

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

NO. 40113-4-II

STATE OF WASHINGTON

Respondent,

vs.

FRASER ROTCHFORD

Appellant.

FILED
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PORT TOWNSEND
WA

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF WASHINGTON
FOR JEFFERSON COUNTY
Cause Number: 09-01-00114-1
The Honorable Craddock Verser

BRIEF OF RESPONDENT

JUELANNE DALZELL
Jefferson County Prosecuting Attorney
Attorney for Respondent

P.O. Box 1220
Port Townsend, WA 98368
(360) 385-9180

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STATEMENT OF THE CASE

I Restatement of Issues Presented

- A. The evidence was sufficient to prove the elements of the offense.
- B. The trial court properly heard Mr. Rotchford's request for a new attorney.
- C. The trial court correctly honored Mr. Rotchford's request for a bench trial.

II Statement of Facts

Mr. Rotchford was on probation with Jefferson County District Court on June 15, 2009, due to three convictions for violating civil anti-harassment orders in 2008 and 2009. RP 31. He met with his probation officers twice that day, about 20 minutes apart. During the first meeting he told them that he was going insane (RP 32); he was very angry with Jefferson Mental Health and wanted to kill them. RP 34-35. He told them he was angry over the medication that Jefferson Mental Health was giving him as part of his court-ordered treatment there. RP 34. In the second meeting he reiterated these statements and advised that he was feeling more justified in wanting to kill Jefferson Mental Health and that he needed to go to jail. RP 36.

The probation officers summoned Jefferson County Sheriff's Deputies. RP 40. Deputy Tracer spoke to Mr. Rotchford who told him that jail was the best place for him and that he had come back to the courthouse because otherwise he would have gone to Jefferson Mental Health and killed them. RP 79. Mr. Rotchford further stated that he believed Jefferson Mental Health was trying to kill everyone who comes to them for help because they did not meet their expectations. RP 78. Deputy Tracer noticed that Mr. Rotchford's face was bright red and he appeared angry. RP 80. Believing that Mr. Rotchford would attempt to harm the people at Jefferson Mental Health, Deputy Tracer arrested Mr. Rotchford for harassment - threats to kill. RP 78.

The probation officer called Jefferson Mental Health, spoke with Ms. Sheila Hunt-Witte, told her Mr. Rotchford was in custody, and told her of the statements Mr. Rotchford had made. RP 41. Ms. Hunt-Witte is a designated mental health professional, a registered nurse, a nurse practitioner, and a certified counselor. RP 82. Ms. Hunt-Witte testified that she was a "little fearful" of Mr Rotchford since his intake at Jefferson Mental Health because of "his previous threats to people in the community." RP 85. Ms. Hunt-Witte felt Mr. Rotchford's threat was credible and asked the probation officers meet with her supervisor and the crisis team at

Jefferson Mental Health. RP 87. She testified that, because of the death threats, she was placed in reasonable fear that the threat would be carried out. RP 87.

The probation officers met with Jefferson Mental Health staff on June 16, 2009. RP 88.

Mr. Ben Critchlow was appointed to represent Mr. Rotchford. On August 7, 2009, Mr. Rotchford filed a request for appointment of a new counsel and Mr. Critchlow filed a Motion to Withdraw as Counsel. The court heard both requests on August 14, 2009. RP 3.

At the hearing Mr. Rotchford requested a new counsel because he thought the assigned counsel, Mr. Critchlow, had incorrectly related statements to the court that he had made. RP 4-5. The court advised Mr. Rotchford not to make statements directly related to the trial during the hearing, told him to talk to Mr. Critchlow about his factual concerns, and advised him that if Mr. Critchlow thought there was a problem he would move to withdraw. RP 5.

Mr. Rotchford stated "This is a very ideological case, in my opinion. And, I'm uncomfortable with the fact that my attorney has expressed that he does not share the same conceptions of what's happening, and maybe that doesn't actually affect the showing of the case." RP6.

The court responded, “ It doesn’t. ... It doesn’t affect the ability of the attorney to adequately represent you under the law.”

Mr. Rotchford’s motion was denied.

On November 20, 2009, defense counsel told the court that Mr. Rotchford wanted to waive his right to a jury trial and submitted a waiver of jury trial form to the court. RP 11. Judge Verser held a colloquy with Mr. Rotchford and his attorney and confirmed his desire to waive a jury trial and his understanding of the consequences. The following colloquy occurred:

COURT: Mr. Rotchford, I’ve been handed this Waiver of Jury Trial. You’ve been, you know that you have a right to have your case heard by a 12-person jury, an impartial jury selected from this county. And, this says you’ve consulted with Mr. Critchlow regarding the decision that you want to have the case heard by me, or another judge, whoever the judge is, and not have a jury to determine whether or not the state has proved this crime beyond a reasonable doubt. And that’s your desire?

MR. ROTCHFORD: Yes, your honor.

COURT: It says you freely and voluntarily give up your right to be tried by a jury and request a trial by the court, as opposed to the jury. And you’ve talked this over with Mr. Critchlow?

MR. ROTCHFORD: Yes, I have.

COURT: And you understand all of that?

MR. ROTCHFORD: Yes, I do.

COURT: And the judge will just listen to the evidence and make a determination, whoever the judge is. It may be me, it may be somebody else, and that's OK with you?

MR. ROTCHFORD: Yes.

MR. CRITCHLOW: Judge, I'd just supplement that by advising the court that Fraser, I don't know if this is known to the court or counsel. He did submit to a jury trial in District Court. So its not that he's unaware of what that ...

COURT: The Proceeding ...

MR. CRITCHLOW: ... the proceedings, yeah.

COURT: I'll consent to the Waiver of Jury Trial and I've signed the statement so indicating. I'm confident Mr. Rotchford knows what he's doing.

The Waiver of Jury Trial form was signed by Mr. Rotchford and his attorney, Mr. Critchlow, and the judge, the Honorable Craddock Verser, attesting to Mr. Rotchford's knowing, voluntary, and intelligent waiver of his right to a jury trial. Supplementary CP 1.

A bench trial was held on December 7, 2009. Mr. Rotchford was found guilty of harassment – threats to kill.

This appeal timely followed.

III. ARGUMENT

A. The evidence was sufficient to prove the elements of the offense.

Mr. Rotchford asserts the evidence was insufficient to support his felony harassment-threats to kill conviction, arguing that his repeated statements that he wanted to kill “mental health” was materially different from stating that he intended or planned to kill anyone. Appellant’s Brief 12. Specifically, Mr. Rotchford argues “In the absence of testimony that [he] said he intended to kill someone” the evidence was insufficient to prove felony harassment. Appellant’s Brief 12.

Evidence is sufficient to support a conviction when, viewed in the light most favorable to the State, any rational trier of fact could find the essential elements of the crime beyond a reasonable doubt. *State v. Bryant*, 89 Wn.App. 857, 869, 950 P.2d 1004 (1998) (citing *State v. Rempel*, 114 Wn.2d 77, 82, 785 P.2d 1134 (1990)), review denied, 137 Wn.2d 1017, 978 P.2d 1100 (1999). In a sufficiency of the evidence claim, the defendant admits the truth of the State's evidence and all inferences that reasonably can be drawn from that evidence. *State v. Salinas*, 119 Wn.2d 192, 201,

829 P.2d 1068 (1992) (citing *State v. Theroff*, 25 Wn.App. 590, 593, 608 P.2d 1254, *aff'd*, 95 Wn.2d 385, 622 P.2d 1240 (1980)).

The trier of fact makes credibility determinations that we do not review on appeal. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).

Under RCW 9A.46.020(1), in order to prove that Mr. Rotchford committed the crime of harassment, the State must show that,

(a) [w]ithout lawful authority, the person knowingly threatens:

(i) To cause bodily injury immediately or in the future to the person threatened or to any other person; or

(ii) To cause physical damage to the property of a person other than the actor; or

(iii) To subject the person threatened or any other person to physical confinement or restraint; or

(iv) Maliciously to do any other act which is intended to substantially harm the person threatened or another with respect to his or her physical or mental health or safety; and

(b) The person by words or conduct places the person threatened in reasonable fear that the threat will be carried out. "Words or conduct" includes, in addition to any other form of communication or conduct, the sending of an electronic communication.
(Emphasis added.)

RCW 9A.46.020(2) outlines the requirements for determining if the harassment committed is a felony or a gross misdemeanor stating,

(a) Except as provided in (b) of this subsection, a person who harasses another is guilty of a gross misdemeanor.

(b) A person who harasses another is guilty of a class C felony if either of the following applies: (i) The person has previously been convicted in this or any other state of any crime of harassment, as defined in RCW 9A.46.060, of the same victim or members of the victim's family or household or any person specifically named in a no-contact or no-harassment order; or (ii) the person harasses another person under subsection (1)(a)(i) of this section by threatening to kill the person threatened or any other person.

RCW 9A.46.020(1)(a)(iv) proscribes only threats to do an act that is intended to substantially harm another's physical or mental health or safety. In addition, the threat must be "malicious," which means "an evil intent, wish, or design to vex, annoy, or injure another person."¹

"Criminal liability only attaches if the person threatened has a reasonable fear that the threat will be carried out. These factors sufficiently limit the scope of the statute's application despite any ambiguity surrounding the term 'mental health.' A person cannot be convicted simply because he or she makes a threat. The State must also prove intent, malice, and a fear that is reasonable." *State v. Williams*, 98 Wn.App. 765, 770-771, 991 P.2d 107 (2000).

¹ RCW 9A.04.110(12)

To prove a violation of the felony harassment statute, the State was required to prove “that the person threatened was placed in reasonable fear of ‘the threat’-the actual threat made” and prove that the harm threatened and the harm feared are the same. *State v. C.G.*, 150 Wn.2d 604, 609, 80 P.3d 594 (2003). Assuming evidence shows the victim's subjective fear, the standard for determining whether the fear was reasonable is an objective standard considering the facts and circumstances of the case. *State v. Alvarez*, 74 Wn.App. 250, 260-61, 872 P.2d 1123 (1994), *aff'd*, 128 Wn.2d 1, 904 P.2d 754 (1995).

True Threat

Mr. Rotchford argues that his statements that he “wanted” to kill Jefferson Mental Health was not a violation of the felony harassment statute because he did not say he “intended”, or “planned” to kill them. Appellant’s Brief at 12.

A defendant’s statement that he wanted to kill someone together with facts sufficient to show the defendant harbored ill feelings toward the threatened party was a “true threat” and a verdict of guilty of felony harassment – threat to kill, was reasonable. *State v. Schaler*, 145 Wn.App. 628, 186 P.3d 1170 (2008).

Here, Mr. Rotchford told a Sheriff's Deputy and probation officers that he wanted to kill Jefferson Mental Health, who he was angry with because of the medication they prescribed to him. This was a true threat and this appeal should be denied.

Here, Mr. Rotchford told his probation officers and Sheriff's Deputies he was very angry with Jefferson Mental Health because of the medication they were giving him; he wanted to kill them; and, later, he was feeling more justified in wanting to kill Jefferson Mental Health. Clearly, he made a threat to kill the employees of Jefferson Mental Health and stated he harbored ill feelings toward the threatened parties.

Ms. Hunt-Witte, an employee of Jefferson Mental Health testified that she believed Mr. Rotchford's threat was credible and she was fearful for her safety. RP 87. The court was justified in believing that Ms. Hunt-Witte feared for the safety of herself and her coworkers when a person they were treating for mental health problems became angry and told police "that jail was the best place for him and that he had come back to the courthouse because otherwise he would have gone to Jefferson Mental Health and killed them."

The court's verdict was reasonable and this appeal should be denied.

Present Threat

To the extent Mr. Rotchford argues that the circumstances under which he made his threat reflected the condition that he was talking to probation officers and Deputies and that condition precluded Ms. Hunt-Witte from taking the threat seriously, this is incorrect. Mr. Rotchford would not remain in the officers' presence indefinitely and could carry out his threat at some time in the future.

The State is not required to prove a "nonconditional present threat" where the charging statute and applicable statutory definitions do not establish such an element. *See State v. Edwards*, 84 Wn.App. 5, 12, 924 P.2d 397 (1996). Assuming evidence shows the victim's subjective fear, the standard for determining whether the fear was reasonable is an objective standard considering the facts and circumstances of the case. *State v. Alvarez*, 74 Wn.App. 250, 260-61, 872 P.2d 1123 (1994), *aff'd*, 128 Wn.2d 1, 904 P.2d 754 (1995).

The courts have held that the State need not prove a present threat to support a verdict finding that the victim's fear of the threat was reasonable. *State v. Cross*, --- P.3d ----, 2010 WL 2590588 (2010).

Sufficient evidence supports the court's finding Mr. Rotchford guilty of felony harassment-threats to kill. Here, it is uncontroverted

that Mr. Rotchford was under the care of Jefferson Mental Health, for prior assaultive behavior, that he was angry over the treatment he was receiving there, that he stated he wanted to kill the agency employees, that he felt justified in killing them, and that an employee felt her life threatened

Fear of Death

The court could reasonably infer from Ms. Hunt-Witte's testimony that she had knowledge of Mr. Rotchford's mental health condition and reasonably believed his warning that he would endeavor to kill her and her fellow employees if left to his own devices

In light of all the evidence, Mr. Rotchford's threats, as well as his and assaultive conduct and unstable mental health situation, any reasonable court could find beyond a reasonable doubt that Ms. Hunt-Witte's concern for her safety was reasonable.

Mr. Rotchford relies on *C.G.* for his argument that there is insufficient evidence to support a finding that Ms. Hunt-Witte reasonably feared bodily harm from his threat. But *C.G.* is distinguishable and Mr. Rotchford's reliance is misplaced. In *C.G.*, a student shouted, "I'll kill you Mr. Haney, I'll kill you" to her school's vice principal. 150 Wn.2d at 606-07, 80 P.3d 594. The State

charged C.G. with felony harassment because her threat involved death. RCW 9A.46.020(2). Our Supreme Court had to determine whether sufficient evidence supported a finding that Haney reasonably feared that C.G. would carry out this threat and cause Haney's death. At trial, Haney did not testify that he believed C.G. would kill him; instead, he testified that C.G.'s threat caused him concern only about a future "harm." *C.G.*, 150 Wn.2d at 607, 80 P.3d 594. On this testimony, our Supreme Court reversed C.G.'s felony harassment conviction, holding that the evidence was insufficient to prove Haney's fear of death as a result of the threat. *C. G.*, 150 Wn.2d at 610, 80 P.3d 594.

C.G. is distinguishable because, here, there is sufficient evidence to support the court's finding that Ms. Hunt-Witte had a reasonable fear that Mr. Rotchford would attempt to kill her and her fellow employees.

This appeal is without merit and should be denied.

B. The trial court properly heard Mr. Rotchford's request for a new attorney

Mr. Rotchford asserts the trial court did not make an adequate inquiry into his complaint when he requested a new counsel.

1. Standard of Review

A trial court's refusal to appoint new counsel is reviewed for an abuse of discretion. *State v. Cross*, 156 Wn.2d 580, 607, 132 P.3d 80 (2006).

2. Defendant must first show good cause for the court to consider substitute counsel

A criminal defendant who is dissatisfied with appointed counsel must show good cause to warrant substitution of counsel, such as a conflict of interest, an irreconcilable conflict, or a complete breakdown in communication. *State v. Stenson*, 132 Wn.2d 668, 734, 940 P.2d 1239 (1997), (citing *Smith v. Lockhart*, 923 F.2d 1314, 1320 (8th Cir.1991)). (Stenson I). The factors to be considered in deciding whether to grant a motion to substitute counsel are (1) the reasons given for the dissatisfaction, (2) the court's own evaluation of counsel, and (3) the effect of any

substitution upon the scheduled proceedings. *Id.* (citing *State v. Stark*, 48 Wn.App. 245, 253, 738 P.2d 684 (1987)).

Counsel and defendant must be at such odds as to prevent presentation of an adequate defense. *State v. Lopez*, 79 Wn.App. 755, 766-67, 904 P.2d 1179 (1995) (citing *United States v. Morrison*, 946 F.2d 484, 498 (7th Cir.1991)). The defendant may not rely on a general loss of confidence or trust alone to justify appointment of a substitute new counsel. *Stenson I*, 132 Wn.2d at 734, 940 P.2d 1239.

A defendant does not have an absolute right under the Sixth Amendment to his choice of a particular advocate. *State v. DeWeese*, 117 Wn.2d 369, 375-76, 816 P.2d 1 (1991) (citing *Wheat v. United States*, 486 U.S. 153, 159 n. 3, 108 S.Ct. 1692, 100 L.Ed.2d 140 (1988)).

Mr. Rotchford asserts irreconcilable conflict and/or complete breakdown in communication with counsel. An irreconcilable conflict occurs when the breakdown of the relationship results in the complete denial of counsel. *In re Pers. Restraint of Stenson*, 142 Wn.2d 710, 722, 16 P.3d 1 (2001) (*Stenson II*).

A significant dispute over trial strategy coupled with a strained relationship between the defendant and his counsel does not warrant substitution of counsel. *Stenson II*, 142 Wn.2d 710,

726-27, 16 P.3d 1. Stenson wanted his attorneys to blame another suspect while his attorneys had concluded that the guilt phase could not be won and did not want to take any action which might alienate the jury at the penalty phase. Stenson complained that his attorneys would not investigate matters that he thought were important and that they did not keep him sufficiently informed. *Stenson II*, 142 Wn.2d at 727, 16 P.3d 1. Matters became so heated that defense counsel requested to be removed from the case and acknowledged that he could not stand the sight of Stenson. *Stenson II*, 142 Wn.2d at 729, 16 P.3d 1. In rejecting Stenson's claim of irreconcilable conflict, the court noted that the effects of the breakdown appeared negligible and that there was no evidence that the representation was inadequate. *Stenson II*, 142 Wn.2d at 729-30, 16 P.3d 1.

Contrary to Mr. Rotchford's assertions, he has not shown a complete breakdown in communication or other irreconcilable conflict. He did not offer any witnesses to support his claims at the hearing. His only explanation of his reason for wanting to substitute counsel was:

"This is a very ideological case, in my opinion. And, I'm uncomfortable with the fact that my attorney has expressed that he does not share the same conceptions of what's happening, and maybe that doesn't actually affect the showing of the case." RP6.

In examining the extent of the conflict, the court considers the extent and nature of the breakdown in the relationship and its effect on the representation actually presented.² If the representation is inadequate, prejudice is presumed. If the representation is adequate, prejudice must be shown.³ Because the purpose of providing assistance of counsel is to ensure that defendants receive a fair trial, the appropriate inquiry necessarily must focus on the adversarial process, not only on the defendant's relationship with his lawyer as such. "[T]he essential aim of the [Sixth] Amendment is to guarantee an effective advocate for each criminal defendant rather than to ensure that a defendant will inexorably be represented by the lawyer whom he prefers."⁴

Here, the record does not establish anything approaching inadequate representation nor does it show that Mr. Rotchford's right to effective assistance of counsel was jeopardized by his continued representation with his attorney.

Mr. Rotchford did not assert any facts to the trial court that warranted consideration of a substitute counsel. This appeal is without merit and should be denied.

² *Stenson II*, 142 Wn.2d at 724, 16 P.3d 1.

³ *Cross*, 156 Wn.2d 580, 132 P.3d 80 (absent actual ineffective assistance of counsel, trial strategy is left to the attorney and client to work out).

⁴ *Wheat*, 486 U.S. at 159, 108 S.Ct. 1692.

C. The trial court correctly honored Mr. Rotchford's request for a bench trial

Mr. Rotchford argues that his jury trial waiver was inadequate because neither the written waiver nor the trial judge's explanation made reference to all of the rights he was waiving. He argues that a waiver of the state constitutional right to a jury trial is valid only if the defendant is fully aware of the meaning of the state constitutional right. Without citing authority, Mr. Rotchford claims that he needed to understand his right to participate in jury selection, his right to an impartial jury, his right to a 12-person jury, his right to be presumed innocent until proven guilty beyond a reasonable doubt, and his right to a unanimous verdict.

The circumstances of this case, the defendant's arguments; the state history and cases cited by defendant are identical to those previously litigated in *State v. Pierce*, 134 Wn.App. 763, 142 P.3d 610 (2006), where this court found the defendant validly waived his right to a jury trial.

The right to a jury trial is subject to a knowing, intentional, and voluntary waiver. *State v. Forza*, 70 Wn.2d 69, 70-71, 422 P.2d 475 (1966).

A defendant may waive the right so long as he does so knowingly, intelligently, voluntarily, and free from improper

influences. *State v. Stegall*, 124 Wash.2d 719, 725, 881 P.2d 979 (1994). We will not presume that a defendant waived his jury trial right unless the record adequately establishes a valid waiver. *Pierce*, 134 Wash.App. at 771, 142 P.3d 610. Although Washington's right to a jury trial is more expansive than its federal counterpart, there are no additional safeguards required for its waiver. *Pierce*, 134 Wn.App. at 773, 142 P.3d 610.

While not determinative, a defendant's written waiver pursuant to CrR6.1(a) is strong evidence that he validly waived a jury trial. *Pierce*, 134 Wn.App. at 771, 142 P.3d 610. Also relevant is an attorney's representation that his client knowingly, intelligently, and voluntarily relinquished this right. *Pierce*, 134 Wn.App. at 771, 142 P.3d 610. Courts are not required to engage in an extended colloquy; the only requirement is a personal expression of waiver by the defendant. *Stegall*, 124 Wn.2d at 725, 881 P.2d 979.

Washington courts have already determined that the right to trial by jury under Washington's state constitution is broader than the federal constitutional jury trial right. *State v. Hobble*, 126 Wn.2d 283, 298, 892 P.2d 85 (1995) (citing *Pasco v. Mace*, 98 Wn.2d 87, 99, 653 P.2d 618 (1982)). For example, the court in *Pasco* held that the state constitution, unlike the federal, provides the right to a jury

trial for any adult criminal offense, including petty offenses. *Pasco*, 98 Wn.2d at 99, 653 P.2d 618.

Washington has rules governing a defendant's waiver of the jury trial right. A defendant may waive the right as long as the defendant acts knowingly, intelligently, voluntarily, and free from improper influences. *State v. Stegall*, 124 Wn.2d 719, 724-25, 881 P.2d 979 (1994). We will not presume that the defendant waived his jury trial right unless we have an adequate record showing that the waiver occurred. *State v. Woo Won Choi*, 55 Wn.App. 895, 903, 781 P.2d 505 (1989), superseded on other grounds as recognized by *State v. Anderson*, 72 Wn.App. 453, 458-59, 864 P.2d 1001 (1994) (citing *Seattle v. Williams*, 101 Wn.2d 445, 451, 680 P.2d 1051 (1984)).

In examining the record, the courts consider whether the defendant was informed of his constitutional right to a jury trial. *Woo Won Choi*, 55 Wn.App. at 903, 781 P.2d 505. We also examine the facts and circumstances generally, including defendant's experience and capabilities. *Woo Won Choi*, 55 Wn.App. at 903, 781 P.2d 505. A written waiver, as CrR 6.1(a)⁵ requires, is not determinative but is strong evidence that the

⁵ “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.” CrR 6.1(a).

defendant validly waived the jury trial right. *Woo Won Choi*, 55 Wn.App. at 904, 781 P.2d 505. An attorney's representation that his client knowingly, intelligently, and voluntarily relinquished his jury trial rights is also relevant. *Woo Won Choi*, 55 Wn.App. at 904, 781 P.2d 505. Courts have not required an extended colloquy on the record. *Stegall*, 124 Wn.2d at 725, 881 P.2d 979; *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, 881 P.2d 979.

Washington's rule on jury trial waiver contrasts with the rules for waiving other rights. For example, when a defendant wishes to waive the right to counsel and proceed pro se, the trial court must usually undertake a full colloquy with the defendant on the record to establish that the defendant knows the relative advantages and disadvantages of proceeding pro se. *Stegall*, 124 Wn.2d at 725, 881 P.2d 979. A guilty plea, which involves waiving numerous trial rights, is valid if the record shows not only a voluntary and intelligent waiver, but also an understanding of the waiver's direct consequences. *Stegall*, 124 Wn.2d at 725, 881 P.2d 979.

The right to jury trial, like the right to remain silent and the right to confront witnesses, is treated differently and is easier to waive. See *Brand*, 55 Wn.App. at 786, 780 P.2d 894. The trial

strategy of any particular case may perhaps dictate the waiver of one or more of these rights while still preserving to the accused the right to a fair trial. *Brand*, 55 Wn.App. at 786, 780 P.2d 894. For example, competent defendants and experienced counsel may have good reasons to waive a jury trial, believing that their defense would be better understood and evaluated by a judge than by jurors who may be less sympathetic to technical legal contentions. *Brand*, 55 Wn.App. at 786-87, 780 P.2d 894..

Here, as in *Pierce*, Mr. Rotchford received the advice of counsel and submitted his waiver in writing. The court informed Rotchford that he had the right to a unanimous verdict by 12 people. His counsel informed the court that he had already experienced a jury trial. Mr. Rotchford knew that by waiving this right, only the judge would decide his case. He told the court that he understood his jury trial right and was waiving it freely and voluntarily. As in *Pierce*, this court should hold that Mr. Rotchford validly waived his jury trial right.

This appeal is without merit and should be denied.

IV. CONCLUSION

The State respectfully requests that this Court affirm the trial court's sentence and that Appellant be ordered to pay costs, including attorney fees, pursuant to RAP 14.3, 18.1 and RCW 10.73.

Respectfully submitted this 28th day of July, 2010,

JUELANNE DALZELL, Jefferson County
Prosecuting Attorney

A handwritten signature in cursive script, reading "Thomas A. Brotherton", is written over a horizontal line.

By: Thomas A. Brotherton, WSBA # 37624
Deputy Prosecuting Attorney

1
2
3 IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

4 DIVISION II

5 STATE OF WASHINGTON,
6 Respondent,
7 vs.
8 FRASER ROTCHFORD,
9 Appellant.

Case No.: 40113-4-II
Superior Court No.: 09-1-00114-1

DECLARATION OF MAILING

FILED
COURT APPEALS
10 APR -6 PM 12:31
STATE OF WASHINGTON
CLERK OF COURT

10 Janice N. Chadbourne declares:

11 That at all times mentioned herein I was over 18 years of age and a citizen of the United
12 States; that on the 4th day of August, 2010, I mailed, postage prepaid, a copy of the BRIEF OF
13 RESPONDENT to the following:

14 David C. Ponzoha, Clerk
15 Court of Appeals, Division II
16 950 Broadway, Suite 300
Tacoma, WA 98402-4454

Jodi R. Backlund
Manek R. Mistry
BACKLUND & MISTRY
203 Fourth Ave E., Suite 404
Olympia WA 98501

17 Fraser Rotchford
18 c/o Jefferson County Jail
19 81 Elkins Road
Port Hadlock, WA 98339

20 I declare under penalty of perjury under the laws of the State of Washington that the
21 foregoing declaration is true and correct.

22 Dated this 4th day of August, 2010, at Port Townsend, Washington.

23 
24 Janice N. Chadbourne
25 Legal Assistant

26
27
28 DECLARATION OF MAILING
Page 1

JUELANNE DALZELL
PROSECUTING ATTORNEY
FOR JEFFERSON COUNTY
Courthouse -- P.O. Box 1220
Port Townsend, WA 98368
(360) 385-9180

