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A. ASSIGNMENTS OF ERROR

1. The trial court erred in failing to dismiss a juror who expressed her concern that she could not be fair and impartial, and who asked to be excused.
2. The trial court erred in ruling that the appeal bond required of the Defendant would have to be two separate bonds by two separate sureties.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Was the Court justified in refusing to excuse a juror Who expressed her concern about being able to be a fair and impartial juror, and who asked to be excused from the jury? (Assignment of Error No. 1)
2. Where an appeal bond amount is set by the Court, do the applicable statutes and court rules require that two separate bonds, each in the amount set by the Court for the appeal bond, be posted by a Defendant to secure his release from custody pending appeal? (Assignment of Error No. 2)

C. STATEMENT OF THE CASE

By Second Amended Information filed on January 13, 2009, the Defendant, COLTON A. WATTS, was charged with one count of Delivery of a Controlled Substance (Count I) and one count of Involving a Minor in Drug Dealing (Count II). CP 76-78. The matter came before the court for jury trial on January 13, 2009, the Honorable Judge Richard Brosey presiding. RP from 1/13/09, pp. 1-126 (hereafter denominated as “RP I”); RP from 1/14/09, pp. 1-51 (hereafter denominated as “RP II”).

After some preliminary matters and jury selection, the State called Detective Kevin Engelbertson of the Lewis County Sheriff’s Office as its first witness. RP 19 et seq. He described a decision to attempt to do a “controlled buy” involving the Defendant

and a confidential informant named Mr. Mendez. RP I, p. 21. He went on to describe a controlled buy that was conducted on May 9, 2008, at the Defendant's residence in Vader, Lewis County, Washington. RP I, p. 21 et seq. The witness testified that he had the informant phone the Defendant's residence in the Detective's presence, and that he could hear the conversation through the phone's speakerphone system. RP I, pp. 22-23. There ensued a conversation about purchasing 17 ecstasy pills for \$120, and the individual on the other end of the phone told the informant to come to the residence and pick them up. RP I, p. 23. Over defense objection, the Detective was allowed to testify that the voice he heard on the other end of the phone call was the voice of the Defendant. RP I, pp. 24-25.

Engelbertson then described the "controlled buy" process that was followed in sending the informant to the Vader residence to purchase the pills. RP I, pp. 25-29. He identified Exhibit 1 as the pills which were given to him by the informant after the informant had gone to the Vader residence. RP I, pp. 28-29.

Engelbertson stated that he contacted the Defendant Watts on July 17, 2008. RP I, p. 29. Engelbertson testified that Watts, after being read his *Miranda* rights, remembered setting up the deal for the ecstasy pills with the informant Mendez, and stated that he and Jeremy Patterson were in "some sort of partnership" in selling ecstasy pills, which they obtained from Tacoma. RP I, p. 30. The Court then excused the jury for lunch. RP I, p. 31.

After the jury left the courtroom, one of the jurors was brought into court and stated that she was "very familiar with Vader and some of the names that you called in court." She went on to say "I did not recognize, but listening to the names again, yes, I do

know some of these people, so I'd like to be excused." RP I, pp. 31-32. The following colloquy then took place, at RP I, pp. 32-33:

THE COURT: The mere fact that you know some of these people, that causes you to believe you'd have a hard time sitting as a fair and impartial juror in this case?

JUROR: Yeah, it would bother me.

...

THE COURT: Okay. Are you uncomfortable - - do you live in the Vader area?

JUROR: Yes.

THE COURT: Are you uncomfortable sitting as a juror in this cause because of the fact that there's people involved in the Vader community the detective is describing? Do you feel apprehensive about that the fact you're being asked to sit in judgment of some actions and there may be perhaps some retaliation or something of that sort?

JUROR: Yes.

THE COURT: Is it very concerning to you?

JUROR: Uh-huh.

...

THE COURT: Ma'am, are you able to put aside whatever feelings you may have and the fact that you may know some of the names and - and judge the case on the evidence as it's presented?

JUROR: Yes.

The juror was then excused, and the State moved that the juror be excused. RP I, p. 34. The Court indicated it would consider the request over the lunch hour, and perhaps bring the juror back into court for further questioning before resuming the trial after the lunch break. RP I, p. 36.

After the lunch break, the State again renewed its request that the juror be excused. RP I, p. 37. The juror was again brought into the courtroom, and the following colloquy took place at RP I, pp. 41-42:

THE COURT: As I understand it, your initial concern, with respect to service on this jury, arose during the course of your listening to Detective Engelbertson's testimony; is that correct?

JUROR: Uh-huh.

THE COURT: And what triggered it was his mention of some -- of at least one individual about whom you're concerned that you may know who lives in the Vader area?

JUROR: Just -- just knowing the Vader area in general and -- and coming in contact with these people and, you know, it's -- I just feel uncomfortable.

THE COURT: Are you -- are you concerned that there -- in the event that you were to continue to serve on a jury, knowing this particular individual, that there might be retribution to follow in the event there were a conviction?

JUROR: Not really, but I'm just hoping that I can be impartial.

THE COURT: Okay. Who specifically -- what specific name was it that raises your concern?

JUROR: Maybe it's not so much names as it is vicinity, the area, because I know a lot of people down there.

THE COURT: I see. Are you telling me you would have some difficulty being fair and impartial because of the fact that the entire transaction about on which the State basis (sic) the prosecution occurred in the Vader area?

JUROR: I'm just worried somewhere during the trial it could create a problem, so I wanted to bring it forth early.

THE COURT: So it isn't specifically one individual that Detective Engelbertson mentioned. It's more of the fact the transaction occurred in Vader and nobody told you that during the jury

selection?

JUROR: Yes.

THE COURT: Do you think you could put aside any concern and actually judge the case on the evidence as presented, or would you prefer that the Court excuse you from further attendance and participation?

JUROR: I would prefer the Court excuse me, if that's possible.

Despite the concerns expressed by the juror as to her ability to remain fair and impartial, the trial judge declined to remove her as a juror and utilize one of the alternate jurors. RP I, p. 43.

On cross examination, Engelbertson indicated that on several occasions subsequent to May 9, he unsuccessfully tried to involve Watts in further sales of drugs to the informant. RP I, p. 46. He also admitted that he had no knowledge as to whether Watts received any of the money which was used by the informant to purchase ecstasy on May 9. RP I, p. 46. He further admitted that Mendez, the informant, had admitted to using and selling marijuana, but that he had never been cited for those crimes. RP I, p. 49. Engelbertson stated that Watts had told him that it was Mr. Patterson who gave the drugs to Cameron Poole to take out to deliver to Mendez. RP I, p. 52.

Jase Mendez, the informant, then testified for the State. RP I, pp. 69 et seq. He described his acquaintance with Watts, and the fact that he agreed to do controlled buys with Det. Engelbertson in order to have his charges of Delivery of Marijuana dropped. RP I, p. 71. He described the events of May 9, and identified the voice on the phone as that of the Defendant Watts. RP I, pp. 71-73. He stated he knew Jeremy Patterson, and that it was not Jeremy Patterson who answered the phone when he called the Watts residence on

May 9. RP I, p. 74. When he arrived at the Watts residence, Cameron Poole came out and sold him the 17 ecstasy pills. RP I, pp. 75-76. He identified Exhibit 1 as the pills he had purchased from Poole. RP I, p. 77.

On cross examination, Mendez stated he had no ill will or bad feelings towards Watts, but admitted sending Watts a emails on July 24 and 26, 2008, in which he called watts obscene names and threatened bodily harm to Watts. RP I, pp. 78-84

Bruce Siggins, a chemist at the State Patrol Crime Lab, testified that his tests of some of the pills in Exhibit 1 revealed that they contained ecstasy, or 3,4 - ethylene-dioxymethamphetamine. RP I, pp. 87-94.

Cameron Poole testified that he was sixteen years old, with a birthdate of February 22, 1992. RP I, p. 97. He stated he had known Watts for about a year and a half, but that he did not know him very well. RP I, p. 98. He stated that on May 9, 2008, he was at Watts' house when Watts received a phone call from someone he thought was "Jase". RP I, pp. 99-100. He was later given some pills by Watts, and was asked by Watts to go outside and get some money for the pills. RP I, pp. 100-101. Poole indicated he was receiving favorable treatment on some of his criminal matters as part of his "deal" with the authorities, I.e. to come into court and state that Watts was the one who gave him the pills. RP I, p. 102-103.

Timothy Nathan English and Rick Van Wyck, both employed with the Lewis County Sheriff's Office, gave brief testimony as to their involvement in the "controlled buy" of May 9, 2008. RP I, pp. 107-116. Detective Engelbertson was also briefly recalled to the stand as well. RP I, pp. 117-119. The State then rested. RP I, p. 120. The defense

rested without calling any witnesses. RP I, p. 123.

After the giving of jury instructions and closing arguments of counsel, the jury convicted the Defendant as charged. RP II, pp. 46-47. The Defendant was sentenced on March 3, 2009, to a total term of 55 months (CP 25-34); RP 3/3/09, pp. 1-20. Also on March 3, 2009, the Court set an appeal bond in the amount of \$50,000, and required two sureties (i.e. two separate bonds in the amount of \$50,000 each). RP 3/3/09, p. 19; CP 23-24.

On March 9, 2009, a hearing was held on a defense request that the “two surety” requirement for the appeal bond be waived. RP 3/9/09, pp. 1-11. After arguments of counsel, the Court declined to modify the appeal bond ruling, and an Order to that effect was signed and filed. CP 1.

Timely Notice of Appeal was filed in the case on March 3, 2009. CP 11-22.

D. ARGUMENT

The trial court erred in refusing to excuse a juror who had expressed doubts concerning her ability to be a fair and impartial juror, and who asked to be excused from the jury.

The right to a fair and impartial jury trial in a criminal case is a fundamental right guaranteed by both the State and Federal Constitutions. U.S. Constitution, Sixth Amendment; Washington Constitution, Article I, Section 22, Amendment 10. Implicit in this guarantee of a fair and impartial jury is a jury which is free from bias, and which is actually composed of 12 fair and impartial jurors.

RCW 4.44.170 discusses, in relevant part, challenges for cause as follows:

Particular causes of challenge are of three kinds:

- (1) For such a bias as when the existence of the facts is ascertained, in judgment of law disqualifies the juror, and which is known in this code as implied bias.
- (2) For the existence of a state of mind on the part of the juror in reference to the action, or to either party, which satisfies the court that the challenged person cannot try the issue impartially and without prejudice to the substantial rights of the party challenging, and which is known in this code as actual bias.

RCW 4.44.190 further discusses a challenge based on actual bias:

A challenge for actual bias may be taken for the cause mentioned in RCW 4.44.170(2). But on the trial of such challenge, although it should appear that the juror challenged has formed or expressed an opinion upon what he or she may have heard or read, such opinion shall not of itself be sufficient to sustain the challenge, but the court must be satisfied, from all the circumstances, that the juror cannot disregard such opinion and try the issue impartially.

It is conceded that a long line of Washington cases establish that a trial court is vested with discretion in ruling on a challenge for cause, and that a trial court's rulings in this regard will not be disturbed or constitute reversible error absent a manifest abuse of that discretion. *State v. Noltie*, 116 Wn. 2d 831, 838, 809 P. 2d 190 (1991); *State v. Rupe*, 108 Wn. 2d 734, 748, 743 P. 2d 210 (1987), *cert. denied*, 486 U.S. 1061, *reh'g denied*, 487 U.S. 1263 (1988); *State v. Gilcrist*, 91 Wn. 2d 603, 611, 590 P. 2d 809 (1979). In cases where actual bias is claimed, it must be established by proof. *Noltie, supra.*, at 838. Nonetheless, if a juror should have been excused for cause, but was not, the remedy is reversal. *Miles v. F.E.R.M. Enters., Inc.*, 29 Wn. App. 61, 64, 627 P. 2d 564 (1981).

It is submitted that the case of *City of Cheney v. Grunewald*, 55 Wn. App. 807, 780 P. 2d 1332 (1989), is of use in the present analysis. That case was a DUI trial, where a prospective juror indicated that he was a member of Mothers Against Drunk Driving, and that he had joined that organization after his niece was killed by a drunk driver. After extensive questioning, the juror answered all the questions in a manner which indicated he could put aside his association with M.A.D.D. and his niece's death at the hands of a drunk driver and try the case fairly and impartially. However, when asked by defense counsel if he felt the Defendant would get a fair trial if the jury were composed of six persons with his (i.e. the juror's) frame of mind, the juror responded: "I don't think so." 55 Wn. App. At 809. A challenge for cause to that juror was denied by the trial judge.

In holding that the denial of that challenge for cause deprived Grunewald of his right to a fair trial under the State and Federal Constitutions, the Court ruled that sufficient actual bias had been shown. The court went on to quote with favor the following statement from *Kanzenbach v. S.C. Johnson & Son, Inc.*, 273 Wis. 621, 627, 79 N.W. 2d 249 (1956):

...it is a good rule for the trial judge to honor challenges for cause whenever he may reasonably suspect that circumstances outside the evidence may create bias or an appearance of bias on the part of the challenged juror.

In reversing Grunewald's conviction and remanding the matter for a new trial, the Court stated at page 811:

Here, there was a reasonable suspicion of bias based on Mr. Bauman's contradictory answers on voir dire. Consequently, there was sufficient justification for the court to have granted Mr. Grunewald's challenge for cause. Its failure to do so was error.

Applying these rules to the facts of the instant case, it seems clear that the juror who expressed doubts about her ability to be fair and impartial should have been excused. She expressed concerns about potential retaliation if the verdict went a certain way, and indicated, time and again, her concern that she may not be able to remain fair and impartial throughout the trial for that reason. Even up to the very end of the inquiry, she requested that she be excused from the jury. Failure of the trial judge to have excused her constitutes reversible error.

The trial court erred when it required two separate appeal bonds from two separate sureties, each in the amount of the appeal bond set by the Court, in order for the Defendant to obtain release from custody pending appeal.

The seminal case on this issue is *State v. Smith*, 84 Wn. 2d 498, 527 P. 2d 674 (1974), where the Washington Supreme Court addressed the issue of whether RCW 10.73.040 or the criminal rules promulgated by the Washington Supreme Court controlled the matter of bail/bond pending appeal. After discussing the clear conflict between the language of RCW 10.73.040 and CrR 3.2(h), the Supreme Court resolved the issue as follows, at pages 501-2:

This conflict can be resolved by either of two modes of analysis. First, courts have certain limited inherent powers; among these is the power to prescribe rules for procedure and practice. Although a clear line of demarcation cannot always be delineated between what is substantive and what is procedural, the following general guidelines provide a useful framework for analysis. Substantive law prescribes norms for societal conduct and punishments for violations thereof. It thus creates, defines, and regulates primary rights. In contrast, practice and procedure pertain to the essentially mechanical operations of the courts by which substantive law, rights, and remedies are effectuated. These guidelines, however, are expressive of the common law and should be applied in

consonance therewith whenever possible. Apropos of this, the fixing of bail and the release from custody traditionally has been, and we think is, a function of the judicial branch of government, unless otherwise directed and mandated by unequivocal constitutional provisions to the contrary... Since the inherent power to fix bail is grounded in the power to hold defendant, and thus relates to the manner of ensuring that the alleged offense will be heard by the court, we believe it to be implicit that the right to bail is essentially procedural in nature. Therefore, we hold that CrR3.2(h) was validly promulgated by the Supreme Court pursuant to its inherent rule-making authority to prescribe rules of procedure.

Since the promulgation of rules of procedure is an inherent attribute of the Supreme Court and an integral part of the judicial process, such rules cannot be abridged or modified by the legislature. Thus, the right to bail (and release) after verdict and pending appeal in the two cases consolidated and considered in this opinion is governed **solely by the provisions of CrR 3.2(h)**. (Citations omitted); (Emphasis added).

The above holding in *Smith, supra.*, was affirmed in the case of *State v. Hunt*, 76 Wn. App. 625, 886 P. 2d 1170 (1995), *review denied*, 128 Wn. 2d 1010, 910 P. 2d 481 (1981), where the Court stated, in footnote 1 (referring to RCW 10.73.040), as follows:

The first whole sentence of this statute has been superseded by CrR 3.2(f) (formerly CrR 3.2(h)), a criminal court rule that governs the release of convicted defendants pending appeal. *State v. Smith*, 84 Wn. 2d 498, 502-03, 527 P. 2d 674 (1974).

The same holding, i.e. that the right to bail after verdict and pending appeal is governed **solely** by CrR 3.2 (h), was again made and affirmed in *State v. Hunter*, 35 Wn. App. 708, 719, 669 P. 2d 489, *review denied*, 100 Wn. 2d 1030 (1983).

Thus, it seems clear that the setting of an appeal bond is controlled entirely and **solely** by CrR 3.2(h), and **not** by RCW 10.73.040. CrR 3.2(h) states as follows:

Release After Finding or Plea of Guilty. After a person has been found or pleaded guilty, and subject to RCW

9.95.062, 9.95.064, 10.64.025, and 10.64.027, the court may revoke, modify, or suspend the terms of release and/or bail previously ordered.

Copies of the four statutes referenced in CrR 3.2(h) have been appended to this Brief as Exhibit A. Interestingly, RCW 10.64.025 addresses the detention of an individual after conviction and pending sentencing, and states that such an individual **shall** be detained unless the court finds “by clear and convincing evidence that the defendant is not likely to flee or pose a danger to the safety of any other person or the community if released.” In that the Court in the instant case allowed Mr. Watts to remain at liberty pending his sentencing hearing, it must be presumed that such a finding was made by the Court at the time that decision was made, and that the Court’s finding was, as required by statute, by “clear and convincing evidence.”

The only other of the four statutes which even bears any relevance at all to the instant case is RCW 9.95.062. However, here again, the Court already ruled, on March 3, 2009, that an appeal bond in the amount of \$50,000 was appropriate, and further indicated, with the approval of the Deputy Prosecuting Attorney, that the Judgment & Sentence would be stayed upon the posting of said appeal bond. Thus, it again should be presumed that the factors set forth in RCW 9.95.062 had been considered by the Court in whether to stay execution of the Judgment & Sentence, and that the Court had already determined that a stay is in order once the \$50,000 appeal bond was posted.

The matter of an appeal bond is governed exclusively by CrR 3.2(h), which contains no requirement that the bond be with “two sureties”. The Court exercised its discretion on March 3, 2009, and set an appeal bond in the amount of \$50,000, and

9.95.062, 9.95.064, 10.64.025, and 10.64.027, the court may revoke, modify, or suspend the terms of release and/or bail previously ordered.

Copies of the four statutes referenced in CrR 3.2(h) have been appended to this Brief as Appendix A. Interestingly, RCW 10.64.025 addresses the detention of an individual after conviction and pending sentencing, and states that such an individual **shall** be detained unless the court finds “by clear and convincing evidence that the defendant is not likely to flee or pose a danger to the safety of any other person or the community if released.” In that the Court in the instant case allowed Mr. Watts to remain at liberty pending his sentencing hearing, it must be presumed that such a finding was made by the Court at the time that decision was made, and that the Court’s finding was, as required by statute, by “clear and convincing evidence.”

The only other of the four statutes which even bears any relevance at all to the instant case is RCW 9.95.062. However, here again, the Court already ruled, on March 3, 2009, that an appeal bond in the amount of \$50,000 was appropriate, and further indicated, with the approval of the Deputy Prosecuting Attorney, that the Judgment & Sentence would be stayed upon the posting of said appeal bond. Thus, it again should be presumed that the factors set forth in RCW 9.95.062 had been considered by the Court in whether to stay execution of the Judgment & Sentence, and that the Court had already determined that a stay is in order once the \$50,000 appeal bond was posted.

The matter of an appeal bond is governed exclusively by CrR 3.2(h), which contains no requirement that the bond be with “two sureties”. The Court exercised its discretion on March 3, 2009, and set an appeal bond in the amount of \$50,000, and

indicated that a stay of the execution of the Judgment & Sentence would be signed once said appeal bond was posted. The Defendant should have been required to post an appeal bond in the total amount of \$50,000. Requiring the posting of two separate and distinct bonds, with separate and distinct sureties, each in the full amount of the bond set by the court, was clear error.

E. CONCLUSION

For the reasons stated herein, this court should reverse the Defendant's convictions in this matter and remand for a new trial, and the Court should rule that the Defendant is required to post only a single appeal bond in the amount set by the Court to obtain release pending appeal.

DATED: August 6, 2009.

Respectfully submitted,



ROBERT M. QUILLIAN,
Attorney for Appellant
WSBA #6836

CERTIFICATE

I certify that I mailed a copy of the Brief of Appellant by depositing same in the United States Mail, first class postage prepaid, to the following people at the addresses indicated:

Lewis County Prosecuting Attorney
345 W. Main St.
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Chehalis, WA 98532

DATED this 6th day of August, 2009.



ROBERT M. QUILLIAN, WSBA #6836
Attorney for Appellant

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STATE OF WASHINGTON
BY W. J. [Signature]
CLERK

APPENDIX A

RCW 9.95.062

Stay of judgment — When prohibited — Credit for jail time pending appeal.

(1) Notwithstanding CrR 3.2 or RAP 7.2, an appeal by a defendant in a criminal action shall not stay the execution of the judgment of conviction, if the court determines by a preponderance of the evidence that:

(a) The defendant is likely to flee or to pose a danger to the safety of any other person or the community if the judgment is stayed; or

(b) The delay resulting from the stay will unduly diminish the deterrent effect of the punishment; or

(c) A stay of the judgment will cause unreasonable trauma to the victims of the crime or their families; or

(d) The defendant has not undertaken to the extent of the defendant's financial ability to pay the financial obligations under the judgment or has not posted an adequate performance bond to assure payment.

(2) An appeal by a defendant convicted of one of the following offenses shall not stay execution of the judgment of conviction: Rape in the first or second degree (RCW 9A.44.040 and 9A.44.050); rape of a child in the first, second, or third degree (RCW 9A.44.073, 9A.44.076, and 9A.44.079); child molestation in the first, second, or third degree (RCW 9A.44.083, 9A.44.086, and 9A.44.089); sexual misconduct with a minor in the first or second degree (RCW 9A.44.093 and 9A.44.096); indecent liberties (RCW 9A.44.100); incest (RCW 9A.64.020); luring (RCW 9A.40.090); any class A or B felony that is a sexually motivated offense as defined in RCW 9.94A.030; a felony violation of RCW 9.68A.090; or any offense that is, under chapter 9A.28 RCW, a criminal attempt, solicitation, or conspiracy to commit one of those offenses.

(3) In case the defendant has been convicted of a felony, and has been unable to obtain release pending the appeal by posting an appeal bond, cash, adequate security, release on personal recognizance, or any other conditions imposed by the court, the time the defendant has been imprisoned pending the appeal shall be deducted from the term for which the defendant was sentenced, if the judgment is affirmed.

[1996 c 275 § 9; 1989 c 276 § 1; 1969 ex.s. c 4 § 1; 1969 c 103 § 1; 1955 c 42 § 2. Prior: 1893 c 61 § 30; RRS § 1745. Formerly RCW 10.73.030, part.]

Notes:

Finding — 1996 c 275: See note following RCW 9.94A.505.

Severability — 1989 c 276: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 276 § 6.]

RCW 9.95.064
Conditions of release. (Effective until August 1, 2009.)

(1) In order to minimize the trauma to the victim, the court may attach conditions on release of an offender under RCW 9.95.062, convicted of a crime committed before July 1, 1984, regarding the whereabouts of the defendant, contact with the victim, or other conditions.

(2) Offenders released under RCW 9.95.420 are subject to crime-related prohibitions and affirmative conditions established by the court, the department of corrections, or the board pursuant to RCW 9.94A.715 and *9.94A.712, 9.94A.713, 72.09.335, and 9.95.420 through 9.95.440.

[2001 2nd sp.s. c 12 § 326; 1989 c 276 § 4.]

Notes:

*Reviser's note: RCW 9.94A.712 was recodified as RCW 9.94A.507 pursuant to the direction found in section 56 (4), chapter 231, Laws of 2008, effective August 1, 2009.

Intent – Severability – Effective dates – 2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Application – 2001 2nd sp.s. c 12 §§ 301-363: See note following RCW 9.94A.030.

Severability – 1989 c 276: See note following RCW 9.95.062.

RCW 9.95.064
Conditions of release. (Effective August 1, 2009.)

(1) In order to minimize the trauma to the victim, the court may attach conditions on release of an offender under RCW 9.95.062, convicted of a crime committed before July 1, 1984, regarding the whereabouts of the defendant, contact with the victim, or other conditions.

(2) Offenders released under RCW 9.95.420 are subject to crime-related prohibitions and affirmative conditions established by the court, the department of corrections, or the board pursuant to RCW *9.94A.712, 9.94A.704, 72.09.335, and 9.95.420 through 9.95.440.

[2008 c 231 § 41; 2001 2nd sp.s. c 12 § 326; 1989 c 276 § 4.]

Notes:

*Reviser's note: RCW 9.94A.712 was recodified as RCW 9.94A.507 pursuant to the direction found in section 56 (4), chapter 231, Laws of 2008, effective August 1, 2009.

Intent – Application – Application of repealers – Effective date – 2008 c 231: See notes following RCW 9.94A.701.

Severability – 2008 c 231: See note following RCW 9.94A.500.

Intent – Severability – Effective dates – 2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Application – 2001 2nd sp.s. c 12 §§ 301-363: See note following RCW 9.94A.030.

Severability – 1989 c 276: See note following RCW 9.95.062.

RCW 10.64.025
Detention of defendant.

(1) A defendant who has been found guilty of a felony and is awaiting sentencing shall be detained unless the court finds by clear and convincing evidence that the defendant is not likely to flee or to pose a danger to the safety of any other person or the community if released. Any bail bond that was posted on behalf of a defendant shall, upon the defendant's conviction, be exonerated.

(2) A defendant who has been found guilty of one of the following offenses shall be detained pending sentencing: Rape in the first or second degree (RCW 9A.44.040 and 9A.44.050); rape of a child in the first, second, or third degree (RCW 9A.44.073, 9A.44.076, and 9A.44.079); child molestation in the first, second, or third degree (RCW 9A.44.083, 9A.44.086, and 9A.44.089); sexual misconduct with a minor in the first or second degree (RCW 9A.44.093 and 9A.44.096); indecent liberties (RCW 9A.44.100); incest (RCW 9A.64.020); luring (RCW 9A.40.090); any class A or B felony that is a sexually motivated offense as defined in RCW 9.94A.030; a felony violation of RCW 9.68A.090; or any offense that is, under chapter 9A.28 RCW, a criminal attempt, solicitation, or conspiracy to commit one of those offenses.

[1996 c 275 § 10; 1989 c 276 § 2.]

Notes:

Finding – 1996 c 275: See note following RCW 9.94A.505.

Severability – 1989 c 276: See note following RCW 9.95.062.

RCW 10.64.027
Conditions of release.

In order to minimize the trauma to the victim, the court may attach conditions on release of a defendant under RCW 10.64.025 regarding the whereabouts of the defendant, contact with the victim, or other conditions.

[1989 c 276 § 5.]

Notes:

Severability -- 1989 c 276: See note following RCW 9.95.062.

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STATE OF WASHINGTON
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IN THE COURT OF APPEALS DEPUTY
STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,)
)
Respondent,)
)
VS.)
)
COLTON A. WATTS,)
)
Appellant.)
_____)

NO. 39016-7-II

CERTIFICATE OF MAILING RE:
BRIEF OF APPELLANT

CERTIFICATE

I certify that I mailed a copy of the Brief of Appellant by depositing same in the United States Mail, first class postage prepaid, to the following people at the addresses indicated, on August 6, 2009:

Mr. Colton A. Watts
138 NE School St.
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DATED this 8th of August, 2009.



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