Supreme Court No. 100765-5
Court of Appeals No. 83303-1-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

CITY OF VANCOUVER,
Respondent,

v.

CRYSTAL DAWN BOLDT,
Petitioner.

ON REVIEW FROM THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR CLARK COUNTY

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Petitioner, Crystal Dawn Boldt, through her attorney, Sean M. Downs, requests the relief designated in Part B.

B. COURT OF APPEALS DECISION

Ms. Boldt requests review of the published opinion of the Court of Appeals in 83303-1-I, filed on February 22, 2022. A copy of the decision is attached as Appendix A.

C. ISSUES PRESENTED FOR REVIEW

1. Whether this court should accept review where Ms. Boldt's criminal trial was presided over by a district court commissioner absent the agreement by the defendant on the record.

D. STATEMENT OF THE CASE

Ms. Boldt was charged by information with theft in the third degree for an alleged shoplifting incident at Kohl's. RP (08/26/2019) 61. Ms. Boldt proceeded to jury trial in front of Commissioner Todd George. RP (08/26/2019) 1. After a review of the clerk's papers and court hearings, there is an absence of

any record that Ms. Boldt waived her right to have a trial in front of a judge and she did not affirmatively consent to a trial in front of a commissioner. The only mention of proceeding in front of a commissioner was at the August 12, 2019 readiness hearing, which is stated as follows:

> JUDGE OSLER: All right, so we'll see you back two weeks from today then it will be on September twenty—or August 26th at 8:30. That will be your next court date. I still have a bunch of cases because we're still starting up this docket today, so if for some reason I'm double or triple booked is there any objection to having a court commissioner hear this case?
>
> DEFENSE ATTORNEY: Um, I don't have an objection to that [unintelligible] … Um, Commissioner George is…
>
> JUDGE OSLER: No objection?
>
> DEFENSE ATTORNEY: Yeah, no objection to Commissioner George.
>
> JUDGE OSLER: Any objection from the city?
>
> ABBY POWELL (PROSECUTOR): No objection to either commissioner.
>
> JUDGE OSLER: Okay, thank you. All right, so we'll plan on seeing you – somebody will – on the

> twenty-sixth of August, Ms. Boldt. Okay, good to go.
>
> DEFENSE ATTORNEY: She doesn't need to sign anything?
>
> JUDGE OSLER: No, she already signed her trial dates before.

RP (08/12/2019) 1-2.

The court did not engage in a colloquy with Ms. Boldt about a trial before a commissioner and Ms. Boldt's attorney did not confer with her beforehand. *Id*. Ms. Boldt subsequently proceeded to trial and was ultimately found guilty by jury verdict. RP (08/26/2019) 190-193.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

This court should accept review, as this case is an issue of first impression and it involves an issue of substantial public interest that should be determined by the Supreme Court. RAP 13.4(b)(4).

1. **The district court commissioner did not have authority to preside over the criminal trial absent agreement by the defendant on the record.**

Jurisdictional issues are reviewed *de novo*. *State v. Squally*, 132 Wn.2d 333, 340, 937 P.2d 1069 (1997). Likewise, questions of statutory interpretation are a question of law reviewed *de novo*. *Perkins Coie v. Williams*, 84 Wn. App. 733, 736, 929 P.2d 1215 (1997).

"Each district court commissioner shall have such power, authority, and jurisdiction in criminal and civil matters as the appointing judges possess and shall prescribe, except that ***when serving as a commissioner, the commissioner does not have authority to preside over trials in criminal matters***, or jury trials in civil matters unless agreed to on the record by all parties." RCW 3.42.020 (Powers of commissioners—Limitations) (emphasis added). Defendants have a substantial right to have cases tried in a court presided over by an elected district court judge accountable to the electorate, rather than by an unelected commissioner. That right cannot be waived by defense counsel's unauthorized statement or signing of a consent stipulation absent the defendant's own consent. *State v.*

Sain, 34 Wn. App. 553, 557, 663 P.2d 493 (1983) (detailing analogous authority regarding Superior Court judges *pro tem*). Absent an affirmative waiver, the commissioner did not have jurisdiction to preside over the trial of the defendant. *Id*. The defendant's written consent or specific consent on the record must be obtained before the commissioner can undertake any trial proceedings in the case. *Id*. In contrast, the statute governing district court commissioner trials requires consent "on the record by all parties." It does not reference consent by "attorneys of record." RCW 3.42.020.

Again, by analogy, under the Washington Constitution Article IV § 7, when a trial by jury has been demanded, the trial shall be by jury unless the parties *or their attorneys of record* consent to trial by the court sitting without a jury. Wash. Const. Article IV, § 7 (emphasis added). In construing that provision, our Supreme Court stated that the client must specifically consent to the withdrawal of a jury demand and this may be done by the submission of a signed statement. *Graves v. P.J.*

Taggares Co., 94 Wn.2d 298, 305, 616 P.2d 1223 (1980); *see also State v. Stegall*, 124 Wn.2d 719, 881 P.2d 979 (1994) (waiver of right to 12-person jury is constitutionally valid only on showing of either personal statement from defendant or indication of discussion of issue with defendant prior to attorney's own waiver). The essential element to the valid appointment of a commissioner to preside over a criminal trial, which must exist, is the consent of the parties. *State v. Hastings*, 115 Wn.2d 42, 46, 793 P.2d 956 (1990) (detailing analogous authority regarding Superior Court judges *pro tem*)[1].

Waiving the right to be tried in front of a judge instead of a commissioner is similar to the requirement of the waiver of the right to be tried by a jury. Both the state and federal constitutions protect the right to a trial by jury. U.S. Const.

[1] *Hastings* is distinguishable from district court proceedings because defendants in district court cases are not allowed to move from a *pro tem* judge to an elected judge. The defendant in *Hastings* argued that there was a constitutional right to move from a *pro tem* judge to an elected judge. Here, we have the statutory provisions from RCW 3.42.020 that are clear as to what is required for a valid waiver.

Amend. VI, XIV; art. I, § 21. An accused person may waive that right, but such a waiver must be voluntary, knowing, and intelligent. *State v. Hos*, 154 Wn. App. 238, 249, 225 P.3d 389 (2010) (citing *City of Bellevue v. Acrey*, 103 Wn.2d 203, 207, 691 P.2d 957 (1984)). A claim arguing that an accused person did not validly waive his/her right to a jury trial may be raised for the first time on appeal. *Hos*, 154 Wn. App. at 252; RAP 2.5(a)(3). The burden of proving the validity of a jury trial waiver is on the state. *Id*. An appellate court "must indulge every reasonable presumption against [a jury trial waiver], absent a sufficient record." *Id*. at 250 (citing *State v. Wicke*, 91 Wn.2d 638, 645, 591 P.2d 452 (1979)). The validity of a purported waiver of the right to a jury trial is reviewed *de novo*. *Id*. (citing *State v. Ramirez–Dominguez,* 140 Wn. App. 233, 239, 165 P.3d 391 (2007)). A record can only support a jury trial waiver if it contains a "personal expression of waiver" by the accused. *Id*. (citing *Wicke*, 91 Wn.2d at 644). Counsel's waiver of the right to trial by jury, on the behalf of the accused,

is insufficient to proceed without a jury as factfinder. *Id*. This is true even when -- as in *Wicke* -- the accused "stood beside his counsel, without objection, as counsel orally waived a jury trial." *Id*. (citing *Wicke*, 91 Wn.2d at 644). Rather, the trial court must orally question the accused to obtain a personal waiver of this critical constitutional right. *Id*. (citing *Wicke*, 91 Wn.2d at 641). As the *Wicke* court noted, an implicit waiver does not establish the fact of a knowing, voluntary, and intelligent waiver "to the extent of the constitutional standard demanded by the United States Supreme Court…" *Wicke*, 91 Wn.2d at 645 (citing *Hodges v. Easton*, 106 U.S. 408, 1 S.Ct. 307, 27 L.Ed. 169 (1882); *Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); *Schneckloth v. Bustamonte*, 412 U.S. 218, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973)). As in *Hos* and *Wicke*, Ms. Boldt did not sign a written waiver. *Hos*, 154 Wn. App at 251; *Wicke*, 91 Wn.2d at 641. Also like in *Hos* and *Wicke*, the trial court did not personally question Ms. Boldt to determine whether she had knowingly, voluntarily, and

intelligently waived her right to a trial before a judge or even understood the rights afforded to her. *Hos*, 154 Wn. App. at 252; *Wicke*, 91 Wn.2d at 641.

Being tried in front of a commissioner is not merely a ministerial matter that a defense attorney can make the decision without the consent of the defendant. This is a substantial issue because it relates directly to a commissioner's jurisdiction to try a case. RCW 3.42.020. Jurisdiction "is the power and authority of the court to act." 77 Am.Jur.2D *Venue* § 1, at 608 (1997). Jurisdiction connotes the power to decide a case on its merits. *Dougherty v. Dep't of Lab. & Indus. for State of Washington*, 150 Wn.2d 310, 315–16, 76 P.3d 1183 (2003). As an analogy, juvenile court is a statutorily devised system. *See* RCW Title 13; RCW 13.04.021. Like the waiver of any right in juvenile court, a juvenile's waiver of juvenile court jurisdiction and a decline hearing must be an "express waiver intelligently made by the juvenile after the juvenile has been fully informed of the right being waived. *State v. Saenz*, 175 Wn.2d 167, 283 P.3d

1094 (2012) (right must be waived by the individual; not by counsel).

Substantive rights need to be waived specifically by the defendant. *See*, *e.g.*, *Hos*, *Wicke*, *supra*. Here, the legislature specifically implemented a right to a defendant – the statute requires that the right must be waived by "all parties". RCW 3.42.020. A "party" under the plain and ordinary meaning of that term means the defendant. *HomeStreet, Inc. v. State, Dep't of Revenue*, 166 Wn.2d 444, 451, 210 P.3d 297 (2009); *Black's Law Dictionary Free Online Legal Dictionary 2nd Ed.* (A "party" is "[a] person concerned or having or taking part in any affair, matter, transaction, or proceeding, considered individually.")[2]. "Parties" means the individuals involved in the action. Here, that must include the defendant, Ms. Boldt, personally. By our customary understanding of the term "parties", the waiver of trial by judge must be agreed to by the

[2] *See* <https://thelawdictionary.org/party/> (last accessed September 10, 2020).

defendant, who is a party to the action. Ms. Boldt is the one that must consent; no one else is allowed to consent for her per the plain language of the statute. The statute does not include an exception to allow the defense attorney to waive the right to be tried in front of a judge like the Washington State constitution does for superior court *pro tem* judges. The court is required to look to the plain text of the statute, which requires the consent of Ms. Boldt. There is no authority that allows defense counsel to orally confirm that a commissioner may preside over the proceedings.

There are number of rights that defense attorneys are not allowed to waive or enter into without the defendant's consent, such as what plea to enter; whether to waive a jury trial; whether to testify on her own behalf; whether to appeal; whether to represent herself or hire a lawyer/request an appointed lawyer; the objectives of the representation. The court of appeals treated this issue as merely a non-substantial procedural matter. To the contrary, decisions over what judicial

officer presides over a matter is a substantial decision – the judicial officer determines what evidence is admissible, how the jury is instructed, which jury panel members may be excused, limitations on witness testimony, other miscellaneous legal issues that arise during trial, and potentially sentencing. The substantial nature of this decision necessarily must require input from the defendant. *Cf*. RCW 4.12.050 (Notice of disqualification).[3]

Because Ms. Boldt does not have a written waiver in the court file, the issue was not addressed by Ms. Boldt or the court on the record, and Ms. Boldt did not confer with her attorney about the issue beforehand, there was no valid waiver of a trial before a judge. Therefore, the commissioner did not have authority to preside over the criminal trial in the instant case.

[3] The disqualification of judge statute states that "[a]ny party to or any attorney appearing in any action or proceeding in a superior court may disqualify a judge from hearing the matter…" RCW 4.12.050. This statute makes the distinction that "party" and "attorney" are not one in the same.

Accordingly, Ms. Boldt's conviction must be reversed and this case remanded for a new trial. *Sain*, 34 Wn. App. At 557.

F. CONCLUSION

Given the foregoing, Petitioner respectfully requests this court to accept review.

DATED this 24th day of March, 2022.

This document contains 2,677 words.

Respectfully submitted,

s/ Sean M. Downs
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CERTIFICATE OF SERVICE

I, Sean M. Downs, a person over 18 years of age, served the City of Vancouver City Attorney a true and correct copy of the document to which this certification is affixed, on March 24, 2022 to email address <Abby.Powell@cityofvancouver.us>.

Service was made by email pursuant to the Respondent's consent. I also served Petitioner, Crystal Boldt, a true and correct copy of the document to which this certification is affixed via email to <cdboldt@gmail.com>.

s/ Sean M. Downs
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APPENDIX A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

CITY OF VANCOUVER, Respondent, v. CRYSTAL DAWN BOLDT, Appellant.	)	No. 83303-1-I PUBLISHED OPINION

VERELLEN, J. — RCW 3.42.020 controls when and how a district court commissioner has the authority to preside over a criminal trial. It provides a district court commissioner the same power and authority as a district court judge but prohibits a commissioner from presiding over a criminal or a civil jury trial "unless agreed to on the record by all parties." This is a procedural statute. An attorney is presumed to have authority to speak for their client on procedural matters.

Crystal Boldt argues her conviction for third degree theft in Clark County District Court is invalid because she did not personally consent to a commissioner presiding over her trial. But because the appointment of the presiding judicial officer over a district court criminal trial is a procedural matter and defense counsel had the authority to act on Boldt's behalf, her attorney's consent on the record was sufficient to provide authority for a commissioner to preside under RCW 3.42.020.

Therefore, we affirm.

FACTS

Boldt was charged with third degree theft in Clark County District Court for taking merchandise from a store in Vancouver (the City). At the readiness hearing two weeks before trial, District Court Judge Kelli Osler told the parties she might be "double, triple booked" on the day of trial and asked, "[I]s there an objection to having [a] commissioner hear this case?"[1] Defense counsel said, "[N]o objection," and Boldt said nothing.[2] The prosecutor also consented on the City's behalf. District Court Commissioner Todd George presided over trial without any objection, and the jury found Boldt guilty.

Boldt filed a RALJ appeal and, for the first time, argued her sentence was invalid because she never consented under RCW 3.42.020 to having a commissioner preside. The RALJ court concluded she consented and affirmed.

A commissioner granted Boldt's petition for discretionary review to consider whether RCW 3.42.020 requires a defendant's personal consent for a district court commissioner to preside over a criminal trial.

ANALYSIS

Boldt contends her conviction is invalid because she did not personally consent to a commissioner presiding over her trial, depriving Commissioner George of the authority to do so under RCW 3.42.020. The City argues RCW 3.42.020 lets a district court commissioner preside over a criminal trial when the parties or their attorneys consent in open court.

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[1] Clerk's Papers at 289.

[2] Id.

Boldt relies on State v. Sain[3] to argue article IV, section 5 of the Washington Constitution grants a criminal defendant in district court the right to an elected judicial officer presiding at trial. Because this is a constitutional right, she contends it can be waived under RCW 3.42.020 by the defendant alone. She is mistaken.

Article IV, section 5 requires only that at least one superior court judge in each county be elected.[4] From this, the Sain court concluded article IV, section 5 granted "a substantial right" to criminal defendants in superior court "to be tried in a court presided over by an elected superior court judge."[5] But in State v. Belgarde, our Supreme Court rejected Sain's analysis, concluding "art[icle] IV, sec[tion] 5 does not expressly grant a right to a trial presided over by an elected superior court judge."[6] Indeed, article IV, section 5 actually "envisions that unelected superior court judges will perform judicial duties."[7] The court explained Sain is limited to a "narrow question" considering the authority of pro tem judges in superior court.[8]

The Washington Constitution grants the legislature "sole authority to determine the jurisdiction and powers of [district] courts."[9] The constitution does not grant district court defendants the right to an elected judge.[10] There is no constitutional limitation on

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[3] 34 Wn. App. 553, 663 P.2d 493 (1983).

[4] State v. Belgarde, 119 Wn.2d 711, 720, 837 P.2d 599 (1992).

[5] Sain, 34 Wn. App. at 557.

[6] 119 Wn.2d 711, 721, 837 P.2d 599 (1992).

[7] Id.

[8] Id.

[9] State v. Hastings, 115 Wn.2d 42, 49, 793 P.2d 956 (1990) (citing WASH. CONST. art. IV, §§ 1, 10, 12).

[10] Id. at 46.

allowing a district court commissioner to preside over a criminal trial in district court.[11] Because Boldt's argument does not implicate a constitutional right, the legislative intent behind RCW 3.42.020 controls our analysis.

We review issues of statutory interpretation de novo.[12] We interpret statutes to identify and carry out the intent of the legislature as shown by the statute's plain meaning.[13] A statute's plain meaning is shown by its own terms and by related statutes.[14] "To adhere to established principles of statutory interpretation," a court should be "reluctant to accept literal readings with . . . 'strained consequences,'

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[11] Id. at 49 (citing WASH CONST. art. IV, §§ 1, 10, 12); see State v. Bliss, 191 Wn. App. 903, 908, 365 P.3d 764 (2015) ("The legislature has sole authority to prescribe [district courts'] jurisdiction and powers.") (citing Young v. Konz, 91 Wn.2d 532, 540, 588 P.2d 1360 (1979)).

[12] State v. Armendariz, 160 Wn.2d 106, 110, 156 P.3d 201 (2007) (citing State v. J.P., 149 Wn.2d 444, 449, 69 P.3d 318 (2003)). Boldt also argues she raises an issue of jurisdiction. She is mistaken. "'Jurisdiction is the power and authority of the court to act.'" ZDI Gaming Inc. v. State ex rel. Washington State Gambling Comm'n, 173 Wn.2d 608, 616, 268 P.3d 929 (2012) (internal quotation marks omitted) (quoting Dougherty v. Dep't of Labor & Indus. for State of Washington, 150 Wn.2d 310, 315, 76 P.3d 1183 (2003)). Where the court has authority over the parties, the type of controversy, and the authority to enter a particular judgment, then it has jurisdiction over the case. Ronald Wastewater Dist. v. Olympic View Water & Sewer Dist., 196 Wn.2d 353, 368, 474 P.3d 547 (2020) (citing John Hancock Mut. Life Ins. Co. v. Gooley, 196 Wash. 357, 370, 83 P.2d 221 (1938)). Boldt does not challenge Clark County District Court's authority over her person or its ability to hear and enter judgment on the criminal charges against her. Instead, her challenge is to the steps required by RCW 3.42.020 to grant a commissioner authority to preside over a criminal trial in district court. This is distinct from a true question of jurisdiction.

[13] J.P., 149 Wn.2d at 450 (citing Nat'l Elec. Contractors Ass'n v. Riveland, 138 Wn.2d 9, 19, 978 P.2d 481 (1999)).

[14] Id. (citing Dep't of Ecology v. Campbell & Gwinn, L.L.C., 146 Wn.2d 1, 11, 43 P.3d 4 (2002); State v. Clausing, 147 Wn.2d 620, 630, 56 P.3d 550 (2002) (Owens, J. dissenting)).

especially when they do not align with the statute's purpose and plain meaning of its text."[15]

Under RCW 3.42.020, the legislature granted a district court commissioner the same "power, authority, and jurisdiction in criminal and civil matters" as a district court judge. But a commissioner has no "authority to preside over trials in criminal matters, or jury trials in civil matters unless agreed to on the record by all parties."[16] Here, it is undisputed that both parties' attorneys agreed on the record to a commissioner presiding at trial.[17] Thus, the question is whether "all parties" includes the parties' attorneys.

Boldt contends the ordinary dictionary meaning of "parties" in absence of the term "attorneys" means the legislature intended to require a defendant's personal consent.

When, as here, a term is undefined, we can use a dictionary to give a term its ordinary meaning.[18] "Party" is synonymous with "litigant," meaning "anyone who both is directly interested in a lawsuit and has a right to control the proceedings, make a

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[15] State v. Bergstrom, No. 99347-5, slip op. at 15-16 (Wash., Jan. 27, 2022), http://www.courts.wa.gov/opinions/pdf/993475.pdf (quoting State v. Fjermestad, 114 Wn.2d 828, 835, 791 P.2d 897 (1990)).

[16] RCW 3.42.020.

[17] Boldt asserts the parties must give their consent in writing. But she does not explain why an agreement "on the record" must be in writing. A writing submitted to the court could be sufficient, but it is not necessary. Because she cites no apt authority for her position, and we do not add terms to an unambiguous statute, J.P., 149 Wn.2d at 450 (citing State v. Delgado, 148 Wn.2d 723, 727, 63 P.3d 792 (2003); Davis v. Dep't of Licensing, 137 Wn.2d 957, 963, 977 P.2d 554 (1999)), this argument fails.

[18] HomeStreet, Inc. v. State, Dep't of Revenue, 166 Wn.2d 444, 451, 210 P.3d 297 (2009) (citing Garrison v. Wash. State Nursing Bd., 87 Wn.2d 196, 196, 550 P.2d 7 (1976)).

defense, or appeal from an adverse judgment."[19] Thus, reading RCW 3.42.020 literally, "party" could be consistent with Boldt's contention. But determining plain meaning also includes consideration of related statutes and avoiding strained results.[20]

Boldt's literal interpretation of "parties" is unconvincing because it leads to "'strained consequences'" for the judicial system and would undermine the statute's purpose.[21] For example, RCW 3.34.110(1)(b) governs the disqualification and replacement of judicial officers, including commissioners, in a district court proceeding. To move for disqualification, "a party files an affidavit that the party cannot have a fair and impartial trial or hearing."[22] Under Boldt's interpretation, a party must personally file the affidavit and cannot authorize counsel to do so. Similarly, RALJ 2.4(a) provides for who may initiate appeals from a district court proceeding and states, "A party . . . must file a notice of appeal in the court of limited jurisdiction." Read literally, an incarcerated defendant must personally file their notice of appeal and cannot rely on defense counsel to do so. And, as applied to RCW 3.42.020, civil litigants would be required to personally appear in district court to authorize a commissioner presiding over their jury trial. By adding this impediment, Boldt's interpretation would limit the efficient convenience intended from letting a commissioner preside.

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[19] BLACK'S LAW DICTIONARY 1150-51 (11th ed. 2019); accord Nat'l Bank of Washington, Coffman-Dobson Branch v. McCrillis, 15 Wn.2d 345, 357, 130 P.2d 901 (1942) (defining "parties litigant" in art. IV, § 7 as "the antagonistic sides of a controversy . . . the real parties in interest") (citations omitted).

[20] J.P., 149 Wn.2d at 450 (citing Campbell & Gwinn, 146 Wn.2d at 11; Clausing, 147 Wn.2d at 630).

[21] Bergstrom, No. 99347-5, slip op. at 15-16 (citing Fjermestad, 114 Wn.2d at 835).

[22] RCW 3.34.110(1)(b).

"Efficient trial management and effective advocacy would be undermined if courts required client approval every time an attorney makes a strategic decision during a case."[23] Presumably, the legislature was aware of the authority typically granted attorneys when it enacted RCW 3.42.020, particularly because criminal defendants are guaranteed legal representation.[24] The legislature would not have limited attorneys' well-established authority without showing its intent to do so. Read in context rather than literally, "parties" in RCW 3.42.020 includes the parties' attorneys.

Because Boldt's attorney could consent, the question is whether she was authorized to do so. "A lawyer appears in a trial as the representative and alter ego of [their] client,"[25] and, we presume that counsel acts with their client's approval.[26] Every defense counsel is "impliedly authorized to waive procedural matters" on their client's behalf.[27] Defense counsel can waive a client's substantive rights when expressly authorized to do so.[28]

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[23] State v. Hernandez, 6 Wn. App. 2d 422, 427, 431 P.3d 126 (2018) (citing Gonzalez v. United States, 553 U.S. 242, 250, 128 S. Ct. 1765, 170 L. Ed. 2d 616 (2008); New York v. Hill, 528 U.S. 110, 114-15, 120 S. Ct. 659, 145 L. Ed. 2d 560 (2000)).

[24] U.S. CONST. amend. VI; art. I, § 22.

[25] State v. Peeler, 7 Wn. App. 270, 274, 499 P.2d 90 (1972).

[26] Id. (citing State v. Elder, 130 Wash. 612, 228 P. 1016 (1924)).

[27] State v. Cobos, 178 Wn. App. 692, 699, 315 P.3d 600 (2013) (citing Graves v. P.J. Taggares Co., 94 Wn.2d 298, 303, 616 P.2d 1223 (1980); Sain, 34 Wn. App. at 556-57).

[28] Id. (citing Graves, 94 Wn.2d at 303; Sain, 34 Wn. App. at 556-57). We note, though, that express authorization need not always be given on the record. E.g., State v. Thomas, 128 Wn.2d 553, 559, 910 P.2d 475 (1996) (explaining a defendant's personal waiver of the right to testify need not be made on the record).

Boldt argues RCW 3.42.020 grants a party a substantive right to an elected judicial officer at trial, so the absence of her personal authorization made defense counsel's consent invalid. The City contends RCW 3.42.020 does not grant a substantive right.

"There is not always a 'clear line of demarcation' between that which is substantive and that which is procedural."[29] When faced with this issue, courts apply "general guidelines" from State v. Smith[30] to "differentiate[ ] between substantive and procedural matters."[31]

> "Substantive law prescribes norms for societal conduct and punishments for violations thereof. It thus creates, defines, and regulates primary rights. In contrast, practice and procedure pertain to the essentially mechanical operations of the courts by which substantive law, rights, and remedies are effectuated."[32]

The identity of a presiding judicial officer and the mechanism of that officer's appointment plainly "pertain to the essentially mechanical operations of the courts."[33] RCW 3.42.020 is a procedural rather than substantive statute.

Defense counsel is always implicitly authorized to decide procedural matters.[34] Because Boldt's defense counsel decided a procedural matter, and nothing in the

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[29] State v. Gresham, 173 Wn.2d 405, 431, 269 P.3d 207 (2012) (quoting State v. Smith, 84 Wn.2d 498, 501, 527 P.2d 674 (1974)).

[30] 84 Wn.2d 498, 527 P.2d 674 (1974).

[31] State v. Templeton, 148 Wn.2d 193, 213, 59 P.3d 632 (2002); see Gresham, 173 Wn.2d at 431 (applying the same).

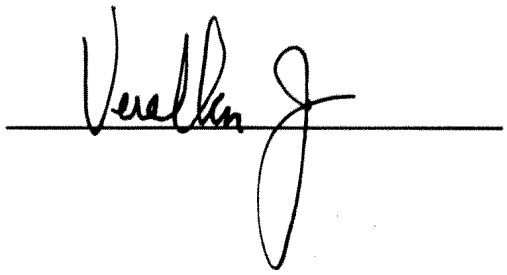
[32] Templeton, 148 Wn.2d at 213 (quoting Smith, 84 Wn.2d at 501).

[33] Smith, 84 Wn.2d at 501.

[34] Cobos, 178 Wn. App. at 699 (citing Graves, 94 Wn.2d at 303; Sain, 34 Wn. App. at 556-57).

record suggests Boldt revoked her authority to do so, all parties agreed on the record to a commissioner presiding over the criminal trial, consistent with RCW 3.42.020.

Therefore, we affirm.



WE CONCUR:

GRECCO DOWNS, PLLC

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