

79481-2

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Appellant,

v.

DUSTIN GENE ABRAMS,

Respondent.

DIRECT APPEAL
FROM THE SUPERIOR COURT OF GRANT COUNTY

APPELLANT'S BRIEF

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I. IDENTITY OF APPELLANT

The State of Washington, represented by the Grant County Prosecutor, is Appellant herein.

II. ASSIGNMENTS OF ERROR

The trial court erred in holding the perjury statute constitutionally defective and in dismissing with prejudice the State's case on that basis. CP 49-52, 60-61. No findings of fact or conclusions of law accompany the court's decision.

III. ISSUE

When nothing prohibits a jury from finding every element of the crime of perjury, does the requirement under RCW 9A.72.010(1) that a judge make a threshold finding of the element of materiality render the perjury statute RCW 9A.72 constitutionally defective?

IV. STATEMENT OF THE CASE

The Defendant Dustin Abrams has been charged with perjury in the first degree. CP 18-19. The perjury statute is set forth at RCW 9A.72.020:

- (1) A person is guilty of perjury in the first degree if in any official proceeding he makes a materially false statement which he knows to be false under an oath

- required or authorized by law.
- (2) Knowledge of the materiality of the statement is not an element of this crime, and the actor's mistaken belief that his statement was not material is not a defense to a prosecution under this section.
 - (3) Perjury in the first degree is a class B felony.

The Defendant challenged the constitutionality of the statute, arguing that, under the definitions section and Washington case law, the element of materiality has been taken out of the province of the jury. CP 34-43. The definition at issue reads:

- (1) "Materially false statement" means any false statement oral or written, regardless of its admissibility under the rules of evidence, which could have affected the course or outcome of the proceeding; whether a false statement is material shall be determined by the court as a matter of law;

RCW 9A.72.010.

The prosecutor agreed with the Defendant that a jury must determine the element of materiality. CP 44-45. However, the prosecutor argued that a threshold judicial determination of materiality did not prevent the jury from deciding the question as well. CP 45. Because the court could submit the element to the jury, the statute could be constitutionally applied.

The trial court found the perjury statute to be constitutionally defective in way that it "does not believe can be cured by the Courts." CP 52. The case was dismissed with prejudice. CP 60-61. This appeal follows. CP 62-69.

V. APPLICABLE STANDARDS

A. REVIEW BY THE SUPREME COURT.

The Supreme Court may accept direct review of a superior court decision in which the superior court has held a statute unconstitutional. RAP 4.2(a)(2). The Supreme Court may also deny direct review, transferring the case to the Court of Appeals for determination. RAP 4.2(e)(1).

A case which raises fundamental and urgent issues of broad public import requiring prompt and ultimate determination should be resolved by the Supreme Court of the state. RCW 2.06.030(d).

B. STANDARD FOR APPELLATE REVIEW.

The constitutionality of a criminal statute is a question of law that the court reviews de novo. State v. Jenkins, 100 Wn.App. 85, 89, 995 P.2d 1268 (2000).

The language of a statute should be construed to uphold its constitutionality if possible. City of Seattle v. Ivan, 71 Wn.App. 145, 155, 856 P.2d 1116 (1993). Every presumption is indulged in favor of upholding a statute which bears a reasonable and substantial relation to the promotion of public health, safety, morals, or welfare. State v. Melcher, 33 Wn.App. 357, 359, 655 P.2d 1169 (1982).

If a statute that may be unconstitutional is capable of being construed

so that it is constitutional, the statute should be so construed unless such construction is plainly contrary to the intent of the Legislature. See Communications Workers v. Beck, 487 U.S. 735, 762, 108 S.Ct. 2641, 101 L.Ed.2d 634 (1988); Edward J. DeBartolo Corp. v. Florida Gulf Coast Bldg & Constr. Trades Council, 485 U.S. 568, 575, 108 S.Ct. 1392, 99 L.Ed.2d 645 (1988); State v. Reyes, 104 Wn.2d 35, 41, 700 P.2d 1155 (1985) (it is the duty of the court to construe a statute so as to uphold its constitutionality unless the unconstitutional aspect of the statute is not susceptible to being cured); Grant v. Spellman, 99 Wn.2d 815, 819, 664 P.2d 1227 (1983) (presumption in favor of validity of acts of Legislature requires all doubts to be resolved in support of legislation unless the act is clearly unconstitutional).

Legislative intent is that statutes be preserved through severance of offending portions only. State v. Anderson, 81 Wn.2d 234, 237, 501 P.2d 184 (1972).

If any provision of this title, or its application to any person or circumstance is held invalid, the remainder of the title, or the application of the provision to other persons or circumstances is not affected, and to this end the provisions of this title are declared to be severable.

RCW 9A.04.010(4).

A party challenging the constitutionality of a statute must prove its invalidity beyond a reasonable doubt. State v. Thorne, 129 Wn.2d 736, 769-70, 921 P.2d 514 (1996); State v. Aver, 109 Wn.2d 303, 306-07, 745

P.2d 479 (1987). To fulfill that burden, one must show that “no set of circumstances exists in which the statute, as currently written, can be constitutionally applied.” City of Redmond v. Moore, 151 Wn.2d 664, 669, 91 P.3d 875 (2004). In contrast, alleging a statute is unconstitutional as-applied requires showing only that application of the statute to the party’s specific actions is unconstitutional. Moore, 151 Wn.2d at 668-69. “Holding a statute unconstitutional as-applied prohibits future application of the statute in a similar context, but the statute is not totally invalidated.” Moore, 151 Wn.2d at 669.

A statute is facially invalid only if there are no circumstances under which the statute can be constitutionally applied. Tonstall v. Bergeson, 141 Wn.2d 201, 221, 5 P.3d 691 (2000). Where an interpretation or severance may render a statute constitutional, the court must so interpret or sever. State v. Crediford, 130 Wn.2d 747, 760, 927 P.2d 1129 (1996).

VI. ARGUMENT

A. THE SUPREME COURT SHOULD ACCEPT REVIEW.

Washington courts have not yet addressed the constitutionality of the Washington perjury statute in the context of United States v. Gaudin, 515 U.S. 506, 115 S.Ct. 2310, 132 L.Ed.2d 444 (1995). Every witness statement in Washington, whether made by written declaration or by oral testimony, is

sworn under penalty of perjury. If the legislature's prohibition of perjury has no force, there is no guarantee for these statements.

A case such as this, which raises fundamental and urgent issues of broad public import requiring prompt and ultimate determination (RCW 2.06.030(d)), should be resolved by the Supreme Court of the state.

B. THE PERJURY STATUTE IS CONSTITUTIONAL ON ITS FACE.

The elements of first degree perjury, including materiality, are set forth at RCW 9A.72.020.¹ The defendant has a constitutional right under the Fifth and Sixth Amendments to have a jury determine the elements of the crime beyond reasonable doubt. United States v. Gaudin, 515 U.S. 506, 509-10, 115 S.Ct. 2310, 132 L.Ed.2d 444 (1995). "The Constitution gives a criminal defendant the right to demand that a jury find him guilty of all the elements of the crime with which he is charged; one of the elements in the present case is materiality; respondent therefore had a right to have the jury decide materiality." United States v. Gaudin, 515 U.S. at 511.

¹ In United States v. Gaudin, 515 U.S. 506, 115 S.Ct. 2310, 132 L.Ed.2d 444 (1995), the court did not reach the question of whether materiality was an element of the crime of false statement, because the government conceded this point. United States v. Gaudin, 515 U.S. at 524 (Rehnquist, C.J., concurring). However, United States v. Johnson, 520 U.S. 461, 465, 117 S.Ct. 1544, 137 L.Ed.2d 718 (1997) answered this question definitively. The court found that the statute's text leaves "no doubt that materiality is an element of perjury," and accordingly must be decided by a jury. United States v. Johnson, 520 U.S. at 465. The federal statute considered in Johnson is substantially similar to the Washington perjury statute.

RCW 9A.72.010(1) does not contradict this constitutional imperative. The definitional statute *does not prohibit* a jury from determining materiality, but only requires that a judge determine materiality as well. Such a threshold determination does not contravene the constitution. In fact, it provides the defendant with an additional protection -- a variation of a Knapstad motion as to this element. State v. Knapstad, 107 Wn.2d 346, 729 P.2d 48 (1986) (establishing a procedure for dismissing a criminal prosecution before trial based on evidence legally insufficient to support a finding of guilt).

“It is commonplace for the same mixed question of law and fact to be assigned to the court for one purpose, and to the jury for another. United States v. Gaudin, 515 U.S. at 521 (explaining that courts determine relevance in admitting evidence while juries determine relevance in deciding guilt and explaining that courts determine probable cause to conduct a search in suppression motions while juries determine the same in a 18 U.S.C. § 241-242 suit charging the deprivation of constitutional rights under color of law).

This is consistent with constitutional authority which permits a judge to direct a verdict for the defendant if the evidence is legally insufficient to establish guilt, but prohibits a judge from directing a verdict for the State, no matter how overwhelming the evidence. Sparf v. United States, 156 U.S. 51, 105-106, 15 S. Ct. 273, 39 L. Ed. 343 (1895). See also United States v.

Martin Linen Supply Co., 430 U.S. 564, 572-573, 97 S. Ct. 1349, 51 L. Ed. 2d 642 (1977); Carpenters v. United States, 330 U.S. 395, 410, 67 S. Ct. 775, 91 L. Ed. 973 (1947).

The perjury statute has a reasonable and substantial relation to our justice system, because all sworn testimony is made under penalty of perjury. Because the validity of the statute significantly affects the justice system, resolving this case has a reasonable and substantial relation to the promotion of our public health, safety, morals, and welfare. Every presumption must be indulged in favor of upholding a statute which bears a reasonable and substantial relation to the promotion of our public health, safety, morals, and welfare. State v. Melcher, 33 Wn.App. 357, 359, 655 P.2d 1169 (1982).

Because the statute can be constitutionally applied by submitting all elements to the jury, it is constitutional on its face. Because the State proposes that all elements be submitted to a jury, the statute will be constitutional as applied.

C. SEVERANCE IS PREFERRED OVER WHOLESAL
INVALIDATION OF A STATUTE.

The legislature provided a definitions section intended to simplify the procedure. In so doing, it explained that materiality was a question of law. RCW 9A.72.010(1) (“whether a false statement is material shall be determined by the court as a matter of law”). This explanation stemmed from

a division of authority on this question. This confusion was finally resolved with Gaudin. United States v. Gaudin, 515 U.S. at 517-18. In holding that materiality was a mixed question of law and fact (United States v. Gaudin, 515 U.S. at 512-14), Gaudin created a new rule. United States v. Johnson, 520 U.S. 461, 467, 117 S.Ct. 1544, 137 L.Ed.2d 718 (1997).

Following Gaudin, the words “as a matter of law” must be severed from the last sentence in RCW 9A.72.010(1). State v. Crediford, 130 Wn.2d 747, 760, 927 P.2d 1129 (1996) (permitting severance of an offending portion of a statute while leaving the remaining provisions intact). Severance is preferred over wholesale invalidation of a statute where elimination of the invalid portion does not render the remainder of the act incapable of accomplishing the overall purpose.

An act cannot be declared unconstitutional in its entirety by reason of the fact that some one or more of its provisions is unconstitutional, unless the constitutional and unconstitutional provisions are unseverable and are so intimately connected and interdependent in their meaning and purpose that it can not be believed that the legislature would have passed the one without the other, or unless the part eliminated is so intimately connected with the remainder of the act that the elimination will render the remainder incapable of accomplishing the purposes of the legislature.

State v. Lawton, 25 Wn.2d 750, 766, 172 P.2d 465 (1946). See also Caritas Servs., Inc. v. Dep’t of Soc. & Health Servs., 123 Wn.2d 391, 416-17, 869 P.2d 28 (1994); State v. Anderson, 81 Wn.2d 234, 236, 501 P.2d 184 (1972).

Permitting a jury determination of materiality does not contradict legislative intent. No language in the statute prohibits a jury determination. Specifically, the definition requiring judges to determine materiality does not prohibit a jury determination. It is not reasonable to believe that the legislature would have refused to pass RCW 9A.72.020 if it had understood that the jury would also determine all elements of the crime.

Nor does a jury determination on materiality obliterate the legislature's intent to criminalize perjury. The legislature's overall intent was to criminalize perjury, not to contravene the constitution.

To read the statute as permitting a jury determination is not merely constitutionally expedient. It is a fairly possible and entirely reasonable reading of legislative intent.

Finally, this Court has held that courts will not speculate on the legislative intent of the criminal code when addressing a constitutional challenge, because the courts are obligated under the severability clause of RCW 9A.04.010(4) to declare invalid only those specific offending portions rather than entire acts. State v. Anderson, 81 Wn.2d 234, 237, 501 P.2d 184 (1972).

If any provision of this title, or its application to any person or circumstance is held invalid, the remainder of the title, or the application of the provision to other persons or circumstances is not affected, and to this end the provisions of this title are declared to be severable.

RCW 9A.04.010(4). The priority under appellate standards is to preserve the statute.

D. STATE V. HUGHES DOES NOT PROHIBIT A JURY DETERMINATION ON THE ELEMENT OF MATERIALITY.

The trial court relied on State v. Hughes, 154 Wn.2d 118, 110 P.3d 192 (2005), overruled by Washington v. Recuenco, -- U.S. --, 126 S. Ct. 2546, 165 L. Ed. 2d 466 (2006) for its assertion that the judiciary cannot set up a procedure transferring authority to the jury absent a legislative amendment. The premise and subsequent reliance are both error.

First, no procedure need be created. Elements are already determined by juries. Materiality is an element. A jury must determine materiality just as it does every other element in RCW 9A.72.020.

Second, Hughes did not overrule RCW 2.28.150 as the trial court suggests. Under RCW 2.28.150, if the course of proceeding is not specifically pointed out by statute, the court may adopt any suitable process or mode of proceeding which may appear most conformable to the spirit of the laws. Abad v. Cozza, 128 Wn.2d 575, 588, 911 P.2d 376 (1996); Mabe v. White, 105 Wn. App. 827, 829, 15 P.3d 681 (2001). In Hughes, the court declined to use this power in a particular and distinguishable circumstance.

In Hughes, the court was asked to jury rig a remedy in the wake of Blakely v. Washington, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403

(2004). It was asked to intrude in the uniquely legislative function of fixing legal punishments, essentially to enact a complicated sentencing scheme, which the court felt was beyond its function and capacity. State v. Hughes, 154 Wn.2d at 149-51. The court held, “[w]here the legislature has not created a procedure for juries to find aggravating factors and has, instead, explicitly provided for judges to do so, we refuse to imply such a procedure on remand.” State v. Hughes, 154 Wn.2d at 150. This court declined to fashion a remedy on such a grand scale so as to alter a complicated sentencing statute, which demonstrated intensive legislative interest and effort.

In declining to fashion a remedy, the court noted that it had similarly declined in State v. Martin, 94 Wn.2d 1, 614 P.2d 164 (1980). In the Martin case, no statute permitted the court to convene a jury solely to consider the death penalty. The court was asked to create a procedure for empanelling a death penalty jury following a guilty plea. Such an important question, the procedures that determine whether a person should live or die, is properly a matter for the legislature. The court’s reluctance recognized that “death is different” and death penalty law is deserving of the greatest deliberation and caution. Gregg v. Georgia, 428 U.S. 153, 188, 96 S. Ct. 2909, 49 L. Ed. 2d 859 (1976).

But the question in the instant case is distinguishable. Hughes is

inapposite. In Hughes, the court was not being asked to sever a provision, but to create by common law a procedure completely absent from the Sentencing Reform Act. In the instant case, the State argued that the court had “the power and obligation to submit the question of materiality to the jury.” CP 46. The court was not asked to intrude in a complex system. The court was simply asked to read the statute as written. The statute makes materiality an element. Elements are found by juries.

The Hughes court did note, interestingly, that where a statute is merely silent or ambiguous on an issue, the court should imply a necessary and appropriate procedure. State v. Hughes, 154 Wn.2d at 151. Specifically, the court cited United States v. Buckland, 289 F.3d 558 (9th Cir. 2002), which reviewed a statute that failed to specify who would determine drug quantity and failed to identify the appropriate burden of proof for these determinations. The Ninth Circuit found that congressional intent was to increase punishment based on type and amount of controlled substance. United States v. Buckland, 289 F.3d at 568. The court honored both this intent and the Apprendi rule by implying, in this silence, a procedure in which the jury could find the necessary facts. Id.

In the instant case, the statute does not state that a jury may not determine materiality. It is silent. Clearly then this element must be determined by a jury along with all other elements. The court must permit

the element of materiality to go to the jury.

The trial court's decision ignores the well recognized presumption of constitutionality of an act of legislation. The decision must be reversed.

VII. CONCLUSION AND RELIEF REQUESTED

RCW 9A.72.020 determines that materiality is an element of the crime of perjury. As such, it must be submitted to the jury. RCW 9A.72.010(1) does not direct otherwise. The statute is constitutional on its face.

Based upon the forgoing, the Appellant prays the trial court's decision be reversed and that this action be remanded.

DATED: Jan. 9, 2007.

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**State of Washington v. Dustin Gene Abrams
Supreme Court No. 79481-2**

Appendix

- A. 06-1-00291-4, Memorandum Decision on Defendant's Motion to Dismiss, October 26, 2006.
- B. 06-1-00291-4, Order of Dismissal and Denial of Reconsideration, November 2, 2006.
- C. RCW 2.28.150
- D. RCW 9A.04.010
- E. RCW 9A.72.010
- F. RCW 9A.72.020

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KENNETH D. KUNES
Grant County Clerk

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF GRANT

STATE OF WASHINGTON,
Plaintiff,

No. 06-1-00291-4

v.

DUSTIN G. ABRAMS,
Defendant.

MEMORANDUM DECISION
ON DEFENDANT'S MOTION
TO DISMISS

Defendant, Dustin G. Abrams, has been charged by Information with perjury in the first degree. It is alleged that the Defendant, while participating in a CrR 3.5 hearing in Grant County Superior Court cause number 05-1-00454-4, made a materially false statement, which he knew to be false, while under oath.

RCW 9A.72.010 provides, in pertinent part, that:

Whether a false statement is material shall be determined by the Court as a matter of law.

The Defendant alleges that this provision wherein the legislature has determined that the Court shall make the determination as to materiality as a matter of law is unconstitutional. The Defendant alleges that materiality is an element of the offense of perjury and, constitutionally, the Defendant has a right for elements of the crime to

Decision on Defendant's
Motion to Dismiss - 1

Superior Court of the State of Washington
For Douglas County
John Hotchkiss, Judge
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Appendix A

1 be determined by a jury. The State, in its memorandum in opposition to Defendant's
2 motion to dismiss, appears to agree that the statute is unconstitutional as written, or
3 at least does not put up much resistance. The Court finds that in the charge of
4 perjury in the first degree that materiality is an element of the crime and must be
5 submitted to the jury as opposed to determined by the Court as a matter of law.

6 *United States v. Gaudin*, 515 U.S. 506, 115 S. Ct. 2310, 132 L. Ed. 2d 444 (1995);
7 *Johnson v. United States*, 520 U.S. 461, 117 S. Ct. 1554, 137 L. Ed. 2nd 718 (1997).

8 The State then argues that even though the legislature has required that the
9 Court make the decision of materiality as a matter of law, there is nothing that
10 prohibits the Court from simply submitting the question of materiality to the jury for
11 determination, along with all other elements of the crime of perjury. The State argues
12 that the Court has the authority to sever the offending portion of the statute to make it
13 Constitutional or use its inherent authority to submit the question of materiality to the
14 jury, thereby making the statute Constitutional.

15
16 RCW 2.28.150 does provide that the Courts, in some circumstances, do have
17 authority to adopt any suitable process or mode of proceeding which may appear
18 most comfortable to the spirit of the law. Superior Courts may rely on RCW 2.28.150
19 for authority to create a mode of proceeding necessary to carry out a statutory
20 directive without violating Constitutional rights. *Mabe v. White*, 105 Wn. App. 827
21 (2001). The Court's authority is not endless. Particularly in light of a specific
22
23
24

Decision on Defendant's
Motion to Dismiss - 2

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1 directive from the legislature. See *State v. Masangkay*, 121 Wn. App. 904 (2004); *In*
2 *Re Cross*, 99 Wn.2d 373 (1983).

3 The Court does not believe that *State v. Credford*, 130 Wn.2d 747 (1996)
4 applies. In *Credford* the Court was engaged in interpretation of legislative intent. In
5 the present case, the Court must specifically ignore legislative directive because the
6 directive is unconstitutional and replace legislative directive with something that is
7 Constitutional. This Court does not believe that this is the role of the judiciary. If this
8 were the role of the judiciary, Courts would not have to concern themselves with
9 voiding any legislative enactment which gave specific directions, as the Courts could
10 merely replace the legislative directive with something that would pass Constitutional
11 muster. This Court does not know why the legislature determined that the Court
12 should, as a matter of law, determine materiality and a jury determine the other
13 elements of perjury. The Court does not know the legislative history and no one has
14 provided the Court with legislative history that would explain this. The legislature
15 may have determined that under the present language of the statute, materiality
16 would be difficult for a jury to determine and/or for the Defendant to defend against.
17 As such, the legislature may wish to incorporate other language or other definitions of
18 materiality if it is to be presented to untrained fact-finders. This Court does not know,
19 but it is well established that it is the power of the legislative branch of government to
20 define crimes and prescribe punishment which is virtually exclusive. *State v. Cook*,
21 26 Wn. App. 683 (1980).
22
23
24

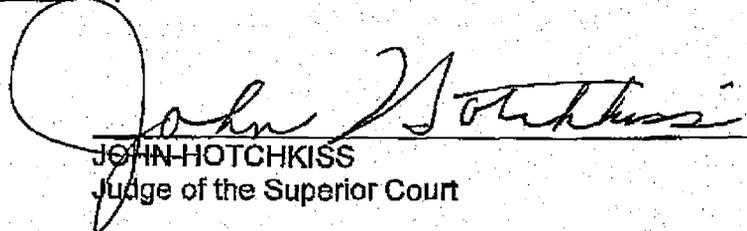
Decision on Defendant's
Motion to Dismiss - 3

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1 The Court really does see this issue as most similar to the issue addressed in
 2 *State v. Hughes*, 154 Wn.2d 118 (2005). As here, the Court sees it as fairly simple to
 3 convene a jury and present aggravating factors to the jury. The Court in *Hughes*, of
 4 course, found that this could not be done. As a matter of fact, shortly after the
 5 *Hughes* decision, which followed *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct.
 6 2531, 159 L. Ed. 2nd 403 (2004), not only did the Court in *Hughes* find that the judicial
 7 branch could not simply set up a procedure for the jury to find a factual basis for
 8 aggravating circumstances as opposed to the Court, the legislature did indeed
 9 amend the statute in 2005, RCW 9.94A.537, to provide specifically that the issue
 10 shall be determined by the jury.

11 The perjury statute is constitutionally defective. This Court does not believe it
 12 can be cured by the Courts. This Court believes that its job is to interpret legislative
 13 enactment. This Court's job is not to create legislation. Although it seems fairly
 14 insignificant to substitute the jury as the fact-finder on materiality as opposed to the
 15 Court, to do so would not be interpreting the legislative enactment, but to blatantly
 16 change it. This is the job of the legislature. The Defendant's motion to dismiss is
 17 granted.
 18

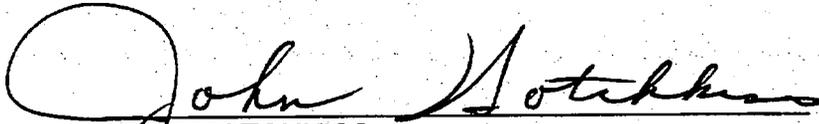
19 DATED this 20th day of October 2006.

20
 21 
 22 JOHN HOTCHKISS
 23 Judge of the Superior Court
 24

Decision on Defendant's
 Motion to Dismiss - 4

Superior Court of the State of Washington
 For Douglas County
 John Hotchkiss, Judge
 P.O. Box 488
 Waterville, WA 98858-0488
 (509) 745-9063 884-9430

DATED this 2nd day of November ~~October~~ 2006.


JOHN HOTCHKISS
Judge of the Superior Court

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Order of Dismissal - 2

Superior Court of the State of Washington
For Douglas County
John Hotchkiss, Judge
P.O. Box 488
Waterville, WA 98858-0488
(509) 745-9063 884-9430

RCW 2.28.150

Implied powers — Proceeding when mode not prescribed.

When jurisdiction is, by the Constitution of this state, or by statute, conferred on a court or judicial officer all the means to carry it into effect are also given; and in the exercise of the jurisdiction, if the course of proceeding is not specifically pointed out by statute, any suitable process or mode of proceeding may be adopted which may appear most conformable to the spirit of the laws.

RCW 9A.04.010

Title, effective date, application, severability, captions.

(1) This title shall be known and may be cited as the Washington Criminal Code and shall become effective on July 1, 1976.

(2) The provisions of this title shall apply to any offense committed on or after July 1, 1976, which is defined in this title or the general statutes, unless otherwise expressly provided or unless the context otherwise requires, and shall also apply to any defense to prosecution for such an offense.

(3) The provisions of this title do not apply to or govern the construction of and punishment for any offense committed prior to July 1, 1976, or to the construction and application of any defense to a prosecution for such an offense. Such an offense must be construed and punished according to the provisions of law existing at the time of the commission thereof in the same manner as if this title had not been enacted.

(4) If any provision of this title, or its application to any person or circumstance is held invalid, the remainder of the title, or the application of the provision to other persons or circumstances is not affected, and to this end the provisions of this title are declared to be severable.

(5) Chapter, section, and subsection captions are for organizational purposes only and shall not be construed as part of this title.

RCW 9A.72.010

Definitions.

The following definitions are applicable in this chapter unless the context otherwise requires:

(1) "Materially false statement" means any false statement oral or written, regardless of its admissibility under the rules of evidence, which could have affected the course or outcome of the proceeding; whether a false statement is material shall be determined by the court as a matter of law;

(2) "Oath" includes an affirmation and every other mode authorized by law of attesting to the truth of that which is stated; in this chapter, written statements shall be treated as if made under oath if:

(a) The statement was made on or pursuant to instructions on an official form bearing notice, authorized by law, to the effect that false statements made therein are punishable;

(b) The statement recites that it was made under oath, the declarant was aware of such recitation at the time he or she made the statement, intended that the statement should be represented as a sworn statement, and the statement was in fact so represented by its delivery or utterance with the signed jurat of an officer authorized to administer oaths appended thereto; or

(c) It is a statement, declaration, verification, or certificate, made within or outside the state of Washington, which is certified or declared to be true under penalty of perjury as provided in RCW 9A.72.085.

(3) An oath is "required or authorized by law" when the use of the oath is specifically provided for by statute or regulatory provision or when the oath is administered by a person authorized by state or federal law to administer oaths;

(4) "Official proceeding" means a proceeding heard before any legislative, judicial, administrative, or other government agency or official authorized to hear evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or depositions;

(5) "Juror" means any person who is a member of any jury, including a

grand jury, impaneled by any court of this state or by any public servant authorized by law to impanel a jury; the term juror also includes any person who has been drawn or summoned to attend as a prospective juror;

(6) "Testimony" includes oral or written statements, documents, or any other material that may be offered by a witness in an official proceeding.

RCW 9A.72.020

Perjury in the first degree.

(1) A person is guilty of perjury in the first degree if in any official proceeding he makes a materially false statement which he knows to be false under an oath required or authorized by law.

(2) Knowledge of the materiality of the statement is not an element of this crime, and the actor's mistaken belief that his statement was not material is not a defense to a prosecution under this section.

(3) Perjury in the first degree is a class B felony.