91174-6

Supreme Court No. (to be set)
Court of Appeals No. 44351-1-II
IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Respondent,
vs.

Joel Alexander
Appellant/Petitioner

Grays Harbor County Superior Court Cause No. 12-1-00189-1
The Honorable Judge F. Mark McCauley

PETITION FOR REVIEW

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I. IDENTITY OF PETITIONER

Petitioner Joel Alexander, the appellant below, asks the Court to review the decision of Division II of the Court of Appeals referred to in Section II.

II. COURT OF APPEALS DECISION

Joel Alexander seeks review of the Court of Appeals opinion entered on December 9, 2014. A copy of the opinion is attached.

III. ISSUES PRESENTED FOR REVIEW

ISSUE 1: Is RCW 9A.28.020 unconstitutional because it was enacted in violation of Wash. Const. art. II, § 19?
ISSUE 2: In its analysis of RCW 9A.28.020 under art. II, § 19, did the Court of Appeals misapply the single-subject rule and the subject-in-title rule, and ignore well-established Supreme Court precedent?
ISSUE 3: Does WPIC 100.05 (defining "substantial step" in attempt cases) relieve the state of its burden to prove a substantial step?
ISSUE 4: Does a conviction for attempt require proof of conduct strongly corroborative of the actor's criminal purpose?
ISSUE 5: Should the Supreme Court reconsider its precedent when the U.S. Supreme Court has clearly abandoned the rationale underlying that precedent?

IV. STATEMENT OF THE CASE

Joel Alexander met a police officer at a public bathroom in Elma. The officer had posed online as a boy of eleven, and the two had conducted a long exchange of electronic communication. RP 16-156.

Based on this electronic correspondence and the items Mr. Alexander brought with him, the state charged Mr. Alexander with Attempted Rape of a Child in the First Degree. CP 1.

At trial, the court instructed the jury on the law of criminal attempt. The court defined the phrase "substantial step" as "conduct that strongly indicates a criminal purpose and that is more than mere preparation." CP 39. Defense counsel did not object.

Mr. Alexander was convicted. CP 3. At sentencing, the state alleged that Mr. Alexander had prior convictions that qualified him for sentencing as a persistent offender.[1] RP 192-193. Mr. Alexander did not stipulate to his criminal history. The defense did not agree that the prior convictions related to the person before the court. Counsel also objected on the grounds that the evidence was insufficient to prove the prior convictions. RP 192.

The state offered an exhibit that included documents purporting to establish the prior convictions. RP 193; Ex. 2 (12/10/12). Based on the exhibit, the court found that Mr. Alexander qualified as a persistent offender, and sentenced him to life without the possibility of parole. RP 198-199; CP 3-11.

---

[1] The prior conviction was for two counts of Rape of a Child in the Second Degree. CP 4.

Mr. Alexander timely appealed. CP 14-15. In a part-published opinion, the Court of Appeals upheld Mr. Alexander's conviction and sentence.

V. ARGUMENT WHY THE SUPREME COURT SHOULD ACCEPT REVIEW AND REVERSE THE COURT OF APPEALS' PART-PUBLISHED OPINION.

A. The Supreme Court should accept review to determine whether the legislature enacted RCW 9A.28.020 in violation of art. II, § 19 of the state constitution.

The Supreme Court reviews constitutional violations *de novo*. *State v. Lynch*, 178 Wn.2d 487, 309 P.3d 482 (2013). Statutes are presumed constitutional; the party challenging a statute's constitutionality "bears the heavy burden of establishing its unconstitutionality beyond a reasonable doubt." *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 205, 11 P.3d 762 (2000) *opinion corrected,* 27 P.3d 608 (2001). This standard is met when "argument and research show that there is no reasonable doubt that the statute violates the constitution." *Id.*

Under Wash. Const. art. II, § 19, "No bill shall embrace more than one subject, and that shall be expressed in the title." The provision is intended (a) to prevent "logrolling" (where a law is pushed through by attaching it to other legislation), and (b) "to notify members of the

Legislature and the public of the subject matter of the measure." *Amalgamated Transit Union,* 142 Wn.2d at 207.

The constitutional inquiry under both provisions starts with analysis of the title. *Amalgamated Transit Union* 142 Wn.2d at 207. The title of a bill may be general or restrictive. *Amalgamated Transit Union,* 142 Wn.2d at 207-208.

Restrictive titles are "narrow, as opposed to broad;" the label applies whenever "'a particular part or branch of a subject is carved out and selected as the subject of the legislation.'" *State v. Broadaway*, 133 Wn.2d 118, 127, 942 P.2d 363 (1997) (quoting *Gruen v. State Tax Comm'n,* 35 Wn.2d 1, 23, 211 P.2d 651 (1949)), *overruled on other grounds by State ex rel. Washington State Finance Commission v. Martin*, 62 Wn.2d 645, 384 P.2d 833 (1963)).

Restrictive titles will not be regarded as liberally as general titles. *Amalgamated Transit Union,* 142 Wn.2d at 210. Violations of art. II, § 19 "are more readily found where a restrictive title is used." *Id, at* 211. Examples of restrictive titles include "An act relating to the acquisition of property by public agencies," "An act relating to local improvements in cities and towns," "An act relating to increasing penalties for armed crime." *Id.*

General titles, on the other hand, are "broad rather than narrow." *Amalgamated Transit Union,* 142 Wn.2d at 207-208. They "may be comprehensive and generic rather than specific." *Id.* A statute enacted under a general title is invalid unless there is "rational unity between the general subject and the incidental subjects." *Id,* at 209. Examples of general titles include "An Act relating to violence prevention," "An Act relating to tort actions." *Id,* at 208 (providing examples).

Once a bill's title has been characterized as general or restrictive, the bill can be analyzed for compliance with the single-subject rule and the subject-in-title rule. *Id.*

1. The Court of Appeals erroneously concluded that ESSB 6151 had a general title, and thus analyzed the bill using the wrong legal standard.

RCW 9A.28.020 criminalizes attempt. The current version of the statute was enacted in 2001 as part of the Third Engrossed Substitute Senate Bill (ESSB) 6151. Laws of 2001, 2nd sp. s. ch. 12, § 354. The title of the enacting bill was "AN ACT Relating to the management of sex offenders in the civil commitment and criminal justice systems… [and] prescribing penalties." Laws of 2001, 2nd sp. s. ch. 12.

The title here is restrictive. *Amalgamated Transit Union,* 142 Wn.2d at 207-208. The title has "carved out and selected" "a particular part or branch of a subject." *Broadaway*, 133 Wn.2d at 127 (citations and

internal quotation marks omitted). Had the title read "An Act relating to sex offenders," it might have qualified as a general title. Instead, the title focuses on a particular part (management of sex offenders) from a broader subject (sex offenders generally). Laws of 2001, 2nd sp. s. ch. 12, § 354.

The phrase "the management of sex offenders in the civil commitment and criminal justice systems" is akin to the examples of restrictive titles given in *Amalgamated Transit Union*: "the acquisition of property by public agencies," "local improvements in cities and towns," "increasing penalties for armed crime." *Amalgamated Transit Union,* 142 Wn.2d at 211. By contrast, it is more restrictive than the examples of general titles listed in that case: "violence prevention," "tort actions." *Amalgamated Transit Union,* 142 Wn.2d at 208.

The Court of Appeals erroneously found the bill's title general rather than restrictive. Opinion, p. 5. It reached this result by ignoring the word "management" in the title:

> [T]he title of ESSB 6151 broadly relates to sex offenders in both the civil commitment system and the criminal justice system, and does not focus on a specific aspect of sex offenders. Therefore, we hold that ESSB 6151's title is general.
> Opinion, p. 5.

The Supreme Court should accept review to clarify the test for determining whether a title is general or restrictive. Because the title here carves out a particular part of a general subject, the court should find the

title restrictive rather than general. *Amalgamated Transit Union,* 142 Wn.2d at 208, 211.

2. The Court of Appeals erroneously decided that ESSB 6151 addressed only one subject.

The single subject rule gives legislators "the opportunity to consider legislative subjects in separate bills, so that each subject may stand or fall upon its own merits or demerits." *Washington Toll Bridge Auth. v. State*, 49 Wn.2d 520, 525, 304 P.2d 676 (1956). The relevant inquiry is whether "the body of the act contain[s] more than one general subject..." *Id,* at 523. A statute passed in violation of the single subject rule is unconstitutional and therefore void. *Id,* at 216; *Toll Bridge,* 49 Wn2d at 525. Where a title is restrictive, all provisions must be "fairly within" the title. *Amalgamated Transit Union,* 142 Wn.2d at 210. By contrast, when a title is general, there must be "rational unity" between the general subject of the bill and the incidental subjects. *Id.,* at 209.

These tests ensure that all provisions are sufficiently related to each other to comprise a single subject when considered as a whole. *Id.* Part of the analysis turns on whether each subject is necessary to implement the act's purpose. *Amalgamated Transit Union,* 142 Wn.2d at 217.

The bill at issue here (Laws of 2001, 2nd sp. s. ch. 12) violated the single subject rule because it addressed a variety of subjects that were not "fairly within" the bill's title.[2] *Amalgamated Transit Union,* 142 Wn.2d at 210.

One section of the bill was captioned "sex offender treatment providers." Among other things, it established qualifications for providers who treat sexually violent predators in transitional facilities. 2001 Wash. Legis. Serv. 2nd Sp. Sess. Ch. 12, § 402. It also created limited immunity for such providers, and for providers who treat level III sex offenders on community custody. 2001 Wash. Legis. Serv. 2nd Sp. Sess. Ch. 12, § 403.

Parts of the bill increased the sentences for certain crimes. *See* Laws of 2001, 2nd sp. s. ch. 12, §316 (establishing a mandatory minimum for sexually violent predator escape); §354 (adding certain sex crimes to the list of attempts that qualify as class A felonies); §§ 355, 359 (elevating second-degree assault with sexual motivation and indecent liberties by forcible compulsion to class A felonies).

[2] Some provisions were "fairly within" the bill's title. For example, certain provisions addressed issues relating to transitional facilities for sexually violent predators released to less restrictive alternatives. Among other things, these sections authorized DSHS to set up a transitional facility on McNeil Island, provided incentives for localities to construct other such facilities, and placed restrictions on the location of potential transitional facilities. Laws of 2001, 2nd sp. s. ch. 12, §§ 201-226. Another provision addressed set up the "determinate plus" sentencing scheme (§§303-304). Each of these provisions arguably relate to management of sex offenders, and thus fall "fairly within" the bill's title. Any such provisions could legitimately combine with other provisions fairly within the bill's title. *Amalgamated Transit Union,* 142 Wn.2d at 210.

Other provisions made changes to substantive offenses. *See* Laws of 2001, 2nd sp. s. ch. 12, §§ 357-358 (criminalizing sexual contact between school employees and students); §360 (adding to the alternative means of committing sexually violent predator escape).

None of these disparate provisions relate to the management of sex offenders. Accordingly, they are not "fairly within" the bill's title, and the bill does not comply with the single-subject rule. *Amalgamated Transit Union,* 142 Wn.2d at 210.

Contrary to the Court of Appeals' conclusion, these provisions also fail the single-subject test applied to bills with general titles. Opinion, pp. 5-6. This bill lacks the "rational unity" required. *Id.,* at 209. Thus, for example, the provisions establishing qualifications and limiting liability for sex offender treatment providers have nothing to do with the sections creating new offenses and enhancing the penalties for certain sex crimes. Laws of 2001, 2nd sp. s. ch. 12, §§ 316, 315, 357-358, 359, 360, 402-403. Nor is there "rational unity" between these provisions and the bill's title (the *management* of sex offenders). *Id.*

The Supreme Court should accept review and hold that the statute criminalizing attempt was enacted in a bill that embraced multiple

subjects. Because the bill is void under Wash. Const. art. II, § 19,[3] the court should reverse Mr. Alexander's conviction and dismiss the charge with prejudice. *Amalgamated Transit Union,* 142 Wn.2d at 216; *Toll Bridge,* 49 Wn.2d at 525.

3. The Court of Appeals erroneously decided that the bill's title encompassed all of the various subjects addressed by the bill.

The purpose of the subject-in-title rule is to provide notice of the measure's contents. *Amalgamated Transit Union,* 142 Wn.2d at 217. The title must give notice which would lead an "inquiring mind" to make inquiry into the body of the act or which indicates the scope and purpose of the law. *Id.*

For purposes of the subject-in-title rule, courts consider only the substantive language describing the bill. A title's "mere reference to a section... does not state a subject." *Patrice v. Murphy*, 136 Wn.2d 845, 853, 966 P.2d 1271 (1998) (internal quotation marks and citations omitted). This is so even if the numerical reference follows words such as "amending," "adding new sections to," or "repealing." *Id.; see also Fray v. Spokane Cnty.*, 134 Wn.2d 637, 651-555, 952 P.2d 601 (1998). Numeric references do not give adequate notice: "To say that mere

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[3] The statute has not been resuscitated by reenactment or amendment since 2001. *See Morin v. Harrell*, 161 Wn.2d 226, 228, 164 P.3d 495 (2007) (a proper "amendment or reenactment cures the art. II, § 19 defect.")

reference to a numbered section embodies the idea of a theme, proposition, or discourse, it seems to us, is not sustained by the ordinary understanding of those terms." *State v. Superior Court of King Cnty.*, 28 Wash. 317, 325, 68 P. 957 (1902).

The bill enacting the criminal attempt statute was titled "AN ACT Relating to the management of sex offenders in the civil commitment and criminal justice systems... [and] prescribing penalties." Laws of 2001, 2nd sp. s. ch. 12. As noted above, the title here is restrictive because it carved out and selected a particular part or branch of a subject. *Amalgamated Transit Union,* 142 Wn.2d at 207-208; *Broadaway*, 133 Wn.2d at 127 (citations and internal quotation marks omitted). The title does not relate to sex offenders generally; instead, it is limited to the *management* of sex offenders.

This title does not give notice to an "inquiring mind"[4] that the bill contains provisions relating to the qualifications of sex offender treatment providers. Nor does it suggest that the bill addresses immunity for certain sex offender treatment providers. The title does not make clear that the bill creates new sex offenses and increases the penalty for certain sex crimes. Laws of 2001, 2nd sp. s. ch. 12, §§ 316, 315, 357-358, 359, 360, 402-403.

The Court of Appeals erroneously concluded that the bill's title adequately expressed these subjects. Opinion, p. 7. The court failed to address provisions that have nothing to do with the "overarching theme related to the management of sex offenders." Opinion, p. 7.

Furthermore, the court relied on the title's recitation of numeric sections affected by the bill as proof that the title gives notice of the subjects addressed. Opinion, p. 7. This reliance on the title's numerical reference conflicts with Supreme Court precedent dating back at least to 1902. *King Cnty.*, 28 Wash. at 325.

The Supreme Court should accept review and hold that the criminal attempt statute was enacted as part of a bill that violates the subject-in-title rule. *Amalgamated Transit Union,* 142 Wn.2d at 210. Because he was found guilty of violating an unconstitutional statute, Mr. Alexander's conviction must be vacated and the charge dismissed with prejudice.

4. The Supreme Court should accept review because the Court of Appeals decision conflicts with well-established Supreme Court precedent, and because this case presents significant constitutional questions that are of substantial public interest. RAP 13.4(b)(1), (3), and (4).

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[4] *Amalgamated Transit Union,* 142 Wn.2d at 217.

This case is appropriate for resolution by the Supreme Court. First, the constitutionality of RCW 9A.28.020 has the potential to affect a large number of criminal cases. It is therefore a significant constitutional issue that is of substantial public interest. Second, the Court of Appeals decision conflicts with well-established Supreme Court precedent. *See King Cnty.*, 28 Wash. at 325.

The Supreme Court should accept review under RAP 13.4(b)(1), (3), and (4). The court should invalidate RCW 9A.28.020 because it was enacted in violation of Wash. Const. art. II, § 19. Mr. Alexander's conviction must be reversed and the charge dismissed with prejudice.

B. The Supreme Court should accept review and determine whether WPIC 100.05 relieves the state of its burden to prove criminal attempt because it does not require proof of conduct that is "strongly corroborative of the actor's criminal purpose."

Due process requires the prosecution to prove every element of the charged crime. U.S. Const. Amend. XIV; *In re Winship,* 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970). An omission or misstatement of the law in a jury instruction that relieves the state of its burden to prove every element of an offense violates due process. *State v. Thomas*, 150 Wn.2d 821, 844, 83 P.3d 970 (2004). Such an error is not harmless unless it can be shown beyond a reasonable doubt that the error did not contribute to the verdict. *State v. Brown*, 147 Wn.2d 330, 341, 58 P.3d 889 (2002).

A person is guilty of an attempt to commit a crime if, with intent to commit a specific crime, he or she does any act which is a substantial step toward the commission of that crime. RCW 9A.28.020. The Supreme Court has defined the phrase "substantial step" to mean "conduct strongly corroborative of the actor's criminal purpose." *State v. Workman*, 90 Wn.2d 443, 451, 584 P.2d 382 (1978); *State v. Aumick*, 126 Wn.2d 422, 894 P.2d 1325 (1995).

WPIC 100.05 defines "substantial step" in attempt cases. 11A Wash. Prac., Pattern Jury Instr. Crim. WPIC 100.05 (3d Ed). The pattern instruction provides that "A substantial step is conduct that strongly *indicates a* criminal purpose..." WPIC 100.05 (emphasis added). The trial court used this language in its instruction defining "substantial step."

Both WPIC 100.05 and the court's instruction in this case ignore *Workman's* corroboration requirement. Both also substitute the phrase "a criminal purpose" for "the actor's criminal purpose." CP 39; *cf Workman,* 90 Wn.2d at 451. The Court of Appeals has upheld this language, even though it departs from the *Workman* standard. Opinion, pp. 8-9 (citing *State v. Davis*, 174 Wn. App. 623, 300 P.3d 465 (2013)).

The Supreme Court should accept review and determine whether jury instructions defining the phrase "substantial step" must use the *Workman* definition. The definition of "substantial step" set forth in the

pattern instruction has the potential to affect a large number of criminal cases. Accordingly, this case presents a significant constitutional issue that is of substantial public interest. The Supreme Court should accept review under RAP 13.4(b)(3) and (4).

C. The Supreme Court should accept review and "fully consider all United States Supreme Court guidance" on the continuing viability of the *Almendarez-Torres* exception to the *Blakely* rule.

Any fact that increases the penalty for a crime must be proved to a jury beyond a reasonable doubt. U.S. Const. Amends. VI, XIV; Wash. Const. art. I, §§ 21, 22.; *Apprendi v. New Jersey,* 530 U.S. 466, 476, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000); *Blakely v. Washington,* 542 U.S. 296, 303, 124 S.Ct. 2531, 159 L.Ed.2d 403 (2004). Since *Blakely* was decided, prior convictions have generally been exempted from this rule on the basis of *Almendarez–Torres v. United States,* 523 U.S. 224, 118 S.Ct. 1219, 140 L.Ed.2d 350 (1998).[5]

The U.S. Supreme Court has abandoned the rationale underlying the *Almendarez-Torres* exception to *Blakely. Alleyne v. United States*, --- U.S. ---, 133 S.Ct. 2151, 186 L.Ed.2d 314 (2013). The *Alleyne* court made clear that the elements of a crime are those facts required to impose a particular punishment. *Id.*

[5] In *Almendarez-Torres,* the U.S. Supreme Court refused to limit a sentence based on the state's failure to allege prior convictions in the charging document. The case preceded both *Apprendi* and *Blakely,* and did not involve the right to a jury trial or the right to proof beyond a reasonable doubt.

Although the U.S. Supreme Court has not overruled *Almendarez-Torres,* this court need not wait for the court to take that step:

> The doctrine of stare decisis should not keep this court from fully considering all United States Supreme Court guidance on federal issues, even when the newer cases have not directly overruled or superseded prior cases... Thus, we can reconsider our precedent not only when it is has been shown to be incorrect and harmful but also when the legal underpinnings of our precedent have changed or disappeared altogether.

W.G. Clark Const. Co. v. Pac. Nw. Reg'l Council of Carpenters, 180 Wn.2d 54, 66-67, 322 P.3d 1207 (2014).

The underpinnings of the *Almendarez-Torres* exception have been eliminated. This court should accept review and "fully consider[ ] all United States Supreme guidance," including that provided by the *Alleyne* court. *Clark,* 180 Wn.2d at 66-67. When a prior conviction affects the sentence that may be imposed on an offender, that person is entitled to a jury trial and proof beyond a reasonable doubt, under the rationale in *Alleyne.* The "legal underpinnings" of Washington precedent based on *Almendarez-Torres* "have changed or disappeared altogether." *Id.*

The continuing viability of the *Almendarez-Torres* exception in light of *Alleyne* is a significant constitutional issue that is of substantial public interest. It has the potential to affect every sentence imposed on every felony offender with an offender score greater than zero. The

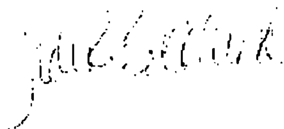
Supreme Court should accept review and decide the issue under RAP 13.4(b)(3) and (4).

VI. CONCLUSION

The issues here are significant under the state constitution. They have the potential to impact many criminal prosecutions, and so are of substantial public interest. The Supreme Court should accept review pursuant to RAP 13.4(b)(3) and (4). Furthermore, the Court of Appeals decision conflicts with well-established Supreme Court precedent. The court should accept review pursuant to RAP 13.4(b)(1).

Respectfully submitted December 29, 2014.

BACKLUND AND MISTRY



Jodi R. Backlund, No. 22917
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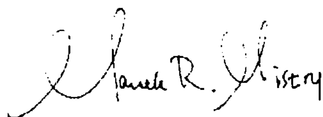


Manek R. Mistry, No. 22922
Attorney for the Appellant

CERTIFICATE OF MAILING

I certify that I mailed a copy of the Petition for Review, postage pre-paid, to:

Joel Alexander, DOC #787787
Clallam Bay Correction Center
1830 Eagle Crest Way
Clallam Bay, WA 98326

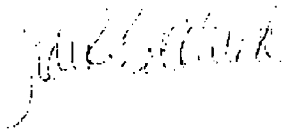
And:

Grays Harbor County Prosecuting Attorney
102 West Broadway, #102
Montesano, WA 98563

In addition, I electronically filed the original with the Court of Appeals.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Olympia, Washington on December 29, 2014.



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APPENDIX:

FILED
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DIVISION II

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STATE OF WASHINGTON

BY
DEPUTY

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. JOEL RYAN ALEXANDER, Appellant.	No. 44351-1-II PUBLISHED IN PART OPINION

LEE, J. — A jury found Joel Ryan Alexander guilty of attempted first degree rape of a child. Alexander appeals, arguing that (1) the criminal attempt statute violates the Washington State Constitution's single-subject and subject-in-title rule contained in article II, section 19; (2) the trial court's "substantial step" jury instruction relieved the State of its burden to prove all the essential elements of the crime; and (3) the trial court erred in finding by a preponderance of the evidence that Alexander had two prior most serious offenses that counted as two strikes under the Persistent Offender Accountability Act (POAA).[1]

In the published portion of the opinion, we hold that the criminal attempt statute codified in RCW 9A.28.020 does not violate article II, section 19. In the unpublished portion of the opinion, we address Alexander's remaining claims and affirm his conviction and sentence.

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[1] RCW 9.94A.570.

FACTS

In 2012, Sunshine Beerbower called the Elma police after discovering alarming online correspondence on the family computer between her 10-year-old son and 34-year-old Joel Alexander. Elma police officers responded to Beerbower's call and coordinated an investigation with the Washington State Patrol. Law enforcement took over the 10-year-old's Facebook and e-mail accounts and continued to communicate with Alexander. Alexander, believing that he was communicating with the 10-year-old boy, arranged a meeting at a park near the boy's home to have sexual contact. When Alexander arrived, he was arrested.

Alexander was charged with attempted first degree rape of a child. The trial court's jury instructions included the following:

> INSTRUCTION No. 4
>
> To convict the defendant of the crime of attempted rape of a child in the first degree, each of the following elements of the crime must be proved beyond a reasonable doubt:
>
> (1) That on or about April 15, 2012, the defendant did an act that was a substantial step toward the commission of rape of a child in the first degree.
>
> . . . .
>
> INSTRUCTION No. 10
>
> A substantial step is conduct that strongly indicates a criminal purpose and that is more than mere preparation.

Suppl. Clerk's Papers (SCP) at 38-39. A jury found Alexander guilty of attempted first degree rape of a child.

At sentencing, the State presented evidence of Alexander's two prior convictions of second degree rape of a child. Alexander neither objected nor stipulated to the admission of his prior

convictions. The trial court found by a preponderance of the evidence that Alexander had committed two prior most serious offenses and ruled that the current offense was a most serious offense that counted as a strike. Accordingly, under the POAA, the trial court sentenced Alexander to life in prison without the possibility of parole. Alexander appeals.

ANALYSIS

CONSTITUTIONALITY OF THE CRIMINAL ATTEMPT STATUTE, RCW 9A.28.020

The Washington State Constitution article II, section 19 states, "No bill shall embrace more than one subject, and that shall be expressed in the title." Article II, section 19 established two specific rules: (1) the single-subject rule, and (2) the subject-in-title rule. *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 206-07, 11 P.3d 762, 27 P.3d 608 (2000).

Alexander argues that the criminal attempt statute[2] violates the Washington State Constitution's single-subject and subject-in-title rule contained in article II, section 19. Alexander argues that because the criminal attempt statute is unconstitutional, his conviction must be vacated and the charge dismissed with prejudice. Because the criminal attempt statute does not violate article II, section 19, Alexander's claim fails.

We review allegations of constitutional violations de novo. *State v. Vance*, 168 Wn.2d 754, 759, 230 P.3d 1055 (2010). We presume that statutes are constitutional; a party challenging the constitutionality of a statute bears the burden of proving the statute's unconstitutionality beyond a reasonable doubt. *State v. Hunley*, 175 Wn.2d 901, 908, 287 P.3d 584 (2012).

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[2] RCW 9A.28.020.

The criminal attempt statute was amended in 2001 as part of the Third Engrossed Substitute Senate Bill (ESSB) 6151. ESSB. 6151 is titled: "AN ACT Relating to the management of sex offenders in the civil commitment and criminal justice systems." LAWS OF 2001, 2d Spec. Sess. ch. 12, at 2196. Among other things, the act amended the criminal attempt statute to reclassify some attempted sex offenses as class A felonies. LAWS OF 2001, 2d Spec. Sess., ch. 12, § 354, at 2251.

A. Single-subject rule

Article II, section 19's first requirement is that no bill shall embrace more than one subject. "The single-subject requirement seeks to prevent grouping of incompatible measures as well as pushing through unpopular legislation by attaching it to popular or necessary legislation." *Pierce County v. State*, 144 Wn. App. 783, 819, 185 P.3d 594 (2008). If the bill has a general title, it "may constitutionally include all matters that are reasonably connected with it and all measures that may facilitate the accomplishment of the purpose stated." *Pierce County*, 144 Wn. App. at 821 (citing *Amalgamated Transit*, 142 Wn.2d at 209). Conversely, "a restrictive title expressly limits the scope of the act to that expressed in the title" and "provisions not fairly within it will not be given force." *Amalgamated Transit*, 142 Wn.2d at 210.

The first step in addressing the single-subject requirement is to determine whether the title of the bill is general or restrictive. *Pierce County*, 144 Wn. App. at 819-20. "'A general title is broad, comprehensive, and generic[,] as opposed to a restrictive title that is specific and narrow,'"[3]

[3] *Pierce County*, 144 Wn. App. at 820 (quoting *City of Burien v. Kiga*, 144 Wn.2d 819, 825, 31 P.3d 659 (2001)).

and that "selects a particular part of a subject as the subject of the legislation" or subsets of an overarching subject. *Pierce County*, 144 Wn. App. at 820.

Alexander states without argument that ESSB 6151's title is restrictive. Br. of Appellant at 12. We disagree.

To be considered a general title, the title need not "contain a general statement of the subject of an act; [a] few well-chosen words, suggestive of the general subject stated, is all that is necessary." *Amalgamated Transit*, 142 Wn.2d at 209; *see also Pierce County*, 144 Wn. App. at 820. Here, the title of ESSB 6151 broadly relates to sex offenders in both the civil commitment system and the criminal justice system, and does not focus on a specific aspect of sex offenders. Therefore, we hold that ESSB 6151's title is general.[4] Because ESSB 6151's title is general, "great liberality will be indulged to hold that any subject reasonably germane to such title may be embraced within the body of the bill." *Amalgamated Transit*, 142 Wn.2d at 207.

The second step in addressing the single-subject requirement is to determine whether a rational unity exists among the subjects addressed in the bill. *Amalgamated Transit*, 142 Wn.2d at 209; *Pierce County*, 144 Wn. App. at 821. "Rational unity requires that [the bill's] subjects be reasonably connected to each other and to [the bill's] title." *Pierce County*, 144 Wn. App. at 821.

[4] *See Citizens for Responsible Wildlife Mgmt. v. State*, 149 Wn.2d 622, 632, 636, 71 P.3d 644 (2003) (holding title "Shall it be a gross misdemeanor to capture an animal with certain body-gripping traps, or to poison an animal with sodium fluoroacetate or sodium cyanide?" was a general title); *Kiga*, 144 Wn.2d at 825 (holding title "Shall certain 199 tax and fee increases be nullified, vehicles exempted from property taxes, and property tax increases (except new construction) limited to 2% annually?" was a general title); *Amalgamated Transit*, 142 Wn.2d at 193, 217 (holding title "Shall voter approval be required for any tax increase, license tab fees be $30 per year for motor vehicles, and existing vehicle taxes be repealed" was a general title).

Alexander argues that the bill is unconstitutional because it embraces many subjects, and that the criminal attempt statute is unrelated to transitional facilities for sex offenders or the classification of assault with sexual motivation. We disagree.

Here, a rational unity exists because ESSB 6151 amended the criminal attempt statute to reclassify some attempted sex offenses as class A felonies. LAWS OF 2001, 2d Spec. Sess., ch. 12, § 354, at 2251. The amendments to the criminal attempt statute are reasonably connected to the other subjects relating to the management of sex offenders—the amendment creates greater penalties for offenders who attempt to commit sex offenses. Also, a rational unity exists because the subjects addressed in the bill are reasonably connected to each other (all related to sex offenders) and to the bill's title (management of sex offenders in the criminal and civil systems). Therefore, Alexander fails to prove beyond a reasonable doubt that ESSB 6151 violated article II, section 19. Accordingly, his argument that the criminal attempt statute violates the single-subject rule fails.

B. Subject-in-title rule

The second requirement of article II, section 19 is that a bill's subject must be stated in its title. *Amalgamated Transit*, 142 Wn.2d at 217; *Pierce County*, 144 Wn. App. at 822. This requirement seeks to provide notice of the bill's contents to the public and to legislators. *Amalgamated Transit*, 142 Wn.2d at 217. "This requirement is satisfied if the title of the act gives notice that would lead to an inquiry into the body of the act or indicates the scope and purpose of the law to an inquiring mind." *Pierce County*, 144 Wn. App. at 822 (citing *Amalgamated Transit*, 142 Wn.2d at 217). A title does not need to provide details or be an exhaustive index. *Amalgamated Transit*, 142 Wn.2d at 217. "Any objections to a title must be grave, and the conflict

between it and the constitution palpable, before we will hold an act unconstitutional for violating the subject-in-title requirement." *Pierce County*, 144 Wn. App. at 822.

To the extent that Alexander argues that ESSB 6151 violates the subject-in-title rule, his argument is meritless. Here, the full title of the act reads:

> AN ACT Relating to the management of sex offenders in the civil commitment and criminal justice systems; amending RCW 71.09.020, 36.70A.103, 36.70A.200, 9.94A.715, 9.94A.060, 9.94A.120, 9.94A.190, 9.94A.390, 9.94A.590, 9.94A.670, 9.95.005, 9.95.010, 9.95.011, 9.95.017, 9.95.020, 9.95.032, 9.95.052, 9.95.055, 9.95.064, 9.95.070, 9.95.080, 9.95.090, 9.95.100, 9.95.110, 9.95.115, 9.95.120, 9.95.121, 9.95.122, 9.95.123, 9.95.124, 9.95.125, 9.95.126, 9.95.130, 9.95.140, 9.95.190, 9.95.250, 9.95.280, 9.95.290, 9.95.300, 9.95.310, 9.95.320, 9.95.340, 9.95.350, 9.95.360, 9.95.370, 9.95.900, *9A.28.020*, 9A.36.021, 9A.40.030, 9A.44.093, 9A.44.096, 9A.44.100, 9A.76.—and 72.09.370; reenacting and amending RCW 9.94A.030, 9.94A.320, 18.155.020 and 18.155.030; adding new sections to chapter 71.09 RCW; adding new sections to chapter 72.09 RCW; adding new sections to chapter 9.94A RCW; adding new sections to chapter 9.95 RCW; adding a new section to chapter 4.24 RCW; creating new sections; repealing RCW 9.95.0011 and 9.95.145; prescribing penalties; providing an effective date; providing expiration dates; and declaring an emergency.

LAWS OF 2001, 2d Spec. Sess., ch. 12, at 2196. The subject at issue (amendment of RCW 9A.28.020) is clearly expressed in the title of ESSB 6151. The bill has an overarching theme related to the management of sex offenders and the title references the criminal attempt statute. The title notifies an interested reader that the amendments to the criminal attempt statute relate to the management of sex offenders. Because the title gives notice of the subjects contained within the legislation, Alexander's claim that the criminal attempt statute violates the subject-in-title rule fails.

Accordingly, we hold that the criminal attempt statute codified in RCW 9A,28.020 does not violate the Washington State Constitution's single-subject and subject-in-title rule contained in article II, section 19.

A majority of the panel having determined that only the foregoing portion of the opinion will be printed in the Washington Appellate Reports and that the remainder shall be filed for public record in accordance with RCW 2.06.040, it is so ordered.

ANALYSIS

JURY INSTRUCTION

Alexander argues that the trial court erroneously defined "substantial step" in its jury instruction, which relieved the State of its burden to prove all elements of the crime beyond a reasonable doubt. Br. of Appellant at 15. Specifically, he argues that (1) the instruction erroneously included the phrase "indicates a *criminal purpose*" instead of "corroborative of the actor's criminal purpose" as stated in *State v. Workman*,[5] and (2) the instruction allowed the jury to convict based on intent to commit *a* crime, and not *the* specific crime charged. Br. of Appellant at 16.

Alexander's claim fails under our decision in *State v. Davis*, 174 Wn. App. 623, 635, 300 P.3d 465 (2013). In *Davis*, we considered and rejected the same arguments Alexander makes here. *Davis* specifically rejected the arguments that *Workman* requires the jury instruction to use the word "corroborate" rather than "indicate," and that the instruction allowed the jury to convict if the defendant's conduct indicated the intent to commit any crime. *Davis*, 174 Wn. App. at 636 (holding that "the Supreme Court has not mandated use of the word 'corroborates,'" and "there is no authority that the State must show independent evidence of intent").

[5] *State v. Workman*, 90 Wn.2d 443, 451, 584 P.2d 382 (1978).

Alexander asks us to reconsider our decision in *Davis*. However, Alexander has not offered any authority for his interpretation of *Workman* or any authority to support his comment that *Davis* should be reconsidered. *Davis* is controlling, and we reject Alexander's assertion that the "substantial step" jury instruction was erroneous because it relieved the State of its burden of proving all elements of the crime beyond a reasonable doubt.

PRIOR OFFENSE

Alexander argues that prior most serious offenses must be proved to a jury beyond a reasonable doubt because they elevate the seriousness of the current offense. Br. of Appellant at 23. We disagree. The United States Supreme Court in *Apprendi v. New Jersey*, relying on *Almendarez-Torres v. United States*,[6] said that "*[o]ther than the fact of a prior conviction*, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.'" *Apprendi v. New Jersey*, 530 U.S. 466, 490, 120 S. Ct. 2348, 2362, 147 L. Ed. 2d 435 (2000) (emphasis added); *see United States v. Pacheco-Zepeda*, 234 F.3d 411, 414 (9th Cir. 2000) (noting that *Apprendi* "unmistakably carved out an exception for 'prior convictions' that specifically preserved the holding of *Almendarez-Torres*"), *cert. denied*, 532 U. 532 U.S. 966 (2001). The Supreme Court in *Blakely v. Washington* reiterated the same exception for prior convictions. 542 U.S. 296, 301, 124 S. Ct. 2531, 2536, 159 L. Ed. 2d 403 (2004).

Alexander argues, however, that the most recent Supreme Court case of *Alleyne v. United States* eliminates the *Apprendi* exception for prior convictions. 133 S. Ct. 2151, 2160, 186 L. Ed.

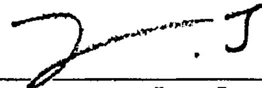
[6] *Almendarez-Torres v. United States*, 523 U.S. 224, 118 S. Ct. 1219, 140 L. Ed. 2d 350 (1998).

2d 314 (2013). But, *Alleyne* explicitly noted that the *Apprendi* exception for prior convictions was not raised and the court was not addressing it. 133 S. Ct. 2160, n.1.

Further, our Supreme Court recently considered and rejected this issue in *State v. Witherspoon,* 180 Wn.2d 875, 329 P.3d 888 (2014). There, the Supreme Court said, "Like *Blakely*, nowhere in *Alleyne* did the Court question *Apprendi's* exception for prior convictions. It is improper for us to read this exception out of Sixth Amendment doctrine unless and until the United States Supreme Court says otherwise." *Witherspoon,* 180 Wn.2d at 892. The *Witherspoon* court went on to say that the "United States Supreme Court precedent, as well as [Washington]'s own precedent, dictate that under the POAA, the State must prove previous convictions by a preponderance of the evidence and the defendant is not entitled to a jury determination on this issue." *Witherspoon,* 180 Wn.2d at 894.

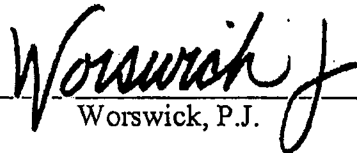
Witherspoon is controlling. Thus, the trial court did not err in finding by a preponderance of the evidence that Alexander had two prior most serious offenses that counted as strikes under the POAA.

We affirm Alexander's conviction and sentence.



Lee, J.

We concur:



Worswick, P.J.

Sutton, J.

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