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No. 52809-6-II

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

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STATE OF WASHINGTON,

Respondent,

v.

JOSEPH BONOMO,

Appellant.

---

ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR PIERCE COUNTY

---

BRIEF OF APPELLANT

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## A. INTRODUCTION

Joseph Bonomo was driving his girlfriend's car when he was pulled over and arrested for driving with his license suspended. After learning Mr. Bonomo was on community supervision, the arresting officer decided to call community corrections officers (CCOs) "to investigate further." The CCOs who responded also decided to arrest Mr. Bonomo for being out of county without permission. The CCOs then engaged in a wide-ranging search of Mr. Bonomo's person and his girlfriend's car, finding a small amount of heroin in Mr. Bonomo's pocket and a short-barreled shotgun in the trunk of the car. Mr. Bonomo was ultimately convicted of two firearm counts and one count of possessing a controlled substance.

The CCOs exceeded the scope of their statutory authority to perform warrantless searches because (1) the car did not belong to Mr. Bonomo, (2) there was no reasonable cause to believe Mr. Bonomo committed additional custody violations, and (3) there was no nexus between a suspected community custody violation and the search of the trunk. Because the search of the car was unconstitutional, this Court should reverse the firearm convictions and remand with instructions to grant the motion to suppress.

**B. ASSIGNMENTS OF ERROR**

1. The trial court erred in denying the motion to suppress because the search of the trunk of the car was unconstitutional under article I, section 7.

2. There was insufficient evidence to support the possession of a controlled substance conviction.

3. The sentencing court improperly imposed \$300 in legal financial obligations as well as interest.

**C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

1. Warrantless searches are per se unreasonable under article I, section 7. There are a few narrow exceptions, including the community corrections exception under RCW 9.94A.631. This statutory exception permits searches of an “offender’s” car, but only if there is reasonable cause to believe a probation violation has occurred as well as a nexus between the property searched and the alleged violation. Here, the officers knew the car Mr. Bonomo was driving belonged to his girlfriend, not to Mr. Bonomo. Further, the officers did not have reasonable cause to believe Mr. Bonomo committed additional community custody violations beyond being out of county and in possession of a personal use amount of heroin. Finally, there was no particular or specific factual basis supporting a nexus justifying a search of the trunk of the car. Did the search exceed

the scope of the statutory warrant exception in violation of article I, section 7?

2. The State must prove every essential element of a crime beyond a reasonable doubt for a conviction to be upheld. Wrongdoing must be conscious to be criminal, and due process limits the permissibility of strict liability crimes. The current framework for the crime of unlawful possession of controlled substances requires defendants to bear the burden of proving unwitting possession. This flips the presumption of innocence on its head, shifting the burden of proof for an inherent element of the offense. Here, the trial court did not find Mr. Bonomo knowingly possessed heroin. Should Mr. Bonomo's conviction be reversed on the basis of insufficient evidence?

3. Criminal filing fees must not be imposed on indigent defendants. Further, DNA fees must not be imposed if the state has previously collected the defendant's DNA as a result of a prior felony conviction. Additionally, legal financial obligations do not accrue interest. Here, Mr. Bonomo was found indigent and was previously convicted of a felony. Should the criminal filing fee, DNA fee, and interest be stricken from Mr. Bonomo's sentence?

D. STATEMENT OF THE CASE

**1. Mr. Bonomo is arrested during a routine traffic stop for driving with his license suspended.**

Mr. Bonomo was driving with some friends in Fife when he was pulled over by Officer Mark Dorn for not wearing his seatbelt. CP 4; 12/5/18 RP 15–16. Mr. Bonomo informed Officer Dorn his license was suspended and the car belonged to his girlfriend, Ivy Winget. CP 4; 12/5/18 RP 22, 31. Officer Dorn found Mr. Bonomo was on active Department of Corrections (DOC) supervision in King County. CP 4; 12/5/18 RP 24. Officer Dorn then handcuffed Mr. Bonomo, placed him under arrest for driving with a suspended license, read him his *Miranda* rights, and sat him on the front of the patrol vehicle. 12/5/18 RP 27–30. Mr. Bonomo was “very compliant” throughout this process. 12/5/18 RP 27.

Officer Dorn checked the car’s plates and verified it was registered to Mr. Bonomo’s girlfriend, Ivy Winget, as Mr. Bonomo said. 12/5/18 RP 70–72. Mr. Bonomo provided Ms. Winget’s phone number to Officer Dorn. 12/5/18 RP 35. Officer Dorn then called Ms. Winget, who confirmed the car belonged to her. 12/5/18 RP 35, 72. However, Officer Dorn did not testify he obtained Ms. Winget’s consent to search the car,

and the declaration of probable cause contains no details about the phone call. *See* CP 4–5.

**2. Community corrections officers are called to the scene, find heroin in Mr. Bonomo’s pocket and a shotgun in the trunk of his girlfriend’s car.**

Officer Dorn decided to call DOC to the scene to “investigate further.” 12/5/18 36–37. Community corrections officers (CCOs) Zachary Johnson and Steven Depoister responded. 12/5/18 RP 37, 87, 114. The CCOs believed Mr. Bonomo was not in compliance with his supervision, the “most glaring issue” being he was “out of county without permission.” 12/5/18 RP 95, 116. Although Mr. Bonomo was already under arrest, the CCOs decided “we were also going to arrest him, too” for being out of county. 12/5/18 RP 118.

CCO Johnson performed a pat search of Mr. Bonomo incident to arrest. 12/5/18 RP 103. He discovered “a small amount of heroin” and a hypodermic needle in Mr. Bonomo’s pocket. 12/5/18 RP 104; CP 5.

CCO Johnson called a supervisor to ask “for permission to search the vehicle for more violations.” 12/5/18 RP 104–105. The CCOs proceeded to search Ms. Winget’s car, including the trunk, where they found a short-barreled shotgun. 12/5/18 RP 105–106.

Mr. Bonomo was subsequently charged with unlawful possession of a firearm in the first degree, unlawful possession of a short-barreled

shotgun, and unlawful possession of a controlled substance. CP 29–30 (amended information). The driving while license suspended charge was dropped prior to trial. 12/5/18 RP 8–9.

**3. The court denies the motion to suppress, finds Mr. Bonomo guilty on all counts, and sentences him to 87 months.**

Mr. Bonomo opted to waive his right to a jury trial, and the trial court held a suppression hearing simultaneously with the bench trial. 12/5/18 RP 8–10. Mr. Bonomo moved to suppress all evidence on the basis that the traffic stop was pretextual and the search of the car was unlawful. CP 23–26. The trial court denied Mr. Bonomo’s motion to suppress, concluding the initial traffic stop was valid, Mr. Bonomo was in violation of his community custody conditions for being out of county, and there was a sufficient nexus to search the trunk of the vehicle after the heroin was found in Mr. Bonomo’s pocket. CP 56–59. The court also found Mr. Bonomo guilty on all charges. CP 49–52.

At sentencing, the court imposed a standard range sentence of 87 months. CP 38, 41. The court also found Mr. Bonomo indigent, but imposed \$800 in legal financial obligations, including a \$100 DNA fee and a \$200 criminal filing fee. CP 38–39. The judgment and sentence included a clause that “[t]he financial obligations imposed in this

judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments.” CP 40.

Mr. Bonomo timely appealed. CP 61.

E. ARGUMENT

**1. The trial court erred in denying the motion to suppress because there was no valid warrant exception to search the trunk of the car.**

“[W]arrantless searches are unreasonable per se” under article I, section 7 of the state constitution. *State v. Hendrickson*, 129 Wn.2d 61, 70, 917 P.2d 563 (1996). There are “a few jealously and carefully drawn exceptions to the warrant requirement which provide for those cases where the societal costs of obtaining a warrant, such as danger to law officers [or] the risk of loss or destruction of evidence, outweigh the reasons for prior recourse to a neutral magistrate.” *Id.* (quoting *Arkansas v. Sanders*, 442 U.S. 753, 759, 61 L. Ed. 2d 235, 99 S. Ct. 2586 (1979) (internal quotation marks omitted)). “The burden rests with the State to prove the presence of one of these narrow exceptions.” *Id.* at 70 (internal citations and quotation marks omitted).

Here, the State relied on the community corrections warrant exception under RCW 9.94A.631(1): “If there is reasonable cause to believe that an offender has violated a condition or requirement of the sentence, a community corrections officer may require an offender to

submit to a search and seizure of the offender's person, residence, automobile, or other personal property.” *See also* CP 11–18 (response to motion to suppress).

Under this statutory warrant exception, “reasonable cause” is akin to the “reasonable suspicion” required for a *Terry* stop, which is defined as a “substantial possibility criminal conduct has occurred” based on “specific and articulable facts and rational inferences.” *State v. Parris*, 163 Wn. App. 110, 119, 259 P.3d 331 (2011), *abrogated on other grounds by State v. Cornwell*, 190 Wn.2d 296, 412 P.3d 1265 (2018). There must also be a “nexus between the property searched and the alleged probation violation.” *Cornwell*, 190 Wn.2d at 306.

The trial court erred in denying the motion to suppress pursuant to this statute because (1) the car belonged to Ms. Winget, not Mr. Bonomo, and thus did not satisfy the statutory exception, (2) there was no reasonable cause to believe Mr. Bonomo violated additional community custody conditions beyond being out of county and possessing a personal use amount of heroin, and (3) there was no nexus between a suspected violation and the search of the trunk. This Court reviews a trial court's legal conclusions in denying a motion to suppress *de novo*. *State v. Rooney*, 190 Wn. App. 653, 658, 360 P.3d 913 (2015).

- a. There was no probable cause to believe the car belonged to Mr. Bonomo, and thus no statutory authority to search it.

“If there is reasonable cause to believe that an offender has violated a condition or requirement of a sentence, a community corrections officer may require an offender to submit to a search and seizure *of the offender’s* person, residence, automobile, or other personal property.” RCW 9.94A.631(1) (emphasis added). This statute clearly provides that community corrections officers may search a car without a warrant only if the car *belongs* to a supervised offender. *See id.*

Contrary to the State’s assertion below, the statute does not permit a search of any car *driven* by a supervised offender. *See* CP 13–14. If that was the legislature’s intent, it would have included statutory language to that effect. *See State v. Bacon*, 190 Wn.2d 458, 466–67, 415 P.3d 207 (2018) (statutory omissions “must be considered intentional”); *see also State v. Livingston*, 197 Wn. App. 590, 597 n.11, 389 P.3d 753 (2017) (concluding the legislature could have used different language if it intended to permit a search of “any” property under RCW 9.94A.631(1)).

“[I]f the statute’s meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent.” *State v. Jacobs*, 154 Wn.2d 596, 600, 115 P.3d 281 (2005) (internal citation and quotation marks omitted), *superceded by statute on other*

*grounds as stated in State v. Conover*, 154 Wn.2d 596, 115 P.3d 281 (2005). Accordingly, the statute must be construed to permit a search *only* “of the offender’s . . . automobile.” RCW 9.94A.631(1). Even if the plain language of the statute were open to another interpretation, the rule of lenity would require it be interpreted in Mr. Bonomo’s favor. *See In re Pers. Restraint of Sietz*, 124 Wn.2d 645, 652, 880 P.2d 34 (1994) (“[T]he rule of lenity applies to the [Sentencing Reform Act] and operates to resolve statutory ambiguities, absent legislative intent to the contrary, in favor of a criminal defendant.”).

Here, the officers knew the car belonged to Ms. Winget, not Mr. Bonomo. Officer Dorn testified the car was registered to Ms. Winget and that she confirmed ownership over the phone.<sup>1</sup> 12/5/18 RP 35, 70–72. The officers’ search of the trunk thus went beyond the scope of the exception permitted by the plain meaning of the statute. *See* RCW 9.94A.631(1); *Jacobs*, 154 Wn.2d at 600. However, the trial court did not address the legal significance of the car’s ownership in its order denying the suppression motion, summarily concluding: “Once heroin was found, the next logical nexus was to search the vehicle, including the trunk.” *See* CP 56–59. This was in error.

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<sup>1</sup> There was no evidence Ms. Winget gave consent for a search; either Officer Dorn did not request consent, or Ms. Winget refused to give it. *See* 12/5/18 RP 35, 70–72; *see also* CP 4–5.

In *State v. Winterstein*, the supreme court considered a constitutional challenge to the search of a house believed to be Terry Winterstein's residence. 167 Wn.2d 620, 625, 220 P.3d 1226 (2009). Mr. Winterstein was on community custody and thus his residence was subject to searches under the statutory warrant exception. *See id.* at 628–29. However, Mr. Winterstein had recently changed his address and provided notice to the Department of Corrections prior to the search. *Id.* at 626–27.

The *Winterstein* court recognized the statute only contemplates a warrant exception to “the *offender's* person, residence, automobile, or other personal property.” *Id.* at 628–29; (quoting RCW 9.94A.631) (emphasis in the original). Accordingly, the court held that “the probation officer's authority to search a residence extends *only* to the probationer's residence.” *Id.* at 628 (emphasis added). The court further held that “probation officers are required to have probable cause to believe that their probationers live at the residences they search,” because “though probationers have a lessened expectation of privacy, third parties not under the control of the DOC do not.” *Id.* at 630.

Similarly here, the community corrections officers were required to have probable cause to believe the car belonged to Mr. Bonomo before searching it without a warrant. *See* RCW 9.94A.631(1); *Winterstein*, 167 Wn.2d at 630. This requirement was necessary to protect the privacy

interests of third parties not under DOC's supervision – namely, Ms. Winget's interest not to "be disturbed in [her] private affairs." Const. art. I, § 7; *State v. Kennedy*, 107 Wn.2d 1, 4, 726 P.2d 445 (1986) ("private affairs" includes "automobiles and their contents."); *Winterstein*, 167 Wn.2d at 630 ("third party privacy interests must be considered."). Ms. Winget's privacy interest in the trunk was not diminished by Mr. Bonomo's driving of the car. *See Rooney*, 190 Wn. App. at 661 (living with a probationer does not diminish the privacy expectation of cohabitants). Additionally, the locked trunk was entitled to more protection from government intrusion than the passenger compartment. *See State v. White*, 135 Wn.2d 761, 772, 958 P.2d 982 (1998).

In determining probable cause, "[o]nly facts and knowledge available to the officer at the time of the search should be considered" in determining probable cause. *Winterstein*, 167 Wn.2d at 630. Here, the officers affirmatively knew at the time of the search that the car belonged to Ms. Winget, not Mr. Bonomo. *See* 12/5/18 RP 35, 70–72. Thus they had no authority to search it pursuant to the statutory warrant exception. *See* RCW 9.94A.631(1). Accordingly, this Court should reverse and remand with instructions to grant the motion to suppress.

- b. The search of the trunk was unconstitutional because there was no reasonable cause to believe Mr. Bonomo had committed additional violations nor was there a nexus justifying the search of the trunk.

A search is permissible pursuant to the statutory warrant exception only “[i]f there is reasonable cause to believe that an offender has violated a condition or requirement of the sentence.” RCW 9.94A.631(1). There must be a “well-founded suspicion that a violation has occurred,” based on “*specific and articulable* facts and rational inferences.” *State v. Jardinez*, 184 Wn. App. 518, 524, 338 P.3d 292 (2014) (emphasis added) (internal citations and quotation marks omitted). “The circumstances must suggest a substantial possibility that *the particular person* has committed a specific crime or is about to do so.” *State v. Martinez*, 135 Wn. App. 174, 180, 143 P.3d 855 (2006) (emphasis added). Additionally, there must be a nexus between the property searched and the alleged probation violation, thus “limit[ing] the search to areas or property about which the community custody office has reasonable cause to believe will provide incriminating evidence.” *Jardinez*, 184 Wn. App. at 526.

- i. *There was no reasonable cause to believe Mr. Bonomo committed additional community custody violations beyond being out of county and possessing a small amount of heroin.*

Here, Mr. Bonomo allegedly violated a condition of his sentence requiring he not leave King County without permission. 12/5/18 RP 95,

116. This was the basis for the CCOs' decision to arrest him. *See id.* at 103, 118; *see also* RCW 9.94A.631(1). The CCOs performed a “search incident to arrest,” finding a small amount of heroin. *See* 12/5/18 RP 103; CP 5. After establishing that Mr. Bonomo had violated his community custody on two separate grounds – being out of county and possessing heroin – the CCOs then called their supervisor to ask “for permission to search the vehicle *for more violations.*” 12/5/18 RP 105 (emphasis added). The trial court concluded the search of the car was conducted “based on the CCO’s training and experience that when a probationer has controlled substances on his person, he is likely to have controlled substances and other contraband in his vehicle.” CP 58.

However, the court did not find any factual basis for the CCOs to believe *Mr. Bonomo* had committed additional violations of his community custody, including possessing more drugs than were found in his pocket or being engaged in drug dealing. *See* CP 57–58. Mr. Bonomo was found with a one gram of heroin, a “small” amount suggesting personal use. 12/5/18 RP 43; CP 5; *see also State v. Espinoza*, 2017 WL 3267937 at \*6, 200 Wn. App. 1011 (Aug. 1, 2017) (unpublished)<sup>2</sup> (“Street-level drug dealers will typically carry 25–28 grams of heroin or

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<sup>2</sup> *Espinoza* is not reported; Mr. Bonomo cites it as persuasive authority. *See* GR 14.1(a).

methamphetamine at a time, and one or two grams would be the typical amount carried for personal use.”) The court’s finding the CCOs had experience finding drugs in the vehicles of *other* probationers was neither “specific” nor “particular” to Mr. Bonomo. *See Jardinez*, 184 Wn. App. 524; *Martinez*, 135 Wn. App. at 180. Further, an officer’s experience alone, unsupported by additional facts specific to the particular probationer, amounts only to “an inchoate hunch.” *See id.* Thus there was no “reasonable cause” to believe that Mr. Bonomo possessed more drugs beyond a small amount for personal use. *See RCW 9.94A.631(1)*.

The fact the CCOs testified they searched the car “for more violations” belies the lack of reasonable cause for additional specific and articulable violations. *See 12/5/18 RP 104–105*. CCOs may not engage in “a fishing expedition to discover evidence of other crimes, past or present.” *State v. Olsen*, 189 Wn.2d 118, 134, 399 P.3 1141 (2017) (internal citations and quotation marks omitted). In *Cornwell*, a CCO testified “that he was looking for unrelated probation violations because he searched the vehicle ‘to make sure there’s no *further* violations of his probation.’” 190 Wn.2d at 306–307 (emphasis in the original). The supreme court labeled this “a fishing expedition” in violation of article I, section 7. *Id.* at 307.

Similarly here, the CCOs already had established two community custody violations and thus had sufficient grounds to arrest Mr. Bonomo. *See* RCW 9.94A.631(1). Regardless, the CCOs elected to conduct a fishing expedition by searching the vehicle “*for more violations.*” 12/5/18 RP 104 (emphasis added). Even assuming *arguendo* the CCOs had authority to search a car that did not belong to Mr. Bonomo, the supreme court has recognized that this type of “open-ended” search is unconstitutional. *See Cornwell*, 190 Wn.2d at 307.

*ii. There was no nexus between the trunk and any suspected violations.*

“[S]weeping searches conflict with article I, section 7’s mandate that an individual’s privacy right be reduced only when and to the extent *necessary.*” *Cornwell*, 190 Wn.2d at 305 (emphasis in the original). Accordingly, article I section 7 “permits a warrantless search of the property of an individual on probation only where there is a nexus between the property searched and the alleged probation violation.” *Id.* at 306. The nexus requirement requires CCOs to have “reasonable cause” to believe that the property “will provide incriminating evidence” specific to the suspected custody violation. *See Jardinez*, 184 Wn. App. at 526, 529.

Here, even assuming there was reasonable cause to believe Mr. Bonomo committed additional custody violations, the trial court did not

make any factual findings supporting a nexus between a suspected violation and *the trunk of the car*. See CP 57–58. The trial court made a general factual finding that “when a probationer has controlled substances on his person, he is likely to have controlled substances and other contraband in his vehicle.” CP 58. Again, this finding was not “specific” nor “particular” to Mr. Bonomo as required by article I, section 7. See *Jardinez*, 184 Wn. App. 524; *Martinez*, 135 Wn. App. at 180. Further, the trial court made no particular factual finding concerning a nexus supporting a search of the trunk, only to the vehicle generally. See CP 58. A locked trunk is entitled to more protection than the passenger compartment of a car, and thus requires a specific nexus justifying its search. See *White*, 135 Wn.2d at 772; see also *Cornwell*, 190 Wn.2d at 304–305 (a probationer’s privacy interest must only be diminished “to the extent *necessary*.”) (emphasis in the original). Accordingly, the nexus requirement was not satisfied. See *id.* at 306.

Here, the CCOs exceeded the statutory grant of their authority when they searched Ms. Winget’s car. See RCW 9.94A.631(1). Further, the CCOs engaged in a fishing expedition when they searched the car for “further violations” of Mr. Bonomo’s community custody without a specific or articulable suspected violation. See *id.*; *Jardinez*, 184 Wn. App. 524. Finally, there was no reasonable suspicion to believe Mr.

Bonomo was secreting additional drugs in the trunk of his car, and thus no nexus to support its search. *Cornwell*, 190 Wn.2d at 307. This Court should reverse the conviction and remand with instructions to grant the motion to suppress.

**2. The possession of a controlled substance conviction should be reversed because there was insufficient evidence Mr. Bonomo knowingly possessed heroin.**

“The State must prove every essential element of a crime beyond a reasonable doubt for a conviction to be upheld.” *State v. Byrd*, 125 Wn.2d 707, 713, 887 P.2d 396 (1995). An appellate court may affirm a conviction only if it can conclude a rational trier of fact viewing evidence in the State’s favor could find each element beyond a reasonable doubt. *See State v. Hummel*, 196 Wn. App. 329, 352–53, 383 P.3d 592 (2016). “Where sufficient evidence does not support a conviction, such a conviction ‘cannot constitutionally stand.’” *Id.* (quoting *Jackson v. Virginia*, 443 U.S. 307, 317–18, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979)).

Although the supreme court has previously held drug possession is a strict liability crime, the court is currently reviewing whether the possession statute must be interpreted to have a knowledge element to be deemed constitutional. *See State v. Bradshaw*, 152 Wn.2d 528, 537, 98 P.3d 1190 (2004); *State v. A.M.*, No. 96354-1 (argued May 28, 2019).

“[W]rongdoing must be conscious to be criminal.” *Morrisette v. United States*, 342 U.S. 246, 252, 72 S. Ct. 240, 96 L. Ed. 288 (1952). Although strict liability crimes are constitutionally permissible under certain circumstances, there are due process limits concordant with the presumption of innocence. *See Lambert v. California*, 355 U.S. 225, 228, 78 S. Ct. 240, 2 L. Ed. 2d 228, (1957). Under the current framework, defendants charged with possession of a controlled substance bear the burden of proving the affirmative defense of unwitting possession. *Bradshaw*, 152 Wn.2d at 538. This flips the presumption of innocence on its head, thus “shift[ing] the burden of proof as to what is an inherent element of the offense.” *Schad v. Arizona*, 501 U.S. 624, 640, 111 S. Ct. 2491, 115 L. Ed 2d 555 (1991) (plurality).

Here, the trial court did not make a factual finding Mr. Bonomo knowingly possessed the heroin. *See* CP 49–52. In the absence of this factual finding, this Court “must indulge the presumption that the party with the burden of proof failed to sustain their burden on this issue.” *State v. Armenta*, 134 Wn.2d 1, 14, 948 P.2d 1280 (1997). Should the supreme court hold knowledge is a required element of the crime of possession of a controlled substance, Mr. Bonomo should benefit from that decision and his conviction should be reversed on the basis of insufficient evidence. *See State v. Ramirez*, 191 Wn.2d 732, 749, 426 P.3d 714 (2018)

(defendant's case was on appeal as a matter of right and thus he was entitled to the benefit of changes in the law that came into effect following his conviction); *Hummel*, 196 Wn. App. at 359 (reversal for insufficient evidence is "equivalent to an acquittal" and bars retrial for the same offense) (citations omitted).

**3. The sentencing court improperly imposed \$300 in legal financial obligations as well as interest.**

The sentencing court imposed \$300 in legal financial obligations and interest in violation of state statutes. This Court should remand with instructions to strike these fees and the accompanying interest.

The sentencing court found Mr. Bonomo indigent, but imposed a \$200 criminal filing fee pursuant to RCW 36.18.020(2)(h). CP 38–39. The statute states "this fee shall not be imposed on a defendant who is indigent." *See* RCW 36.18.020(2)(h). Because the trial court made a finding of indigency, the criminal filing fee should be stricken. *See id.*

The sentencing court also imposed a \$100 DNA collection fee. *See* CP 39. However, the statute authorizing the collection of this fee states it should not be imposed if "the state has previously collected the offender's DNA as a result of a prior conviction." RCW 43.43.7541. Washington law requires a DNA sample is taken from all individuals convicted of a felony. *See* RCW 43.43.7541. Mr. Bonomo's criminal

history demonstrates he was convicted of several felonies in Washington, and thus he has already given a DNA sample. *See* CP 37–38.

Accordingly, the \$100 DNA fee should be stricken.

The judgment and sentence also includes a provision that “[t]he financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments.” CP 40. However, legal financial obligations, excluding restitution, do not accrue interest. RCW 3.50.100(4)(b). Accordingly, this Court should order the sentencing court to strike the interest accrual provision.

F. CONCLUSION

For the reasons stated above, this Court should reverse the conviction and remand with instructions to grant the motion to suppress. In the alternative, this Court should reverse the conviction for insufficient evidence, or remand for resentencing.

DATED this 30th day of August, 2019.

Respectfully submitted,

/s Jessica Wolfe

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**REVIEW/REVISION HISTORY:**

- Effective: 3/15/01
- Revised: 6/8/06
- Revised: 7/11/07
- Revised: 2/27/09
- Revised: 6/26/09 AB 09-020
- Revised: 3/8/10
- Revised: 7/30/10
- Revised: 6/6/11
- Revised: 4/8/13
- Revised: 10/1/13
- Revised: 9/15/16

**SUMMARY OF REVISION/REVIEW:**

Major changes. Read carefully!

**APPROVED:**

Signature on file

**RICHARD "DICK" MORGAN**, Secretary  
Department of Corrections

8/23/16

Date Signed

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## REFERENCES:

DOC 100.100 is hereby incorporated into this policy; RCW 9.94.010; RCW 9.94A.030; RCW 10.99.020; RCW 26.50.010; RCW 72.02.280; RCW 72.09.015; RCW 72.09.470; RCW 72.09.490; WAC 137-28; WAC 137-54; ACA 4-4501; DOC 200.200 Offender Betterment Fund (OBF); DOC 210.060 Donations; DOC 320.255 Restrictive Housing; DOC 420.150 Counts; DOC 420.310 Searches of Offenders; DOC 420.330 Searches of Vehicles; DOC 420.340 Searching and Detaining Facility Visitors; DOC 420.380 Drug/Alcohol Testing; DOC 450.300 Visits for Prison Offenders; DOC 590.200 Offender Marriages and State Registered Domestic Partnerships; DOC 670.020 HIV Infection and AIDS; Americans with Disabilities Act

## POLICY:

- I. [4-4501] The Department has established an Extended Family Visit (EFV) Program in Prisons for eligible offenders to support building sustainable relationships important to offender reentry and to provide an incentive for those serving long-term sentences to engage in positive behavioral choices.
- II. [4-4501] This program facilitates visits between an offender and his/her immediate family in a private visiting unit. Immediate family consists of the offender's birth children, stepchildren, grandchildren, great-grandchildren, birthparents or pre-incarceration adoptive parents, stepparents, grandparents, great-grandparents, siblings, and spouse/ state registered domestic partner.

## DIRECTIVE:

- I. Family Visiting Unit
  - A. Before opening a new EFV unit, the proposed site and process will be approved by the appropriate Deputy Director.
    1. All visiting units must comply with facility security and property policies in an effort to provide as safe and secure an environment as possible.
    2. Units will be located in a secure area, reasonably screened from view of the population, and provides an evacuation route in the event of an emergency.
    3. Exclusion of the offender population, custody levels of the facility, and security will be considered in selecting a site.
  - B. A visiting unit consists of a mobile home or similar structure. It will be furnished and contain at least one bedroom, kitchen, bathroom, and living room.

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1. The Superintendent will ensure adequate provisions are available for persons with disabilities.
2. Communications will be provided between the visiting units and the facility's primary, 24 hour duty station or other designated active post.

## II. General Requirements

- A. Extended Family Visiting is authorized to the extent the facility is equipped and staffed to accommodate the program.
- B. Offenders and visitors will be subject to all Department and facility rules and regulations, as well as verbal instructions from employees and/or contract staff.
- C. Any violation of visiting rules and procedures is cause for termination of the visit per DOC 450.300 Visits for Prison Offenders. The offender will be subject to disciplinary action for rule violations and/or the visitor may be suspended or terminated from visiting for a designated period of time.
- D. The Prisons Command B Deputy Director will chair an EFV Review Committee to meet at least bimonthly, in person or by conference call, to review EFV applications for offenders with sex/serious violent offenses and EFV decision appeals. The committee will include:
  - a. The Corrections Program Administrator,
  - b. A Correctional Program Manager or higher authority from the facility where the offender is housed, and
  - c. A representative from the Sex Offender Treatment Program (SOTP), if applicable.

## III. Eligibility

- A. An offender must meet all of the following criteria to participate in an EFV:
  1. An offender serving 5 years or more in Prison on his/her current sentence is eligible to apply after 12 consecutive months in Prison.
  2. An offender serving less than 5 years in Prison on his/her current sentence is eligible to apply after 6 consecutive months in Prison.
  3. An offender who is sentenced to the death penalty, assigned to maximum/close custody level, or housed in restrictive housing per DOC 320.255 Restrictive Housing is excluded from participating.



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4. Interstate Compact offenders must receive authorization from the sending state to be eligible to participate in EFV privileges.
5. Infraction History - All time limits pertaining to infractions start on the date the infraction occurred.
  - a. Must not have been found guilty of committing any of the following infractions within the last 5 years:
    - 1) 501 - Committing homicide
    - 2) 502 - Committing aggravated assault against another offender
    - 3) 507 - Committing an act that would constitute a felony and that is not otherwise included in these rules
    - 4) 511 - Committing aggravated assault against a visitor or community member
    - 5) 521 - Taking or holding any person hostage
    - 6) 550 - Escaping
    - 7) 601 - Possessing, manufacturing, or introducing an explosive device or any ammunition, or any component thereof
    - 8) 602 - Possessing, manufacturing, or introducing any firearm, weapon, sharpened instrument, knife, or poison, or any component thereof
    - 9) 604 - Committing aggravated assault against a staff member
    - 10) 611 - Committing sexual assault against a staff member
    - 11) 633 - Assaulting another offender
    - 12) 635 - Committing sexual assault against another offender, as defined in department policy (i.e., aggravated sexual assault or offender-on-offender sexual assault)
    - 13) 650 - Rioting, as defined in RCW 9.94.010
    - 14) 651 - Inciting others to riot, as defined in RCW 9.94.010
    - 15) 704 - Assaulting a staff member
    - 16) 711 - Assaulting a visitor or community member
  - b. Must not have been found guilty of committing any of the following infractions within the last 3 years:
    - 1) 553 - Setting a fire
    - 2) 603 - Introducing or transferring any unauthorized drug or drug paraphernalia

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- 3) 607 - Refusing to submit to a urinalysis and/or failing to provide a urine sample within the allotted time frame when ordered to do so by a staff member
  - 4) 744 - Making a bomb threat
  - 5) 752 - Possessing, or receiving a positive test for use of, an unauthorized drug, alcohol, or intoxicating substance
  - 6) 778 - Providing a urine specimen that has been diluted, substituted, or altered in any way
- c. Must not have been found guilty within the last year of committing either of the following infractions:
- 1) 606 - Possessing, introducing, or transferring any tobacco, tobacco products, matches, or tobacco paraphernalia
  - 2) 707 - Introducing or transferring alcohol or any intoxicating substance not otherwise included in these rules
6. The offender must not have any pending, non-adjudicated infractions that may result in the visit being denied.
- a. All other infractions or related behavior will be handled per WAC 137-28, including interruption of visitation between the offender and a specified individual(s) for a period up to 180 consecutive days, when there has been an infraction for visit related behavior or behavior that presents a security or safety threat.
7. A Facility Risk Management Team (FRMT) review must occur after an offender receives any serious infraction to determine continued eligibility.
8. The offender must be actively participating in his/her programming requirements, or establish that a reasonable effort has been made to obtain a school or work assignment.
9. **The offender must not have any outstanding or unresolved felony charges or detainers in any jurisdiction, and must not be a suspect in a criminal investigation by any law enforcement agency.**
- a. Immigration and Customs Enforcement (ICE) detainers will not be considered when determining eligibility for EFV privileges.
10. An offender with any documented history/indicator of domestic violence will be excluded from EFV privileges with the following persons:
- a. The victim of the documented domestic violence, and



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- C. Spouses/state registered domestic partners must meet the following additional requirements:
1. The spouse/state registered domestic partner must be legally married to or joined in a state registered domestic partnership with the offender. The spouse/state registered domestic partner must provide a notarized copy of the marriage license/state registered domestic partnership certificate obtained from the appropriate agency.
  2. The marriage/state registered domestic partnership must comply with DOC 590.200 Offender Marriages and State Registered Domestic Partnerships if it is entered into after the judgment and sentence is marked as filed by the County Clerk. In these cases:
    - a. EFVs may begin after one year of marriage/state registered domestic partnership if the couple are birthparents or adoptive parents listed on the birth certificate of a child participating in the EFV. Otherwise, EFVs may begin 3 years after marriage/state registered domestic partnership.
- D. Minors must meet the following additional requirements:
1. The offender's child or stepchild must be the birth child or adopted child of either the offender or his/her spouse/state registered domestic partner with legal custody.
  2. The minor must be accompanied and supervised by an approved EFV participant and have the written notarized consent of the non-incarcerated custodial parent/legal guardian on DOC 20-441 Parent/Guardian Consent for Minor Visit and/or Escort.
  3. A minor who is a victim of the offender's sexual offense, physical abuse, or other mistreatment will not be eligible to visit.
- E. If EFV participants include the offender's minor child(ren), the offender should provide evidence of parenting involvement with the child(ren), which may include, but will not be limited to:
1. Parenting classes,
  2. Parent-teacher conferences,
  3. Read to Me programs,
  4. Scouting, and
  5. Other structured programs to increase parenting skills and exercise of positive parental influence.

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#### IV. Application Process

- A. The offender will submit DOC 21-414 Extended Family Visit (EFV) Application, with required documentation, to his/her assigned Counselor.
- B. Visitors may not be added to an EFV without being approved through the application process by completing DOC 21-415 Extended Family Visit (EFV) Visitor Acknowledgment and mailing it to the offender's Counselor.
  1. A minor's birth certificate originally obtained from the applicable regulatory agency and/or adoption papers from the court must be provided with the application.
    - a. The certificate/papers will be copied by the facility, and the original will be returned to the family.
- C. Background checks will be completed and reviewed for participants upon application.
- D. The Counselor will verify all necessary information and submit DOC 21-417 Extended Family Visit Action to the FRMT within 10 days of receiving all required documentation. The Counselor will include any no contact orders to be considered when scheduling visits (e.g., prohibitions against contact with minors or other persons).
- E. The FRMT will meet with the offender, review the offender's electronic imaging file, and determine the appropriateness of the visit and the completeness/accuracy of all documents. The FRMT will make a recommendation on the EFV Action form and submit it to the Superintendent. If the FRMT approves Extended Family Visiting, the Counselor will notify facility Health Services.
  1. Offenders with a history of mental illness and/or current mental health symptoms that cause concern must have a psychological assessment and recommendation by a mental health employee or contract staff. This evaluation will be submitted with the initial application, reviewed by the FRMT, and forwarded to the Superintendent.
  2. Health Services must provide a recommendation if an offender is being treated for a condition which may be transmitted to the visitor or may be adversely affected if the visit occurs (e.g., is receiving inpatient infirmary care, has a communicable disease or unstable medical condition).
    - a. Health Services will conduct an initial counseling session with the offender if s/he:

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- 1) Has been diagnosed with a communicable disease, or
- 2) Is on medication that can cause birth defects, if the EFV includes a spouse/state registered domestic partner.

b. If the offender has a communicable disease, a health care provider will conduct a counseling session with the participants to make them aware of the implications and to provide additional information.

- 1) Participants will sign DOC 13-437 Family Visit Counseling and the completed form will be filed in the legal section of the offender's health record.

c. If the offender is HIV positive and seeking an EFV with his/her spouse or state registered domestic partner the offender will complete DOC 13-035 Authorization for Disclosure of Health Information to agree to divulge HIV positive status to his/her spouse/state registered domestic partner before the EFV will be approved.

F. An EFV application will not be approved if based upon an offender adopting another offender or adult.

#### V. Authorization

A. All EFV participants require Superintendent/designee approval.

1. The Superintendent will notify participants in writing of denial of EFV privileges and the offender will be notified when approved.

B. The Superintendent will scrutinize and may approve the following situations on a case-by-case basis:

1. A family applicant who is a former offender.
2. Two offenders housed at the same facility may participate in the same EFV if all eligible participants are immediate family members. Otherwise, one offender will visit at a time.

a. Offenders will not be transferred to another facility to participate in an EFV with another offender.



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3. One-on-one visitation requests between the offender and eligible family members other than spouses/state registered domestic partners or parents (e.g., brother or sister and offender only).
  4. An offender may be denied based on the nature of his/her crime, criminal history, and current/prior behavior. If there is reason to believe that an eligible offender is a danger to him/herself, the visitor(s), or the orderly operation of the program, the Superintendent may exclude the offender from the program.
- C. An offender who is eligible to participate in EFVs will be allowed to continue to participate in the program when transferred to another Department Prison without repeating the authorization process unless new charges, violations, or infractions that would prohibit participation has occurred.
- D. Applications for offenders with a sex offense or a serious violent offense listed in Attachment 2 require EFV Review Committee approval.
1. The facility will complete Part 1 of DOC 21-470 Extended Family Visit Review Decision/Recommendation and forward the form and all related EFV documentation to the EFV Review Committee at [docefvreview@doc.wa.gov](mailto:docefvreview@doc.wa.gov).
  2. The committee will document its decision on DOC 21-470 Extended Family Visit Review Decision/Recommendation.
    - a. Denials will be forwarded to the Assistant Secretary for Prisons for review. The Assistant Secretary for Prisons/designee will send a letter to the offender to include reasons for the denial.
    - b. If approved, the form will be sent back to the facility where the offender is housed and a facility employee will notify the offender of approval.
- E. Grandfathering Provision
1. Offenders who applied for or were participating in the EFV Program before January 10, 1995, may be allowed to continue participation based on Superintendent review. Offenders who were grandfathered into the program and demoted in custody must reapply and meet current application criteria.

## VI. Appeals

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- A. Denial of participation in the EFV Program may be appealed to the Assistant Secretary for Prisons.
1. Appeals must be in writing and clearly state the facts that support the reason for the appeal.
  2. Appeals may not be submitted by multiple individuals for the same denial.
  3. The EFV Review Committee will review the appeal and make a recommendation to the Assistant Secretary for Prisons using DOC 21-470 Extended Family Visit Review Decision/Recommendation.
  4. The Assistant Secretary for Prisons has final decision making authority for EFV participation.
    - a. The Assistant Secretary for Prisons/designee will send a letter to the individual who submitted the appeal to include reasons for a denial.
    - b. If a denial is overturned, the EFV Review Committee will complete DOC 21-470 Extended Family Visit Review Decision/Recommendation and email it to the facility where the offender is housed. The facility will notify the offender of the decision.

## VII. Payment

- A. Per RCW 72.09.470, there will be a charge of \$10 per night for each EFV.
1. The fee must be paid before the EFV date is scheduled and may be paid by either the offender or the visitor(s).
    - a. If the offender pays, s/he will complete DOC 06-075 Offender Request to Transfer Funds for the correct amount per DOC 200.000 Trust Accounts for offenders and the fee will be withdrawn from the offender's account.
    - b. If the visitor pays the fee, payment must be sent to the facility in the form of a money order or cashier's check with "EFV" and the offender's name and DOC number clearly printed on it.
  2. The Business Office will notify the scheduling employee when the payment is received/processed.



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3. The payer will be reimbursed if a visit is canceled for any reason other than:
  - a. Disciplinary action against the offender, including placement on disciplinary/Administrative Segregation,
  - b. Program rule violation(s) by the visitor(s), and/or
  - c. Late arrivals beyond one hour on the date of the scheduled visit, unless previously arranged. Extenuating circumstances beyond the visitor's control (e.g., automobile breakdown), if confirmed, will be taken into consideration.

#### VIII. Scheduling

- A. Each visiting unit will be limited to the number of visitors established by the Fire Marshal and the amount of appropriate sleeping space available.
- B. After approval and payment, an EFV will be scheduled based on availability.
  1. An offender may not have an EFV more frequently than every 30 days. The 30 days will be calculated from the last day of the most recent/present EFV, if applicable. An offender may apply for a subsequent visit during or after a previously approved visit.
- C. EFVs will be scheduled for no less than 24 hours and no more than 48 hours in duration.
  1. The scheduling employee will ensure affected employees (e.g., visit/processing employees) are provided with the names of all approved individuals requesting participation for the EFV being scheduled.
- D. The Superintendent will establish procedures for scheduling approved offenders and visitors, including:
  1. Verification of continued eligibility by the offender's Counselor,
  2. Notification to visitors, offenders, and employees, and
  3. Cancellation and fill-in procedures.
- E. Reasons that a visit may be canceled/terminated include, but will not be limited to:
  1. Failure to confirm the visit date in advance of the scheduled visit.



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2. Late arrivals beyond one hour on the date of the scheduled visit, unless previously arranged. Extenuating circumstances beyond the visitor's control (e.g., automobile breakdown), if confirmed, will be taken into consideration.
3. Failure to submit requested paperwork.
4. Any behavior that causes security concerns or disruption to orderly facility operation.
5. Any violation of the EFV policies or procedures.

### IX. Program Orientation

- A. Before the first visit, all participants will receive a program orientation that will include an explanation of the rules and procedures and sign DOC 21-665 Extended Family Visit (EFV) Orientation.
- B. Written information on emergency and evacuation procedures will be maintained in a conspicuous, easy to locate place in the visiting units.

### X. Conduct of the Visit

- A. The Superintendent will establish search procedures for:
  1. Visitors and their property entering and leaving the facility, consistent with DOC 420.340 Searching and Detaining Facility Visitors.
    - a. Visitors have the option of refusing to be searched, but refusal will result in denied admittance to the facility and may jeopardize future visiting privileges.
  2. Offenders entering and leaving the EFV unit, consistent with DOC 420.310 Searches of Offenders.
  3. The visiting area before and after the visit.
- B. The Superintendent will establish count procedures for the visiting area, consistent with DOC 420.150 Counts. Employees must visually and verbally communicate with the offender and visitor(s) at least once every 8 hours.
- C. The Superintendent will establish procedures for the control of visitor medications during the visit.



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1. Visitors are required to document all medication on DOC 16-102 Visitor Medication Questionnaire and send the form to the facility. The facility must receive the form prior to the visit.
  - a. Visitors may bring only the prescribed amount of medication to last the duration of the visit.
  - b. Prescription medication will only be allowed if current and must be in the original container purchased from and labeled by a licensed pharmacy.
  - c. Prescription drugs are for visitor use only. Visitors may not bring in prescription drugs for offenders.
- D. Medical care for visitors will be limited to emergency medical treatment provided by facility medical employees/contract staff, if available onsite. The visitor will sign DOC 20-279 Consent to Medical Treatment and Waiver of Liability (Visitors), have it notarized, and send it to the facility prior to the visit.
- E. The following items will be provided by the facility and cannot be brought in by visitors:
  1. Cooking and eating utensils
  2. Dishes
  3. Pots and pans
  4. Paper towels
  5. Toilet paper
  6. Toys and games
  7. Linens and towels
    - a. Exceptions may be made for visitors with a documented allergen.
- F. A list of authorized items visitors are allowed to take into the family visiting unit is identified in Extended Family Visiting Allowable Items (Attachment 1). This list will be available at the facility and at [www.doc.wa.gov](http://www.doc.wa.gov).
  1. An ice chest may be used to transport cold products to the facility/EFV unit as identified by the facility.
  2. Employees will inspect all food items and watch as the visitor transfers items that are opaque (e.g., milk, grapefruit juice) or in cans, boxes, or glass to plastic bags/containers provided by the visitor.



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- a. Items may not be allowed if a plastic bag/container has not been provided by the visitor for the item to be transferred.
  - b. Liquid will not be transferred to a plastic bag.
  3. All leftover food items which have not been prepared must be removed from the visiting unit, inspected by employees, and removed from the facility by the visitor.
- G. CDs, DVDs, videotapes, and computer games will only be allowed if donated to the facility for EFV use in advance of the visit.
1. Donations will follow DOC 210.060 Donations, and the donated CDs, DVDs, and, videotapes must be rated Early Childhood, Everyone, G, Everyone 10+, Teen, PG, PG-13, or equivalent. Unrated (i.e., NR) items will not be allowed.
  2. Donated video and computer games must be rated Early Childhood, Everyone, Everyone 10+ or equivalent. NR items will not be allowed.
- H. Offenders are encouraged to secure their personal property in their locker or other secured space before attending the EFV. Offenders will sign DOC 21-148 Extended Family Visit Property Waiver if leaving his/her personal property unsecured.
- I. If the offender or visitor leaves the assigned visiting unit area at any time without permission, the visit will be immediately terminated.
- J. Other offenders will not be allowed into the visiting area unless authorized and accompanied by an employee.
- K. Procedures for urinalysis testing of the offender before, during, and after visiting will be conducted per DOC 420.380 Drug/Alcohol Testing.
- L. The Superintendent/designee has the authority to approve, suspend, interrupt, or cancel visits.
1. The visit may be interrupted as necessary or in an emergency.
- M. The Superintendent will ensure that the EFV unit and surrounding areas are kept in a safe and sanitary manner.
1. Offenders and visitors will ensure that the visiting area is left in clean and undamaged condition per established check-out instructions.



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2. Procedures will be established to verify the condition of the visiting unit before and after a visit.
3. A schedule will be established to maintain cleanliness. Units will be periodically closed for extermination, painting, major repairs, and deep cleaning.
4. Arrangements will be made to provide maintenance, cleaning, towels, and bedding. Cleaners, detergents, household goods, utensils, furnishings, and similar items as required and approved will be funded through the Offender Betterment Fund.
5. An ongoing inventory will be maintained of visiting unit contents.

### **XI. Family Planning and Prevention of Sexually Transmitted Infections**

- A. All offenders are encouraged to participate in a family planning program. Family planning information is available through community agencies or upon request from facility Health Services.
- B. Facilities will place a packet provided by Health Services in the EFV unit before the visit containing condoms or another form of barrier protection and information on sexually transmitted disease. Spouses/state registered domestic partners will be responsible for providing any additional condoms/barrier protection and/or alternative birth control (e.g., birth control pills) at their own expense.

### **XII. Service Dogs**

- A. Service dogs that meet the requirements of the Americans with Disabilities Act may be allowed to attend the visit with their designated escort.
- B. Service dogs will not be allowed when a participating offender has a documented history of animal abuse or mistreatment.
- C. The designated escort must accompany and supervise the service dog during the entire visit, including:
  1. Maintaining control of the dog at all times,
  2. Ensuring the dog does not cause damage to any property,
  3. Ensuring the dog is leashed when outside the visiting unit, and
  4. Cleaning up waste.

### **XIII. Suspension/Termination**

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- A. If an offender receives an infraction that disqualifies him/her from visiting, the Hearings Officer/Counselor will notify the EFV scheduling employee of the ineligibility and the date the offender may request reinstatement.
- B. Employees recommending suspension or termination will notify the FRMT through the offender's Counselor. The FRMT will meet with the offender and make a recommendation to the Superintendent on DOC 21-417 Extended Family Visit Action.
  - 1. If the Superintendent approves suspension or termination:
    - a. Visit employees and the EFV scheduling employee, if applicable, will be notified.
    - b. Written notification will be given to the offender and visitor(s) within 30 days or at the conclusion of a pending investigation.

**XIV. Documentation**

- A. EFV related documents and updated information will be scanned/entered into the offender's electronic imaging file upon completion/receiving by the facility where the offender is housed.
- B. If supporting documentation (e.g., birth/marriage certificate) has already been provided by an applicant and scanned into the offender's electronic file, it will not have to be provided again.

**DEFINITIONS:**

The following words/terms are important to this policy and defined in the glossary section of the Policy Manual: Domestic Violence, Spouse. Other words/terms appearing in this policy may also be defined in the glossary.

**ATTACHMENTS:**

- Extended Family Visiting Allowable Items (Attachment 1)
- Sex Offenses and Serious Violent Offenses (Attachment 2)

**DOC FORMS:**

- DOC 06-075 Offender Request to Transfer Funds
- DOC 13-035 Authorization for Disclosure of Health Information
- DOC 13-437 Family Visit Counseling
- DOC 16-102 Visitor Medication Questionnaire



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DOC 20-279 Consent to Medical Treatment and Waiver of Liability (Visitors)

DOC 20-441 Parent/Guardian Consent for Minor Visit and/or Escort

DOC 21-148 Extended Family Visit Property Waiver

DOC 21-414 Extended Family Visit (EFV) Application

DOC 21-415 Extended Family Visit (EFV) Visitor Acknowledgment

DOC 21-417 Extended Family Visit Action

DOC 21-470 Extended Family Visit Review Decision/Recommendation

DOC 21-665 Extended Family Visit (EFV) Orientation



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TITLE  
**OFFENDER MARRIAGES AND STATE REGISTERED  
DOMESTIC PARTNERSHIPS**

## REVIEW/REVISION HISTORY:

Effective: 12/7/84 DOC 730.010  
 Revised: 10/1/85  
 Revised: 11/20/87 DOC 590.200  
 Revised: 4/11/03  
 Revised: 12/1/06  
 Revised: 3/20/08  
 Revised: 3/10/09  
 Revised: 1/18/11  
 Revised: 11/19/12  
 Revised: 3/15/13  
 Revised: 7/20/16  
 Revised: 7/27/17

## SUMMARY OF REVISION/REVIEW:

Added Policy Statement I.A.1 that marriage between 2 offenders confined in Department facilities is prohibited  
 Removed Directive I.F. that the intended spouse/state registered domestic partner must be on the offender's approved visitor list

## APPROVED:

Signature on file

\_\_\_\_\_  
**STEPHEN SINCLAIR**, Secretary  
 Department of Corrections

7/19/17  
 \_\_\_\_\_  
 Date Signed



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**REFERENCES:**

DOC 100.100 is hereby incorporated into this policy; RCW 26.04; RCW 26.60; WAC 137-54-030; WAC 137-54-040; ACA 4-4277; DOC 100.500 Offender Non-Discrimination; DOC 400.030 Security Guidelines for Wireless Portable Technology in Facilities; DOC 450.300 Visits for Prison Offenders; DOC 490.800 Prison Rape Elimination Act (PREA) Prevention and Reporting; DOC 540.105 Recreation Program for Offenders; DOC 590.100 Extended Family Visiting; DOC 700.100 Class III Offender Employment and Compensation

**POLICY:**

- I. The Department will provide a means for offenders to marry or enter into state registered domestic partnerships during their incarceration. The Department neither approves nor disapproves of offender marriage or domestic partnership. [4-4277]
  - A. Marriage between 2 offenders confined in Department facilities is prohibited.
- II. Offender marriages must comply with RCW 26.04. Offender state registered domestic partnerships must comply with RCW 26.60.
- III. Applicants must adhere to the policy requirements to be considered for programs and privileges offered for married individuals/state registered domestic partners.

**DIRECTIVE:**

- I. Requirements
  - A. Offenders must be under Department jurisdiction for one year before beginning the marriage/state registered domestic partnership application process.
  - B. Offenders in Segregation or in an Intensive Management Unit (IMU) or Close Observation Area cannot initiate a marriage/state registered domestic partnership application.
  - C. Application processing may be suspended while an offender is in IMU or a Close Observation Area.
    1. When the application process is suspended, a Chronological Event (chrono) will be entered in the offender's electronic file, and the documents will be scanned into the offender's electronic imaging file. The original documents will be returned to the appropriate person.
  - D. Offenders who are boarders must have permission from the Out-of-State Department or the Regional Director of the Federal Bureau of Prisons.



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E. Both the offender and the intended spouse/state registered domestic partner must be eligible to legally marry or enter into a state registered domestic partnership in Washington State.

F. Eligibility for extended family visits will be determined per DOC 590.100 Extended Family Visiting.

## II. Marriage Application

A. Both the offender and the intended spouse/state registered domestic partner must submit written intent to marry or enter into a state registered domestic partnership.

1. The offender will send DOC 20-213 Marriage/State Registered Domestic Partnership Application for Intended Spouse/State Registered Domestic Partner Use to his/her intended spouse/state registered domestic partner. The form is also available on the Department's website at <http://www.doc.wa.gov/>.

2. The intended spouse/state registered domestic partner will complete and submit the form to the offender's Counselor with the following documents attached:

- a. Copy of his/her photo identification,
- b. Certified copy of his/her birth certificate, and
- c. Certified copies of divorce/dissolution decrees for all prior marriages/state registered domestic partnerships, as applicable.

3. The offender will complete DOC 20-214 Marriage/State Registered Domestic Partnership Application For Offender Use, attach a certified copy of his/her birth certificate and certified copies of divorce/dissolution decrees for all prior marriages/state registered domestic partnerships, as applicable, and submit them to his/her Counselor.

B. The Counselor will process applications using DOC 20-443 Marriage/State Registered Domestic Partnership Process Checklist and will review the submitted documents to determine eligibility for marriage/state registered domestic partnership.

1. Applications involving individuals who were a victim of the offender or found to have engaged in staff sexual misconduct as defined in DOC 490.800 Prison Rape Elimination Act (PREA) Prevention and Reporting should be highly scrutinized and may be denied.



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- C. The Facility Risk Management Team will decide whether the application process should continue. If the application is denied, the Correctional Unit Supervisor will notify the offender and intended spouse/state registered domestic partner, in writing, of the reason for denial (e.g., failure to meet eligibility requirements).
- D. If approved to proceed, the offender must sign DOC 20-215 Marriage/State Registered Domestic Partnership Approval for Release of Information to allow his/her Counselor to provide written information to the intended spouse/state registered domestic partner regarding the offender's criminal history, current offense, and sentence timeline.
- E. The Counselor will provide the intended spouse/state registered domestic partner an updated Criminal Conviction Record (CCR) and an official description of the offender's current conviction.
- F. The intended spouse/state registered domestic partner must sign DOC 20-215 Marriage/State Registered Domestic Partnership Approval for Release of Information indicating s/he has read and understands the information received and still wishes to marry or enter into a state registered domestic partnership with the offender.
- G. The Correctional Unit Supervisor will send DOC 20-218 Marriage/State Registered Domestic Partnership Approval Routing and the following completed forms to the Superintendent/designee with copies of all birth certificates and divorce/dissolution decrees:
  - 1. DOC 20-213 Marriage/State Registered Domestic Partnership Application For Intended Spouse/State Registered Domestic Partner Use,
  - 2. DOC 20-214 Marriage/State Registered Domestic Partnership Application For Offender Use, and
  - 3. DOC 20-215 Marriage/State Registered Domestic Partnership Approval for Release of Information.
- H. The offender will meet with the Superintendent/designee to discuss the marriage/state registered domestic partnership process. The Superintendent has final approval for all offender requests to marry or enter into state registered domestic partnership.
  - 1. The entire packet will be scanned into the offender's electronic imaging file after a final decision is made and the forms are signed.

III. Counseling



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- A. The offender and the intended spouse/state registered domestic partner will participate in counseling prior to marriage or entering into a state registered domestic partnership. The counseling will be conducted by the officiating clergy, if qualified, or a certified professional counselor obtained by the couple.
- B. The clergy or certified professional counselor will be provided with the offender's criminal history and complete DOC 20-444 Marriage/State Registered Domestic Partnership Counseling Requirements.
  1. The couple will be responsible for any costs associated with the counseling.
  2. The counseling will include a full disclosure of the offender's criminal history to the intended spouse/state registered domestic partner.
  3. Minor children and other family members living in the home may be included in the counseling.
  4. Counseling may be conducted by telephone or in person.

#### IV. License/Certificate

- A. After the Superintendent has approved the marriage/state registered domestic partnership request, the intended spouse/state registered domestic partner is responsible for obtaining the license/certificate.
  1. The intended spouse/state registered domestic partner will pick up the license application/declaration and send it to the offender, who will sign it in front of a notary public.
  2. The offender will then return the license application/declaration to the intended spouse/state registered domestic partner, who will obtain the license/certificate.

#### V. Ceremony

- A. A ceremony will be held for offender marriages in compliance with state statute. While not legally required, a ceremony will be offered to offenders entering into a state registered domestic partnership.
  1. The facility Chaplain will supervise the arrangements of the ceremony, which will be performed by:
    - a. An outside officiant (e.g., magistrate, clergy, etc.) obtained by the offender and intended state registered domestic partner, or



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- b. The facility Chaplain directly or a contract Chaplain or religious volunteer clergy, at his/her own discretion, consistent with state requirements and the requirements of his/her endorsing agency or religious group/denomination.
    - 2. Any outside officiant must clear a National Crime Information Center (NCIC) background check and have Superintendent/designee approval based on the following:
      - a. An officiant performing a religious ceremony must:
        - 1) Be qualified under RCW 26.04 to perform marriages in Washington State,
        - 2) Have no felony convictions within the past 10 years, and
        - 3) Submit a certified document verifying his/her authority to perform the ceremony as recognized by the offender's religious or faith-based organization, along with a current letter of appointment or a letter stating s/he is in good standing from the ordaining body or religious authority.
      - b. A member of the judiciary performing a civil ceremony must submit his/her letter of appointment or oath of office.
- B. The couple will be responsible for costs associated with the ceremony.
- C. The ceremony will be private and conducted without media coverage. In addition to the couple and officiant, the following individuals may attend the ceremony:
  - 1. Ceremony participants required by the religion or faith-based organization of the offender or intended spouse/state registered domestic partner. Participants must clear an NCIC background check and require Superintendent/designee approval.
  - 2. Children of the offender and/or intended spouse/state registered domestic partner.
  - 3. A professional photographer, who must clear an NCIC background check and requires Superintendent/designee approval.
  - 4. Up to 6 other attendees, as approved by the Counselor. Attendees must be on the offender's approved visitor list or be approved through the special visit process.



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5. One offender, if approved by the Superintendent/designee.
- D. All attendees must comply with dress standards in DOC 450.300 Visits for Prison Offenders. Exceptions require Superintendent/designee approval.
  - E. Any items brought into the facility by an outside officiant or attendee require approval from the Superintendent/designee in advance. Religious items will be consistent with the requirements for allowable religious items per DOC 560.200 Religious Programs.
    1. Unless religious in nature, items brought into the facility that are outside the visit guidelines are intended for the visitor only.
  - F. The offender and intended spouse/state registered domestic partner must read, sign, and follow DOC 20-219 Acknowledgment of DOC 590.200 Offender Marriages and State Registered Domestic Partnerships.
  - G. After the ceremony, the Superintendent/designee will complete the Authorized Marriage/State Registered Domestic Partnership Report section of DOC 20-218 Marriage/State Registered Domestic Partnership Approval Routing. The form will be scanned into the offender's electronic imaging file, along with a copy of the certificate and/or license.
- VI. Photographs
- A. Photography will meet the following requirements:
    1. The couple will be responsible for any costs associated with photography.
    2. Offender photographers will comply with DOC 540.105 Recreation Program for Offenders and/or DOC 700.100 Class III Offender Employment and Compensation, as applicable.
    3. Photographs will be reviewed for content and compliance with policy.
      - a. Photographs with suggestive or rude posturing, gang signs, or the appearance of gang affiliation will not be permitted.
      - b. Offenders will not be photographed with other offenders except with Superintendent/designee approval.
  - B. If a digital camera is available at the facility, the intended spouse/state registered domestic partner may bring a memory card to use in the camera consistent with DOC 400.030 Security Guidelines for Wireless Portable Technology in Facilities.



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## DEFINITIONS:

Words/terms appearing in this policy may be defined in the glossary section of the Policy Manual.

## ATTACHMENTS:

None

## DOC FORMS:

DOC 20-213 Marriage/State Registered Domestic Partnership Application for Intended Spouse/State Registered Domestic Partner Use

DOC 20-214 Marriage/State Registered Domestic Partnership Application for Offender Use

DOC 20-215 Marriage/State Registered Domestic Partnership Approval for Release of Information

DOC 20-218 Marriage/State Registered Domestic Partnership Approval Routing

DOC 20-219 Acknowledgment of DOC 590.200 Offender Marriages and State Registered Domestic Partnerships

DOC 20-443 Marriage/State Registered Domestic Partnership Process Checklist

DOC 20-444 Marriage/State Registered Domestic Partnership Counseling Requirements

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION TWO**

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STATE OF WASHINGTON,	)	
	)	
Respondent,	)	
	)	
v.	)	NO. 52809-6-II
	)	
JOSEPH BONOMO,	)	
	)	
Appellant.	)	

---

**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, NINA ARRANZA RILEY, STATE THAT ON THE 30<sup>TH</sup> DAY OF AUGUST, 2019, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION TWO** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

<input checked="" type="checkbox"/> KRISTIE BARHAM, DPA [PCpatcecf@co.pierce.wa.us] [kristie.barham@piercecountywa.gov] PIERCE COUNTY PROSECUTOR'S OFFICE 930 TACOMA AVENUE S, ROOM 946 TACOMA, WA 98402-2171	( ) ( ) (X)	U.S. MAIL HAND DELIVERY E-SERVICE VIA PORTAL
<input checked="" type="checkbox"/> JOSEPH BONOMO 836404 PO BOX 7001 MONROE, WA 98272	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____

**SIGNED IN SEATTLE, WASHINGTON THIS 30<sup>TH</sup> DAY OF AUGUST, 2019.**

X 

**Washington Appellate Project**  
1511 Third Avenue, Suite 610  
Seattle, WA 98101  
Phone (206) 587-2711  
Fax (206) 587-2710

# WASHINGTON APPELLATE PROJECT

August 30, 2019 - 4:41 PM

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**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 52809-6  
**Appellate Court Case Title:** State of Washington, Respondent v Joseph Anthony Bonomo, Appellant  
**Superior Court Case Number:** 18-1-01418-4

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