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Court of Appeals  
Division III  
State of Washington  
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NO. 350347-III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION III

STATE OF WASHINGTON,

Respondent,

v.

TRAVIS L. PADGETT,

Appellant.

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AMENDED BRIEF OF RESPONDENT

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I. ASSIGNMENTS OF ERROR

A. ISSUES PRESENTED BY ASSIGNMENTS OF ERROR.

The issues raised by the assignments of error can be summarized as follows;

1. Whether trial court erred in denying Padgett’s motion to compel production of his client file?
2. Whether CrR 4.7(h)(3) requires the trial defense attorney post trial to provide him a copy of his “client file”?
3. Was his attorney of record provided notice of his motion to compel, and his failure to provide such notice sufficient basis to deny his motion to compel?

B. ANSWERS TO ASSIGNMENTS OF ERROR.

1. The trial court did not err in denying Padgett’s motion to compel production of his client file.
2. CrR 4.7(h)(3) does not require trial defense counsel to provide a copy of redacted discovery post trial.
3. The trial court was justified in denying the motion to compel production based upon appellant’s failure to serve his most recent appointed counsel.

II. STATEMENT OF THE CASE

The State accepts the appellant’s statement of the case as sufficient for addressing the issues presented in appellant’s brief.

III. ARGUMENT.

- A. Padgett is not entitled to a copy of the discovery at this time where the integrity of the information cannot be

protected.

1. Standard of Review.

Appellate courts review a question of statutory construction de novo. State v. Roggenkamp, 153 Wn.2d 614, 621, 106 P.3d 196, 199 (2005).

2. Argument.

CrR 4.7(h)(3) provides: “*Custody of materials.* Any materials furnished to an attorney pursuant to these rules shall remain in the exclusive custody of the attorney and be used only for the purposes of conducting the party's side of the case, unless otherwise agreed by the parties or ordered by the court, and shall be subject to such other terms and conditions as the parties may agree or the court may provide. Further, a defense attorney shall be permitted to provide a copy of the materials to the defendant after making appropriate redactions which are approved by the prosecuting authority or order of the court.”

The court rule was amended in 2005, adding the last sentence in the rule. When the court published the proposed rule change for comment, the court stated the purpose for the change in the rule as follows:

The suggested amendment to section (h)(3) would permit a prosecuting attorney and lawyer for a criminal defendant to agree upon, or the court to order, an exception to the current requirement that discovery materials remain in the “exclusive custody” of the defense lawyer.

A prosecuting attorney may determine in some instance that this is no harm in letting a defendant have copies of discovery materials, which in other circumstances a prosecuting attorney may be will to agree to on very limited dissemination, or none at all. The amendment would thus allow flexibility, depending on the nature of the case, that the current rule does not permit.

The suggested amendment is intended to help relieve a burden on defense counsel, while recognizing the need to protect victims and witnesses from possible harassment or embarrassment. Under the existing rule, as usually interpreted, a defense lawyer may not provide copies of discovery documents to his or her client in a conference room (or in a custodial facility with an incarcerated client). Yet there appears to be no restriction on the client reading the material, taking notes, or even making a verbatim copy of the information contained in the document.

Proponents have argued that changing the rule would enhance the preparation of an effective defense. Not only could the lawyer's time be used more effectively, but the client would have the opportunity to review and reflect upon the document. Increasing familiarity with the information in the documents may result in new insights or improved recollections. Defense lawyers also report that trial courts routinely grant motions that allow redacted copies to be given to clients. Allowing the parties to agree to the same thing would, it is hoped, eliminate motions to the court in a number of cases.

An increased opportunity to review all the evidence may result in additional guilty pleas, reducing the trial burden on the courts. Defendants who feel that evidence is not being hidden from them, or who see the full panoply of evidence against them and have it sink in, may be less likely to insist on a trial. When trials do occur, they may well be more expeditious, with all parties fully prepared from a pretrial review of document.

Moreover, a pro se defendant is entitled to the actual documents under the current discovery rules. Some defense counsel have expressed concern that certain defendants may currently be motivated to become "co-counsel" in their

own cases in order to gain access to discovery materials, an approach not favored by the courts. Changing the current rule would hopefully discourage this practice, by increasing trust between clients and their lawyers, and indeed reducing clients' distrust of the legal system in general.

Finally, it should be noted that the sections of the rule providing for protective orders and sanctions would still be available in cases where further restrictions or limitations are deemed necessary.

The purpose of the rule is clearly to allow preparation for trial or for a plea of guilty. Mr. Padgett was convicted of sexually assaulting a minor child. Allowing him unrestricted and unfettered access to the discovery in this case would be detrimental to the interests of the State and the victim. Normally in a case that is set for trial, if the court allows for a redacted copy to be made available to the defendant, a protective order requiring the materials to be kept by the jail personnel and allowing the defendant to examine the materials during certain hours and under certain conditions is the order of the day. (See Attachment A – Policies and Procedures of the Yakima County Jail – Protective Orders – Defendants' Redacted Police Reports). An example of that protective order regarding discovery materials is also attached. (See Attachment B - protective order).

Allowing the appellant to have his "client file" with all of the discovery provided to defense counsel by the State would circumvent the ability of the State to protect the interest of the victims, and the purpose of the rule, by taking away the ability to obtain a protective order regarding the

discovery.

- B. The State has an interest in the discovery provided to defense counsel and thus the defendant is not the “owner” of the discovery materials provided to his attorney that is in his client file.

The appellant is mistaken in his argument that he has a right to a redacted copy of the discovery materials. CrR 4.7(h)(3)’s language is that of “permitting” defense counsel to provide a redacted copy. And as the purpose of the rule states, that “permitting” can be limited in whole or in part depending on the nature of the case.

The appellant cites to the unpublished case of State v. Chargualaf, 182 Wn. App. 1058, \_\_\_ P.2d \_\_\_, 2014 Wash. App. LEXIS 1977, in support of his proposition. There the court stated: “In a criminal case, however, some documents and information in the client's file may also contain sensitive or confidential information that is simply not appropriate to be released to a criminal defendant for the same reasons that discovery must be redacted prior to disclosure pursuant to CrR 4.7 (discussed below). This is applicable whether criminal defense counsel is retained or appointed. Thus, while Chargualaf is entitled to his client file, Chargualaf's counsel must evaluate what documents or information in the file may be properly withheld without prejudicing the client, taking into consideration the restrictions (and spirit of the restrictions) under CrR 4.7. Accordingly, the trial court erred in

summarily denying Chargualaf's request to have his trial counsel provide him his client file". State v. Chargualaf, 182 Wn. App. 1058, \_\_\_ P.2d \_\_\_, 2014 Wash. App. LEXIS 1977, 4-5 (Wash. Ct. App. Aug. 12, 2014). The underlying facts of Chargualaf are much different than in the case of Mr. Padgett. The very nature of this case, a sexual assault, lends itself to a different analysis. It is for the trial court and the appellate courts to determine to what extent, if any, that Mr. Padgett can examine the discovery materials. See State v. Boyd, 160 Wn.2d 424, 438-39, 158 P.3d 54 (2007) (In cases such as these [child pornography], safeguarding the interest of the victims requires conditions that account for the ease with which the evidence can be disseminated. The defendant should be allowed access to the evidence only under defense counsel's supervision).

C. The record supports the court's ruling with regard to denying the motion based on lack of service on other counsel.

The record clearly shows that Padgett's former trial attorney was permitted to withdraw and that his current counsel was Robert Thompson. RP 6-7. Nothing in the motion shows that Robert Thompson was given notice.

IV. CONCLUSION

For the reasons set forth above this court should affirm the trial court's ruling.

Respectfully submitted this 18<sup>th</sup> day of January, 2018,

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## APPENDIX A

**Yakima County Department of Corrections**  
**Policies and Procedures**

Chapter:	<b>6 Operations</b>
Title:	<b>Protective Orders-Defendants' Redacted Police Reports</b>
Number:	<b>6.64</b>
Date Approved:	

**I. Policy:**

- A. It is the policy of the Yakima County Department of Corrections that:
1. All defendants' (inmates') Redacted Police Reports with attached Protective Orders will be kept in a secure location. Any activity regarding the Reports will be logged.
  2. Any Redacted Police reports **without Protective Orders**, in the possession of the named inmate, shall be the sole property and responsibility of that inmate.
  3. No YCDOC staff shall read or review any Redacted Police Reports.
  4. The named inmate/defendant reviewing Protected Redacted Police Reports shall do so in an area that affords the inmate confidentiality. The only person allowed to review Protected Redacted Police reports is the defendant named on the corresponding order.

**II. Authority/Background:**

**III. Definitions (for purpose of this policy):**

- A. YCDOC: Yakima County Department of Corrections.
- B. Redacted Police Reports:
1. Court documents of discovery and materials made available to inmate/defendant, either with or without Protective Orders issued by the Court.
- C. Protective Order (reference Redacted Police Reports):
1. A court order allowing inmate/defendant **limited** access to redacted police reports or any other materials that is evidentiary in nature as the judge deems necessary, for the defendant to assist in the defense of their criminal case.
- D. PRPR: Protected Redacted Police Report (also to include Discovery and/or any other material that is evidentiary in nature).
- E. Sergeant: includes acting sergeant.

**IV. Link To:**

**V. Forms/Attachments:** Discovery (Protected Redacted Police Reports) Log

**VI. Procedure:**

- A. Protected Redacted Police Reports or other material that is evidentiary in nature
1. When a PRPR is delivered to the custody of the YCDOC, YCDOC staff shall:
    - a) Forward the PRPR packet to the shift sergeants' office.
    - b) The shift sergeant will place the PRPR packet in a file with the inmate's name.

- c) The shift sergeant will fill out a Protected Redacted Police Report Log and place on clip board.
- d) The shift sergeant will secure the PRPR packet in the filing cabinet in the Booking Area Lock Evidence Room.
  - 1) The key to the booking Area Evidence Room will be maintained in the shift sergeant's office lock box.

**B. Inmate defendant review of Protected Redacted Police Reports:**

- 1. Inmate defendant review of PRPR shall take place in the Booking Area.
- 2. Inmates shall be directed to use the kiosk request system under "Law Library" when requesting to review their packet.
- 3. Corrections officers and corporals will inform the shift sergeant when an inmate has requested to review their PRPR packet.
- 4. The affected inmate will be escorted to the Booking area as needed for review.
- 5. The sergeant or corporal will be responsible for placing the inmate in a confidential area in Booking, retrieving the PRPR for the inmate, returning the PRPR packet to the Evidence Room and logging said activity as per the PRPR Packet log.
- 6. The inmate will date, time and sign on the log when he/she received the packet for review.
- 7. The inmate/defendant PRPR review may take place on any day between 2000 hours and 2200 hours (sergeants can approve alternate times).
- 8. After review is complete and prior to the inmate leaving the Booking Area, the inmate will be searched in order to assure that the inmate is not in possession of any of the contents of the PRPR.

**C. Resolution of case:**

- 1. Upon completion of the inmate defendant's case, the Care and Custody Lieutenant will contact prosecutor's office to return PRPR packet or with their permission, shred documents.

**Adopted this date by the Director or his designee:**

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Effective Date

by Director or his designee

## APPENDIX B

SUPERIOR COURT OF WASHINGTON FOR YAKIMA COUNTY

STATE OF WASHINGTON,

Plaintiff,

NO.

vs.

PROTECTIVE ORDER  
REGARDING REDACTED POLICE  
REPORTS

Defendant.

The Defendant, \_\_\_\_\_, shall receive a copy of redacted discovery subject to the following conditions and restrictions of this protective order:

- 1) The reports shall not be used for any purpose other than to prepare for the defense of the named defendant in the above-entitled cause.
- 2) The reports shall be kept in the custody of the Yakima County DOC and will not be kept in the Defendant's cell. The Defendant may only view the materials in private at the jail. The materials are not to be viewed by other inmates. The Yakima DOC shall ensure that all pages of the materials are returned after viewing by the inmate. The defendant is being provided numbered bate stamped pages \_\_\_\_\_. The pages are scanned 1 - \_\_\_\_\_.
- 3) The reports shall not be exhibited, shown, displayed or used in any fashion except in connection with judicial proceedings in the above-entitled cause.
- 4) The reports shall not be duplicated and may not be distributed to anyone besides the Defendant.
- 5) When a final disposition in the above-entitled cause has been reached in the trial court, the Yakima County DOC shall ensure that the reports be returned to the Yakima County Prosecuting Attorney's Office within 5 days following final disposition of the case.

- 6) The Prosecuting Attorney's office may ask for the discovery at any time to ensure that no pages have been removed from the packet.
- 7) Any violation of this order may result in sanctions by the court, including loss of the privilege to view and use the redacted reports.

DATED: this \_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
SUPERIOR COURT JUDGE

\_\_\_\_\_  
Deputy Prosecutor Attorney  
WSBA#

\_\_\_\_\_  
Attorney for the Defendant  
WSBA #

\_\_\_\_\_  
Defendant

DECLARATION OF SERVICE

I, Kenneth L. Ramm, state that on January 18, 2018, I emailed a copy, of the Amended Respondent's Brief by to Andrea Burkhart at [Andrea@2arrows.net](mailto:Andrea@2arrows.net)

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 18<sup>th</sup> day of January, 2018 at Yakima, Washington.

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**YAKIMA COUNTY PROSECUTORS OFFICE**

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