligence. *Id.* at 4-5.

B. Proof of Claim, Order to Plan Administration Trustee, and Court Decision

22. On August 7, 2020, Mr. Colt-Sarmiento filed the *Verified Proof of Claim Complaint* for an undisclosed amount. *See* Docket No. 754. On October 27, 2021, Mr. Colt-Sarmiento filed the *Amended Verified Proof of Claim Complaint*, asserting a claim in the amount of $386,897 (the "**Claim**") based on the same allegations in the Complaint. *See* Docket No. 1323.

23. On February 23, 2022, the Court ordered the Plan Administration Trustee to address whether Mr. Colt-Sarmiento was a known creditor as of the Bar Date and was provided notice of the Bar Date. *See* Docket No. 1408. In response, the Plan Administration Trustee submitted a letter stating that Mr. Colt-Sarmiento was an unknown creditor until he filed a claim on July 19, 2020. *See* Docket No. 1413. On March 3, 2022, the Court issued a decision, determining, *inter alia*, that Mr. Colt-Sarmiento had timely filed a claim, and that such claim constitutes a general unsecured claim. *See* Docket No. 1415. The claims agent has assigned Proof of Claim No. 2725 to the Claim (hereinafter, "**Claim No. 2725**").

II. RELIEF REQUESTED

24. Pursuant to section 502 of the Bankruptcy Code and Bankruptcy Rule 3007, the GUC Recovery Trustee seeks entry of the Proposed Order disallowing and expunging Claim No. 2725 because the bases for the claim – defamation, false light invasion of privacy, intentional infliction of emotional distress, negligent infliction of emotional distress, and negligence – lack merit.

III. BASIS FOR RELIEF

25. Section 502 of the Bankruptcy Code governs the allowance and disallowance of claims. 11 U.S.C. § 502. Generally, a filed claim is deemed allowed unless a party in interest objects. 11 U.S.C. § 502(a). If an objection is filed, section 502(b) requires the Court to

determine the amount of the claim and allow it, unless the claim falls in one of the enumerated categories under sections 502(b)(1)-(9). *See* 11 U.S.C. § 502(b). Section 502(b) provides for disallowance of claims that are "unenforceable against the debtor and property of the debtor . . . under . . . applicable law for a reason other than because such claim is contingent or unmatured." 11 U.S.C. § 502(b)(1).

26. The objecting party has the initial "burden of putting forth evidence sufficient to refute the validity of the claim." *In re Metex Mfg. Corp.*, 510 B.R. 735, 740 (Bankr. S.D.N.Y. 2014) (citation omitted). "By producing 'evidence equal in force to the prima facie case,' an objector can negate a claim's presumptive legal validity, thereby shifting the burden back to the claimant to 'prove by a preponderance of the evidence that under applicable law the claim should be allowed.'" *In re Residential Capital, LLC*, 518 B.R. 720, 731 (Bankr. S.D.N.Y. 2014) (quoting *In re Motors Liquidation Co.*, No. 12 Civ. 6074 (RJS), 2013 WL 5549643, at *3 (S.D.N.Y. Sep. 26, 2013)).

A. Mr. Colt-Sarmiento Cannot Prevail on the Merits on Claims of Defamation and False Light Invasion of Privacy

27. The Complaint appears to assert that the Article defamed Mr. Colt-Sarmiento and/or gives rise to a claim for false light invasion of privacy because it falsely stated that "[H]e [Mr. Colt-Sarmiento] exchanged text messages with his co-defendants the day of the murder that read 'KILLKILLKILL' and 'well smoke em.' Court [sic] records show . . . ." Mr. Colt-Sarmiento asserts that this statement is false for four different reasons: First, because he did not send the subject messages; Second, the messages were not sent on the day of the murder; Third, the messages were not relevant to the crimes he was charged with; and Fourth, the phrase "KILLKILLKILL" is a lyric from a co-defendant's favorite rap song.

28. Mr. Colt Sarmiento's defamation and false light invasion of privacy claims should be rejected because the Complaint is legally deficient.

29. First, Mr. Colt-Sarmiento asserts that the Article falsely states that he sent the messages "'KILLKILLKILL' and 'well smoke em,'" when, in fact, he did not. But, that claim stems from a misreading of the Article. Instead, the Article reports that Mr. Colt-Sarmiento and his co-defendants "exchanged text messages . . . that read "KILLKILLKILL" and "well smoke em." Indeed, the Complaint admits the substantial truth of these statements in the Article by asserting that the subject messages were sent by a co-defendant. *See* Ex. D at 2. That admission, and the, at least, substantial truth of the Article's description of the text messages requires the disallowance of this portion of Claim 2725. *See Mark v. Seattle Times*, 635 P.2d 1081, 1092 (Wash. 1981) ("[A] defamation defendant need not prove the literal truth of every claimed defamatory statement. . . . A defendant need only show that the statement is substantially true or that the gist of the story, the portion that carries the 'sting,' is true."). *See also Maison de France, Ltd. v. Mais Oui!, Inc.*, 108 P.3d 787, 794 (Wash. Ct. App. 2005) (truth is an absolute defense to a defamation claim).

30. Second, Mr. Colt-Sarmiento claims that the Article's statement that the messages with the phrases "'KILLKILLKILL,' and, 'well smoke em'" were sent the day of the murder was false because "they were not sent on the day of the murder." *See* Ex. D at 2-3. Whether or not the messages were sent on the day of the murder, Mr. Colt-Sarmiento does not dispute that they, were in fact, sent. *Id*. He also does not dispute that those statements were part of the record at his criminal trial. In any event, such minor inaccuracies do not support a defamation claim. *See Seattle Times*, 635 P.2d at 1092 ("The Supreme Court has held that 'inaccurate and defamatory reports of facts' drawn from judicial proceedings are not deserving of First

Amendment protection. . . . It is not the law, however, that every misstatement of fact, however insignificant, is actionable as defamation. Indeed, state law requires not only that there be fault on the part of the defamation defendant, but that 'the substance of the statement' 'makes substantial danger to reputation apparent.'" [citations omitted]).

31. Mr. Colt-Sarmiento was convicted of second-degree murder and related crimes and sentenced to more than sixty years in jail. That sentence was affirmed on appeal. Assuming the Article's report that the subject messages were sent the "day of the murder" was inaccurate, that inaccuracy does not present a "substantial danger" to Mr. Colt-Sarmiento's reputation.

32. Third, Mr. Colt-Sarmiento appears to claim that the Article's inclusion of the phrases "'KILLKILLKILL,' and, 'well smoke em'" portrays him in a false light because those statements did not have any relevancy to the crimes charged. In Washington, a false light invasion of privacy claim "arises when someone publicizes a matter that places another in a false light if (a) the false light would be highly offensive to a reasonable person and (b) the actor knew of or recklessly disregarded the falsity of the publication and the false light in which the other would be placed." *Paterson v. Little, Brown & Co.*, 502 F. Supp. 2d 1124, 1147 (W.D. Wash. 2007) (citing *Eastwood v. Cascade Broadcasting Co.*, 722 P.2d 1295 (Wash. 1986) (en banc)).

33. False light "differs from defamation in that it focuses on compensation for mental suffering, rather than reputation." *Corey v. Pierce County*, 225 P.3d 367, 373 (Wash. Ct. App. 2010) (citing *Eastwood*, 722 P.2d at 1297). "Thus, '[i]t is not . . . necessary to the action . . . that the plaintiff be defamed.' Restatement (Second) of Torts § 652E, cmt. B . . . . 'It is enough that he is given unreasonable and highly objectionable publicity that attributes to h[is] characteristics, conduct or beliefs that are false, and so is placed before the public in a false position.' Restatement (Second) of Torts § 652E, cmt. b." *Washburn v. Gymboree Retail Stores, Inc.*, No.

C11–822 (RSL), 2012 WL 3818540, at *16 (W.D. Wash. Sept. 4, 2012) (citation omitted). Finally, "[a]lthough defamation and invasion of privacy by false light are distinct causes of action, they both 'rest on the disclosure of *false or misleading information* . . . .'" *Kivlin v. City of Bellevue*, No. C20-0790 RSM, 2021 WL 5140260, at *6 (W.D. Wash. Nov. 4, 2021) (quoting *Seaquist v. Caldier*, 438 P.3d 606, 612, *review denied*, 449 P.3d 657 (2019)) (emphasis in original).

34. Mr. Colt-Sarmiento's subjective opinion concerning the relevance of the phrases "'KILLKILLKILL,' and, 'well smoke em'" to his trial and ultimate conviction for second-degree murder (the victim was shot in the back) does not make the accuracy of those statements, or their presence in the trial record, any more or less true. Indeed, the Complaint admits that Mr. Colt-Sarmiento received text messages containing those phrases from his co-defendants. *See* Ex. D at 2-3. As a result, the Article's inclusion of those phrases does not "rest on the disclosure of false or misleading information" and is therefore, as a matter of law, neither defamatory nor capable of portraying Mr. Colt-Sarmiento in a false light. *See Kivlin*, 2021 WL 5140260 at *6.

35. Fourth, Mr. Colt-Sarmiento appears to assert that the Article defamed him or gave rise to a claim for false light invasion of privacy because the phrase "'KILLKILLKILL'" came from a co-defendant's favorite rap song. Even if that is true, it does not make the Article's reference to that phrase false and misleading as the Complaint admits that Mr. Colt-Sarmiento received text messages from a defendant with that phrase. *See* Ex. D at 2.

36. It is also true that even if Mr. Colt-Sarmiento was defamed because the phrase "'KILLKILLKILL' or well smoke em'" was attributed to him, the News Tribune was privileged to publish the phrase under the fair reporting privilege. Under Washington law, "[a] newspaper has a qualified or conditional privilege to report legal proceedings provided the publication is a

fair and accurate statement of the contents and is made without malice." *O'Brien v. Tribune Pub. Co.*, 499 P.2d 24, 30 (1972). The fair reporting privilege "allows the news media to publish to the general public reports on any official action or proceeding, or any public meeting pertaining to a matter of public concern." *Alpine Industries Computers, Inc. v. Cowles Pub. Co.*, 57 P.3d 1178, 1186 (Wash. Ct. App. 2002) (citations omitted). The privilege is designed to "serve the public's interest in obtaining information as to what transpires in official proceedings and public meetings." *Id.* (citing *Herron v. Tribune Publ'g Co.*, 736 P.2d 249, 260 (1987) (other citations omitted).

37. The fair reporting privilege "applies where communication is attributed properly to an official proceeding and the report is an accurate report of that proceeding or a fair abridgement." *Alpine Industries*, 57 P.3d at 1186 (citing Restatement (Second) of Torts § 611 cmt. a, d, f (1977)). The privilege protects a publisher "even if the publisher does not believe defamatory statements contained in the official report to be true or even knows the defamatory statements to be false." *Id.* (citing Restatement, § 611 cmt. a); *see also Herron*, 736 P.2d at 260 (the fair reporting privilege protects a "republisher when the defamatory statement originally was made in the course of an official proceeding or contained in an official report."). The privilege bars a plaintiff from maintaining a defamation action if: (a) the report is attributable to an official proceeding; and (2) the report is accurate or a fair abridgement." *Id.* (citing Restatement, § 611 cmt. d, e, f; *Rushford v. New Yorker Magazin*e, Inc., 846 F.2d 249, 254 (4th Cir. 1988); *Ditton v. Legal Times*, 947 F. Supp. 227, 230 (E.D. Va. 1996)).

38. "A publisher fairly abridges the judicial proceeding if the report renders a 'substantially correct' account of the proceeding.'" *Alpine Industries*, 57 P.3d at 1187 (citing *Ditton*, 947 F.Supp. at 230 [quoting *Rushford*, 846 F.2d at 254-55])). "Under this standard, the

publisher must not edit and delete an otherwise accurate report so as to misrepresent the proceeding and thus mislead the reader. . . . And the publisher must not add material so as to cast a person in a defamatory light. . . . To determine the fairness of the report, we must read the article as a whole." *Id.* (citing Restatement, supra, § 611 cmt. f). In applying the fair reporting privilege, the Court's role "is simply to ask whether the article in general fairly summarizes the court documents." *Clapp v. Olympic View Pub. Co., L.L.C.*, 154 P.3d 230, 235 (Wash. Ct. App. 2007)

39. Here, the exchanged messages are attributable to an official proceeding, Mr. Colt-Sarmiento's trial. The messages are also a fair abridgement of those proceedings because the purpose of the Article was to report about Mr. Colt-Sarmiento's criminal proceedings, not report about who sent certain text messages, and the Article clearly does so. *See* Ex. C.

40. In sum, the Article fairly summarized the court records such that the fair reporting privilege applies.

B. Mr. Colt-Sarmiento Cannot Prevail on the Merits on Claims of Intentional Infliction of Emotional Distress and Negligent Infliction of Emotion Distress

41. In addition to defamation and false light invasion of privacy claims, the Complaint appears to also assert claims for intentional infliction of emotional distress and negligent infliction of emotional distress. The claims are also without merit.

1. Intentional Infliction of Emotional Distress

42. Under Washington law, a claim for intentional infliction of emotion distress requires a showing of: (1) intentional or reckless infliction of emotional distress, (2) by outrageous and extreme conduct of the defendant, (3) resulting in severe emotional distress to plaintiff. *Grimsby v. Samson*, 530 P.2d 291, 295 (Wash. 1975). The conduct at issue must be "'[s]o outrageous in character, and so extreme in degree, as to go beyond all possible bounds of

decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.'" (emphasis omitted.) *Id.* (quoting Restatement (Second) of Torts § 46, cmt. d at 73 (1965)) "[I]t is not enough that a 'defendant has acted with an intent which is tortious or even criminal, or that he has intended to inflict emotional distress, or even that his conduct has been characterized by 'malice,' or a degree of aggravation which would entitle the plaintiff to punitive damages for another tort.'" *Id.* (quoting *Id.*). Liability also "'does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities.'" *Id.* (quoting *Id.*).

43. The publication of the Article does not rise to the level of conduct to show intentional infliction of emotional distress, as it is not outrageous, utterly intolerable, or so extreme as to go beyond all possible bounds of decency. As stated, the complained-of statements in the Article are all true or substantially true and reflect the News Tribune's privileged reporting on a matter of public concern. It is also relevant in this regard that the Court of Appeals of Washington affirmed Mr. Colt-Sarmiento's conviction. *See* Ex. B.

44. In sum, because Mr. Colt-Sarmiento cannot establish any "outrageous or extreme conduct" by the News Tribune, his intentional infliction of emotional distress claim is legally deficient.

2. Negligent Infliction of Emotional Distress

45. Under Washington law, "[n]egligent infliction of emotional distress is a limited, judicially created cause of action that allows a family member to a recovery for "foreseeable" intangible injuries caused by viewing a physically injured loved one shortly after a traumatic accident." *Colbert v. Moomba Sports, Inc.*, 176 P.3d 497, 500 (Wash. 2008). To maintain an action for negligent infliction of emotional distress, a plaintiff must "show the distress [is] manifested by 'objective symptomatology' - *i.e.,* 'physical symptoms evidencing and resulting

from the emotional distress.'" *Brower v. Ackerley*, 943 P.2d 1141, 1147 (Wash. Ct. App. 1997) (quoting *Hunsley v. Giard*, 553 P.2d 1096, 1102 (1976)).

46. Mr. Colt-Sarmiento cannot assert a negligent infliction of emotional distress claim because he does not, and cannot, allege that he viewed "a physically injured loved one shortly after a traumatic accident." As a result, under Washington law this claim is legally defective.

C. Mr. Colt-Sarmiento Cannot Prevail on the Merits on a Claim of Negligence

47. Mr. Colt-Sarmiento alleges that the News Tribune's reporting was negligent because it failed to investigate, prepare or supervise its employees prior to publication of the Article. *See* Ex. D. at 4. The negligence claim lacks merit because the complained-of statements are true and privileged such that publication was not unreasonable. *See Seattle Times*, 635 P.2d at 1092 (under a negligence standard, private figures libeled on matters of public importance must establish all four elements of a defamation case: falsity, an unprivileged communication, fault, and damages).[2]

48. In conclusion, the GUC Recovery Trustee respectfully submits that Claim No. 2725 be disallowed and expunged in its entirety because Mr. Colt-Sarmiento cannot prevail on the merits of his claims of defamation, false light invasion of privacy, intentional infliction of emotional distress, negligent infliction of emotional distress or negligence.

IV. NOTICE

49. Notice of this Objection has been given to parties on the master service list who have agreed to accept service by email and by first-class certified mail to Alberto Colt-

[2] *See Mark v. King Broad. Co.*, 618 P.2d 512, 516 (Wash. Ct. App. 1980), *aff'd sub nom.*, *Mark v. Seattle Times*, 635 P.2d 1081 (Wash. 1981) ("The commission of crime, prosecutions resulting from it, and judicial proceedings arising from the prosecutions . . . are without question events of legitimate concern to the public and consequently fall within the responsibility of the press to report the operations of government.").

Sarmiento. The GUC Recovery Trustee submits that such notice is sufficient and no other or further notice need be provided.

V. CONCLUSION

WHEREFORE, the GUC Recovery Trustee respectfully requests that the Court enter the Proposed Order attached as **Exhibit A**: (a) disallowing and expunging Claim No. 2725; (b) granting such other and further relief as the Court deems just and proper.

Dated: March 22, 2022
New York, New York

/s/ Leo T. Crowley

PILLSBURY WINTHROP SHAW PITTMAN LLP
Leo T. Crowley
Patrick E. Fitzmaurice
Kwame O. Akuffo
31 West 52nd Street
New York, New York 10019
Telephone: (212) 858-1000
Facsimile: (212) 858-1500
leo.crowley@pillsburylaw.com
patrick.fitzmaurice@pillsburylaw.com
kwame.akuffo@pillsburylaw.com

Counsel for GUC Recovery Trustee

Response Deadline: May 4, 2022 at 4:00 p.m. (Prevailing Eastern Time)
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PILLSBURY WINTHROP SHAW PITTMAN LLP
31 West 52nd Street
New York, NY 10019-6131
Telephone: 212-858-1000
Facsimile: 212-858-1500
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Kwame O. Akuffo

Counsel for GUC Recovery Trustee

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
JCK LEGACY COMPANY, *et al.*,	:	Case No. 20-10418 (MEW)
Debtors.[1]	:	(Jointly Administered)

NOTICE OF OBJECTION AND HEARING

THIS OBJECTION SEEKS TO DISALLOW AND EXPUNGE PROOF OF CLAIM NO. 2725 FILED BY ALBERTO COLT-SARMIENTO ON THE MERITS.

PLEASE TAKE NOTICE that William A. Brandt, Jr., in his capacity as trustee of the JCK Legacy GUC Recovery Trust, filed the *GUC Recovery Trustee's Objection to Proof of Claim No. 2725 Filed By Alberto Colt-Sarmiento on the Merits* (the "**Objection**") with the United States Bankruptcy Court for the Southern District of New York (the "**Bankruptcy Court**").

[1] The Debtors in these chapter 11 cases and the last four characters of each Debtor's tax identification number are: JCK Legacy Company (0478) and Herald Custom Publishing of Mexico, S. de R.L. de C.V. (5UZ1). The location of the GUC Recovery Trustee's service address for purposes of these chapter 11 cases is: 110 East 42 Street, Suite 1818 New York, NY 10017.

PLEASE TAKE FURTHER NOTICE that any response to the Objection must be filed on or before **May 4, 2022 at 4:00 p.m. (ET)** (the "**Response Deadline**") with the Bankruptcy Court, Courtroom 617, One Bowling Green, New York, New York 10004. At the same time, you must serve a copy of any response by the Response Deadline upon the undersigned counsel to the movant and to:

(a) The Debtors, JCK Legacy Company, c/o FTI Consulting, Inc., 1201 W. Peachtree Street, NW, Suite 500, Atlanta, Georgia 30309, Attn.:Sean M. Harding (sean.harding@fticonsulting.com);

(b) Counsel for the Plan Administration Trustee, Skadden, Arps, Slate, Meagher & Flom LLP, One Manhattan West, New York, New York 10001, Attn.: Shana A. Elberg (shana.elberg@skadden.com) and Bram A. Strochlic (bram.strochlic@skadden.com), 300 South Grand Avenue, Suite 3400, Los Angeles, California 90071, Attn.: Van C. Durrer, II (van.durrer@skadden.com), and Destiny N. Almogue (destiny.almogue@skadden.com) and 525 University Avenue, Palo Alto, California 94301 Attn.: Jennifer Madden (jennifer.madden@skadden.com);

(c) Co-counsel for the Plan Administration Trustee, Togut, Segal & Segal LLP, One Penn Plaza, Suite 3335, New York, New York 10119, Attn.: Albert Togut (altogut@teamtogut.com) and Kyle J. Ortiz (kortiz@teamtogut.com);

(d) The GUC Recovery Trust, c/o DSI Consulting, Inc., 110 East 42nd Street, Suite 1818, New York, New York 10017 Attn.: William A. Brandt., Jr. (bbrandt@DSIconsulting.com);

(e) Counsel for the GUC Recovery Trustee, Pillsbury Winthrop Shaw Pittman LLP, 31 West 52nd Street, New York, New York. Attn.: Leo T. Crowley (leo.crowley@pillsburylaw.com), Patrick Fitzmaurice (patrick.fitzmaurice@pillsburylaw.com), and Kwame O. Akuffo (kwame.akuffo@pillsburylaw.com);

(f) The Office of the United States Trustee, U.S. Federal Office Building, 201 Varick Street, Room 1006, New York, New York 10014, Attn.: Benjamin J. Higgins and Brian S. Masumoto; and

(g) Any party that has requested notice pursuant to Bankruptcy

Rule 2002.

Only those responses made in writing and timely filed in accordance with the above procedures will be considered by the Bankruptcy Court.

PLEASE TAKE FURTHER NOTICE THAT, unless the telephonic hearing procedures set forth in General Order M-543 (Morris, C.J.) are amended, the hearing to consider the Objection shall be held **telephonically via Court Solutions LLC on May 11, 2022 at 11:00 am (ET)** before the Honorable Michael E. Wiles in the Bankruptcy Court, Courtroom 617, One Bowling Green, New York, New York 10004. Instructions to register for Court Solutions LLC are attached to Gen. Ord. M-543.

PLEASE TAKE FURTHER NOTICE THAT if you fail to respond in accordance with this Notice and by the Response Deadline, the Bankruptcy Court may grant the relief requested in the Objection without further notice or a hearing.

Dated: March 22, 2022
New York, New York

/s/ Leo T. Crowley

PILLSBURY WINTHROP SHAW PITTMAN LLP
Leo T. Crowley
Patrick E. Fitzmaurice
Kwame O. Akuffo
31 West 52nd Street
New York, New York 10019
Telephone: (212) 858-1000
Facsimile: (212) 858-1500
leo.crowley@pillsburylaw.com
patrick.fitzmaurice@pillsburylaw.com
kwame.akuffo@pillsburylaw.com

Counsel for GUC Recovery Trustee

Exhibit A

Proposed Order

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
JCK LEGACY COMPANY, *et al.*,	:	Case No. 20-10418 (MEW)
Debtors.[1]	:	(Jointly Administered)

ORDER GRANTING GUC RECOVERY TRUSTEE'S OBJECTION TO PROOF OF CLAIM NO. 2725 FILED BY ALBERTO COLT-SARMIENTO ON THE MERITS

Upon consideration of the *GUC Recovery Trustee's Objection to Proof of Claim No. 2725 Filed By Alberto Colt-Sarmiento on the Merits* (the "**Objection**") to disallow and expunge Claim No. 2725[2]; and the Court having jurisdiction under 28 U.S.C. §§ 157 and 1334 to consider the Objection and relief requested; and the Objection and relief requested being a core proceeding under 28 U.S.C. § 157(b)(2); and venue being proper before this Court under 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Objection having been provided; and it appearing that no other notice is needed; and such relief being in the best interest of the Debtors' estates and their creditors, and the GUC Recovery Trust; and the Court having considered all papers submitted; and for good cause shown;

It is hereby **ORDERED** that:

1. The Objection is **SUSTAINED** to the extent set forth herein.

2. Claim No. 2725 is disallowed and expunged in its entirety.

3. The GUC Recovery Trustee or the claims agent is authorized and directed to modify the claims register in accordance with the terms of this Order.

[1] The Debtors in these chapter 11 cases and the last four characters of each Debtor's tax identification number are: JCK Legacy Company (0478) and Herald Custom Publishing of Mexico, S. de R.L. de C.V. (5UZ1). The location of the GUC Recovery Trustee's service address for purposes of these chapter 11 cases is: 110 East 42 Street, Suite 1818 New York, NY 10017.

[2] Capitalized terms used and not otherwise defined herein shall have the meaning ascribed to them in the Objection.

4. The Court shall retain jurisdiction over any matter arising from or related to the implementation of this Order.

Dated: May ___ , 2022
New York, NY

_____
Michael E. Wiles
United States Bankruptcy Judge

Exhibit B

Appellate Decision

13 Wash.App.2d 1117

NOTE: UNPUBLISHED OPINION, SEE WA R GEN GR 14.1

Court of Appeals of Washington, Division 2.

STATE of Washington, Respondent,
v.
Alberto Colt SARMIENTO, Appellant.

No. 51589-0-II
|
Filed June 30, 2020

Appeal from Pierce County Superior Court, Docket No: 15-1-04435-6, Honorable Kitty-Ann Van Doorninck, Judge

Attorneys and Law Firms

Casey Grannis, Nielsen Koch, PLLC, 1908 E. Madison St., Seattle, WA, 98122-2842, for Appellant.

Britta Ann Halverson, Pierce County Prosecuting Attorney, 930 Tacoma Ave. S Rm. 946, Tacoma, WA, 98402-2171, for Respondent.

UNPUBLISHED OPINION

Maxa, J.

***1** Alberto Colt Sarmiento appeals his convictions of second degree murder, two counts of first degree assault, and second degree unlawful possession of a firearm. The convictions arose from a shooting that occurred at the time and location that Sarmiento, a Varrio Sureño Lokotes (VSL) gang member, had arranged a fistfight with Eddie Contreras, who claimed to represent another Sureño gang. Sarmiento was present at the location along with his friends Juan Zuniga and Trino Martinez. When Contreras and two others arrived at the fight location, Sarmiento stood by his truck while Zuniga ran out from some bushes toward Contreras and the others and fired multiple gunshots at them. One of the men with Contreras died of a gunshot wound at the scene and the other sustained a serious gunshot wound.

We hold that (1) any error regarding the issuance of various search warrants that Sarmiento challenges was harmless because the untainted evidence of Sarmiento's guilt on all charges was overwhelming; (2) Sarmiento's trial counsel was not ineffective for failing to request a "defense of others" jury instruction because there was a legitimate strategic reason for not wanting that instruction; (3) the cumulative error doctrine is inapplicable because any error was harmless; (4) the evidence was sufficient to sustain Sarmiento's conviction of second degree unlawful possession of a firearm; and (5) Sarmiento's assertions in a statement of additional grounds (SAG) lack merit. Accordingly, we affirm Sarmiento's convictions.

FACTS

Background

Sarmiento and Contreras met in September 2015 when they engaged in a fistfight. The two shook hands after the fight, exchanged names, and spoke briefly. Sarmiento introduced himself as "Taxer" and said that he was a member of the VSL gang. Contreras told Sarmiento he was a member of the 18th Street, another Sureño gang.

A week or two after the fight, Sarmiento sent Contreras a friend request on Facebook, which Contreras accepted. Sarmiento initiated conversations with Contreras via Facebook Messenger, which were friendly at first but became more adversarial after Sarmiento began to suspect that Contreras was not really a member of the 18th Street gang. Sarmiento and Contreras exchanged messages that each regarded as disrespectful and insulting. Sarmiento complained to others on Facebook about Contreras's insult.

On November 1, Sarmiento sent Contreras a message challenging him to another fight, and Contreras accepted. Sarmiento messaged Contreras again on November 2, and the two men agreed to meet that night for a fistfight without weapons.

November 2, 2015 Shooting

Just before the scheduled fight on November 2, Sarmiento, Zuniga, and Martinez gathered at Steven Gamez's residence. Gamez, Zuniga, and Martinez were all gang members affiliated with the Southside Criminals, another Sureño gang. Martinez displayed a gun and passed it to Zuniga, who also handled it. Sarmiento was there and saw the gun. Sarmiento discussed his anger at a person who was posing as an 18th Street gang member and had disrespected Sarmiento. Sarmiento, Zuniga, and Martinez talked about doing work for the gang.

***2** Sarmiento, Zuniga, and Martinez left Gamez's residence in Sarmiento's truck with the gun. Martinez gave Zuniga the gun after they made a brief stop. They then drove to the location of the planned fistfight.

Contreras brought his friends Elijah Crawford and Isaac Fogalele to the planned fight to provide backup if necessary. When they arrived at the fight location, Sarmiento was standing outside his parked truck. Contreras, Crawford, and Fogalele got out of Contreras's vehicle, and as Contreras started walking Sarmiento said, "You talking shit, huh?" 9 Report of Proceedings (RP) at 892. Sarmiento signaled to Zuniga, who was in the bushes nearby, by calling his nickname "Mobster."

Zuniga, who was wearing a bandana over his face, came running out of some bushes toward Contreras, Crawford, and Fogalele with a gun and started shooting at them. Sarmiento stood there without ducking to take cover, and Contreras stated that it was as if "he knew what was going on." 9 RP at 911. Crawford was shot in the back and died at the scene. Fogalele was injured by a bullet. Contreras was uninjured but heard bullets flying by him as he ran away. After the shooting, Sarmiento, Zuniga, and Martinez left the scene in Sarmiento's truck.

Investigation and Charges

Contreras spoke with detectives later that night and showed them his Facebook communications with "Taxer." Contreras identified Sarmiento through photos posted on Facebook. Police subsequently issued a warrant for his arrest.

On November 5, 2015, police obtained a search warrant for Sarmiento's Facebook account. On November 5 and 9, they obtained search warrants for the records relating to four phone numbers that Sarmiento previously had used. On November 12 and 17, police obtained search warrants for the Facebook accounts of Martinez and Jose Salinas. Salinas was a person with whom Sarmiento exchanged gang-related messages publicly on Facebook.

After the shooting, Sarmiento fled the area and stayed with his uncle Raymundo Gomez in Centralia. Gomez subsequently learned of the warrant for Sarmiento's arrest. When Gomez confronted Sarmiento, he admitted to Gomez that he planned the shooting with his friends. Gomez called police a few days later and reported Sarmiento's location.

Police arrested Sarmiento on November 16. Two cell phones were recovered from the scene, one (referred to as the HTC phone) in a freezer wrapped in aluminum foil and another (referred to as the LG phone) located in the storage area where Sarmiento was found hiding. On November 17, police obtained search warrants for the HTC and LG phones.

Zuniga became a person of interest after police saw a Facebook message from Zuniga to Sarmiento after the shooting saying Zuniga had left his backpack in Sarmiento's truck.

The State charged Sarmiento with one count of first degree murder (count I), one count of second degree murder (count II), two counts of first degree assault (counts III and IV), and one count of second degree unlawful possession of a firearm (count V). Sarmiento was charged as an accomplice as to counts I through IV. Counts I through IV also included firearm sentencing enhancements, and all five counts included a gang aggravator.

Zuniga and Martinez also were charged with multiple counts. Zuniga pleaded guilty to first degree murder and two counts of attempted first degree murder. Martinez was scheduled to be tried jointly with Sarmiento, but Martinez later also pleaded guilty.

Motion to Suppress Evidence

***3** Sarmiento moved to suppress evidence derived from the search warrants issued for the HTC and LG phones, his phone records, his Facebook account, and Martinez's and Salinas's Facebook accounts. The trial court reviewed the challenged search warrants and accompanying affidavits and denied Sarmiento's motions.

Evidence at Trial

The State argued that Sarmiento planned an ambush shooting in retaliation for perceived disrespect from Contreras. The State presented evidence regarding the events leading up to the shooting and the shooting itself as described above. The trial court admitted exhibits containing information discovered in the searches of the two phones, Sarmiento's Facebook account, and Martinez's Facebook account. No evidence obtained from Sarmiento's phone records or Salinas's Facebook account was admitted at trial.

Sarmiento did not testify at trial. Zuniga testified for the defense. He testified that he, Sarmiento, and Martinez left

Gamez's house in Sarmiento's truck with the gun that they had been handling. Martinez gave the gun to Zuniga when they made a stop while Sarmiento stood on the other side of the truck. Martinez told Zuniga it was time to "earn your stripes." 14 RP at 1857. Sarmiento told Zuniga "Don't be worried," "Don't be afraid," and "Be ready." 14 RP at 1913. When they left, Zuniga sat next to the window while Martinez sat between him and Sarmiento. Martinez gave Zuniga the gun "just in case" because Zuniga was "riding shotgun." 14 RP at 1816. Zuniga said that Sarmiento saw him with the gun sometime that night.

Zuniga testified that he, Sarmiento, and Martinez then drove to the fight location and Zuniga went into the bushes and put a bandana over his face. After Contreras's vehicle pulled up and three individuals got out, Sarmiento signaled to Zuniga, who opened fire. Zuniga claimed he thought the three individuals were rival gang members and he panicked. He also claimed it was not a planned shooting.

Defense counsel did not request a "defense of others" jury instruction. Sarmiento argued in his opening statement and closing argument that he planned only a fistfight and that he had no knowledge of or involvement in Zuniga's shooting.

Verdict

The jury convicted Sarmiento of first degree manslaughter as a lesser offense to first degree murder, second degree murder, two counts of first degree assault, and second degree unlawful possession of a firearm. The jury also found by special verdict that Sarmiento was armed with a firearm for counts I through IV and that the gang aggravator applied for all counts. The trial court vacated the manslaughter conviction to avoid double jeopardy.

Sarmiento appeals his convictions.

ANALYSIS

A. VALIDITY OF SEARCH WARRANTS

Sarmiento argues that the trial court erred in denying his motion to suppress the evidence seized pursuant to search warrants for his HTC and LG phones, his phone records, his Facebook accounts, and Martinez's and Salinas's Facebook accounts. He claims that the warrants lacked probable cause and violated the particularity requirement of the Fourth Amendment. We conclude that even if the trial court erred in denying his motion to suppress one or more of the search warrants, any error was harmless.

1. Legal Principles

The Fourth Amendment to the United States Constitution and article I, section 7 of the Washington Constitution impose two requirements for search warrants. *State v. Higgs*, 177 Wn. App. 414, 425, 311 P.3d 1266 (2013). First, a warrant can be issued only if supported by probable cause. *State v. Lyons*, 174 Wn.2d 354, 359, 275 P.3d 314 (2012). Second, a search warrant must be sufficiently particular so that the officer executing the warrant can reasonably ascertain and identify the property authorized to be seized. *State v. Besola*, 184 Wn.2d 605, 610, 359 P.3d 799 (2015). "Warrants for materials protected by the First Amendment require a heightened degree of particularity." *Id.* at 611.

***4** In determining whether probable cause supports challenged warrants, we can consider the search warrant affidavits presented to the judge issuing the warrants. *See Lyons*, 174 Wn.2d at 363 ("We cannot defer to the magistrate where the affidavit does not provide a substantial basis for determining probable cause"). However, in assessing the particularity requirement, we may only consider search warrant affidavits if they are attached to or incorporated by reference by the warrant itself. *State v. Riley*, 121 Wn.2d 22, 29, 846 P.2d 1365 (1993).

2. Harmless Error

We apply a harmless error analysis when the trial court admits evidence that is a product of an invalid warrant. *State v. Keodara*, 191 Wn. App. 305, 317-18, 364 P.3d 777 (2015). Admission of evidence obtained through a warrant that violates constitutional requirements is an error of constitutional magnitude. *Id.* at 317. An error of constitutional magnitude is harmless "if, in light of the entire trial record, we are convinced that the [factfinder] would have reached the same verdict absent the error." *State v. Romero-Ochoa*, 193 Wn.2d 341, 348, 440 P.3d 994 (2019).

The State bears the burden of showing beyond a reasonable doubt that the error did not contribute to the verdict. *Keodara*, 191 Wn. App. at 317-18. One way to establish harmless error is to show that the untainted evidence is so

overwhelming that it necessarily leads to a finding of guilt. *Id.* at 318. We also can look to the "overall significance of the erroneously admitted or excluded evidence in this context (e.g., whether it was cumulative or corroborated, or consistent with the defense theory)." *Romero-Ochoa*, 193 Wn.2d at 348.

3. Analysis

We do not address the merits of Sarmiento's challenges to various search warrants. Instead, we assume without deciding that the trial court erred in denying Sarmiento's motion to suppress. We conclude that even if the warrants were invalid, any error in admitting evidence relating to the warrants was harmless because overwhelming untainted evidence supported Sarmiento's murder and assault convictions and the firearm and gang special verdicts.

a. Immaterial Warrants

Initially, the trial court did not admit any evidence that was derived from the search warrants for Sarmiento's phone records or Salinas's Facebook account. Therefore, any error relating to these warrants necessarily could not have affected the outcome of the trial.

b. Murder and Assault Convictions

Undisputed evidence established that Zuniga shot and killed Crawford and assaulted Contreras and Fogalele with a firearm. Fogalele was struck by a bullet and Contreras heard bullets flying by as he ran. Zuniga pleaded guilty to murder and two counts of attempted murder and admitted at trial that he fired the shots. The issue here is whether there was overwhelming untainted evidence at trial that Sarmiento acted as Zuniga's accomplice.

The evidence showed that just before the scheduled fight between Sarmiento and Contreras, Sarmiento expressed his anger at a person – presumably Contreras – who was posing as an 18th Street gang member and had made disrespectful comments regarding Sarmiento. Sarmiento, Martinez, and Zuniga talked about doing work for the gang.

Sarmiento, Zuniga, and Martinez drove in Sarmiento's truck to the fight location with Martinez in possession of a gun. When Martinez gave Zuniga the gun during a stop, he told Zuniga it was time to "earn your stripes." 14 RP at 1857. Sarmiento told Zuniga "Don't be worried," "Don't be afraid," and "Be ready." 14 RP at 1913. Martinez gave Zuniga the gun "just in case" because Zuniga was "riding shotgun." 14 RP at 1816.

***5** When they arrived at the fight location, Sarmiento stood next to his truck while Zuniga went out of sight. Zuniga put a bandana over his face. Zuniga testified that as Contreras confronted Sarmiento, Sarmiento gave Zuniga a signal. Zuniga immediately came running out of the bushes and started firing multiple shots at Contreras and his companions. Sarmiento stood next to his truck without ducking to take cover, according to Contreras as if "he knew what was going on." 9 RP at 911.

After the shooting, Sarmiento told his uncle that he had planned the shooting with his friends.

We conclude that overwhelming untainted evidence established that Sarmiento was an accomplice to second degree murder and two first degree assaults.

c. Second Degree Unlawful Possession of a Firearm

The State argued at trial and argues on appeal that Sarmiento constructively possessed the firearm that Zuniga used because the gun was in the truck that he was driving. None of the evidence introduced at trial that derived from the search warrants related to Sarmiento's possession of the gun on the night of the shooting. Therefore, we conclude that the jury would have convicted Sarmiento of unlawful possession of a firearm absent any error. *See* *Romero-Ochoa*, 193 Wn.2d at 348.

d. Gang Aggravator

The jury was instructed that to find the charged gang aggravator, it had to determine "[w]hether the defendant committed the offense with the intent to directly or indirectly cause any benefit, aggrandizement, gain, profit, or other advantage to or for a criminal street gang, its reputation, influence, or membership." Clerk's Papers (CP) at 243. The gang aggravator related to all five charges.

Sarmiento did not contest at trial that he was a member of the VSL gang. He introduced himself to Contreras as "Taxer" and said that he was a member of the VSL gang. Others knew Sarmiento to be a VSL gang member. Contreras told Sarmiento he represented 18th Street, another Sureño gang. Sarmiento's Facebook Messenger conversations with Contreras became more adversarial after Sarmiento began to suspect that Contreras was not really a member of the 18th Street gang.

Gamez, Zuniga, and Martinez were all gang members affiliated with the Southside Criminals, another Sureño gang. At Gamez's house on the night of the shooting, Sarmiento, Martinez, and Zuniga talked about doing work for the gang. Zuniga wanted to elevate his status within the gang. When Martinez handed Zuniga the gun, Martinez told him to "earn your stripes." 14 RP at 1857. Zuniga felt that he earned his stripes by firing the gun. As noted above, there was extensive evidence at trial to establish that Sarmiento was an accomplice to Zuniga's actions.

We conclude that overwhelming untainted evidence established that Sarmiento or an accomplice committed the charged offenses with the intent to directly or indirectly cause any benefit, aggrandizement, gain, profit, or other advantage to or for a criminal street gang, its reputation, influence, or membership.

B. INEFFECTIVE ASSISTANCE OF COUNSEL

Sarmiento argues that his defense counsel was ineffective because he failed to request a "defense of others" jury instruction based on the theory that Zuniga acted in defense of Sarmiento when Zuniga shot at Contreras, Crawford, and Fogalele. We disagree.

1. Legal Principles

Both the Sixth Amendment to the United States Constitution and article I, section 22 of the Washington Constitution guarantee criminal defendants the right to effective assistance of counsel. *State v. Estes*, 188 Wn.2d 450, 457, 395 P.3d 1045 (2017). We review de novo an ineffective assistance of counsel claim. *Id.*

***6** To prevail on an ineffective assistance claim, the defendant must show both that (1) defense counsel's representation was deficient and (2) the deficient representation prejudiced him or her. *Id.* at 457-58. Representation is deficient if, after considering all the circumstances, it falls below an objective standard of reasonableness. *Id.* at 458. Prejudice exists if there is a reasonable probability that, except for counsel's error, the result of the proceeding would have been different. *Id.* It is not enough that ineffective assistance conceivably impacted the case's outcome; the defendant must affirmatively show prejudice. *Id.*

We begin our analysis with a strong presumption that defense counsel's performance was reasonable. *Id.* Defense counsel's conduct is not deficient if it can be characterized as legitimate trial strategy or tactics. *Id.* To rebut the strong presumption that counsel's performance was effective, "the defendant bears the burden of establishing the absence of any 'conceivable legitimate tactic explaining counsel's performance.' " *State v. Grier*, 171 Wn.2d 17, 42, 246 P.3d 1260 (2011) (quoting *State v. Reichenbach*, 153 Wn.2d 126, 130, 101 P.3d 80 (2004)).

Where counsel's failure to request a particular jury instruction is the basis for a claim of ineffective assistance, the defendant must show that he or she "was entitled to the instruction, counsel's performance was deficient in failing to request it, and the failure to request the instruction caused prejudice." *State v. Classen*, 4 Wn. App. 2d 520, 539-40, 422 P.3d 489 (2018).

2. Legitimate Trial Strategy

Even if Sarmiento was entitled to a defense of others instruction, the question here is whether defense counsel's failure to request such an instruction can be characterized as a legitimate trial strategy or tactic. *See Grier*, 171 Wn.2d at 42.

When a defendant is charged as an accomplice to a shooting, the primary defense often is that the defendant had no knowledge that a shooting would occur. Defense counsel proffered this defense. The theory was that Zuniga, a young, aggressive, and undisciplined gang member, had acted on his own during the shooting because he was eager to elevate his status within the gang. Defense counsel argued that Zuniga was high and intoxicated at the time of the shooting. Defense counsel also argued that Sarmiento was not an accomplice to Zuniga's actions because there was no plan between them to shoot anyone and that Zuniga acted purely on his own.

If defense counsel had requested a defense of others instruction, the jury might have inferred that Zuniga was acting at Sarmiento's request to defend him. Therefore, the instruction could have undermined Sarmiento's theory that Zuniga had acted alone and that Sarmiento had nothing to do with Zuniga's decision to shoot the victims. Given the strong presumption that defense counsel's performance was effective, we conclude that the decision not to request a defense of other instruction was a legitimate trial strategy.

Because Sarmiento cannot demonstrate that defense counsel's performance was deficient, we hold that Sarmiento's ineffective assistance of counsel claim on this basis fails.

C. CUMULATIVE ERROR

Sarmiento argues that cumulative error denied him a fair trial. Under the cumulative error doctrine, the defendant must show that the combined effect of multiple errors requires a new trial. *State v. Clark*, 187 Wn.2d 641, 649, 389 P.3d 462 (2017).

Here, we have held that even if the trial court erred in denying Sarmiento's suppression motion, any error was harmless. Therefore, the cumulative error doctrine is inapplicable. *See State v. Yarbrough*, 151 Wn. App. 66, 98, 210 P.3d 1029 (2009).

D. SUFFICIENCY OF THE EVIDENCE – POSSESSION OF FIREARM

***7** Sarmiento argues that the State failed to present sufficient evidence of second degree unlawful possession of a firearm because it failed to establish that he had actual or constructive possession of a firearm. We disagree.

1. Legal Principles

The test for determining sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found guilt beyond a reasonable doubt. *State v. Cardenas-Flores*, 189 Wn.2d 243, 265, 401 P.3d 19 (2017). In a sufficiency of the evidence claim, the defendant admits the truth of the evidence and the court views the evidence and all reasonable inferences drawn from that evidence in the light most favorable to the State. *Id.* at 265-66. Credibility determinations are made by the trier of fact and are not subject to review. *Id.* at 266. Circumstantial and direct evidence are equally reliable. *Id.*

A person is guilty of unlawful possession of a firearm in the second degree if he knowingly has a firearm in his possession or control and he has previously been adjudicated guilty of a felony. RCW 9.41.040(2)(a); *State v. Anderson*, 141 Wn.2d 357, 360, 5 P.3d 1247 (2000). The trial court's to-convict instruction included these elements. Sarmiento stipulated that he previously had been adjudicated guilty as a juvenile of a felony offense and was not permitted by law to possess a firearm.

A person can have actual possession or constructive possession of an item. *State v. Reichert*, 158 Wn. App. 374, 390, 242 P.3d 44 (2010). Actual possession requires physical custody of the item. *Id.* Constructive possession occurs when a person has "dominion and control" over an item. *Id.* Although the defendant's ability to immediately take actual possession of an item can show dominion and control, mere proximity to the item by itself is insufficient. *State v. Davis*, 182 Wn.2d 222, 234, 340 P.3d 820 (2014). A person can have possession without exclusive control; more than one person can be in possession of the same item. *State v. George*, 146 Wn. App. 906, 920, 193 P.3d 693 (2008).

Whether sufficient evidence establishes that a defendant had dominion and control over an item depends on the totality of the circumstances. *State v. Lakotiy*, 151 Wn. App. 699, 714, 214 P.3d 181 (2009). Aspects of dominion and control include whether the defendant could immediately convert the item to his or her actual possession, *State v. Jones*, 146 Wn.2d 328, 333, 45 P.3d 1062 (2002); the defendant's physical proximity to the item, *State v. Chouinard*, 169 Wn. App. 895, 899, 282 P.3d 117 (2012); and whether the defendant had dominion and control over the premises where the item was located. *Reichert*, 158 Wn. App. at 390.

When a defendant has dominion and control of the premises, a rebuttable presumption arises that the defendant also has dominion and control over items within the premises. *Reichert*, 158 Wn. App. at 390. Courts have found sufficient evidence that a defendant had dominion and control an item in a vehicle when the defendant was driving a vehicle that he or she owns. *State v. Bowen*, 157 Wn. App. 821, 828, 239 P.3d 1114 (2010); *State v. Turner*, 103 Wn. App. 515, 524, 13 P.3d 234 (2000).

In *Bowen*, the defendant was the owner, driver, and sole occupant of a truck in which a firearm was located. 157 Wn. App. at 828. This court stated, "An individual's sole occupancy and possession of a vehicle's keys sufficiently supports a finding that the defendant had dominion and control over the vehicle's contents." *Id.* In *Turner*, the defendant was driving his truck with one passenger and a rifle was in the back seat. 103 Wn. App. at 521. The court noted that the defendant was "in close proximity to the rifle, knew of its presence, was able to reduce it to his possession, and had been driving the truck in which the rifle was found." *Id.* He also "knew that he was transporting the firearm and did nothing to remove it from his presence." *Id.* at 524. The court stated, "[W]here there is control of a vehicle and knowledge of a firearm inside it, there is a reasonable basis for knowing constructive possession, and there is sufficient evidence to go to the jury." *Id.*

2. Analysis

***8** Consistent with the law stated above, the trial court instructed the jury as follows regarding the definition of "possession":

> Possession means having a firearm in one's custody or control. It may be either actual or constructive. Actual possession occurs when the item is in the actual physical custody of the person charged with possession. Constructive possession occurs when there is no actual physical possession but there is dominion and control over the item.
>
> Proximity alone without proof of dominion and control is insufficient to establish constructive possession. Dominion and control need not be exclusive to support a finding of constructive possession.
>
> In deciding whether the defendant had dominion and control over an item, you are to consider all the relevant circumstances in the case. Factors that you may consider, among others, include whether the defendant had the immediate ability to take actual possession of the item, whether the defendant had the capacity to exclude others from possession of the item, and whether the defendant had dominion and control over the premises where the item was located. No single one of these factors necessarily controls your decision.

CP at 239. In addition, the to-convict instruction required that the jury find that Sarmiento had possession of a firearm on November 2, the day of the shooting.

The State argues that Sarmiento had constructive possession because the gun that Zuniga shot was in Sarmiento's truck, which he was driving, and he did nothing to remove it. Sarmiento argues that the State could not show that he had dominion and control over the firearm while it was in the truck because there was no evidence that Sarmiento knew Zuniga had the gun inside the truck or knew that Martinez brought the gun into the truck in the first place.

An essential element of the crime of unlawful possession of a firearm is knowing possession. *State v. Hartzell*, 156 Wn. App. 918, 944, 237 P.3d 928 (2010). But knowledge may be inferred when the defendant's conduct indicates the requisite knowledge is logically probable. *State v. Warfield*, 119 Wn. App. 871, 884, 80 P.3d 625 (2003).

Here, Sarmiento saw the gun at Gamez's house, regardless of whether he touched it. Zuniga testified that he, Sarmiento, and Martinez left Gamez's house with the gun in Sarmiento's truck. When Martinez gave Zuniga the gun at a stop, Sarmiento told Zuniga "Don't be worried," "Don't be afraid," and "Be ready." 14 RP at 1913. Zuniga testified that Sarmiento saw him with the gun in his hands sometime that night. This evidence supports a reasonable inference that Sarmiento knew that the gun was in his truck.

Sarmiento points out that the cases that find sufficient evidence of possession based on a defendant driving a vehicle in which a firearm was located all involved situations where the firearm was not in anyone's actual possession. *Bowen*, 157 Wn. App. at 828 (firearm in bag next to driver's seat); *Turner*, 103 Wn. App. at 518 (firearm in back seat). Here, the gun was not simply loose in the truck; it was actually possessed by Martinez and then Zuniga. But as the court instructed the jury here, "whether the defendant had dominion and control over the premises where the item was located" was a factor that the jury could consider and "[d]ominion and control need not be exclusive to support a finding of constructive possession." CP at 239. The instruction did not state that a third party's actual possession of the gun precluded a finding of constructive possession.

***9** We hold that the evidence was sufficient to prove that Sarmiento had constructive possession of the firearm.

E. SAG CLAIMS

1. Challenges to Warrants

Sarmiento asserts that the use of the term "co-conspirators" in the HTC and LG phone warrant was overbroad because RCW 9A.32.030 (the first degree murder statute) does not contain the term "co-conspirator" and the term allowed law enforcement to broaden their search to items for which there was no probable cause. He also asserts that the temporal limitations on some of the search warrants did not cure the warrants' overbreadth because the date limitations were not relevant to the crimes under investigation.

But we held above that even if the warrants were invalid, any error was harmless. Therefore, we reject these assertions.

2. Double Jeopardy

Sarmiento asserts that his convictions for second degree felony murder and first degree manslaughter violate the Fifth Amendment's prohibition on double jeopardy.

However, at sentencing the trial court vacated the first degree manslaughter conviction. Sarmiento's judgment and sentence states that he was convicted of only one count of second degree murder under RCW 9A.32.050(1)(b). Therefore, we conclude that there was no violation of double jeopardy.

CONCLUSION

We affirm Sarmiento's convictions.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

We concur:

LEE, C.J.

CRUSER, J.

All Citations

Not Reported in Pac. Rptr., 13 Wash.App.2d 1117, 2020 WL 3542315

End of Document

Exhibit C

Article

THE NEWS TRIBUNE

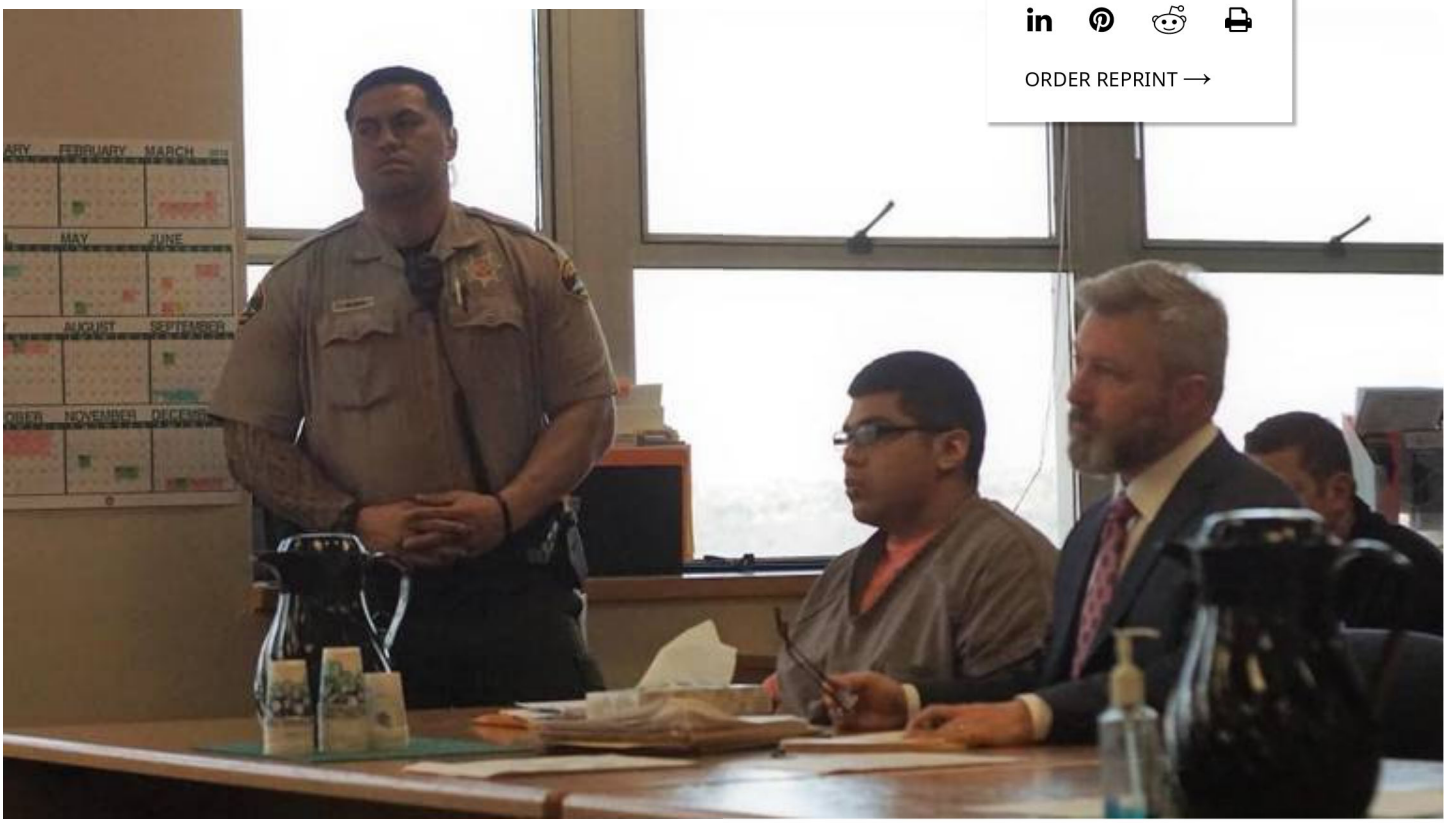
LOCAL

Man who instigated fight that left Tacoma teenager dead gets long prison term

BY TESS RISKI

UPDATED MARCH 10, 2018 6:51 PM

ORDER REPRINT ⟶



Alberto Colt-Sarmiento, seated in glasses, was sentenced Friday in Pierce County Superior Court to more than 60 years in prison for his role in the shooting death of Elijah Crawford in Tacoma. Colt-Sarmiento's attorney, Michael Stewart, is at right. TESS RISKI *TESS.RISKI@THENEWSTRIBUNE.COM*

Only have a minute? Listen instead

Powered by **Trinity Audio**

00:00 02:54

Alberto Colt-Sarmiento, 25, was sentenced Friday in Pierce County Superior Court to 60 years, 10 months in prison in the 2015 fatal shooting of Elijah Crawford.

Though the violence was rooted in gang-related issues, Crawford had no gang affiliations. His friend was to engage in a fistfight with Colt-Sarmiento. Crawford, 18, tagged along to support his buddy.

At some point, a friend of Colt-Sarmiento pulled out a gun, court records show. Crawford was shot in the back while running away in the 1400 block of East 44th Street in Tacoma, deputy prosecutor Jesse Williams said in court Friday.

The victim's mother, Debbye Crawford, said during the sentencing hearing that her son had plans to join the military, go to college and become a wrestling coach.

"I hate you with every fiber in me," Crawford told Colt-Sarmiento before turning her attention to the court. "His two sons get to see him get older. Get to have letters. Get to talk to him on this phone. I get to have a grave site and old pictures."

Colt-Sarmiento did not fire the gun that killed Crawford, but prosecutors said he was key in orchestrating the fight. He exchanged text messages with his co-defendants the day of the murder that read, "KILLKILLKILL," and, "well smoke em," court records show.

A jury last month found Colt-Sarmiento guilty of second-degree murder, unlawful possession of a firearm and two counts of first-degree assault.

Williams sought an exceptional sentence of more than 73 years. That included the high end of the sentencing range plus enhancements and 18 years on top of that. The 18 years are symbolic, Williams said, of Crawford's age at the time of his death.

"There should be no mercy for these types of crimes," the deputy prosecutor said.

Defense attorney, Michael Stewart, pointed out Colt-Sarmiento did not kill anyone and called the prosecution's recommendation excessive.

"Alberto Colt-Sarmiento is not the killer," Stewart said. "He's not the shooter. He didn't plan an ambush. He didn't orchestrate this.

"This range offends my sense of justice. We will look forward to pressing this case on appeal."

.

In remarks to the court, Colt-Sarmiento maintained his innocence.

"As much as I would like to bring back your son, I cannot," he told Debbye Crawford. "I desire to with all my heart, but it is not in my power. And though my heart goes out to you, I stand today as an innocent man."

Judge Kitty-Ann van Doorninck then handed down the 60-year sentence.

Two co-defendants, Juan Javier Zuniga-Gonzales, 19, and Trino Valentino Martinez, 23, pleaded guilty in 2016. Both were sentenced to 21 years in prison. Zuniga-Gonzalez is believed to have fired the shot that killed Crawford.

This story was originally published March 9, 2018 7:00 PM.

Exhibit D

Complaint

IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR PIERCE COUNTY

ALBERTO COLT-SARMIENTO, Plaintiff, vs. TACOMA NEWS TRIBUNE, Defendant.	CASE NO. 20 2 05809 8 COMPLAINT FOR A CIVIL ACTION (Personal Injury/Tort) (JURY TRIAL DEMANDED)

ALBERTO COLT-SARMIENTO, the Plaintiff pro se herein, allege as follows:

I. JURISDICTION AND VENUE

1.1 Jurisdiction in this Court is proper under RCW 2.08.010, because jurisdiction has not been exclusively vested in another Court by law.

1.2 Venue in this Court is proper under RCW 4.12.020(3) as the claims complained of arose within Pierce County and the Defendant is located in Pierce County.

II. PARTIES TO CONTROVERSY

ALBERTO COLT-SARMIENTO, #406372
Clallam Bay Corr. Center
1830 Eagle Crest Way
Clallam Bay, WA 98326
(360)203-1427
www.jpay.com

2.1 ALBERTO COLT-SARMIENTO, the Plaintiff pro se (hereinafter "Plaintiff"), is an individual residing primarily in the State of Washington, County of Clallam Bay. Specifically, Plaintiff is currently serving a sentence at the Clallam Bay Corrections Center, 1830 Eagle Crest Way, Clallam Bay, Washington, 98326.

2.2 TACOMA NEWS TRIBUNE, the Defendant (hereinafter "Defendant"), is a private corporation in Pierce County, in the State of Washington, County of Pierce. Specifically, the Defendant is located at: 1950 South State Street, Tacoma, Washington, 98405.

III. STATEMENT OF FACTS

3.1 At approximately an unknown hour, March 11, 2018 a False Statement was published by a Tacoma News Tribune reporter Ms./Mrs. Tess Risski. Specifically the Defendant published the false statement "...[H]e exchanged text messages with his co-defendants the day of the murder that read 'KILLKILLKILL' and 'well smoke em,' Court [sic] records show...". The Defendant falsely stated that Court records showed this when Court records show (1) Court records show that Plaintiff did not send those messages, (2) Court records show that they were by his co-defendant but they were not sent on the day of the murder, nor did the statements have any relevancy to the crimes charged, and (3) Court records show that "KILLKILLKILL" came

ALBERTO COLT-SARMIENTO, #406372
Clallam Bay Corr. Center
1830 Eagle Crest Way
Clallam Bay, WA 98326
(360)203-1427
www.jpay.com

from his co-defendant's favorite rap song by the Chicano rap artist "Rascal," a song taken from an original song by Tupac Shakur. The Defendant did publish this unprivileged false statement intentionally and/or recklessly.

3.2 Thereafter the trial, Plaintiff's Mother Natalia Colt-Flores (hereinafter "Mother") retrieved a copy of the newspaper from her boss at her job, at Tacoma Fixture. Plaintiff's Mother's Boss had observed it and handed it to her, thereby humilating Plaintiffs Mother. Upon her distress of learning that her son (Plaintiff) had sent text messages on the day of the murder, which was a false statement, she confronted Plaintiff and refused to appeal to Family members for any more help in Plaintiff's defense.

3.3 Plaintiff's Mother has three other copies of the false light her son was placed under.

3.4 The manager to Plaintiff's residence stated to his mother that her son was no longer welcome back to the area i.e. the trailer park his mother resides at when he ever got out of prison.

3.5 On March 13, 2018 Plaintiff was transferred from Pierce County Jail to Washington Corrections Center at Shelton (hereinafter "WCC"), the receiving institution all inmates are screen and processed for the Washington Department of Corrections (hereinafter "WDOC").

ALBERTO COLT-SARMIENTO, #406372
Clallam Bay Corr. Center
1830 Eagle Crest Way
Clallam Bay, WA 98326
(360)203-1427
www.jpay.com

3.6 At around the same month but an unknown day in "R-1" at WCC, Plaintiff found a copy of the Tacoma News Tribune paper in his cell.

3.7 At an unknown time but in the month of late March, Plaintiff requested an officer at WCC, C/O Erica Rich, to look up Tacoma News Tribune address for him (see Affidavit #2).

3.8 Thereafter the publication Plaintiff began to suffer from ridicule and began to seek mental health treatment (see Affidavit #3).

3.9 Plaintiff was caused due to the injury to take medication of "Prozasin." Plaintiff asserts that there should be an alternative such as "Cognium" paid for by the Defendants to help him heal from the injury intentionally inflicted by the Defendant because of the false newspaper publication.

IV. CAUSES OF ACTIONS

IV. (A) CLAIM ONE

4.1 Plaintiff incorporates paragraphs 1.1 through 3.9.

4.2 The Defendant did have a duty to provide reasonable care in the investigation, preparation, and publication of publicly circulated materials.

4.3 The Defendant did have a duty to train and supervise their employees.

4.4 The Defendants have breached these duties.

4.5 The Defendant's breach has damaged Plaintiff.

ALBERTO COLT-SARMIENTO, #406372
Clallam Bay Corr. Center
1830 Eagle Crest Way
Clallam Bay, WA 98326
(360)203-1427
www.jpay.com

4.6 The Plaintiff does accuse the Defendant of the "TORT OF NEGLIGENCE."

IV. (B) CLAIM TWO

4.7 Plaintiff does incorporate paragraphs 1.1 through 4.6.

4.8 The Defendant did expose Plaintiff to hatred, ridicule, obloquy, and deprived Plaintiff of the benefit of public confidence and social intercourse.

4.9 The Defendant did cause actual monetary damages.

4.10 The Plaintiff does accuse the Defendant of "DEFAMATION-LIBEL" (Claim 2) or in the alternative "INVASION OF PRIVACY BY FALSE LIGHT" (alternative Claim 2).

IV. (C) CLAIM THREE

4.11 Plaintiff incorporates paragraphs 1.1 through 4.10.

4.12 Due to Defendant's breach Plaintiff has suffered episodes of memory loss causing Plaintiff to seek mental treatment and receive mental health medications.

4.13 Plaintiff does accuse the Defendant of "INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS" (Claim 3) or in the alternative "NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS" (alternative Claim 3).

V. RESERVATION OF RIGHTS

5.1 Plaintiff reserves the right to amend this Complaint as the factual allegations contained herein evolve, and add any and all other claims that have or may arise from the facts

ALBERTO COLT-SARMIENTO, #406372
Clallam Bay Corr. Center
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www.jpay.com

underlying this lawsuit.

VI. STATEMENT OF RELIEF SOUGHT

WHEREFORE, Plaintiff asks the Court for the following relief:

6.1 Consequential Damages.

6.2 Continuing Damages.

6.3 Actual Damages.

6.4 Discretionary Damages.

6.5 Punitive Damages.

6.6 Any other relief as this Court may deem just, equitable, and proper under the circumstances.

DATED and SIGNED this 25th day of February, 2020.

Respectfully Filed By:

xAlberto Colt-S

ALBERTO COLT-SARMIENTO, Plaintiff

ALBERTO COLT-SARMIENTO, #406372
Clallam Bay Corr. Center
1830 Eagle Crest Way
Clallam Bay, WA 98326
(360)203-1427
www.jpay.com

Clallam Bay Corr. Center
1830 Eagle Crest Way
Clallam Bay, WA 98326
(360)203-1427
(360)203-1500/CBCC Main
e-mail: www.jpay.com

March 7, 2020

Kevin Stock, Court Clerk
Pierce County Superior Court
930 Tacoma Avenue Sounth, Room 110
Tacoma, WA 98402

RE: Filing New Lawsuit; Colt-Sarmineto v. Tacoma News Tribune

Dear Court Clerk:

Hello. Thank you for your recent letter requesting I include the Summons with the other legal documents. Please find enclosed "MOTION AND DECLARATION FORE A WAIVER OF CIVIL FEES AND SURCHARGES," "ORDER" [proposed], "CASE INFORMATION COVER SHEET," "SUMMONS," "COMPLAINT FOR A CIVIL ACTION" (w/ two Complaint faces to send back to me).

Please note the Motion to be heard and potentially granted/signed so I can proceed. Upon granting in forma pauperis status please send me a copy of the filed version with the extra two face sheets bate stamped.

In conclusion, please contact me at the above modes of communication if you have any questions or concerns. I look forward to hearing back from your Honorable Court. Thanks again. Bye.

Well Regards,

x alberto colt-D

ALBERTO SARMIENTO, Plaintiff pro se

ALBERTO SARMIENTO #406372
Clallam Bay Corrections Center
1830 Eagle Crest Way
Clallam Bay, WA 98326
(360)203-1427
(360)203-1500/CBCC Main
e-mail: www.jpay.com

February 25, 2020

Kevin Stock, Court Clerk
Pierce County Superior Court
930 Tacoma Avenue South, Room 110
Tacoma, WA 98402

RE: Filing New Lawsuit; Colt-Sarmiento v. Tacoma News Tribune

Dear Court Clerk:

Hello. Please find enclosed the "MOTION AND DECLARATION FOR WAIVER OF CIVIL FEES AND SURCHARGES," "ORDER" [proposed], "CASE INFORMATION COVER SHEET," "COMPLAINT FOR A CIVIL ACTION" (w/ two Complaint faces to send back to me).

Please note the Motion to be heard and potentially granted /signed so I can proceed. Upon granting in forma pauperis statue please send me a copy of the filed version with the extra two face sheets bate stamped.

In conclusion, please contact me at the above modes of communication if you have any questions or concerns. I look forward to hearing back from you Honorable Court. Thanks again. Bye.

Well Regards,

ALBERTO COLT S., Plaintiff pro se

IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR PIERCE COUNTY

ALBERTO COLT-SARMIENTO, Plaintiff, vs. TACOMA NEWS TRIBUNE, Defendant.	CASE NO. _____ SUMMONS [20 DAYS] TO TACOMA NEWS TRIBUNE

TO THE DEFENDANT: TACOMA NEWS TRIBUNE

A lawsuit has been started against you in the above entitled court by ALBERTO COLT-SARMIENTO, Plaintiff. Plaintiff's claim is stated in the written Complaint, a copy of which is served upon you with this summons.

In order to defend against this lawsuit, you must respond to the complaint by stating your defense in writing, and by serving a copy upon the person signing this summons within 2o days after service of this summons, excluding the day of service, or a default judgment may be entered against you without notice. A default judgment is one where the Plaintiff is entitled to what she or he asks for because you have not responded. If you serve a notice of appearance on the undersigned person, you are entitled to notice before a default judgment mey be entered.

You may demand that the Plaintiff file this lawsuit with the Court. If you do so, the demand must be in writing and must be served upon the person signing this summons. Within 14 days after you serve the demand, the plaintiff must

ALBERTO COLT-SARMIENTO #406372
Clallam Bay Corr. Center
1830 Eagle Crest Way
Clallam Bay, WA 98326
(360)963-1427
www.jpay.com

file this lawsuit with the court, or the service on you of this summons and complaint will be void.

If you wish to seek the advise of an attorney in this matter, you should do so promptly so that your written response, if any, may be served on time.

This summons is issued pursuant to rule 4 of the Superior Court Civil Rules of the State of Washington.

DATED and SIGNED this 8th day of March, 2020.

SENT REPONSES AND NOTICES TO:

x Alberto Colt-S
ALBERTO COLT-SARMIENTO#406372
Clallam Bay Corr. Center
1830 Eagle Crest Way
Clallam Bay, WA 98326

ATTN: Court Clerk
Pierce County
Superior Court
930 Tacoma Avenue South
Tacoma, WA 98402

ALBERTO COLT-SARMIENTO #406372
Clallam Bay Corr. Center
1830 Eagle Crest Way
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(360)203-1427
www.jpay.com