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I. ASSIGNMENTS OF ERROR

1. ERROR IS ASSIGNED TO THE TRIAL COURT'S ACCEPTANCE OF RAMIREZ-DOMINGUEZ'S JURY TRIAL WAIVER.
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III. STATEMENT OF THE CASE

(1) Procedural History.

The Cowlitz County prosecutor charged Ponciano Ramirez-Dominguez with a single count of rape of a child in the first degree.

CP 1-2.

Language barrier issues were evident as soon as Ramirez-Dominguez's first court appearance on August 3, 2005¹. RPI 4.² At that hearing, Ramirez-Dominguez was provided with a Spanish language interpreter, Marta Rutherford. RPI 4. Although Ms. Rutherford was able to understand Ramirez-Dominguez's broken Spanish, she told the court that Ramirez-Dominguez spoke Mixteco. RPI 4.

At his next court appearance on August 4³, Ramirez-Dominguez expressed, through a Spanish language interpreter, that he felt he would be better off with a Mixteco interpreter. RPI 7-10.

On August 9⁴, Ramirez-Dominguez appeared for the first time with his court-appointed counsel, John Hays. RPI 9. Hays expressed concern over his disjointed communication with Ramirez-Dominguez as Ramirez-Dominguez's native language was Mixteco. RPI 11. Hays confirmed that Ramirez-Dominguez spoke some Spanish but no English. RPI 11. Hays also revealed that Ramirez-Dominguez grew up in Mexico, had no formal education,

¹ Heard before Judge Warne

² "RPI" refers to the first of five volumes of verbatim transcription. The page numbers throughout the five volumes are consecutive. RPI captures all of the hearings held from the first appearance to the waiver of jury trial.

³ Before Judge Johanson

⁴ Before Judge Warne

and did not read or write. RPI 11. Given the very serious nature of the charges, Hays did not want to risk miscommunication and requested that a Mixteco interpreter be provided. RPI 12.

On August 18⁵, Ramirez-Dominguez was arraigned with the assistance of an interpreter whose first language was Mixteco Baja. RPI 14-15. The interpreter, Santiago Ventura, also speaks Spanish and English. RPI 14-15.

At a September 27⁶ hearing, Hays expressed concern about Ramirez-Dominguez's ability to speak Mixteco Baja when it appeared that his native tongue was something similar to Mixteco Alta. RPI 25-26. Mixteco Alta and Mixteco Baja are separate but related languages. RPI 26. Nonetheless, the parties went ahead with pre-trial and set a date for a CrR 3.5 hearing. RPI 21-22.

On October 11⁷, Ramirez-Dominguez was in court again with Mixteco Baja interpreter Santiago Ventura. Ventura told the court that at times Ramirez-Dominguez did not seem to understand some of the words he used and suggested that a different interpreter would be better able to serve Ramirez-Dominguez. RPI 33. A difficulty remained in finding which specific type of Mixteco

⁵ Before Judge Warning

⁶ Before Judge Warne

⁷ Before Judge Warning

Ramirez-Dominguez spoke. RPI 29. Ramirez-Dominguez's illiteracy and general lack of education significantly contributed to his inability to articulate which Mixteco he spoke; he couldn't understand the differences. RPI 29-30.

At an October 25⁸ hearing, the court heard from a deputy court administrator about her efforts to find an interpreter who spoke Ramirez-Dominguez's native language. RPI 44-48. She was unable to find anybody. RPI 44-48. Defense counsel Hays ultimately pointed out to the court that it had gotten to the point during communications that it was simply easier to communicate in Spanish because Ramirez-Dominguez understood Spanish better than he understood Ventura's Mixteco. RPI 50.

On November 8⁹, Hays, with the assistance of Ventura, told the court that despite continuing efforts to find a Mixteco interpreter who speaks a dialect understood by Ramirez-Dominguez, all efforts had failed. RPI 61. Hays communicated with Ramirez-Dominguez about the language problem and the inability to find a suitable Mixteco interpreter. RPI 61-62. Ramirez-Dominguez said that he wished simply to proceed in Spanish as he understood that

⁸ Before Judge Warne

⁹ Before Judge Warne

language better than he understood the offered Mixteco. RPI 61-62, 65. To bolster the court's comfort in proceeding in Spanish, the state had Marta Rutherford, the Spanish language interpreter from Ramirez-Dominguez's first appearance, explain her ability to communicate with Ramirez-Dominguez in the Spanish language. RPI 70-71. Ms. Rutherford indicated that part of the communication issue was related to the interpreter having to make a literal interpretation in court and that had she had the ability to explain concepts to Ramirez-Dominguez, he would be more likely to understand what was going on. RPI 70-71. The court ultimately decided that it was appropriate for Ramirez-Dominguez to proceed in Spanish. RPI 76.

On December 6¹⁰, the court heard a CrR 3.5 hearing. Amira Sonntag, a certified Spanish-speaking court interpreter, interpreted for Ramirez-Dominguez at the hearing. RPI 94. Prior to the taking of testimony, Ms. Sonntag indicated that she had difficulties communicating with Ramirez-Dominguez in Spanish as Ramirez-Dominguez's syntax and grammar did not line up appropriately. RPI 94-96. Hays reminded the court that Ramirez-Dominguez was

¹⁰ Before Judge Warne

only proceeding in Spanish because of the inability to find a suitable Mixteco interpreter. RPI 99.

At the hearing, the state called Spanish-speaking Gresham police detective Manual Hernandez. RPI 101. Hernandez described how he spoke to Ramirez-Dominguez in Spanish on two separate occasions as part of his investigation. RPI 102-141. Although Hernandez felt that he was adequately able to communicate with Ramirez-Dominguez in Spanish, he explained that Ramirez-Dominguez's Spanish grammar was informal, not very good, and indicative of a low educational level. RPI 112, 140-141. Ultimately, the court held that the Miranda warnings Hernandez gave to Ramirez-Dominguez were not adequate and ruled that the state could not offer the statements in its case-in-chief. RPI 207.

The state later filed a motion asking the court to reconsider its CrR 3.5 ruling. CP 3-5. The court did so and filed a bench order ruling that Ramirez-Dominguez's statements to Hernandez would be admissible in the state's case-in-chief.¹¹ CP 14.

On December 9¹², Ramirez-Dominguez appeared in a video conference from the Cowlitz County Jail with Hays and a Spanish-

¹¹ The motion for reconsideration was done only on pleadings. No formal hearing was held.

¹² Before Judge Warne

speaking interpreter. Although Ramirez-Dominguez had not signed a jury trial waiver, the Court accepted his oral waiver of a jury. RPI 208-212.

The non-jury trial commenced on December 12 before Judge Warning. RPII¹³ 218. Ms. Sonntag again acted as interpreter for Ramirez-Dominguez. RPII 218. Prior to any testimony, the state filed an amended information charging rape of a child in the first degree or, in the alternative, child molestation in the first degree (count I) and kidnapping in the first degree (count II). CP 11-12. Hays, on behalf of Ramirez-Dominguez, did not object to the added charges as he had been previously put on notice of the state's intent. RPII 221. He did object to the state expanding the alleged incident date. RPII 221. The court allowed the amendment. RPII 223.

Ramirez-Dominguez testified.¹⁴ RPIII¹⁵ 449-515. He said that although he speaks Spanish, he doesn't speak it very well. RPIII 450. He had to learn Spanish so he could work; he began

¹³ "RPII" refers to the verbatim report of the first day of trial held on December 12, 2005.

¹⁴ This portion of Ramirez-Dominguez's testimony is provided not for its factual content - instead see Factual History below - but only to assist with an understanding of ongoing language barrier issues.

¹⁵ "RPIII" refers to the verbatim report of the second day of trial, December 13, 2005.

learning the language somewhere between 11 and 13 years of age. RPIII 450.

There were numerous instances during Ramirez-Dominguez's testimony where there were translation difficulties and where Ramirez-Dominguez was not appropriately responsive to questions. For example, Hays asked Ramirez-Dominguez to provide the names and ages of his children. Ramirez-Dominguez simply responded that the oldest was born in Mexico. RPIII 451. At other times, Ramirez-Dominguez stumbled over the meaning of words. For example, Ramirez-Dominguez did not understand what it meant to be "employed" although he did understand what it meant to "work." RPIII 453. As another example, Ramirez-Dominguez did not understand what "summer" meant. RPIII 468. Ms. Sonntag, the interpreter, repeatedly told the court that she was having a difficult time interpreting. RPIII 451, 455, 458, 459, 501, 505. The state repeatedly complained that Ramirez-Dominguez's responses were non-responsive. RPIII 456, 457, 463, 464, 482, 501.

Ultimately, the court found Ramirez-Dominguez guilty of child molestation in the first degree and kidnapping in the first degree. RPIII 544-545. Sentencing was set over. The court ordered a mandatory pre-sentence investigation. RPIII 546.

Sentencing was held on February 6, and February 13, 2006. RPIV¹⁶ and RPV¹⁷. The court held that the two crimes constituted the same criminal conduct. RPIV 554. Under the mandatory authority of RCW 9.94A.712, the court imposed a minimum term of 68 months on a 51-68 month range, and a maximum term of life. RPIV 554, RPV 598; CP 16, 19.

The defendant made a timely appeal. CP 40.

(2) Factual History.

Regaciano Guzman Marcus met Ramirez-Dominguez in Fresno, California, and gave him a ride to Oregon. RPII 286. Ramirez-Dominguez's family later joined him in Oregon. RPII 286. The Guzman family lived first in Fairview, Oregon, and later in Sandy, Oregon. RPII 285. Over time, the Guzman family and the Ramirez-Dominguez family became friends. RPII 286. Periodically, Guzman and his wife would allow Ramirez-Dominguez to take their daughters, including B.G.¹⁸ to pick berries. On one of these occasions, Guzman and his children accompanied Ramirez-Dominguez on a berry picking excursion. RPII 288. On that

¹⁶ "RPIV" refers to the verbatim report for the February 6, 2006, sentencing hearing.

¹⁷ "RPV" refers to the verbatim report for the February 13, 2006, sentencing hearing.

¹⁸ B.G. is the Jane Doe in the information and amended information.

particular trip, the group had picnicked by a river in Woodland, Washington. RPII 288-89.

In 2003 when B.G. was a 10-year-old fifth grader, Ramirez-Dominguez came and picked her up at her family home. RPII 242, 245, 259. She believed that she was going to the Ramirez-Dominguez home to help the wife make tamales. RPII 242. Instead, Ramirez-Dominguez drove her alone to Woodland, Washington. RPII 242, 246, 248. Neither of B.G.'s parents had given permission for this trip although Ramirez-Dominguez told her her parents had given permission. RPII 245, 287, 361. While B.G. and Ramirez-Dominguez were near the river where she had previously picnicked with Ramirez-Dominguez and her family in Woodland, Ramirez-Dominguez took his pants down, pulled her pants down, and lay on top of her. RPII 248, 251-53. Ramirez-Dominguez touched her vagina with his fingers. RPII 253. For a reason unknown to B.G., Ramirez-Dominguez got off of her, pulled up his pants, and told her to pull her pants up. RPII 255. They then drove back to B.G.'s residence where he gave her \$20 and dropped her off. RPII 255-56.

In his testimony, Ramirez-Dominguez acknowledged taking B.G. to Woodland alone. RPIII 470, 474. He believed he had

B.G.'s parents' permission to take her. RPIII 472. B.G. undressed herself. RPIII 476. B.G. did not touch his penis. RPIII. He did not touch B.G.'s breasts. RPIII 478. He thought B.G. wanted to have sex with him. RPIII 495. They held hands and hugged. RPIII 506. Ramirez-Dominguez was born in November 1965. RPIII 451.

IV. ARGUMENT

I. PONCIANO RAMIREZ-DOMINGUEZ LACKED SUFFICIENT SKILL AND FACILITY WITH THE SPANISH LANGUAGE TO MAKE A KNOWING, VOLUNTARY, AND INTELLIGENT WAIVER OF HIS RIGHT TO A JURY TRIAL.

Every criminal defendant has a right under the United States Constitution Sixth Amendment and Article 1, Section 21, of the Washington State Constitution to a jury trial. City of Pasco v. Mace, 98 Wn.2d 87, 653 P.2d 618 (1982). A defendant can, however, waive that right. Any waiver must be voluntary, knowing and intelligent. Bellevue v. Acrey, 103 Wn.2d 203, 207, 691 P.2d 957 (1984); see also CrR 6.1(4). The presumption should be made against waiver absent an adequate record to the contrary. Seattle v. Williams, 101 Wn.2d 445, 451, 680 P.2d 1051 (1984), (quoting State v. Wicke, 91 Wn.2d 638, 645, 591 P.2d 452 (1997)). Because it implicates the waiver of an important constitutional right, review is

de novo. United States v. Villa-Fabela, 882 F.2d 434, 437 (9th Cir. 1989); State v. Vasquez, 109 Wn. App. 310, 319, 34 P.3d 1255 (2001).

In examining the record, the appellate court will consider whether the defendant was informed of his constitutional right to a jury trial. Williams, 101 Wn.2d at 451. The Court also examines the facts and circumstances generally including the experience and capabilities of the accused. State v. Downs, 36 Wn.App. 143, 145, 672 P.2d 416 (1983), review denied, 100 Wn.2d 1040 (1984) (citing Johnson v. Zerbest, 304 U.S. 458, 464, 82 L.Ed. 1461 58 S. Ct. 1019, 146 A.L.R. 357 (1938) (waiver of right to counsel.)) Existence of a written waiver is not determinative, but is strong evidence of the waiver's validity. Downs, 36 Wn.App. at 145. An attorney's representation that his client knowingly, intelligently and voluntarily relinquished his jury trial rights is also relevant. Downs, 36 Wn.App. at 146. Courts have not required an extended colloquy on the record. State v. Stegall, 124 Wn.2d 719, 725, 881 P.2d 979 (1994); State v. Brand, 55 Wn. App. 780, 785, 780 P.2d 894 (1989). Instead, Washington requires only a personal expression of waiver from the defendant. Stegall, 124 Wn.2d at 725.

On December 9, Judge Warne accepted Ramirez-Dominguez's waiver after the following colloquy:

THE COURT: All right, can you hear me in the jail? All right, ma'am, if you will raise your right hand, please?

Do you swear to interpret these proceedings from the English-language to a language this defendant can understand, to the best of your ability?

THE INTERPRETER: I do, your Honor.

THE COURT: All right.

MR. HAYS: Your Honor, this is the case of State v. Ponciano Ramirez-Dominguez. It is cause number 05-1-00437-9. This matter is currently set for trial on Monday. It will be going to trial. My client and I have had a number of discussions both today as well as on other occasions on whether or not we want to try this case in front of a judge or jury, and my client has decided that he would like to try this case in front of a judge; is that correct, Ponciano?

DEFENDANT RAMIREZ-DOMINGUEZ: Yes. Yes, that's what I said.

MR. HAYS: And so we are appearing before the Court asking the Court to accept the defendant's oral waiver of jury. I have gone over the written jury waiver form with him, and I've had the interpreter explain it to him -- actually not explain it, I've actually had her translate it to him. My client does not want to sign any paperwork at all. That is not because he does not want to waive jury, it is just because he does not want to sign any more paperwork. He feels that he had been deceived by the police officer in this case when he signed the rights form, and that he has decided that he will not be signing any more paperwork. Is that correct, Ponciano?

DEFENDANT RAMIREZ-DOMINGUEZ: Yes, that's what I said. Yes, I apologize to the judge. I apologize. I apologize to all the people of the law that I am hearing --

MR. HAYS: And I understand his position, but once again, we're asking the Court to accept his oral waiver of jury -- his right to jury, your Honor.

THE COURT: All right. Mr. Ramirez-Dominguez, you understand that you have the right to a trial by a jury of 12 people, and if you give up that right, all decisions about the facts and the law in this case will be decided by a judge sitting alone? It won't be necessary for a jury of 12 people to unanimously convict you; do you understand that, sir?

DEFENDANT RAMIREZ-DOMINGUEZ: I don't understand at all, but I wanted for it to continue as we are doing until we get there.

THE COURT: Okay.

DEFENDANT RAMIREZ-DOMINGUEZ: I apologize to the judge and my attorney, but I don't have any other way. I want this to end. I will continue -- I am doing this for my children, my wife. It was a mistake.

MR. HAYS: Maybe we could go through the rights one by one, your Honor?

THE COURT: All right. Sir, you and your attorney have talked about your right to a trial by a jury of 12 people; is that correct?

DEFENDANT RAMIREZ-DOMINGUEZ: Um-hum. Yes.

THE COURT: And you understand that if we have a trial with a jury, all 12 of those people would have to agree for them to give any verdict, to make any decision in this case? Do you understand that?

DEFENDANT RAMIREZ-DOMINGUEZ: Yes, my attorney explained, yes.

THE COURT: All right. If you give up your right to a trial by a jury, your trial will be in front of a judge sitting alone. There won't be a jury here.

DEFENDANT RAMIREZ-DOMINGUEZ: Um-hum. That's fine.

THE COURT: And all of the decisions on the facts and on the law will be made by that judge only. Do you understand that?

DEFENDANT RAMIREZ-DOMINGUEZ: Yes.

THE COURT: And after discussing this matter with your attorney, it is my understanding that it is your desire to give up or waive your right to a jury and have this case decided just by a judge; is that correct?

DEFENDANT RAMIREZ-DOMINGUEZ: I think that my attorney is doing everything for me and my interpreter -- yes, it's all what I want to do.

THE COURT: Do you want to have this case --

DEFENDANT RAMIREZ-DOMINGUEZ: To be able to go ahead.

THE COURT: Do you want to have this case tried by a judge and not by a jury?

DEFENDANT RAMIREZ-DOMINGUEZ: By the judge. As soon as possible.

THE COURT: You have a trial date set for Monday. Right now we're just talking about the judge or jury issue. I need you to tell me that you want this case to be tried by a judge or by a jury; I need to know which one you prefer? Which would you rather have, a judge or a jury?

DEFENDANT RAMIREZ-DOMINGUEZ: The judge, I think. I apologize. I apologize to the judge. I want -- I want this kind of problem --

THE INTERPRETER: -- and the interpreter didn't understand one of the words that he said -- that Mr. Ponciano said.

DEFENDANT RAMIREZ-DOMINGUEZ: I'm doing this for my children.

THE COURT: All right. Sir, you need to listen to me, and you need to answer my question. I need you to answer one question: Do you want to have this case tried by a judge or by a jury?

DEFENDANT RAMIREZ-DOMINGUEZ: By the judge.

THE COURT: All right, and you have gone over that with your attorney?

DEFENDANT RAMIREZ-DOMINGUEZ: Yes.

THE COURT: Do you have any question about your rights?

DEFENDANT RAMIREZ-DOMINGUEZ: I don't have any more questions.

THE COURT: Can you tell me why you won't sign the jury waiver?

DEFENDANT RAMIREZ-DOMINGUEZ: Why? Because I'm sad. I signed a document before when the police arrested me. I don't know how to read and I signed and that's the reason why I feel sad. Perhaps that's good for me, but I don't know how to read well and I am sorry. All the kind of paperwork that my attorney has, I think is good, but I don't want to sign. I ask -- I apologize to the judge.

THE COURT: All right, I will accept his waiver of jury. We will commence the trial Monday morning at 9 a.m.

MR. HAYS: Thank you very much, your Honor.

THE COURT: All right. Thank you.

DEFENDANT RAMIREZ-DOMINGUEZ: Thank you very much.

In considering the validity of jury waiver, the court will consider the totality of the record. Here the record speaks for itself. The record is replete with Ramirez-Dominguez's inability to effectively communicate in any language. No appropriate Mixteco interpreter could be located. Ramirez-Dominguez's use and understanding of the Spanish language is very simple and uneducated. During his trial testimony he could not comprehend the meaning of simple terms such as "employment" and "summer". How was he to comprehend the court's terms - unanimously convict? trial in front of a judge sitting alone? - during the waiver hearing. When the judge tried to summarize the concept of jury waiver in a paragraph, Ramirez-Dominguez's response was, "I don't understand at all, but I want for it to continue as we are doing until we get there." Was it ever explained to Ramirez-Dominguez what the difference was between a judge and a jury? Although defense counsel Hays apparently had a Spanish-language

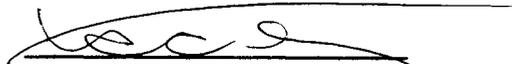
interpreter translate a jury waiver to Ramirez-Dominguez, the waiver has never been made part of the record so it is unclear what the waiver actually explained. Defendant refused to sign the waiver because, as he told the court, he was “sad”.

The facts of State v. Woo Won Choi, 55 Wn. App. 895, 781 P.2d 505 (1989), are helpful contrast. Woo Won Choi was a Korean immigrant charged with first degree assault who elected to proceed to trial in English. Prior to trial, the court acknowledged that there was a possible language problem. Defense counsel explained to the court that he had “many, many” meetings with Woo Won Choi and that he was confident Woo Won Choi could understand the court. Id. at 900. In accepting Woo Won Choi’s jury waiver, the court explained the difference between bench and jury trials and that Choi had the right to a jury trial. Id. Under our facts, defense counsel and Ramirez-Dominguez relented to a Spanish language interpreter only because it was easier to understand than the proposed Mixteco interpreter. And Judge Warne accepted the waiver without making sure Ramirez-Dominguez understood the difference between a bench and a jury trial.

V. CONCLUSION

Ramirez-Dominguez made an invalid waiver of his right to jury trial. His conviction should be reversed and remanded for retrial.

Respectfully submitted this 28th day of August, 2006.


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Attorney for Appellant

APPENDIX

State Statute

RCW 9.94A.712

Sentencing of non-persistent offenders.

(1) An offender who is not a persistent offender shall be sentenced under this section if the offender:

(a) Is convicted of:

(i) Rape in the first degree, rape in the second degree, rape of a child in the first degree, child molestation in the first degree, rape of a child in the second degree, or indecent liberties by forcible compulsion;

(ii) Any of the following offenses with a finding of sexual motivation: Murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, assault of a child in the second degree, or burglary in the first degree; or

(iii) An attempt to commit any crime listed in this subsection (1)(a);

committed on or after September 1, 2001; or

(b) Has a prior conviction for an offense listed in RCW 9.94A.030(33)(b), and is convicted of any sex offense which was committed after September 1, 2001.

For purposes of this subsection (1)(b), failure to register is not a sex offense.

(2) An offender convicted of rape of a child in the first or second degree or child molestation in the first degree who was seventeen years of age or younger at the time of the offense shall not be sentenced under this section.

(3)(a) Upon a finding that the offender is subject to sentencing under this section, the court shall impose a sentence to a maximum term and a minimum term.

(b) The maximum term shall consist of the statutory maximum sentence for the offense.

(c)(i) Except as provided in (c)(ii) of this subsection, the minimum term shall be either within the standard sentence range for the offense, or outside the standard sentence range pursuant to RCW 9.94A.535, if the offender is otherwise eligible for such a sentence.

(ii) If the offense that caused the offender to be sentenced under this section was rape of a child in the first degree, rape of a child in the second degree, or child molestation in the first degree, and there has been a finding that the offense was predatory under RCW 9.94A.836, the minimum term shall be either the maximum of the standard sentence range for the offense or twenty-five years, whichever is greater. If the offense that caused the offender to be sentenced under this section was rape in the first degree, rape in the second degree, indecent liberties by forcible compulsion, or kidnapping in the first degree with sexual motivation, and there has been a finding that the victim was under the age of fifteen at the time of the offense under RCW 9.94A.837, the minimum term shall be either the maximum of the standard sentence range for the offense or twenty-five years, whichever is greater. If the offense that caused the offender to be sentenced under this section is rape in the first degree, rape in the second degree with forcible compulsion, indecent liberties with forcible compulsion, or kidnapping in the first degree with sexual motivation, and there has been a finding under RCW 9.94A.838 that the victim was, at the time of the offense, developmentally disabled, mentally disordered, or a frail elder or vulnerable adult, the minimum sentence shall be either the maximum of the standard sentence range for the offense or twenty-five years, whichever is greater.

(d) The minimum terms in (c)(ii) of this subsection do not apply to a juvenile tried as an adult pursuant to RCW 13.04.030(1)(e) (i)

or (v). The minimum term for such a juvenile shall be imposed under (c)(i) of this subsection.

(4) A person sentenced under subsection (3) of this section shall serve the sentence in a facility or institution operated, or utilized under contract, by the state.

(5) When a court sentences a person to the custody of the department under this section, the court shall, in addition to the other terms of the sentence, sentence the offender to community custody under the supervision of the department and the authority of the board for any period of time the person is released from total confinement before the expiration of the maximum sentence.

(6)(a)(i) Unless a condition is waived by the court, the conditions of community custody shall include those provided for in RCW 9.94A.700(4). The conditions may also include those provided for in RCW 9.94A.700(5). The court may also order the offender to participate in rehabilitative programs or otherwise perform affirmative conduct reasonably related to the circumstances of the offense, the offender's risk of re-offending, or the safety of the community, and the department and the board shall enforce such conditions pursuant to RCW 9.94A.713, 9.95.425, and 9.95.430.

(ii) If the offense that caused the offender to be sentenced under this section was an offense listed in subsection (1)(a) of this section and the victim of the offense was under eighteen years of age at the time of the offense, the court shall, as a condition of community custody, prohibit the offender from residing in a community protection zone.

(b) As part of any sentence under this section, the court shall also require the offender to comply with any conditions imposed by the board under RCW 9.94A.713 and 9.95.420 through 9.95.435

Court Rule

CrR 6.1

TRIAL BY JURY OR BY THE COURT

(a) Trial by Jury. Cases required to be tried by jury shall be so tried unless the defendant files a written waiver of a jury trial, and has consent of the court.

(b) Number of Jurors. Unless otherwise provided by these rules, the number of persons serving on a jury shall be 12, not including alternates. If prior to trial on a non-capital case all defendants so elect, the case shall be tried by a jury of not less than six, or by the court.

(c) Juror Unable To Continue. If a case has not yet been submitted to the jury and a juror is unable to continue and no alternate jurors were selected or none are available, or if a case has been submitted to the jury and a juror is unable to continue, all defendants may elect to continue with the remaining jurors. The court shall declare a mistrial for any defendant who does not elect to continue with the remaining jurors. If some, but not all, defendants elect to continue with the trial, the court shall proceed with the trial for those defendants unless the court determines manifest necessity requires a mistrial.

(d) Trial Without Jury. In a case tried without a jury, the court shall enter findings of fact and conclusions of law. In giving the decision, the facts found and the conclusions of law shall be separately stated. The court shall enter such findings of fact and conclusions of law only upon 5 days' notice of presentation to the parties.

Washington State Constitution, section 21 – Trial by Jury. The right of trial by jury shall remain inviolate, but the legislature may provide for a jury of any number less than twelve in courts not of record, and for a verdict by nine or more jurors in civil cases in any court of record, and for waiving of the jury in civil cases where the consent of the parties interested is given thereto.

United States Constitution, Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

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and that said envelope contained the following:

- (1) APPELLANT'S BRIEF
- (2) AFFIDAVIT OF MAILING

Dated this 28th day of August 2006.



LISA E. TABBUT, WSBA #21344
Attorney for Appellant

SUBSCRIBED AND SWORN to before me this 28th day of August 2006.



Sharon A. Ball
Notary Public in and for the
State of Washington
Residing at Longview, WA 98632
My commission expires 06/10/07