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CRIMINAL DIVISION
KING COUNTY PROSECUTORS OFFICE

NO.

81219-5

THE SUPREME COURT
OF THE STATE OF WASHINGTON

(from King County Superior Court Cause No. 07-C-06093-2 SEA)

STATE OF WASHINGTON,

Respondent,

v.

LOUIS LANCIOTI,

Petitioner.

MOTION FOR ACCELERATED DISCRETIONARY REVIEW
IN THE SUPREME COURT

RAMONA C. BRANDES
WSBA NO. 27113
Attorney for Appellant
Northwest Defenders Association

1111 Third Avenue, Suite 200
Seattle, Washington 98101
(206)674-4700

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SUPREME COURT
STATE OF WASHINGTON

ORIGINAL

A. IDENTITY OF PETITIONER

Petitioner in this matter is Louis Lanciloti. The Respondent is the State of Washington.

B. DECISION BELOW

In September 2007 the King County Superior Court began restricting eligible jurors from the jury venire in civil and criminal cases. The court divided the venire in two parts and jurors in one set of zip codes within King County are ineligible to serve in superior court cases heard at the Regional Justice Center in Kent, Washington. Jurors in another set of zip codes within King County are ineligible to serve in cases heard at the Seattle courthouse. Because all King county capital cases are heard in the Seattle courthouse, this decision excludes all eligible jurors who live in South King County from service in a capital case. King County is the only county in the state with dual courthouses for superior court.

Petitioner Lanciloti contends the constitutionality of RCW 2.36.055, which permits Washington counties to divide their jury venire, and King County Local General Rule (LGR) 18, which split the jury venire, violate the Article 1, Section 22 of the Washington Constitution and the Sixth Amendment to the United States Constitution. Petitioner

presented significant evidence demonstrating the differences between the two jury pools created by LGR 18.

Both Petitioner and Respondent and the Court agreed to seek direct review of the issue by the Washington Supreme Court.

On January 28, 2008, Petitioner challenged the constitutionality of RCW 2.36.055 and LGR 18 on the grounds that they violate Washington Constitution, Article 1, Section 22 and the Sixth Amendment to the United States Constitution. On February 4, 2008, King County Superior Court Judge Christopher Washington found RCW 2.36.055 and LGR 18 constitutional under both the Washington Constitution and the Sixth Amendment. The court issued a written order to that effect on February 6, 2008.¹ Petitioner seeks review of these decisions.

RCW 2.36.055 authorizes counties with more than one superior court facility to split jury venires between courts. King County Local General Rule 18, implements that statute, dividing the residents of the county into two venires on residence zip code. Jury panels in the Seattle courthouse are drawn only from the population with zip codes in the northern portion of the county, and panels from the Kent courthouse are drawn only from the population in the southern portion of the county.

¹ Appendix A. Order Finding RCW 2.36.055 and LGR 18 Constitutional, and Certifying Need for Discretionary Pursuant to RAP 2.3(B)(4) and RAP 4.2(A)(4), issued by

The pertinent portion of RCW 2.36.055 reads as follows

In a county with more than one superior court facility and a separate case assignment area for each court facility, the jury source list may be divided into jury assignment areas that consist of registered voters and licensed drivers and identicard holders residing in each jury assignment area. Jury assignment area boundaries may be designated and adjusted by the administrative office of the courts based on the most current United States census data at the request of the majority of the judges of the superior court when required for the efficient and fair administration of justice.

RCW 2.36.055.

Pursuant to RCW 2.36.055 the King County Superior Court adopted Local General Rule 18 (LGR 18), effective September 1, 2007.

LGR 18 provides:

(1) Designation of Jury Assignment Areas. The jury source list shall be divided into a Seattle jury assignment area and a Kent jury assignment area, that consist of registered voters and licensed drivers and identicard holders residing in each jury assignment area. The area within each jury assignment area shall be identified by zip code and documented on a list maintained by the chief administrative officer for the court.

(2) Assignment or Transfer by Court. This rule shall not create a right in any individual to have a case tried before a jury from a specific jury assignment area. The Court on its own may assign cases to be heard by jurors drawn from another case assignment area in the county, or from the entire county, or may assign or transfer cases to another case assignment area pursuant to LR 82(e)(4)(C) or LCrR

Christopher Washington in State v. Lanciloti, Cause 07-C-06093-2 SEA on February 6, 2008.

5.1(d)(2)(C), as applicable, whenever required for the just and efficient administration of justice in King County.

(3) Where Jurors Report. Individuals receiving a jury summons shall report for service to the Court facility in the jury assignment area identified on the face of the summons.

(4) Adjustment of Jury Assignment Area Boundaries. The jury assignment areas contained in this rule may be adjusted by the administrative office of the courts based on the most current United States census data at the request of the majority of the judges of the superior court when required for the efficient and fair administration of justice.

LGR 18.

The Petitioner now seeks to appeal that ruling.

C. ISSUES PRESENTED FOR REVIEW

1. The Petitioner seeks review of the trial court's decision finding that a court's decision to exclude otherwise eligible jurors from service based on where the jurors reside within the county does not violate Article 1, Section 22 of the Washington State Constitution.
2. The Petitioner seeks review of the trial court's decision the racial, educational, economic and other differences between the two venires did not establish prima facie evidence of a violation of the Sixth Amendment's guarantee to a venire panel that is a representative cross section of the community.

3. The Petitioner seeks review of the trial court's disregard for the rights of the population of the Southern Jury Assignment Area to serve as jurors on capital cases.
4. The Petitioner seeks review of whether the failure of King County Superior Court to follow a fixed procedure when drawing jury venires violates RCW 2.36.055.

D. STATEMENT OF THE CASE

On September 1, 2007, King County implemented LGR 18, splitting the master jury source list for King County Superior Court into two separate lists—one for the northern portion of the county to serve the Seattle courthouse, and one for the southern portion of the county to serve the Kent courthouse. On October 18, 2007, Judge Joan DuBuque issued a written opinion in a separate case² finding that RCW 2.36.055 and LGR 18 constitutional. Judge DuBuque determined that the evidence before her did not establish a Sixth Amendment violation. A subsequent ruling in

² Appendix B. Memorandum Opinion on Defense Motion Regarding Jury Assignment Area issued by King County Superior Court Judge Joan DuBuque in *State v. Delanty*, 06-1-06165-5 SEA dated October 18, 2007.

a third case³ later heard by Judge Greg Canova concurred with Judge DuBuque. However, On January 3, 2008, Judge Cheryl Carey of King County Superior Court issued a memorandum⁴ finding that RCW 2.36.055 and LGR 18 were unconstitutional under Article 1, Section 22 of the Washington Constitution. The court did not address the Sixth Amendment concerns in that opinion. That case was settled by plea agreement. A similar ruling was issued in a fourth case⁵ heard by King County Superior Court Judge Mary Roberts. Following arguments by trial counsel on the issue of the dual jury assignment areas, Judge Roberts issued an oral ruling that the defendant in that case was entitled to a jury of the entire county. The State did not appeal that ruling. None of these cases included the demographic data submitted in this case.

In addition to these conflicting rulings, the courts have not utilized a uniform approach to drawing a jury venire in King County. Some courts are following the statute and pulling jurors from the jury assignment area designated by statute and local rule. Some courts are asking the parties to

³ Appendix C. Memorandum Opinion on Defense Motion Regarding Jury Assignment Area issued by King County Superior Court Judge Greg Canova in State v. Hopkins, 07-1-05332-4 SEA dated January 28, 2008.

⁴ Appendix D. Memorandum Opinion on Defense Motion Re: Constitutionality of RCW 2.36.055 and GR 18, issued by King County Superior Court Judge Cheryl Carey in joined cases State v. Conte, 05-C-08807-5 SEA, State v. Colacurcio Jr., 05-C-08808-3 SEA, State v. Colacurcio Sr, 05-C-09909-1 SEA, and State v. Furfaro, 05-C-08810-5 SEA, dated January 3, 2008.

⁵ Appendix E, Clerk's Minute entry of King County Superior Court Judge Mary Robert's ruling for all county jury panel, State v. LaRue, 06-1-10024-3 KNT

agree to a bifurcated jury venire sua sponte. Some courts are asking for the jury administrator to summons a jury from the entire county, particularly in serious cases, and some courts are drawing a jury by pulling equal numbers of jurors from the two separate jury assignment areas.

On January 28, 2008, Petitioner Louis Lanciloti challenged RCW 2.36.055 and LGR 18 as violating the Washington Constitution and the Sixth Amendment to the U.S. Constitution. In support of this motion, Petitioner submitted over 1300 pages of demographic data. On February 4, 2008, the court issued an oral ruling denying Petitioner's motion.

Petitioner timely filed a Notice of Discretionary Review in response to the Court's order. The Respondent is in agreement that this matter is appropriate for discretionary review. Judge Washington certified the issue as appropriate for interlocutory review⁶ on February 6, 2008, and stayed further proceedings.⁷ The defendant has been released on his personal recognizance in this matter, so he is not presently being held in custody pursuant to this charge.

Petitioner Lanciloti was charged with Possession of Methamphetamine on July 15, 2007. When he was arrested on this charge Mr. Lanciloti was sitting next Terry Menegassi, who was holding a syringe containing methamphetamine. Between Lanciloti and Menegassi

⁶ Appendix A, supra

was a beer can that held a substance that the state is alleging is methamphetamine. The underlying facts of Petitioner's arrest are not relevant to the issues to be reviewed in this matter.

In support of Petitioner's objection to the jury venire, he submitted demographic data to the court from the 2000 United States census, that established significant differences between the jury assignment areas for the northern portion of King county and the southern portion of King county. The two "half" populations were both different from each other, as well as from the whole King county population. The three groups had significant differences in Hispanic/Latino populations, traditional marital households, single parent households, the disabled, the self-employed, the degrees of education, and significant disparity in the economic status as established by median home values and median household income. By changing the demographic parameters for the jury source pool, King County Superior Court denied distinct groups in the community the right to serve on jury panels at the Seattle and Kent courthouses.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

Under RAP 2.3(b) it is clear that discretionary review of this matter is appropriate. RAP 2.3 (b) provides in pertinent part:

⁷ Appendix F, Stay of Proceedings

(2) The superior court has committed probable error and the decision of the superior court substantially alters the status quo or substantially limits the freedom of a party to act;

(4) The superior court has certified, or that all parties to the litigation have stipulated, that the order involves a controlling question of law as to which there is substantial ground for a difference of opinion and that immediate review of the order may materially advance the ultimate termination of the litigation.

RAP 2.3(b)(2),(4).

The superior court has committed probable error when it issued its decision in conflict with the ruling of the Washington Supreme Court in Fugita v. Milroy, 71 Wash. 592, 129 Pac. 384, 386-7 (1913), where the court stated that the words in Article 1, Section 22 of the Washington Constitution requiring a jury “of the county” meant a jury of the whole county, and not a jury of some particular part of the county. The trial court’s decision “substantially alters the status quo” in that it deprives the defendant of his traditional right to have a jury selected from the body of the county, rather than from a part of the county.

The King County Superior Court decision to split the jury venire has significantly departed from the accepted and usual course of judicial proceedings. The split jury venire is unlike any prior jury selection process used at any time in the history of the State of Washington. No

other county in Washington creates a jury source list for Superior Court trials from any geographic division less than the entire county.

The superior court has certified, and all the parties have stipulated, that the court's order involves a controlling question of law as to which there is substantial ground for a difference of opinion. King County Superior Court judges have issued conflicting opinions on the question. Immediate review of the order and the jury selection practice in King County will materially advance the ultimate termination the litigation in numerous cases.

F. CONCLUSION

Petitioner Lanciloti respectfully requests that the Court grant discretionary review for the reasons outline above. This matter is of significant impact for jurors and parties in cases being heard in King County. It requires immediate resolution as the practice is impacting all Superior Court jury trials in King County since September 1, 2007.

Respectfully Submitted this 13th day of February, 2008.

NORTHWEST DEFENDERS ASSOCIATION



RAMONA C. BRANDES, WSBA 27113
Attorney for Petitioner

APPENDIX A

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

LOUIS F. LANCILOTI,

Defendant.

)
)
) No. 07-C-06093-2 SEA
)
)
) ORDER FINDING RCW 2.36.055
) AND LGR 18 CONSTITUTIONAL,
) AND CERTIFYING NEED FOR
) DISCRETIONARY PURSUANT TO
) RAP 2.3(B)(4) AND RAP 4.2(A)(4)
)
)
)

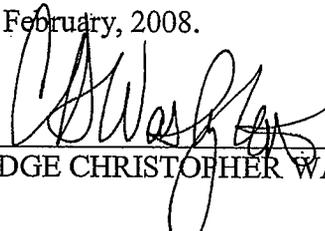
THIS MATTER having come on regularly before the undersigned judge of the above-entitled court upon the motion of the defendant for an order declaring RCW 2.36.055 and Local King County General Rule 18 unconstitutional under Article 1, Section 22 of the Washington State Constitution, and the Sixth Amendment of the United States Constitution, the court being fully advised in the premises; now, therefore,

IT IS HEREBY ORDERED, ADJUDGED and DECREED that this Court finds RCW 2.36.055 and King County Local General Rule 18 do not violate Article 1, Section 22 of the Washington State Constitution. That constitutional provision provides that all defendants have the right to a trial "by an impartial jury of the county in which the offense is charged." This language does not mandate that the jury venire must be drawn from the entire county; the provision is satisfied as long as the jurors are drawn from a portion of the county. This Court also finds that the defendant's Sixth Amendment right to an impartial jury from a fair cross-

1 section of the county has not been violated by the implementation of Local General Rule 18
2 because the defendant has not established that dividing King County into two jury assignment
3 areas has resulted in the systemic exclusion or underrepresentation of a "distinctive group"
4 within the county.

5 This Court certifies, and the parties agree, that the constitutionality of RCW 2.36.055 and
6 LRG 18 are a controlling questions of law as to which there is substantial ground for a difference
7 of opinion and that immediate review of this court's order may materially advance the ultimate
8 termination of the above litigation, as well as that of other criminal cases. In fact, different
9 departments of the King County Superior Court have issued different rulings on this same state
10 constitutional question. This finding is made pursuant to RAP 2.2(b)(4). Additionally, this
11 Court finds that the case involves a fundamental and urgent issue of broad public import which
12 requires prompt and ultimate determination pursuant to RAP 4.2(a)(4).

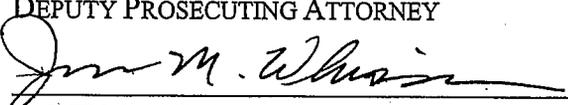
13 DONE IN OPEN COURT this 6th day of February, 2008.

14 
15 JUDGE CHRISTOPHER WASHINGTON

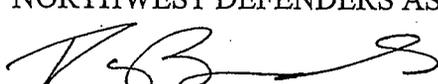
16 PRESENTED BY:

17 DANIEL T. SATTERBERG
18 KING COUNTY PROSECUTING ATTORNEY

19 
20 JENNIFER ATCHISON, WSBA #33263
21 DEPUTY PROSECUTING ATTORNEY

22 
23 JAMES M. WHISMAN, WSBA #19109
24 SENIOR DEPUTY PROSECUTING ATTORNEY

25 NORTHWEST DEFENDERS ASSOCIATION

26 
27 RAMONA C. BRANDES, WSBA#27113
28 Attorney for Defendant

29 ORDER CERTIFYING NEED FOR DISCRETIONARY REVIEW
30 BY THE WASHINGTON SUPREME COURT PURSUANT TO
31 RAP 2.2(b)(4) AND 4.2(A)(4) - 2

Daniel T. Satterberg, Prosecuting Attorney
Norm Maleng Regional Justice Center
401 Fourth Avenue North
Kent, Washington 98032-4429

APPENDIX B

1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR THE COUNTY OF
2 KING

3
4 State of Washington,

5 Plaintiff,

6 vs.

7 Thomas Delanty,

8 Defendant

) Case No.: No. 06-1-06165-5 SEA

) Memorandum Opinion on Defense Motion
Regarding Jury Assignment Area

9
10 This matter having come on for hearing on October 4, 2007 and October 12, 2007 before the
11 undersigned on the issue of whether RCW 2.36.055 and King County Superior Court Local
12 General Rule 18 (KCLGR 18) violate the defendant's constitutional right to a fair and impartial
13 jury of the county in which the crime charged is alleged to have been committed as guaranteed
14 by Article 1 Section 22 of the Constitution of the State of Washington and the Sixth Amendment
15 federal constitutional right to an impartial jury comprised of a fair cross section of the
16 community as applied to the states pursuant to the 14th Amendment Due Process Clause. Taylor
17 v. Louisiana, 419 U.S. 522, 528 (1975).

18
19 In addressing these issues, this opinion will be divided three different areas: procedural
20 background, issues presented and the court's analysis.
21
22
23
24
25

1 **Procedural Background**

2
3 Effective July 24, 2005, RCW 2.36.055 was amended to include the following new language:

4
5 "In a county with more than one superior court facility and a separate case assignment
6 area for each court facility, the jury source list may be divided into jury assignment areas
7 that consist of registered voters and licensed drivers and identicard holders residing in
8 each jury assignment area. Jury assignment area boundaries may be designated and
9 adjusted by the administrative office of the courts based on the most current United States
10 census data at the request of the majority of the judges of the superior court when
11 required for the efficient and fair administration of justice."

12
13 On June 26, 2007, KCLGR 18 was approved by the majority of the judges of King County
14 Superior Court. It divided the county into jury assignment areas consonant with the case
15 assignment areas previously in existence for the assignment of civil and criminal cases between
16 the superior court Regional Justice Facility in Kent and the Seattle superior court facility.

17 The local rule was filed with the state administrator for the courts in accordance with GR 7 and
18 became effective September 1, 2007. See Exhibit 1 attached hereto.

19
20 On September 25, 2007, the Administrative Office of the court communicated its approval of
21 the jury assignment area boundaries as designated in the local rule. See Exhibit 2 attached
22 hereto.

23
24 Previously, on September 11, 2007, this case was pre-assigned to this court for pre-trial
25 management and trial. On September 21, 2007, the court received an informal request for an "all
county" jury venire. The court directed that the matter be addressed via a formal motion with
adequate briefing.

1 As noted above, oral argument was presented before the court on two occasions.

2
3 Issues Presented

4
5 1. Does RCW 2.36.055 (and KCLGAR 18) violate Article 1 Section 22 of the Washington State
6 Constitution by allowing a superior court jury venire to be summoned from a jury assignment
7 area contained within the county?

8
9 2. Does RCW 2.36.055 (and KCLGAR 18) violate the defendant's 6th Amendment right to an
10 impartial jury comprised of a fair cross section of the community?

11
12 Analysis

13
14 The crux of the issue before the court is whether the state legislature has the authority to allow
15 King County, which operates superior court facilities in two locations within the county, to have
16 its jury source list divided into two jury assignment areas. The jury assignment areas are
17 consistent with the case assignment areas for each facility. Since 1997 King County Superior
18 Court has conducted civil and criminal trials at these two locations. Pursuant to Local Rules,
19 cases have been assigned to each location based on geographic boundary designations (See
20 KCLR 82 and KCLCR 5.1). Up until September 1, 2007 the jury source list was drawn from
21 the county as a whole. On September 1, 2007, the jury source list was divided into two jury
22 assignment areas. The area within each jury assignment area is designated by zip code and, as
23 noted above, has been approved by the administrative office of the courts.

24
25

1 Under traditional statutory analysis, a statute is presumed constitutional and the burden of
2 proving its unconstitutionality is upon the party challenging it, in this case the defendant.

3 That burden is a heavy one; the unconstitutionality must be proven beyond a reasonable doubt.
4

5 In amending RCW 2.36.055, the legislature made some specific findings:

6 "Sec. 1. The legislature finds that superior courts with more than one superior court
7 facility are asking some jurors to travel excessively long distances to attend court
8 proceedings. In these cases, the legislature further finds that consideration of a juror's
9 proximity to a particular courthouse can be accommodated while continuing to provide
10 proportionate jury source list representation from distinctive groups within the
11 community. The legislature intends to lessen the burdens borne by jurors fulfilling their
12 civic duties by providing a mechanism that narrows the geographic area from which the
13 jurors are drawn while maintaining a random and proportionate jury pool."

14 That legislative finding must be considered within the context of the other provisions of Ch 2.36
15 RCW and GR 18 governing jury source lists, jury selection and the summoning of jurors to serve
16 trial courts throughout the county. The legislature has made it clear that the public policy of the
17 state of Washington is twofold: to insure that a random and impartial jury panel from a fair cross
18 section of the population of the area served by the court is selected to try a case [Art 1, Section
19 22, GR 18, RCW 2.36.080 (1)] and that the consideration be given to the burden of jury service
20 upon eligible citizens by allowing jury assignment areas that consider geographic proximity
21 (RCW 2.36.055) and the duration of that jury service or term (RCW 2.36.080(2)).

22 In reviewing the findings and the statute, it appears that the legislature intended to insure
23 proportionality and randomness in the selection of the jury source list while being cognizant of
24 the propriety of considering geographic area in drawing jury panels within the county.
25

1 In State v. Twyman, 143 Wn. 2d. 115 (2001) the Washington Supreme Court upheld the
2 constitutionality of a similar jury source list established for district courts. That case specifically
3 discussed the state constitutional provision at issue in this case: Article 1 Section 22. Article 1,
4 Section 22 states, in pertinent part: "In criminal prosecutions the accused shall have the right...to
5 have a speedy public trial by an impartial jury of the county in which the offense is charged to
6 have been committed." The Supreme court approved a jury source list that was composed by
7 zip code generally coextensive with the electoral districts of the district court. In so doing, it
8 held that the manner of selection was substantially in compliance with RCW 2.36.050 and RCW
9 2.36.065. It pointed to State v. Newcomb, 58 Wash. 414, 418 (1910) in support of its holding
10 that selecting jurors from an area of the county as described above comported with the provisions
11 of Article 1 Section 22 of our state constitution.

12
13 While Twyman is not directly on point since it does not address superior courts, its reasoning
14 and citations to earlier cases, persuades this court to conclude that if faced with the question, the
15 Washington State Supreme Court would uphold RCW 2.36.055 (and consequently KCLGAR
16 18) as being constitutional under Article 1 Section 22 of our state constitution. There are
17 significant parallels in the statutory purposes underlying the legislation to allow the superior
18 courts (that are operating out of two court facilities) to summon jurors drawn from an area that is
19 less than the entire county as was approved for district courts in State v. Twyman, supra. See
20 RCW 2.36.055 and RCW 2.36.050. The constitutional language at issue is the same. Further,
21 the majority of states that have constitutional language similar to Washington have also
22 addressed the issue consistent with the principles enunciated in State v. Twyman, supra. These
23 cases are cited at length in the thorough briefing provided to this court by both counsel.
24 State v. Twyman cited with approval State v. Newcomb, 58 Wash 414, 419 (1910). In the
25 Newcomb case, the Supreme Court, in discussing the words "jury of the county", looked to the

1 pre-existing common law as well as its interpretation of the meaning of that phrase under the
2 state constitution, stating:

3
4 "Under the old rule of the common law, the jury was required to come from the vicinage
5 or neighborhood of the place where the crime was alleged to have been committed, or the
6 cause of action, if civil, arose; and it was a ground of challenge if some given number
7 were not summoned from the hundred in which such place lay. This rule was gradually
8 changed until the law was satisfied if the jury was returned from any part of the county
9 and the words 'jury of the county,' as used in our constitution, have never been held
10 to mean more than that the jurors, when summoned, should come from some
11 part of the county." (Emphasis added.)

12 The court went on to say:

13 "Counsel for appellant, upon this charge of unconstitutionality, seems to lay great stress
14 upon the opinion of this court in State ex rel. Lyle v. Chehalis County, 54 Wash. 278,
15 103 Pac. 464. We can find no common ground between the two cases. In that case the
16 question discussed was the constitutionality of the act dividing counties into separate
17 judicial districts, contrary to what we held to be the inhibition of the constitution in
18 providing but one superior court in each county. There is no method provided for in
19 the constitution for summoning jurors, nor does it attempt to define their
20 qualifications. Hence such matters can be safely and properly left to legislative
21 enactment." (Emphasis added).

22 It is the defense position that Article 1 Section 22 of our state constitution must be literally
23 interpreted and strictly construed to require a constitutional amendment before superior court
24 jurors may be summoned from an area within the county instead of the county at large. In light
25 of the language contained within Newcomb and Twyman, this court believes that the legislature
has the authority to determine how superior court jurors may be summoned to serve and to which
court facility within the county so long as the randomness of selection within the district or jury
assignment area is maintained. The approval of the King County jury assignment area by the
Administrative Office of the Courts was obtained and there is nothing in the record before this

1 court to support a determination that the jury assignment area to be used in this case is
2 unconstitutional.

3
4 As noted in the letter from the Administrative office of the courts, the way in which King
5 County has divided itself into jury source list assignment areas shows "Congruence between case
6 assignment areas and jury assignment areas is rational and does not, by itself, introduce bias into
7 the administration of justice." Further, the office noted that "Available demographic data shows
8 that the areas are constructed so that the populations within the two areas are very similar in
9 terms of race and ethnicity." There is no evidence in the record before this court that the jury
10 panels so summoned to either Kent or Seattle are anything but randomly selected from a
11 representative cross section of the community.

12
13 In State ex rel. Fugita v. Milroy, 71 Wash. 592 (1913), the court struck a jury venire because the
14 police judge directed the Sheriff to summon "sixteen good and lawful men" from the body of his
15 city. The court held:

16 "We think the plain intent of the words 'jury of the county' is that the defendant is entitled to
17 have the venire extended to the body of the county, and that it may not be restricted to a less
18 unit; at least without express legislative sanction." (Emphasis added; citations omitted). It is
19 important to note that the process used in Fugita was not sanctioned by state law and in fact
20 destroyed the element of chance or randomness which courts have held is essential to a
21 constitutionally fair and impartial jury. For example, in Zanone v. State of Tennessee, 36 S.W.
22 711 (1896), the court struck as unconstitutional a jury venire which a judge had ordered be
23 exclusively composed of residents from the country to the exclusion of the city of Memphis. Yet
24 earlier, in Ellis v. State, 20 SW 500,504 (1892) the same supreme court upheld a state law that
25 required a jury venire to be selected from 5 specified districts within a county that was composed

1 of 17 districts. In so doing, it noted that the Tennessee constitution gave defendants the right to a
2 "speedy public trial by an impartial jury of the county." It held, at page 504:

3 "If the jury is made up of citizens of any part of the county, who are otherwise qualified, the
4 requirement of the constitution is complied with."
5

6 The practice condemned in Fugita and Zanone is the intentional interference with the element of
7 chance or randomness in the summoning of a jury venire. In the case before this court, the
8 legislature has enacted a provision that is consistent with the constitutional principle of an
9 impartial jury of the county.
10

11 The defendant has failed to meet his burden of proving beyond a reasonable doubt that RCW
12 2.36.055 violates Article 1, Section 22 of the state constitution.
13

14 The defendant's challenge under the 6th Amendment to the United States Constitution similarly
15 fails. There is no evidence that there has been the exclusion from the jury source list for each
16 jury assignment area any identifiable group or class so as to destroy the representative nature of
17 the community. Taylor v. Louisiana, 419 U.S. 522 (1975). There has been no showing that the
18 list as drawn has any discriminatory intent or effect as to any race, gender, religion or economic
19 class. Based on the certification of the assignment areas by the state Administrative Office of the
20 courts, it appears that the composition of the two assignment areas are similar and are a
21 representative cross section of the community.
22

23 The court is mindful that there is serious and honest debate between the parties on this issue.

24 This involves a fundamental issue concerning the defendant's right to a fair and impartial jury. It
25 involves a controlling question of law as to which there is a substantial ground for a difference of

1 opinion in the interpretation of the constitutional authority under our state constitution and
2 decisional law.

3
4 Additionally, it involves an issue of fundamental and broad public import for the superior court,
5 the litigants and citizens of King County since if this court is wrong in its analysis and the statute
6 is unconstitutional, numerous cases will be at jeopardy of having to be retried at great expense to
7 all involved.

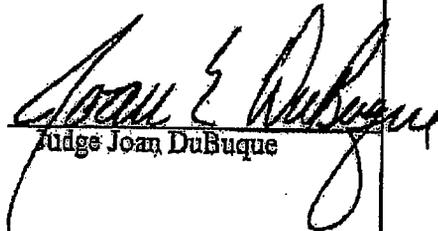
8
9 Thus, pursuant to RAP 2.3 (b)(4) this court certifies that discretionary review may materially
10 advance the ultimate termination of litigation involving this issue. Additionally, pursuant to
11 RAP 4.2 (a)(4), this court believes direct review by the Supreme Court of the State of
12 Washington will provide the prompt and ultimate determination of this issue of fundamental and
13 broad public import.

14 In conclusion,

15
16 It is **HEREBY Ordered, Adjudged and Decreed that:**

17
18 1. The defendant's challenge to the constitutionality of RCW 2.36.055 is denied. KCLGAR-18
19 shall be followed in the selection of the jury panel to try this case.

20
21 Dated this 18th day of October, 2007

22
23 
24 Judge Joan DuBuque
25

APPENDIX C

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)	
)	
)	No. 07-1-05332-4 SEA
Plaintiff,)	
)	
vs.)	
	)	MEMORANDUM OPINION ON
TERESA J. HOPKINS,	)	DEFENSE MOTION REGARDING
	)	THE JURY ASSIGNMENT AREA
Defendant.)	
)	
)	

This matter having come before the Honorable Greg Canova for hearing on January 16, 2008 on the issue of whether RCW 2.36.55 and King County Superior Court Local General Rule 18 [hereinafter "King County Local General Rule 18"] violate the defendant's constitutional right to a fair and impartial jury of the county in which the crime is alleged to have been committed as guaranteed by Art. I, § 22 of the Washington State Constitution, and the right to an impartial jury comprised of a fair cross-section of the community as guaranteed by the Sixth Amendment of the United States Constitution, as applied to the states through the Fourteenth Amendment.

A statute is presumed constitutional and the party challenging the constitutionality has the very heavy burden of challenging the constitutionality beyond a reasonable doubt. The starting

1 point of the analysis of RCW 2.36.055 is the statutory or legislative intent set forth in Section
2 One of the amended statute:

3 Sec 1: The legislature finds that superior courts with more than one superior
4 court facility are asking some jurors to travel excessively long distances to attend
5 court proceedings. In these cases, the legislature further finds that continuing to
6 provide proportionate jury source list representation from distinctive groups
7 within the community. The legislature intends to lessen the burdens borne by
8 jurors fulfilling their civic duties by providing a mechanism that narrows the
9 geographic area from which the jurors are drawn while maintaining a random and
10 proportionate jury pool.

11 This language from the legislative intent section of the statute must be considered in the
12 context of the entire statute, which provides for the methods by which jurors are summoned, as
13 does King County Local General Rule 18. The Court concludes that the legislative intent is
14 seeking to ensure, consistent with the entire statutory scheme, a random and impartial jury panel
15 from a cross-section of the population area of the court that is selected to try the case.

16 For purposes of the procedural background and the analysis of these issues, this Court
17 adopts in whole the memorandum opinion authored by the Honorable Joan DuBuque and filed
18 on October 18, 2007 in the case of State v. Delanty, under King County cause number 06-1-
19 06165-5 SEA, a copy of which is attached hereto as Appendix A. Additionally, the data
20 provided in the briefing does not convince this Court that the two sections of the county created
21 by RCW 2.36.055 and the King County General Local Rule are racially, economically, or in any
22 way disproportionate, such that a representative and fair cross-section of the community is not
23 provided in each of the two jury districts.

 In conclusion, there is nothing before this Court that leads it to conclude, and certainly
not beyond a reasonable doubt, that the randomness required by Art. 1, § 22 of the Washington
Constitution, and in essence, as well by the Sixth Amendment of the United States Constitution,
is anything other than preserved by the amendments to RCW 2.36.055. This court believes that

1 the legislative enactment is consistent with the decisions in State v. Twyman, 143 Wn.2d 115, 17
2 P.3d 11834 (2001), State v. Newcomb, 58 Wash. 414, 109 P. 355 (1910), and State ex. Rel.
3 Fulgita v. Milroy, 71 Wash. 592, 129 P. 384 (1913) as cited by the State. RCW 2.36.055
4 preserves a defendant's right to a jury of the county guaranteed by Art. I, § 22 of the Washington
5 State Constitution and the Sixth Amendment to the United State Constitution. Consequently,
6 King County General Local Rule 18 is a valid implementation of that statute.

7 Additionally, this Court certifies, as Judge DuBuque did in her memorandum opinion,
8 that pursuant to RAP 2.3(b)(4), this order involves a controlling question of law as to which there
9 is substantial ground for a difference of opinion and that an immediate review of this order may
10 materially advance the ultimate termination of the litigation. Additionally, this Court also
11 believes that direct review by the Washington State Supreme Court pursuant to RAP 4.2(a)(4) is
12 appropriate, given the fact that this is a case involving a fundamental and urgent issue of broad
13 public import that requires prompt and ultimate determination.

14
15 IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

16 The defendant's challenge to the constitutionality of RCW 2.36.055 and King County
17 General Local Rule 18 is denied. King County General Local Rule 18 shall be followed in the
18 selection of the jury panel for this case.

19 DATED this 28th day of January, 2008

20 *(Signature)* Done on this January 16, 2008,

21
22 *(Signature)*
23 JUDGE GREG CANOVA

MEMORANDUM OPINION ON DEFENSE MOTION
REGARDING THE JURY ASSIGNMENT AREA - 3

Daniel T. Satterberg, Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000, FAX (206) 296-0955

APPENDIX A

1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR THE COUNTY OF
2 KING
3

4 State of Washington,
5 Plaintiff,
6 vs.
7 Thomas Delanty,
8 Defendant

) Case No.: No. 06-1-06165-5 SEA
) Memorandum Opinion on Defense Motion
) Regarding Jury Assignment Area

9
10 This matter having come on for hearing on October 4, 2007 and October 12, 2007 before the
11 undersigned on the issue of whether RCW 2.36.055 and King County Superior Court Local
12 General Rule 18 (KCLGR 18) violate the defendant's constitutional right to a fair and impartial
13 jury of the county in which the crime charged is alleged to have been committed as guaranteed
14 by Article 1 Section 22 of the Constitution of the State of Washington and the Sixth Amendment
15 federal constitutional right to an impartial jury comprised of a fair cross section of the
16 community as applied to the states pursuant to the 14th Amendment Due Process Clause. Taylor
17 v. Louisiana, 419 U.S. 522, 528 (1975).

18
19 In addressing these issues, this opinion will be divided three different areas: procedural
20 background, issues presented and the court's analysis.
21
22
23
24
25

1 **Procedural Background**

2
3 Effective July 24, 2005, RCW 2.36.055 was amended to include the following new language:

4
5 "In a county with more than one superior court facility and a separate case assignment
6 area for each court facility, the jury source list may be divided into jury assignment areas
7 that consist of registered voters and licensed drivers and identicard holders residing in
8 each jury assignment area. Jury assignment area boundaries may be designated and
9 adjusted by the administrative office of the courts based on the most current United States
10 census data at the request of the majority of the judges of the superior court when
11 required for the efficient and fair administration of justice."

12
13 On June 26, 2007, KCLGR 18 was approved by the majority of the judges of King County
14 Superior Court. It divided the county into jury assignment areas consonant with the case
15 assignment areas previously in existence for the assignment of civil and criminal cases between
16 the superior court Regional Justice Facility in Kent and the Seattle superior court facility.
17 The local rule was filed with the state administrator for the courts in accordance with GR 7 and
18 became effective September 1, 2007. See Exhibit 1 attached hereto.

19
20 On September 25, 2007, the Administrative Office of the court communicated its approval of
21 the jury assignment area boundaries as designated in the local rule. See Exhibit 2 attached
22 hereto.

23
24 Previously, on September 11, 2007, this case was pre-assigned to this court for pre-trial
25 management and trial. On September 21, 2007, the court received an informal request for an "all
county" jury venire. The court directed that the matter be addressed via a formal motion with
adequate briefing.

1 As noted above, oral argument was presented before the court on two occasions.

2
3 Issues Presented

4
5 1. Does RCW 2.36.055 (and KCLGAR 18) violate Article 1 Section 22 of the Washington State
6 Constitution by allowing a superior court jury venire to be summoned from a jury assignment
7 area contained within the county?

8
9 2. Does RCW 2.36.055 (and KCLGAR 18) violate the defendant's 6th Amendment right to an
10 impartial jury comprised of a fair cross section of the community?

11
12 Analysis

13
14 The crux of the issue before the court is whether the state legislature has the authority to allow
15 King County, which operates superior court facilities in two locations within the county, to have
16 its jury source list divided into two jury assignment areas. The jury assignment areas are
17 consistent with the case assignment areas for each facility. Since 1997 King County Superior
18 Court has conducted civil and criminal trials at these two locations. Pursuant to Local Rules,
19 cases have been assigned to each location based on geographic boundary designations (See
20 KCLR 82 and KCLCR 5.1). Up until September 1, 2007 the jury source list was drawn from
21 the county as a whole. On September 1, 2007, the jury source list was divided into two jury
22 assignment areas. The area within each jury assignment area is designated by zip code and, as
23 noted above, has been approved by the administrative office of the courts.

1 Under traditional statutory analysis, a statute is presumed constitutional and the burden of
2 proving its unconstitutionality is upon the party challenging it, in this case the defendant.
3 That burden is a heavy one; the unconstitutionality must be proven beyond a reasonable doubt.
4

5 In amending RCW 2.36.055, the legislature made some specific findings:

6 "Sec. 1. The legislature finds that superior courts with more than one superior court
7 facility are asking some jurors to travel excessively long distances to attend court
8 proceedings. In these cases, the legislature further finds that consideration of a juror's
9 proximity to a particular courthouse can be accommodated while continuing to provide
10 proportionate jury source list representation from distinctive groups within the
11 community. The legislature intends to lessen the burdens borne by jurors fulfilling their
12 civic duties by providing a mechanism that narrows the geographic area from which the
13 jurors are drawn while maintaining a random and proportionate jury pool."

14 That legislative finding must be considered within the context of the other provisions of Ch 2.36
15 RCW and GR 18 governing jury source lists, jury selection and the summoning of jurors to serve
16 trial courts throughout the county. The legislature has made it clear that the public policy of the
17 state of Washington is twofold: to insure that a random and impartial jury panel from a fair cross
18 section of the population of the area served by the court is selected to try a case [Art 1, Section
19 22, GR 18, RCW 2.36.080 (1)] and that the consideration be given to the burden of jury service
20 upon eligible citizens by allowing jury assignment areas that consider geographic proximity
21 (RCW 2.36.055) and the duration of that jury service or term (RCW 2.36.080(2)).

22 In reviewing the findings and the statute, it appears that the legislature intended to insure
23 proportionality and randomness in the selection of the jury source list while being cognizant of
24 the propriety of considering geographic area in drawing jury panels within the county.
25

1 In State v. Twyman, 143 Wn. 2d. 115 (2001) the Washington Supreme Court upheld the
2 constitutionality of a similar jury source list established for district courts. That case specifically
3 discussed the state constitutional provision at issue in this case: Article 1 Section 22. Article 1,
4 Section 22 states, in pertinent part: "In criminal prosecutions the accused shall have the right...to
5 have a speedy public trial by an impartial jury of the county in which the offense is charged to
6 have been committed.." The Supreme court approved a jury source list that was composed by
7 zip code generally coextensive with the electoral districts of the district court. In so doing, it
8 held that the manner of selection was substantially in compliance with RCW 2.36.050 and RCW
9 2.36.065. It pointed to State v. Newcomb, 58 Wash. 414, 418 (1910) in support of its holding
10 that selecting jurors from an area of the county as described above comported with the provisions
11 of Article 1 Section 22 of our state constitution.

12
13 While Twyman is not directly on point since it does not address superior courts, its reasoning
14 and citations to earlier cases, persuades this court to conclude that if faced with the question, the
15 Washington State Supreme Court would uphold RCW 2.36.055 (and consequently KCLGAR
16 18) as being constitutional under Article 1 Section 22 of our state constitution. There are
17 significant parallels in the statutory purposes underlying the legislation to allow the superior
18 courts (that are operating out of two court facilities) to summon jurors drawn from an area that is
19 less than the entire county as was approved for district courts in State v. Twyman, supra. See
20 RCW 2.36.055 and RCW 2.36.050. The constitutional language at issue is the same. Further,
21 the majority of states that have constitutional language similar to Washington have also
22 addressed the issue consistent with the principles enunciated in State v. Twyman, supra. These
23 cases are cited at length in the thorough briefing provided to this court by both counsel.
24 State v. Twyman cited with approval State v. Newcomb, 58 Wash 414, 419 (1910). In the
25 Newcomb case, the Supreme Court, in discussing the words "jury of the county", looked to the

1 pre-existing common law as well as its interpretation of the meaning of that phrase under the
2 state constitution, stating:

3
4 "Under the old rule of the common law, the jury was required to come from the vicinage
5 or neighborhood of the place where the crime was alleged to have been committed, or the
6 cause of action, if civil, arose; and it was a ground of challenge if some given number
7 were not summoned from the hundred in which such place lay. This rule was gradually
8 changed until the law was satisfied if the jury was returned from any part of the county
9 and the words 'jury of the county,' as used in our constitution, have never been held
10 to mean more than that the jurors, when summoned, should come from some
11 part of the county." (Emphasis added.)

12 The court went on to say:

13 "Counsel for appellant, upon this charge of unconstitutionality, seems to lay great stress
14 upon the opinion of this court in State ex rel. Lytle v. Chehalis County, 54 Wash. 278,
15 103 Pac. 464. We can find no common ground between the two cases. In that case the
16 question discussed was the constitutionality of the act dividing counties into separate
17 judicial districts, contrary to what we held to be the inhibition of the constitution in
18 providing but one superior court in each county. There is no method provided for in
19 the constitution for summoning jurors, nor does it attempt to define their
20 qualifications. Hence such matters can be safely and properly left to legislative
21 enactment." (Emphasis added).

22 It is the defense position that Article 1 Section 22 of our state constitution must be literally
23 interpreted and strictly construed to require a constitutional amendment before superior court
24 jurors may be summoned from an area within the county instead of the county at large. In light
25 of the language contained within Newcomb and Twyman, this court believes that the legislature
has the authority to determine how superior court jurors may be summoned to serve and to which
court facility within the county so long as the randomness of selection within the district or jury
assignment area is maintained. The approval of the King County jury assignment area by the
Administrative Office of the Courts was obtained and there is nothing in the record before this

1 court to support a determination that the jury assignment area to be used in this case is
2 unconstitutional.

3
4 As noted in the letter from the Administrative office of the courts, the way in which King
5 County has divided itself into jury source list assignment areas shows "Congruence between case
6 assignment areas and jury assignment areas is rational and does not, by itself, introduce bias into
7 the administration of justice." Further, the office noted that "Available demographic data shows
8 that the areas are constructed so that the populations within the two areas are very similar in
9 terms of race and ethnicity." There is no evidence in the record before this court that the jury
10 panels so summoned to either Kent or Seattle are anything but randomly selected from a
11 representative cross section of the community.

12
13 In State ex rel. Fugita v. Milroy, 71 Wash. 592 (1913), the court struck a jury venire because the
14 police judge directed the Sheriff to summon "sixteen good and lawful men" from the body of his
15 city. The court held:

16 "We think the plain intent of the words 'jury of the county' is that the defendant is entitled to
17 have the venire extended to the body of the county, and that it may not be restricted to a less
18 unit; at least without express legislative sanction." (Emphasis added; citations omitted). It is
19 important to note that the process used in Fugita was not sanctioned by state law and in fact
20 destroyed the element of chance or randomness which courts have held is essential to a
21 constitutionally fair and impartial jury. For example, in Zanone v. State of Tennessee, 36 S.W.
22 711 (1896), the court struck as unconstitutional a jury venire which a judge had ordered be
23 exclusively composed of residents from the country to the exclusion of the city of Memphis. Yet
24 earlier, in Ellis v. State, 20 SW 500,504 (1892) the same supreme court upheld a state law that
25 required a jury venire to be selected from 5 specified districts within a county that was composed

1 of 17 districts. In so doing, it noted that the Tennessee constitution gave defendants the right to a
2 "speedy public trial by an impartial jury of the county." It held, at page 504:

3 "If the jury is made up of citizens of any part of the county, who are otherwise qualified, the
4 requirement of the constitution is complied with."
5

6 The practice condemned in Fugita and Zanone is the intentional interference with the element of
7 chance or randomness in the summoning of a jury venire. In the case before this court, the
8 legislature has enacted a provision that is consistent with the constitutional principle of an
9 impartial jury of the county.
10

11 The defendant has failed to meet his burden of proving beyond a reasonable doubt that RCW
12 2.36.055 violates Article 1, Section 22 of the state constitution.
13

14 The defendant's challenge under the 6th Amendment to the United States Constitution similarly
15 fails. There is no evidence that there has been the exclusion from the jury source list for each
16 jury assignment area any identifiable group or class so as to destroy the representative nature of
17 the community. Taylor v. Louisiana, 419 U.S. 522 (1975). There has been no showing that the
18 list as drawn has any discriminatory intent or effect as to any race, gender, religion or economic
19 class. Based on the certification of the assignment areas by the state Administrative Office of the
20 courts, it appears that the composition of the two assignment areas are similar and are a
21 representative cross section of the community.
22

23 The court is mindful that there is serious and honest debate between the parties on this issue.

24 This involves a fundamental issue concerning the defendant's right to a fair and impartial jury. It
25 involves a controlling question of law as to which there is a substantial ground for a difference of

1 opinion in the interpretation of the constitutional authority under our state constitution and
2 decisional law.

3
4 Additionally, it involves an issue of fundamental and broad public import for the superior court,
5 the litigants and citizens of King County since if this court is wrong in its analysis and the statute
6 is unconstitutional, numerous cases will be at jeopardy of having to be retried at great expense to
7 all involved.

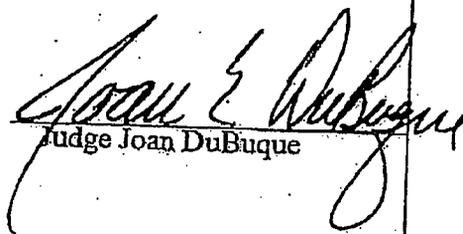
8
9 Thus, pursuant to RAP 2.3 (b)(4) this court certifies that discretionary review may materially
10 advance the ultimate termination of litigation involving this issue. Additionally, pursuant to
11 RAP 4.2 (a)(4), this court believes direct review by the Supreme Court of the State of
12 Washington will provide the prompt and ultimate determination of this issue of fundamental and
13 broad public import.

14 In conclusion,

15
16 It is **HEREBY** Ordered, Adjudged and Decreed that:

- 17
18 1. The defendant's challenge to the constitutionality of RCW 2.36.055 is denied. KCLGAR 18
19 shall be followed in the selection of the jury panel to try this case.

20
21 Dated this 18th day of October, 2007

22
23 
24 Judge Joan DuBuque
25

1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR THE COUNTY OF
2 KING
3

4 State of Washington,
5 Plaintiff,
6 vs.

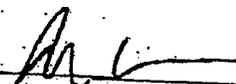
7 Thomas Delanty,
8 Defendant
9

Case No.: No. 06-1-06165-5 SEA

Attachment to Memorandum Opinion on
Defense Motion Regarding Jury Assignment
Area Filed 10/18/07

10
11
12 Attached are exhibits 1 and 2, which were mistakenly omitted from the Memorandum Opinion
13 on Defense Motion Regarding Jury Assignment Area filed on 10/18/07.
14

15 Submitted 10/19/07.

16
17 
18 Alice Gilliam,
19 Bailiff for Judge Joan DuBuque
20
21
22
23
24
25

LGR 18. Jury Assignment Area

(e) Location for Jury Assignment Areas for Civil and Criminal Cases Filed in King County.

(1) Designation of Jury Assignment Areas. The jury source list shall be divided into a Seattle jury assignment area and a Kent jury assignment area, that consist of registered voters and licensed drivers and identicard holders residing in each jury assignment area. The area within each jury assignment area shall be identified by zip code and documented on a list maintained by the chief administrative officer for the court.

(2) Assignment or Transfer by Court. This rule shall not create a right in any individual to have a case tried before a jury from a specific jury assignment area. The Court on its own may assign cases to be heard by jurors drawn from another case assignment area in the county, or from the entire county, or may assign or transfer cases to another case assignment area pursuant to LR 82(e)(4)(C) or LCrR 5.1(d)(2)(C), as applicable, whenever required for the just and efficient administration of justice in King County.

(3) Where Jurors Report. Individuals receiving a jury summons shall report for service to the Court facility in the jury assignment area identified on the face of the summons.

(4) Adjustment of Jury Assignment Area Boundaries. The jury assignment areas contained in this rule may be adjusted by the administrative office of the courts based on the most current United States census data at the request of the majority of the judges of the superior court when required for the efficient and fair administration of justice.

Comment

This rule implements RCW 2.36.055, which allows the jury source list in King County to be divided into jury assignment areas that consist of registered voters and licensed drivers and identicard holders residing in each jury assignment area. The purpose of the statute and this rule is to lessen the burdens borne by jurors in traveling long distances to attend court proceedings by narrowing the geographic area from which jurors are drawn while maintaining a random and proportionate jury pool.

LR 82 (9) Jury Assignment Area. See LGR 18. The rule provides for Seattle and Kent jury assignment areas, consisting of registered voters and licensed drivers and identicard holders residing in each jury assignment area.

LCrR 5.1(6) Jury Assignment Area. See LGR 18. The rule provides for Seattle and Kent jury assignment areas, consisting of registered voters and licensed drivers and identicard holders residing in each jury assignment area.



WASHINGTON
COURTS

September 25, 2007

ADMINISTRATIVE OFFICE OF THE COURTS

N.A. "Butch" Stussy
State Court Administrator

Mr. Paul Sherfey
King County Superior Court
516 Third Avenue, Room C-203
Seattle, WA 98104-2361

RECEIVED

SEP 27 2007

PAUL L. SHERFEY

Dear Mr. Sherfey:

Re: Jury Assignment Boundaries

Thank you for writing to the Administrative Office of the Courts (AOC) on July 16, 2007, regarding King County Jury Assignment Area Boundaries. Please accept my apologies for this delayed response.

As your letter notes, King County Superior Court provided the AOC with a draft of the proposed local rule LGR 18 in May 2007. Dr. Carl McCurley, Manager of the Washington State Center for Court Research, analyzed the proposed jury assignment areas and concluded:

1. Congruence between case assignment areas and jury assignment areas is rational and does not, by itself, introduce bias into the administration of justice;
2. Available demographic data shows that the areas are constructed so that the populations within the two areas are very similar in terms of race and ethnicity.

LGR 18 as subsequently approved by the Court on June 26, 2007, and effective September 1, 2007, does not materially deviate from the proposal previously reviewed by this office.

Therefore, pursuant to RCW 2.36.055, the Administrative Office of the Courts approves the jury assignment area boundaries as designated by King County Superior Court in LGR 18.

Please do not hesitate to contact me if you have questions or concerns.

Sincerely,

N. A. "Butch" Stussy
State Court Administrator

Superior Court of the State of Washington
for the County of King

Paul L. Sherfey
Chief Administrative Officer

King County Courthouse
Seattle, Washington 98104

July 16, 2007

Butch Stussy
1206 Quince St SE
PO Box 41170
Olympia, WA 98504-1170

Re: Jury Assignments Area Boundaries

Dear Butch:

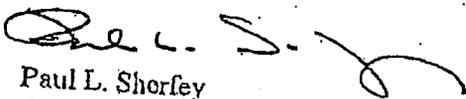
Enclosed is the final King County local rule, pertaining to creation of jury assignment areas, approved by our bench on June 26, 2007. The specific statutory requirement for the Administrative Office of the Courts' review is noted in RCW 2.36.055, which provides in part:

"In a county with more than one superior court facility and a separate case assignment area for each court facility, the jury source list may be divided into jury assignment area that consist of registered voters and licensed drivers and identicard holders residing in each jury assignment area. Jury assignment area boundaries may be designated and adjusted by the administrative office of the courts based on the most current United States census data at the request of the majority of the judges of the superior court when required for the efficient and fair administration of justice."

Although we have provided this proposed rule to you earlier in draft form, we request your formal concurrence, as noted in RCW 2.36.055. The local rule is effective September 1, 2007.

Please let me know if you have any questions.

Sincerely,



Paul L. Sherfey
Chief Administrative Officer

PLS:aj

cc: jmcw/taom/ta 11/16/07/101

APPENDIX 5

Local Rules

Chapter Five Grand And Trial Jurors

- 5.0 SELECTION OF JURORS
 - (a) Source of Names; Method
 - (b) Competency of Prospective Jurors
 - (c) Excuse from Jury Duty
 - (d) Jurors' Meals Expense; Limitations
 - (e) Deposit, Notification, Forfeiture and Reimbursement of Civil Jury Fees
- 5.1 GRAND JURY
 - (a) Drawn and Impaneled Yearly
 - (b) Nominations by Judges Each November
 - (c) List of Nominees, Distribution and Filing
 - (d) Committee on Selection of Grand Jurors
 - (e) Investigation of Nominees; Objections; Withdrawal of Nomination
 - (f) Written Report and Approval of Nominees
- 5.2 JUROR INTERFERENCE

5.0 SELECTION OF JURORS

(a) Source of Names; Method. The names of prospective trial jurors shall be taken from the last published and available registered voters' list and Department of Motor Vehicles records of Los Angeles County through the use of automated random selection. An estimate shall be made of the number of jurors needed to make up the list for the period required, and automated random selection used by the Jury Commissioner shall be based on such estimate. (Rule 5.0, (a) amended and effective 7/1/95.)

(b) Competency of Prospective Jurors. The Jury Commissioner shall determine the statutory qualifications of each prospective juror and exclude from service those he/she shall find to be not competent to act as a trial juror under the provisions of law.

(c) Excuse from Jury Duty. The Jury Commissioner shall determine excuses from jury service under Section 204(b) of the Code of Civil Procedure. Before granting or refusing any excuse from jury service, the Jury Commissioner shall fairly weigh and consider all pertinent data, documents and information submitted by or on behalf of the prospective juror and shall, whenever he/she deems it necessary or desirable, personally interview such prospective juror. (Effective 7/1/94.)

(d) Jurors' Meals Expense; Limitations. Jurors sitting

on criminal cases who are placed in the physical custody of the bailiff by the court during lunch hours or overnight and are not released during mealtimes shall be allowed the actual cost of meals, not to exceed a maximum for each meal as shall from time to time be fixed by the Committee on Personnel and Budget.

(Rule 5.0(d) renumbered and effective 11/01/00.)

(e) Deposit, Notification, Forfeiture and Reimbursement of Civil Jury Fees. The trial date assigned in a civil action shall be the actual date of trial for all purposes of notification and deposit of jury fees.

Twenty-five days prior to the date set for trial in any civil action in which a jury is demanded, the party demanding the jury trial shall deposit [in accordance with Code Civ. Proc., § 631(a)(5)] an advance jury fee of \$150. At the beginning of the second and each succeeding day of jury selection, and promptly after the jury is sworn the party shall deposit with the Clerk, the additional sum necessary to reimburse the Court for the fees and mileage for all jurors appearing for voir dire that day, except for any juror who that day appeared in another case after being excused. On the second day of the court session following the swearing of the jury to try the case, and on each succeeding day, the party shall, at the beginning of the day, deposit with the Clerk a sum equal to one day's fees and the mileage for all sworn jurors and alternates. When the trial judge requests a jury panel for voir dire examination, a standard panel of 30 prospective jurors will be made available, unless the trial judge has specified a different number. ([As Rule 5.0(f) 7/1/94] amended and effective March 1, 2001.)

If a trial does not proceed on the date set because the case is settled, or a continuance is granted on motion of the party depositing the fees, or if the party demanding the jury trial waives the jury, and there has been insufficient time to notify the jurors, any advance jury fee deposited by a party participating in the settlement or who has moved for a continuance or waived the jury, and any additional sum necessary to reimburse the court for jury fees and mileage due for that day shall be forfeited, unless the Court for good cause orders otherwise, in those cases in which the Jury Commissioner or his/her designated representative at the court location is not notified by 2:00 p.m. of the court day preceding the trial date, that the prospective or impaneled jurors summoned and/or directed to appear for the following court day, will not be needed for the trial of the action.

Motions by a party or parties requesting waiver of jury fees or a refund of deposits shall be heard by the judge to whom the case was assigned for trial or the

supervising judge.

(Rule 5.0(e) [renumbered and effective 11/01/00] amended and effective March 1, 2001.)

(Rule 5.0 [1/1/94, 7/1/95] [orig. (d) Jury Panels; Use by Municipal Court REPEALED, renumbered and eff. 11/01/00] amended and effective March 1, 2001.)

5.1 GRAND JURY.

(a) Drawn and Impaneled Yearly. A Grand Jury shall be drawn and impaneled once each fiscal year commencing July 1, by the Presiding Judge in Department One of the Superior Court.

(b) Nominations by Judges Each November.

(1) On or before the first court day in November of each year, each Judge of this court may nominate and transmit to the Presiding Judge the names of two persons to be placed upon a list from which the court shall select the persons from whom the Grand Jury for the ensuing year shall be drawn. The Grand & Trial Jurors' Committee shall nominate such additional persons as necessary to provide a list the composition of which conforms to the requirements of law. The persons so nominated shall be persons qualified for such selection under the provisions of Part 2, Title 4, Chapter 2, Articles 1 and 2 of the Penal Code, and the provisions of the Code of Civil Procedure referred to therein. The nominations shall be made in writing and shall state the name, approximate age, residence address and occupation of each person nominated.

(2) Each judge shall advise his/her prospective nominees that it is the policy of this court that they may not become personally active in campaigns of any candidates for political office or for or against any political proposition during their period of service as Grand Jurors.

(c) List of Nominees, Distribution and Filing. The Presiding Judge shall promptly have the list of nominees duplicated in a form to indicate the judge who nominated each nominee. A copy of the list shall promptly be distributed to each judge of the court. Copies thereof shall be furnished to the press and forthwith filed with the Jury Commissioner where the list shall be open for public inspection.

(d) Committee on Selection of Grand Jurors. Prior to publication of such list, the Presiding Judge shall submit the list to the Committee on Grand and Trial Jurors to whom objections to any nominee may be submitted by

any judge or interested person. The names of the members of such committee shall be filed with the Jury Commissioner and published with the list of nominees.

(e) Investigation of Nominees; Objections; Withdrawal of Nomination. The Presiding Judge shall direct such interviews and preliminary investigation of the nominees as may be suggested by the committee. Additionally, each judge shall make such investigation of the prospective Grand Jurors as he/she may deem appropriate and may communicate to the committee any objections he/she may have. The committee may consider information from any source concerning any nominee. The committee shall transmit such objections or information to the judge who nominated the prospective Grand Juror. A judge may withdraw the name of his/her nominee by informing the committee of such withdrawal.

(f) Written Report and Approval of Nominees.

1) Committee Report. On or before April 30th, the committee shall present to the Presiding Judge a written report concerning each nominee and shall set forth therein any objections to any nominee from any source together with the committee's recommendation whether the names shall be retained on the list of nominees. This report shall be confidential and not disclosed to the public. Any written objections or replies thereto shall be appended to the report.

2) Approval of list of Nominees. Upon receipt of such report, the Presiding Judge may call a meeting of the judges to be held on or before the 10th day of May, or may cause the list to be circulated to the judges before that date of the purpose of approving the list. The names of all nominees, together with the report of the committee, shall be presented to and considered by the judges. Those nominees who are approved by a majority of the judges of the court shall constitute the Grand Jury list. The approved list, as adopted, shall be filed with the County Clerk and made a public record.

(Rule 5.1 effective 1/1/94.)

5.2 JUROR INTERFERENCE

Except as may be authorized by a judge, no person or entity shall distribute or attempt to distribute any written materials tending to influence, interfere, or impede the lawful discharge of the duties of a trial juror, or communicate or attempt to communicate with any person summoned, drawn, or serving as a trial juror in the Superior Courts in Los Angeles for purposes of influencing, interfering, or impeding the lawful discharge

APPENDIX D

FILED
KING COUNTY, WASHINGTON

JAN 03 2008

Bernard Paguaga

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)	
	)	No. 05-C-088075 SEA
	)	No. 05-C-088083 SEA
Plaintiff,	)	No. 05-C-088091 SEA
	)	No. 05-C-088105 SEA
Vs.)	
)	
JOHN GILBERT CONTE, FRANK	)	Memorandum Opinion on
COLACURCIO JR., FRANK COLACURCIO SR,	)	Defense Motion Re:
and MARSHA FURFARO, and each of them,	)	Constitutionality of RCW
	)	2.36.055 and GR 18
Defendants.)	

The issue before this court is whether under RCW 2.36.055 and King County Local Court Rule (KCLR 18), summoning jurors from one jury assignment area and not the other in criminal cases filed within King County Superior Court violates the Washington State Constitution.

The Washington State Constitution Article 1, Section 21 provides that "the right of trial by jury shall remain inviolate."

The Washington State Constitution Article 1, section 22 states in pertinent part: "In criminal prosecutions the accused shall have the right... to have a speedy public trial by an impartial jury of the county in which the offense is charged to have been committed."

The use of the mandatory term "shall", the fact that the right of trial by jury shall remain inviolate, and the very reason why such a right was created; to protect against arbitrary law enforcement in serious criminal cases, *Duncan v. Louisiana*, 392 U.S. 145, supports the conclusion that RCW 2.36.055 and King County Local Court Rule (KCLR 18) are unconstitutional.

The State argues that the statute which allows jurors to be selected from only a part of the county substantially complies with the right of an accused to have a "...trial by an impartial jury of the county in which the offense is charged to have been committed." I disagree.

Without restating arguments made by the defense which are compelling, and I conclude on point, I will briefly discuss a few areas of interest.

Washington Cases

In *Lyle v. Superior Court*, 54 Wash. 378, 103 P. 464 (1909) the Court determined that there is no provision in the Washington State Constitution vesting power within our legislature to alter Article 1, Section 21 or 22. Further, Article 1, Section 29 provides, "The provisions of this Constitution are mandatory, unless by express words they are declared to be otherwise."

I agree that if the legislature cannot alter the dictates of Washington Constitution Article 4, section 5, and split counties into different judicial districts, similarly, it cannot delegate the power to Superior Courts to select jurors from less than the entire county as required by Article 1, section 22.

In *Fugita v. Milroy*, 71 Wash. 592, 129 Pac. 384 (1913), the court invalidated a procedure and ordered a new trial because "the jury was illegally drawn." This is indistinguishable from our current practice in King County. In distinguishing *State v. Newcomb*, 58 Wash. 414, 109 Pac. 355 (1910) the court in *Fugita* reasoned:

"We think the plain intent of the words "jury of the county" is that the defendant is entitled to have the venire extended to the body of the county, and that it may not be restricted to a less unit; at least, without express legislative sanctions. *Lyle v. Superior Court*, 54 Wash. 378, 103 Pac. 464 (1901) ... It would seem that the words "jury of the county" mean a jury of the whole county, and not a jury of some particular part of the county."

The State, in its argument relies on *State v. Twyman*, 143 Wn.2d 115, 17 P.3d 1184 (2001). The issue in *Twyman* is whether under RCW 2.36.050, a district court for a subcounty division may draw its jury pools from countywide master jury lists on the basis of the potential jurors' zip codes if the geographical areas served by the selected zip codes fairly approximate the geographical boundaries of the division.

The Supreme Court in its analysis focused on Courts of Limited Jurisdiction. Courts of Limited Jurisdiction are creatures of statute. Superior Courts are governed by the State Constitution. Footnotes 33 and 34 support the position that our Supreme Court has yet to address the issue that we are addressing here today. Footnote 34 reads, "Supporting the constitutionality of RCW 2.36.050 is the fact that while the Washington Constitution has, since its enactment, defined the jurisdiction of superior courts, see CONST.art. IV, section 6, it was left to the Legislature to determine the powers, duties and jurisdiction of district courts. RCW 3.30.015. CONST. art. IV, section 10, provides:

The legislature shall determine the number of justices of the peace to be elected and shall prescribe by law the powers, duties and jurisdiction of justices of the

peace: Provided, That such jurisdiction granted by the legislature shall not trench upon the jurisdiction of superior or other courts of record, except that justices of the peace may be made police justices of incorporated cities and towns.

Therefore, *Twyman* is distinguishable from the other Washington cases which I conclude invalidates the new procedure here in King County which summons jurors from a "particular section or division of the county."

Inadvertent Consequences

I want to touch on the harm or inadvertent consequence that may arise from a law created by the legislature where they are without such power.

The Court in *Lytle* addressed this very issue when citing to *Lindsley v. Board of Supervisors*, 69 Miss. 815, 11 South. 336. The *Lindsley* case refers to an earlier case, *Alfred v. The State*, where a slave was found guilty of murder and sentenced to hang.

"All of this came about gradually, step by step, from the seemingly harmless enactment sustained by the decision of *Alfred v. The State*. Had the appalling results which have flowed from it been foreseen by the court, it is incredible that it would have made that unfortunate decision; but it was made, and we have the evil results, and had them when the constitution of 1890 was adopted, which contains no word of condemnation or prohibition or restriction of the practice of dividing counties into court districts..."

The *Lindsley* Court goes on to say, "The case of *Alfred v. State* was argued and decided with reference to the rights of the prisoner, and not with due regard to the rights, and interests of the people. We would not hesitate to overrule and disregard it, were it not for the constitutional history of the state since, from which it appears that the matter must have been before the constitutional convention, with no manifestation of dissent, but, rather, indication of approval, so far as to change, without the consent of two thirds of the voters..."

Similarly, we must be careful not to institutionalize error. Once again, as stated in *Lindsley* "We regret to be driven to the conclusion reached, and would gladly announce the opposite view, if we were at liberty to do it, and thereby correct what we regard as a very great public evil; but in this, as in all other cases, our duty is to declare the law to be not as we could wish it was, but what we find it to be, whatever may be the consequence."

Convenience and Efficiency

When our legislature amended RCW 2.36.055, it made specific findings stating the importance of maintaining a random and proportional jury pool. Section 1 in part states, "The legislature intends to lessen the burdens borne by jurors fulfilling their civic duties by providing a mechanism that narrows the geographic area from which the jurors are drawn while maintaining a random and proportionate jury pool."

However, ironically the way that the jury assignment area boundaries may be adjusted is "... at the request of the majority of the judges of the superior court when required for the efficient and fair administration of justice." In other words, the check and balance for randomness and proportionality is by a majority vote of the judges, part of the very government that the constitution was written to protect us from, and the standard to be applied is "...when required for the efficient and fair administration of justice."

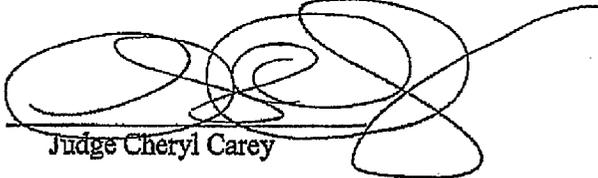
Efficiency and convenience should not be the sole consideration when determining whether individuals are being provided a random and proportional jury pool. Such a provision is a cherished right, not to be taken lightly. To be considered are demographic differences such as economic status, race, gender, age, education, culture, and any other factors necessary to ensure the impaneling of an impartial jury from a fair cross section of our King County community.

As stated in *Peters v. Kiff*, 407 U.S. 493, 503 (1972), "When any large and identifiable segment of the community is excluded from jury service, the effect is to remove from the jury room qualities of human nature and varieties of human experience, the range of which is unknown and perhaps unknowable."

It is HEREBY Ordered, Adjudged and Decreed that:

The defendant's challenge to the constitutionality of RCW 2.36.055 and GR 18 is granted.

Dated the 3rd day of January, 2008.



Judge Cheryl Carey

APPENDIX E

**State of Washington vs Dustin E. LARUE
King County Cause No. 06-1-10024-3 KNT**

Date: January 23, 2008

Judge: Mary E. Roberts
Bailiff: Jason Bolt
Clerk: Barbara Winter
Reporter: Michael Townsend

Continued from: January 22, 2008

MINUTE ENTRY

Parties present with respective counsel

Court hears argument in regards to all county jury panel
Court rules that the all county jury panel is appropriate and the court will pull 30 jurors from Kent and an additional 30 jurors from Seattle

Court is in recess until 9:00 January 24, 2008

APPENDIX F

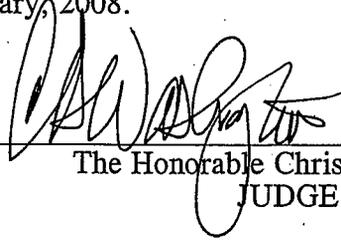
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

STATE OF WASHINGTON,	)	CAUSE NO. 07-C-06093-2 SEA
)	
<i>Plaintiff,</i>	)	ORDER STAYING PROCEEDINGS
	)	PENDING APPEAL
V.)	
)	
LOUIS LANCILOTI,)	
)	
<i>Defendant</i>)	

This matter, having been determined by both the parties and the trial court to be appropriate for interlocutory appeal to resolve a controlling question of law for which there are differing opinions amongst the judges of the Superior Court of King County, and which affects all trials occurring in King County Superior Court relating to the constitutionality of RCW 2.36.055 and Local General Rule 18, and been advised ^{of} Defendant's intent to seek discretionary review to the Supreme Court regarding the court's ruling of constitutionality on this issue on 2/4/08, and upon Defendant's request for a stay of proceedings it is hereby, now Ordered that all Proceedings in this matter are STAYED pending appeal to the Washington Supreme Court until such time as the matter is remanded back to the trial court for further proceedings.

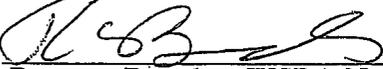
DONE this 6th day of February, 2008.



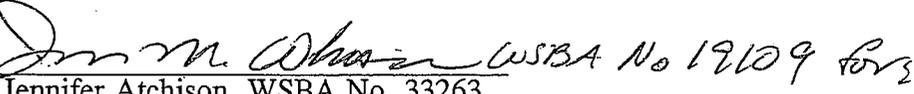
 The Honorable Chris Washington
 JUDGE

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Presented By:



Ramona Brandes, WSBA No. 27113
Attorney for the Defendant



Jennifer Atchison, WSBA No. 33263
Deputy Prosecuting Attorney