

Cause No. 301109

**COURT OF APPEALS
STATE OF WASHINGTON
(Div. III)**



STATE OF WASHINGTON

Plaintiff-Appellee,

v.

LUCAS JAMES MERRILL *Defendant-Appellant,*

SUPERIOR COURT No. 09-1-041904
SPOKANE COUNTY
HONORABLE MARYANN C. MORENO

OPENING BRIEF

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TABLE OF CONTENTS

Table of Contents i

Table of Authorities ii

Introduction & Statement of the Issues Presened for Reviewiii

 a. Assignments of Error 2

 b. Statement of the Case and Proceedings Below..... 4

Argument

 I. IT IS ERROR FOR THE TRIAL COURT TO
DISREGARD THE ATTORNEY’S SAFE-HARBOR
DEFENSE: AN ATTORNEY NEED NOT AWAIT
THE PRESENCE OF A VICTIM’S ADVOCATE IF
THE REQUIRMENT IS IMPRACTICAL OR
COULD RESULT IN UNNECESSARY DELAY 8

 II. THE SECOND CONTACT WAS NOT A
VIOLATION OF SUBSECTION -.030(10)
BECAUSE ATTORNEY HARGET WAS NOT
INVESTIGATING THE ALLEGED ACTS OF HIS
CLIENT, HE WAS DEFENDING AN
ANTICIPATED MOTION AGAINST HIMSELF 14

 III. THERE WAS INSUFFICIENT EVIDENCE TO
FIND HARGET ACTED IN BAD FAITH 15

 IV. ATTORNEY HARGET WAS UNDER NO
REQUIREMENT TO SEEK THE COURT’S
PERMISSION PRIOR TO CONTACTING THE
ADULT VICTIMS 21

Conclusion 22

TABLE OF AUTHORITIES

CASE AUTHORITY

Holbrook v. Weyerhauser Co., 118 Wn. 2d 306 (1992) 9

State v. Armendariz, 160 Wn.2d 106 (2007) 9

State v. SH, 102 Wn.App. 468 (2000) 17

Washington State Physicians Insurance Exchange v. Fisons,
122 Wn.2d 299 (1993)..... 9

STATUTORY and RULE AUTHORITY

RCW 7.69.030(10) passim

RCW 7.69.050 5

OTHER AUTHORITY

.....

INTRODUCTION AND STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

This appeal challenges the imposition of sanctions against counsel representing a criminal defendant charged with seven counts of Attempted First Degree Assault. Early in the case, four alleged victims signed a form letter on the Prosecutor's letterhead invoking their rights under RCW 7.69.030(10). This provision allows victims to demand that all "interviews" be conducted in the presence of a victim advocate for the purpose of emotional support. The form letter cited the statute and included additional restraints on contact.

On the last minutes of the day before the final pretrial hearing, defense counsel received an email from the prosecutor that the alleged victims objected to the plea offer contemplated by the State and defense. Knowing that the trial court had ruled that there were to be no further continuances and that time was of the essence, Defense counsel *unilaterally* contacted one of the victims and her husband to determine if further negotiations were feasible. Defense counsel notified the prosecutor immediately after the contact. The prosecutor thereafter questioned this contact, believing it to violate the form letter demand as well as RCW 7.69.030(10). The prosecutor stated that his office was considering a motion for sanctions. In aid of his response to this threat of sanctions, defense counsel sought advise from his superiors and, following that advise, again contacted the same victims.

Following argument at the sanctions hearing, the trial court held that defense counsel acted in bad faith when he twice telephoned two of the adult victims outside the presence of the prosecution office's victim advocate to discuss the status of plea negotiations.

Defense counsel argues, below, that the statute imposes the duty to involve the victim-advocate for "investigations," that the statute contains a "safe-harbor" exception for instances when it was not "practical" to have the victim-advocate present or would result in "unnecessary delay"; that the statute does not create a remedy for violations; and that the trial court abused its discretion in imposing sanctions in this case of first impression in view of the absence of a violation, the presence of safe-harbor factors, and the lack evidence showing bad faith.

a. ASSIGNMENTS OF ERROR

Appellant Harget raises the following assignments of error:

1. The trial court erred in concluding that Attorney Harget's admitted contact with the alleged victims violated RCW 7.69.030(10) and constituted "bad faith." This erroneous conclusion arose from the following errors of law:
 - a. The trial court's failed to consider whether Harget's first contact was within the "safe-harbor" provisions

set forth in the text of RCW 7.69.030(10). It was an error of law to ignore Harget's defense. Given the statutory safe-harbor provision, and the time considerations driving Attorney Harget, the subsection would not apply to his conduct and, thus, he did not violate the statute.

- b. Regarding Attorney Harget's second contact with the alleged victim, the trial court erred in assuming that the provisions of RCW 7.69.030(10) applied to circumstances where defense counsel was contacting a witness for the purposes of responding to an allegation of his misconduct — a situation that is not governed by RCW 7.69.030(10). It was an error of law to apply subsection -.030(10) to matters other than the investigation of the underlying crime and this second contact, directed not toward investigating the alleged underlying crime but addressing the State's claim of misconduct by defense counsel, did not violate the statute.

- c. The trial court erred in determining that Attorney

Harget acted in bad faith when he “violated the purpose of the statute by engaging in the type of conduct the statute was designed to prohibit.” CP 63.

The finding of bad faith is not supported by the evidence and is an abuse of discretion. The holding that he violated the purpose of the statute is a misinterpretation of the statute’s safe-harbor provision.

- d. The trial court erred in considering that Attorney Harget “made no attempt to seek court intervention prior to contact with the victims.”CP 63. While factually correct, the trial court erroneously implies that such attempt is required under rule or statute and implies that the failure to seek court intervention is evidence of bad faith.

2. The trial court erred in determining that Harget’s conduct warranted sanction because:

- a. RCW 7.69.050 states that no section contained in .030 creates any right of action or remedy for even intentional violations; and,
- b. Harget’s conduct did not affect the integrity of the

courts, nor defile “the very temple of justice”, nor delay or disrupt litigation.

There is insufficient evidence to support any finding that Harget’s conduct warranted sanction and the lower court erred in exercising its inherent authority.

B. STATEMENT OF THE CASE & PROCEEDINGS

The defendant was charged by information with seven counts of attempted first degree assault, a violent crime. CP 1-2, 61. On November 18, 2009, the victims signed a document entitled “Notice of Victim’s Intent to Rely on RCW 7.69.030(10)”. CP 61; CP 11-14.¹ A copy of four notices were provided to defense counsel Matthew Harget on November 18, 2009. CP 61.

Over 16 months later, when plea negotiations appeared to break down on the eve of the final pretrial hearing Attorney Harget contacted two of the adult victims regarding the possibility of further negotiations. CP 61. The lower court found that “[t]he discussion focused on resolution of the case.” CP 61. Harget did not arrange the conference through the victim’s advocate office within the Prosecutor’s office — as required by the form

¹ Appendix 1 sets forth the statute. Appendix 2 is a true and correct copy of the four Notices sent by the State to Attorney Harget.

demands served 16 months previously — and no advocate was present. CP 61. Harget immediately disclosed to the State the fact of his April 7 contact with the two alleged victims; the State responded that the contact was being reviewed as a violation of law. CP 16 (email dated April 7 at 5:21p.m.); CP 29:25 to 30:18.

The State communicated with Attorney Harget and threatened sanctions for his alleged violation of RCW 7.69.030(10). CP 15. In response, Attorney Harget obtained permission from his supervisor Scott Mason to contact the same victims in order to rebut claims by the State. CP 79. Mason gave permission and on May 13, 2011, Attorney Harget placed a second call to the two adult victims in response to the State's threat to seek sanctions against him for the April contact. CP 79:21 to 80:10; CP 49-51.

The State filed its formal motion on May 24, 2011 asking for sanctions against Harget “for the [first] April 7, 2011 contact.” CP 62 The State's motion sought either financial sanctions or a general order directing Attorney Harget to not have contact with the victims unless a victim's advocate was present. CP 62. The motion was framed under the rules governing “discovery misconduct.” CP 62.

Attorney Harget opposed the motion, arguing, *inter alia*, that the April 7 contact was made after an eleventh-hour collapse of plea discussions on the eve of the final pretrial hearing. CP 20. Harget noted that the trial court had previously ruled (on January 21, 2011) that there would be no further continuances in the case. CP 26:16-19. Attorney Harget noted to the lower court that the demand form used by the Spokane prosecutor did not recite the safe-harbor language of the statute. CP 20:17-19; compare Appendix 1 and Appendix 2. He also argued to the lower court that the language in the prosecutor's demand form adds additional burdens not contemplated in the statute itself. CP 19:19-25, and compare Appendix 1 and 2. He argued from a policy standpoint that the prosecutor's practice in this instance distorted criminal rule 4.7, and distorted the defendant's rights to access to all witnesses. He argued that this resulted from the misuse of the prosecutor's "form demand" which expands the statute's protections, from the removal of the safe-harbor language from the "demand", and from the State's insistence that, once an advocate has been demanded, a victim may never be contacted outside the advocate's presence.

The trial court held a hearing on June 9, 2011, and on July 1, 2011, issued its ruling. CP 61-64. The transcript of the June 9 hearing has been designated and filed with this appeal.

The trial court granted the State's motion for sanctions. CP 61-64. Attorney Harget sought relief from judgment on July 22, 2011. CP 65, 66-68. The trial court denied the motion on August 11, 2011. CP 88. Attorney Harget sought a partial stay from judgment pending his anticipated appeal from the Memorandum Opinion of July 1.

The trial court partially granted the motion for Stay, relieving Attorney Harget of the order to pay \$100 in sanctions until the completion of appellate review. The trial court left in place its order that Attorney Harget comply with its demand that he either present or attend a CLE regarding victims' rights. CP 90.

On July 28, 2011, Attorney Harget appealed the Memorandum Decision. CP 82-87. The trial court entered a final order, *nunc pro tunc*, on September 19, 2011. CP 89-96.

ARGUMENT

I. IT IS ERROR FOR THE TRIAL COURT TO DISREGARD THE ATTORNEY'S SAFE-HARBOR DEFENSE: AN ATTORNEY NEED NOT AWAIT THE PRESENCE OF A VICTIM'S ADVOCATE IF THE REQUIRMENT IS IMPRACTICAL OR COULD RESULT IN UNNECESSARY DELAY

Standard of Review This Court reviews interpretation of statutes and court rules under the *de novo* standard. *State v. Armendariz*, 160 Wn.2d 106, 110 (2007). The review standard for the imposition of sanctions in discovery disputes is abuse of discretion. *Washington State Physicians Insurance Exchange v. Fisons*, 122 Wn.2d 299, 338 (1993). Abuse of discretion occurs if the court's order is manifestly unreasonable or based on untenable grounds. *Holbrook v. Weyerhaeuser Co.*, 118 Wn. 2d 306, 315 (1992).

Argument

The statute at issue provides 15 rights to victims of crime. Of the 15 rights, 14 are addressed to judges, prosecutors, or law enforcement officers or their agents. One right, located in section RCW 7.69.030(10), is addressed to *both* defense and prosecutors.

The first portion of subsection -.030(10) states:

With respect to victims of violent and sex crimes, to
have a crime victim advocate from a crime

victim/witness program, or any other support person of the victim's choosing, *present at any prosecutorial or defense interviews with the victim*, and at any judicial proceedings related to criminal acts committed against the victim.

RCW 7.69.030(10) (emphasis supplied). See Appendix 1. The text plainly addresses both prosecutors and defense attorneys seeking interviews with victims of crimes involving violence or sex offenses.

The second provision in sub-section -.030(10) provides safe-harbor language when the rule would prove impractical. That provision imposes a limitation on the requirement that an advocate attend interviews:

This subsection applies if practical *and* if the presence of the crime victim advocate or support person does not cause any unnecessary delay in the investigation or prosecution of the case.

RCW 7.69.030(10) (emphasis supplied), see Appendix 1. The two limitations (practicality and presence of advocate not causing delay) must both be met for the victim advocate requirement to apply.

The third provision of the sub-section limits the nature of the victim advocate's role:

The role of the crime victim advocate is to provide emotional support to the crime victim;

RCW 7.69.030(10), see Appendix 1. The advocate is not authorized to constrain either the prosecutor or defense attorney, or to insure any particular standard of conduct, but only to provide support to the victim.

In defense of his unilateral contact with the adult victims on the eve of the final pretrial conference, Attorney Harget pointed out to the court below that he acted within the safe-harbor provision of the statute. CP 20:17-20, 23:3-5. He did not deny making the contact with the two adult victims. It was uncontested that:

- a. There was an order (from January) stating that the case would receive no further continuances.
- b. The final pretrial hearing was the next morning.
- c. The message from the prosecutor arrived near the close of business and contained manifest ambiguities.

CP 28-29.

The lower court, however, failed to acknowledge that the statute did not apply if impractical or if it created a risk of unreasonable delay. The lower court applied sentence one of RCW 7.60.030(10) as if the safe-harbor did not exist. The lower court was emphatic:

When a victim of a violent crimes invokes their right to the presence of an advocate at any prosecution or defense interview, that right shall be honored.”

CP 63 (lower court’s written memorandum opinion). The trial court noted no exceptions, exemptions, issues of practicality, or even the existence of the safe-harbor provision.

In concluding that Attorney Harget warranted sanctions for calling the victims, the lower court held that his conduct was in bad faith, but it did not find that Attorney Harget violated any court order, nor any of the Rules of Professional Conduct. In the lower court’s view, Harget’s sole violation was the subsection of RCW 7.69.030(10).

Had the lower court considered the full text of the subsection, Attorney Harget’s conduct was plainly permissible. The time constraints facing Attorney Harget at the close of business on April 7, 2011, would require that he either abandon further plea efforts in a case exposing his client to more than 50 years confinement, or that he seek another continuance *despite* the court’s previous warning that no further time would be granted. Either the victims and an advocate were going to have be available before the next day’s final pretrial hearing or counsel, the court, the parties, and the victims were facing an otherwise unnecessary delay.

The lower court exceeded the purpose of the statute and applied the protections of the provision without proper regard for the second, safe-harbor, provision. Its order should be reversed and the State's motion for sanctions rejected.

II. THE SECOND CONTACT WAS NOT A VIOLATION OF SUBSECTION -.030(10) BECAUSE ATTORNEY HARGET WAS NOT INVESTIGATING THE ALLEGED ACTS OF HIS CLIENT, HE WAS DEFENDING AN ANTICIPATED MOTION AGAINST HIMSELF

Despite the fact that the sanctions hearing was noted only for the instance of Harget's first contact, the lower court took pains to address Attorney Harget's second call as well. The lower court determined that "[t]hrough no stretch of the imagination was [Attorney Harget] justified in contacting [the victims] a second time without the presence of the advocate." CP 63. The lower court applied RCW 7.69.030(10) to the second contact without considering the circumstances of that contact. Prior to the second instance, Attorney Harget spoke with his supervisors for advice and direction. For good measure he had a witness present during the call with the alleged victims. CP 79-80, CP 49-51. His call did not relate to acts by or accusations concerning his client. Attorney Harget's second contact was done in response to the State's threat to seek sanctions against him. The topic of discussion was his first call, not the

alleged crimes of his client. RCW 7.69.030 does not — by any “stretch of the imagination” — prohibit contact with witnesses to events which are the subject of a sanctions hearing.

As it is, neither the victims nor the designated advocate were present in court for the sanction hearing. See RCW 7.69.030(10) (requiring the advocate’s presence “at any judicial proceedings related to criminal acts committed against the victim.”)

III. THERE WAS INSUFFICIENT EVIDENCE TO FIND HARGET ACTED IN BAD FAITH

The lower court acknowledged that the case involved issues of first impression. RP 24:21. Despite this, the court found on the limited record and absence of any caselaw on point that Harget’s conduct was deliberate and in bad faith.

Even if the lower court had determined that Attorney Harget’s concerns about practicality and unnecessary delay were ultimately misplaced, there is no basis for the lower court to determine that his concerns failed to constitute good faith. The lower court did not subject subsection -.030(10) to any analysis.

For example, the provision does not forbid contact: it limits *interviews*. Neither of Attorney Harget’s contacts with the two adult victims constituted fact “investigation.” On the first call,

Harget was not investigating the case when he contacted the victims, insofar as the term means fact investigation. But the statute does not specify whether calling a victim to determine if further plea negotiations are acceptable is the functional equivalent of an interview. On the second call, as argued above, Harget was not even seeking any information about his client or the alleged victims' views about his client. He was seeking information in order to present a response to the State's motion for sanctions.

On the issue of *practicality*, the lower court did not specify who held the burden of proof. On the issue of *unnecessary delay*, again, no effort was made by the trial court to examine who was assigned this burden. None of these matters were considered, yet each would be fundamental to a determination of whether an attorney in fact violated the provision in bad faith.

Even assuming for the purpose of this appeal that these burdens were all the respondent's, Attorney Harget made a non-frivolous proffer showing that he acted within the safe-harbor provision. CP

20:17-19. The State did not adduce any facts to contradict the time constraints nor the posture of the plea negotiations.²

The lower court was mindful that RCW 7.69.050 specifically states that the victims' rights created in -.030 did not create any private right of action. Consequently, it relied on its inherent authority in regulating litigation to impose sanctions. The lower court did not base its sanctions as a result of discovery abuse (as argued by the State) but upon the general rule that sanctions are appropriate where an act by counsel affects "the

² The State ignored Harget's justification and took an extreme position, arguing that the same protections and remedies afforded represented criminal defendants under the 6th Amendment should be imposed under -.030(10).

What would be the sanctions that we would be talking about if I had [contacted a defendant directly]? We'd be talking about I'd be fired; I'd be perhaps disbarred or suspended * * * the case could be dismissed.

RP 6/9/11 at 10:19-22. The argument confuses the mandate of RCW 7.69.010 to protect victims "in a manner no less vigorous than the protections afforded to a criminal defendant" to mean that the two sets of protection are comparable. Despite argument from Harget's counsel that "vigorous" enforcement does not mean parity of rights or remedies, the State persisted in its extreme interpretation:

"What part of 'no' don't you understand?" This [violation] was clear; it was unambiguous; it was known; and it was deliberately overstepped.

RP 6/9/11 at 11:15-17. Under the State's version of RCW 7.69.030(10) there *is* no safe-harbor provision. The State would have its "demand form" supercede the limitations within subsection -.030.

integrity of the court and, if left unchecked, would encourage future abuses, citing *State v. SH*, 102 Wn.App. 468, 474 (2000). The rule in *State v. SH*, however, does not support the lower court's sanctions.

In *State v. SH*, the Division 1 court ruled that an eleventh hour request by a juvenile for diversion violated a specific rule requiring the decision on diversion to be made as expeditiously as possible. 102 Wn.App. at 472-73. The appellate court held that the trial court had the inherent power to impose sanctions against an attorney for inappropriate and improper conduct. *Id.*, at 474. This was true, even when a specific pleading did not violate Rule 11. *Id.* Thus, bad faith could be established by an attorney's "delaying or disrupting litigation," or where conduct "affects 'the integrity of the court and, [if] left unchecked, would encourage future abuses.'" *Id.*, citation omitted.

The facts of *State v. SH* involved an allegation of bad faith when the public defender association failed, without justification, to adhere to the mandate in RCW 13.40.080(10) which requires that the election for diversion be made "as expeditiously as possible." *Id.*, at 478 (citing RCW 13.40.080(10)). The requirement for an expedited diversion decision is not limited by any other language in the statute. The mandate has no exemptions, such as the exemption in provision two of RCW

7.69.030(10). Further, prompt election does not burden counsels' access to witnesses. Prompt election does not result in delay or distortion of any of the defendants' rights. Because the statute's requirement was inflexible, and plainly ignored, the court found bad faith. In doing so, the *SH* court rejected the respondent's arguments that RPC 3.1 permits greater leeway for abuse by counsel in a criminal case. *Id.*, at 479.

None of the factors considered in *State v. SH* (violation of Rule 11, naked violation of statutory mandate, abuse of RPC 3.1) are present in this instance. A review of the actual findings reveals that none support a determination of bad faith. The lower court's core findings are instructive:

1. "the state is mandated to protect victims' rights and to offer them the mechanism to invoke their right to have an advocate present";
2. "Mr. Harget, in refusing to recognize that right, violated the purpose of the statute by engaging in the type of conduct the state was designed to prohibit"; and,
3. "By his declaration filed in this matter, Mr. Harget admits that he disregarded the statute and the protections set forth therein."

The first is accurate: the courts are mandated to protect victims' rights. Those rights are neither amorphous nor arbitrary, they arise from the

language of RCW 7.69.030. While the rights affecting judges, prosecutors and law enforcement are extensive, the rights affecting defense counsel's conduct are quite limited. Further, even those limited rights are exempted by a safe-harbor provision. Compare, *State v. SH* (mandate regarding prompt decision not constrained by safe-harbor provision).

The second finding is error and has no support in the record: Harget did not refuse to recognize -.030(10) rights: he noted, based upon uncontradicted proof, that practicality and the risk of unnecessary delay motivated his decision to contact the witnesses and that both practicality and the risk of unnecessary delay exempted the application of the rights listed in -.030(10). Unlike the circumstances facing the defense association in *State v. SH*, the timing circumstances facing Attorney Harget triggered a safe-harbor exemption.

The third finding is similarly erroneous. By his declaration, Attorney Harget demonstrated that he well understood the purpose and operation of RCW 7.69.030(10) and that he acted within the ambit of the statute, in the first instance, and in the second, he acted only after consultation with and approval from his supervisors. This was not an instance of delay or disrupt: here counsel was reasonable in reading into -.030(10)'s

exemption the type of circumstances covered by “practical” necessity and the risk of “unnecessary delay.”

The errors in findings 2 and 3 being patent, the lower court abused its discretion in concluding as a matter of law that Attorney Harget acted in bad faith. The findings — correctly determined from the uncontradicted evidence — show that Harget was facing a 4:43 p.m. message from the State indicating (with ambiguities) that plea negotiations were derailed, a next-day last-chance pretrial, and the certain knowledge that it was both impractical to have the victims and their advocate contacted in time, and the belief that, without reaching out to the victims, the parties would face an unnecessary delay.

IV. ATTORNEY HARGET WAS UNDER NO REQUIREMENT TO SEEK THE COURT’S PERMISSION PRIOR TO CONTACTING THE ADULT VICTIMS

The trial court additionally found that Harget had not sought relief from the demand prepared by the Prosecutor and victims. The court is correct that Harget did not approach the court for relief. No order required him to do so, the statute does not require him to do so, even the State’s demand form (CP 13-16; Appendix 2) does not do so. To whatever extent the trial court considered this fact, Attorney Harget was not required to

obtain prior judicial approval to determine whether it was impractical or likely to cause unnecessary delay to contact the adult victims.

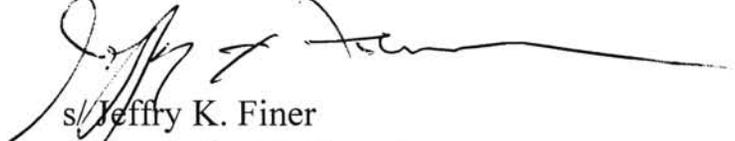
Simply put, if counsel needs prior court approval to contact a victim in order to address coverage under RCW 7.69.030(10), the statute would have so provided. The statute does not limit who may determine the safe-harbor provisions of practicality and unnecessary delay and the trial court abused its discretion to the extent it abrogated the safe-harbor provision by failing to acknowledge the exemption.

CONCLUSION

For the reasons set forth above, Attorney Harget respectfully asks this Court to reverse the lower court's order regarding sanctions.

DATED THIS 29th day of February, 2012.

Law Offices of JEFFRY K FINER



s/ Jeffrey K. Finer
Attorney for Matthew Harget

CERTIFICATE OF SERVICE

I, Danette Lanet, certify that I caused a true and correct copy of the foregoing *Opening Brief* to be filed with the Court of Appeals of the State of Washington, Division III and served, via hand delivery, on the following:

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DATED this 1 day of March, 2012.



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APPENDIX 1

APPENDIX 1

7.69.30. Rights of victims, survivors, and witnesses.

There shall be a reasonable effort made to ensure that victims, survivors of victims, and witnesses of crimes have the following rights, which apply to any criminal court and/or juvenile court proceeding:

(1) With respect to victims of violent or sex crimes, to receive, at the time of reporting the crime to law enforcement officials, a written statement of the rights of crime victims as provided in this chapter. The written statement shall include the name, address, and telephone number of a county or local crime victim/witness program, if such a crime victim/witness program exists in the county;

(2) To be informed by local law enforcement agencies or the prosecuting attorney of the final disposition of the case in which the victim, survivor, or witness is involved;

(3) To be notified by the party who issued the subpoena that a court proceeding to which they have been subpoenaed will not occur as scheduled, in order to save the person an unnecessary trip to court;

(4) To receive protection from harm and threats of harm arising out of cooperation with law enforcement and prosecution efforts, and to be provided with information as to the level of protection available;

(5) To be informed of the procedure to be followed to apply for and receive any witness fees to which they are entitled;

(6) To be provided, whenever practical, a secure waiting area during court proceedings that does not require them to be in close proximity to defendants and families or friends of defendants;

(7) To have any stolen or other personal property expeditiously returned by law enforcement agencies or the superior court when no longer needed as evidence. When feasible, all such property, except weapons, currency, contraband, property subject to evidentiary analysis, and property of which ownership is disputed, shall be photographed and returned to the owner within ten days of being taken;

(8) To be provided with appropriate employer intercession services to ensure that employers of victims, survivors of victims, and witnesses of crime will cooperate with the criminal justice process in order to minimize an employee's loss of pay and other benefits resulting from court appearance;

(9) To access to immediate medical assistance and not to be detained for an unreasonable length of time by a law enforcement agency before having such assistance administered. However, an employee of the law enforcement agency may, if necessary, accompany the person to a medical facility to question the person about the criminal incident if the questioning does not hinder the administration of medical assistance;

(10) With respect to victims of violent and sex crimes, to have a crime victim advocate from a crime victim/witness program, or any other support person of the victim's choosing, present at any prosecutorial or defense interviews with the victim, and at any judicial proceedings related to criminal acts committed against the victim. This subsection applies if practical and if the presence of the crime victim advocate or support person does not cause any unnecessary delay in the investigation or prosecution of the case. The role of the crime victim advocate is to provide emotional support to the crime victim;

(11) With respect to victims and survivors of victims, to be physically present in court during trial, or if subpoenaed to testify, to be scheduled as early as practical in the proceedings in order to be physically present during trial after testifying and not to be excluded solely because they have testified;

(12) With respect to victims and survivors of victims, to be informed by the prosecuting attorney of the date, time, and place of the trial and of the sentencing hearing for felony convictions upon request by a victim or survivor;

(13) To submit a victim impact statement or report to the court, with the assistance of the prosecuting attorney if requested, which shall be included in all presentence reports and permanently included in the files and records accompanying the offender committed to the custody of a state agency or institution;

(14) With respect to victims and survivors of victims, to present a

statement personally or by representation, at the sentencing hearing for felony convictions;

(15) With respect to victims and survivors of victims, to entry of an order of restitution by the court in all felony cases, even when the offender is sentenced to confinement, unless extraordinary circumstances exist which make restitution inappropriate in the court's judgment; and

(16) With respect to victims and survivors of victims, to present a statement in person, via audio or videotape, in writing or by representation at any hearing conducted regarding an application for pardon or commutation of sentence.

Paragraph 7.69.050 - Construction of chapter - Other remedies or defenses

Nothing contained in this chapter may be construed to provide grounds for error in favor of a criminal defendant in a criminal proceeding, nor may anything in this chapter be construed to grant a new cause of action or remedy against the state, its political subdivisions, law enforcement agencies, or prosecuting attorneys. **The failure of a person to make a reasonable effort to ensure that victims, survivors, and witnesses under this chapter have the rights enumerated in RCW 7.69.030 shall not result in civil liability against that person.** This chapter does not limit other civil remedies or defenses of the offender or the victim or survivors of the victim.

APPENDIX 2



STEVEN J. TUCKER
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PROSECUTING ATTORNEY

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**NOTICE OF VICTIM'S
INTENT TO RELY ON RCW
7.69.030(10)**

DATE: NOVEMBER 13, 2009

DEFENDANT: LUCAS J. MERRILL
DEPUTY PROSECUTING ATTORNEY: STEPHEN W. GARVIN
CRIME CHARGED: CT I - VII: ATTEMPTED FIRST DEGREE ASSAULT
OFFENSE DATE: On or about September 30, 2009
PROSECUTOR'S CASE NUMBER: 099368880
Re: SC# 09-1-04190-4

Notice is hereby given that KAREN E. GERTLAR, Victim in the above case, exercises the right to have an advocate present at any prosecution or defense interviews, in accordance with RCW 7.69.030(10), and demands contact, interview or correspondence be arranged through the Victim/Witness Office of the Spokane County Prosecutor's Office.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document has been served upon counsel for all parties by mailing the same to each properly addressed and postage prepaid on this 24 day of November, 2009.

H. Englaro

Karen Mertlar
Signature of Victim

Date: 11-18-09

Mary A. Strand
Signature of Advocate

Exhibit 1

COPY

506 36888



S P O K A N E

C O U N T Y

STEVEN J. TUCKER
PROSECUTING ATTORNEY

OFFICE OF THE SPOKANE COUNTY
PROSECUTING ATTORNEY

Victim - Witness Unit
PSB-1
County-City Public Safety Building
1100 W Mallon
Spokane WA 99260-2043
FAX: (509) 477-3409

**NOTICE OF VICTIM'S
INTENT TO RELY ON RCW
7.69.030(10)**

DATE: NOVEMBER 13, 2009

DEFENDANT: LUCAS J. MERRILL
DEPUTY PROSECUTING ATTORNEY: STEPHEN W. GARVIN
CRIME CHARGED: CT I - VII: ATTEMPTED FIRST DEGREE ASSAULT
OFFENSE DATE: On or about September 30, 2009
PROSECUTOR'S CASE NUMBER: 099368880
Re: SC# 09-1-04190-4

Notice is hereby given that SARAH E. GERTLAR, Victim in the above case, exercises the right to have an advocate present at any prosecution or defense interviews, in accordance with RCW 7.69.030(10), and demands contact, interview or correspondence be arranged through the Victim/Witness Office of the Spokane County Prosecutor's Office.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document has been served upon counsel for all parties by mailing the same to each properly addressed and postage prepaid on this 24 day of November 2009.

J. Englar

Sarah Gertlar
Signature of Victim
Date: 11-18-09

Mary A. Strand
Signature of Advocate

Exhibit 2

COPY



S P O K A N E

C O U N T Y

STEVEN J. TUCKER
PROSECUTING ATTORNEY

OFFICE OF THE SPOKANE COUNTY
PROSECUTING ATTORNEY

Victim - Witness Unit
PSB-1
County-City Public Safety Building
1100 W Mallon
Spokane WA 99260-2043
FAX: (509) 477-3409

NOTICE OF VICTIM'S
INTENT TO RELY ON RCW
7.69.030(10)

DATE: NOVEMBER 13, 2009

DEFENDANT: LUCAS J. MERRILL
DEPUTY PROSECUTING ATTORNEY: STEPHEN W. GARVIN
CRIME CHARGED: CT I - VII: ATTEMPTED FIRST DEGREE ASSAULT
OFFENSE DATE: On or about September 30, 2009
PROSECUTOR'S CASE NUMBER: 099368880
Re: SC# 09-1-04190-4

Notice is hereby given that JAY LYNN GERTLAR, Victim in the above case, exercises the right to have an advocate present at any prosecution or defense interviews, in accordance with RCW 7.69.030(10), and demands contact, interview or correspondence be arranged through the Victim/Witness Office of the Spokane County Prosecutor's Office.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document has been served upon counsel for all parties by mailing the same to each properly addressed and postage prepaid on this 24 day of November, 2009.

H. Englar

Jay Lynn Gertlar
Signature of Victim
Date: 11-18-09

Mary A. Strand
Signature of Advocate

Exhibit 3

CCF



S P O K A N E

C O U N T Y

STEVEN J. TUCKER
PROSECUTING ATTORNEY

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PROSECUTING ATTORNEY

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1100 W Mallon
Spokane WA 99260-2043
FAX: (509) 477-3409

NOTICE OF VICTIM'S
INTENT TO RELY ON RCW
7.69.030(10)

DATE: NOVEMBER 13, 2009

DEFENDANT: LUCAS J. MERRILL
DEPUTY PROSECUTING ATTORNEY: STEPHEN W. GARVIN
CRIME CHARGED: CT I - VII: ATTEMPTED FIRST DEGREE ASSAULT
OFFENSE DATE: On or about September 30, 2009
PROSECUTOR'S CASE NUMBER: 099368880
Re: SC# 09-1-04190-4

Notice is hereby given that VIRGINIA R. GERTLAR, Victim in the above case, exercises the right to have an advocate present at any prosecution or defense interviews, in accordance with RCW 7.69.030(10), and demands contact, interview or correspondence be arranged through the Victim/Witness Office of the Spokane County Prosecutor's Office.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document has been served upon counsel for all parties by mailing the same to each properly addressed and postage prepaid on this 24 day of November, 2009.

H. Englaro

Virginia Gertlar
Signature of Victim
Date: 11-18-09

Mary A. Strand
Signature of Advocate

Exhibit 4