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STATE OF WASHINGTON  
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NO. 41081-8-II  
Cowlitz Co. Cause NO. 10-8-00130-4

**COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON**

STATE OF WASHINGTON,

Respondent,

v.

A.G.S.,

Appellant.

PM 5-16-11

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**BRIEF OF RESPONDENT**

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**I. ANSWER TO ASSIGNMENTS OF ERROR**

1. The trial court did not err in ordering the redacted release of appellant's Special Sex Offender Dispositional Alternative (SSODA) evaluation to the parents of the minor victims in light of Washington's strong support for crime victims as set forth in Art. 1, Section 35 of the Constitution of the State of Washington, RCW 7.69 *et sequitur*, and ruling in favor of disclosure in Koenig v. Thurston County, 155 Wn.App. 398 (2010).

2. The trial court did not err in entering Findings of Fact 3 and 5. The Conclusion of Law 1 contains a clerical error in that it refers to Finding of Fact 4 but it clearly means to refer to Finding of Fact 5. This error is *de minimus*. The substantive ruling does not demonstrate an abuse of discretion.

**II. ANSWER TO ISSUE PERTAINING TO ASSIGNMENTS OF ERROR**

No reversal is appropriate where the court, acting in compliance with the state constitution and the statutory laws supporting and protecting victims, released a redacted version of the defendant's SSODA evaluation to the victims so that the victims and their parents would understand the underlying basis for the court's sentence and disposition. In ordering the

redaction of parts of the SSODA evaluation, the court harmonized the laws governing the release of information regarding sex offenders to the public and the victims' rights laws.

Appellant utterly fails to address the state constitution and the victim's rights laws in place in making its argument in favor of reversal. Further, it should be noted that the case law appellant cites does not support its position and, in fact, supports respondent's position. The appellant is asking this court to overrule established case precedent and to rule in his favor. This appeal lacks any merit and should be summarily dismissed.

### **III. STATEMENT OF THE CASE**

For purposes of this appeal only, the state accepts appellant's Statement of the Case with the following additions.

A.G.S. (DOB: 06/19/93) was charged with two counts of rape of a child in the first degree and two counts of child molestation in the second degree, to which A.G.S. pled guilty. CP 4-6, 7-16; 3RP 11-12. The victims were his young nieces and nephews and his crimes sharply divided the family. 4RP 7 - 8, 11 - 12, 18. The child victims' parents acted as their representatives in the criminal process. See 4RP 5 - 24.

At A.G.S.'s disposition hearing on June 22, 2010, the court noted that the SSODA evaluations submitted by the State and the Defense were similar and that both concluded that A.G.S. is amenable to treatment. 4RP 30. In noting that the reports did not address the emotional harm to the child victims, the court stated the following:

“One thing that they [the reports] do not discuss, but that I’ve heard here today very eloquently, is how damaging his conduct was to these children. This is – this is the overwhelming consideration to me: There’s been a huge amount of damage done to these children, and I think, quite frankly, we’d give them the wrong message if he was placed on the SSODA disposition. There’s been a huge amount of damage... this conduct, extensive, ongoing is not acceptable.”

4RP 30-31. Although the reports did not address the emotional injury to the child victims, at sentencing the parents of the victims addressed the court extensively on June 22, 2010 and the final disposition of the matter was profoundly impacted by their victim impact statements which are reproduced for the court in 4 RP 5 - 24. Each parent testified to the extreme emotional harm that each of their children is currently working through in daily life. They described the intensive therapy their children had been going through and were continuing to go through to overcome damage resulting from the crimes that were committed against them. The court deviated from the agreed sentence and declined a SSODA disposition, sentencing the defendant to the maximum standard range of

53 to 76 weeks. 4RP 31. The court set presentation of the Order on Adjudication and Disposition to June 29, 2010. 4RP 32.

On June 29, 2010 at the presentation of the order, the state moved for an order to allow it to release the defendant's SSODA evaluation to the parents of the child victims. 5 RP 3. In its argument, the state explained that the victims' parents had requested this evaluation and that the state believed that it needed an order from the court to release it. 5RP 4. The state argued that the SSODA evaluation would assist in the victims' and their families' therapy. 5RP 7. The court recognized that there was a balancing of the laws:

The considerations – again, it's a balancing. Families of the victims have a – seems to me, a right to some information about the Defendant, the Defendant's evaluation, the information on which the decisions were made. So I think they have a right to some information.

\* \* \*

The balancing is, there may be some parts of the report that they have no need or right to, and that would not be helpful, and may be harmful.

So, my initial inclination is to go through the report and try and make a determination about which things might rightfully be given to the victims, the families of the victims, and which things out [*sic*] not to be....

5RP 5-6.

Defense counsel then argued that the state had already provided its own SSODA evaluation of the defendant to the victims and their parents. 5 RP 6. The court pointed out that the two evaluations were not “substantially different” and that they both came to the same conclusion that the defendant was “amenable to treatment.” 4 RP 28, 30 5 RP 6. The court ordered defense counsel to redact the sections of the SSODA evaluation which were dissimilar to the state’s SSODA evaluation of the defendant and which defense counsel would consider inappropriate and set a follow-up hearing date on July 20, 2010. 5 RP 7-8.

On July 20, 2010, the Court ordered that the following sections of the defendant’s SSODA evaluation could be released to the parents of the child victims: Page 1-6, down to the section titled “Sexual History” but not including that section; the section “Millon Clinical Inventory” on Page 8; and Page 10, starting with the “Polygraph Examination,” to the end of the report. 6 RP 6. The court clarified:

“The – the issue on which I’m deciding this is, essentially, that this is the administration of justice; that it’s supposed to be done openly; and that the evaluation was a matter I considered in making my Disposition Order; and that the family certainly has a right to understand what was considered.

And the part that has been – small part that has been excluded, essentially, does not relate to the particular offense and is not necessary for the family to understand how the decision was made that was made here.

6 RP 8-9. On August 10, 2010 the court entered the following Findings of Fact and Conclusions of Law On Victim's Motion For Release Of Records:

**Findings of Fact:**

1. The victims' parents have requested a copy of the Respondent's psycho-sexual SSODA evaluation.
2. The evaluation was used by the Court in determining the Respondent's disposition.
3. The victims' families have a right to know the information considered by the court in making its disposition. This is essential in the open administration of justice.
4. The open and public nature of the courts is central to the administration of justice.
5. The Court finds the following sections of the evaluation were relevant to the Court's disposition decision and related to the particular offense:
  - a. Pages 1-5
  - b. Page 6 down to the section labeled Sexual History
  - c. Page 8 section labeled Millon Adolescent Clinical Inventory
  - d. Page 10, beginning with the section labeled Polygraph Examination, through the end of the report to page 15.
6. The law governing the release of Public Records would not allow the release of the evaluation and the victims do not

have another way of obtaining this information of which the Court is aware.

**Conclusion of Law:**

1. The portions of the evaluation mentioned in Finding of Fact Number 4 [clerical error – should be “5” per the record found at 6 RP 6] shall be released to the victims.

At the presentation of the Findings of Fact and Conclusions of Law on August 10, 2010, the court also granted the defense motion to stay the release of defendant’s SSODA evaluation and had the clerk seal the defendant’s SSODA evaluation in the court file, pending the outcome of this appeal. 7 RP 3.

**IV. ARGUMENT**

**I. STANDARD OF REVIEW**

Appellate review of a conclusion of law that is based upon finding of fact is limited to determining whether the trial court’s findings are supported by substantial evidence, and if so, whether those findings support the conclusion of law. State v. Graffius, 74 Wn.App. 23, 29, 871 P.2d 1115, 1118-19 (1994). “Substantial evidence” needed to support a trial court’s finding of fact on appellate review is evidence sufficient to persuade a fair-minded person of the truth of the declared premise. Id.

Further, unchallenged findings of fact shall be considered verities upon appeal. State v. Gentry, 125 Wn.2d 570, 605, 888 P.2d 1105, 1127 (1995). Appellant has not challenged Findings of Fact numbers one, two, four, or six, so this court may take these as a verities upon appeal.

**II. WASHINGTON'S CRIME VICTIMS' BILL OF RIGHTS AND CONSTITUTIONAL AMENDMENT SUPPORT THE CHILD VICTIMS' RIGHTS TO THE REDACTED SSODA EVALUATION.**

Appellant mistakenly believes that the controlling law herein is RCW 71.09.120 and RCW 4.24.550. However, as the prosecutor explained to the court in moving for an order releasing the defendant's SSODA evaluation, it was seeking the order because the parents of the child victims had requested the report.<sup>1</sup> Thus, the crime victims were seeking the information and the state was simply doing due diligence and assuring proper compliance with the law. The court's decision to order the release of the redacted SSODA evaluation is necessarily based in the law conferring rights to crime victims and harmonizing those laws with RCW 4.24.550.

The State of Washington supports the rights of crime victims to participate in criminal proceedings through its constitution, statutes and

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<sup>1</sup>The parents were participating as representatives of their children, the victims in the

case law. Significantly, in 1989, Washington became one of the thirty-three states that amended their constitutions to confer constitutional rights and standing for crime victims in criminal proceedings.<sup>2</sup> WA Const. Art. 1, section 35 entitled “Victims of Crimes - Rights” states:

Effective law enforcement depends on cooperation from victims of crime. To ensure victims a meaningful role in the criminal justice system and to accord them due dignity and respect, victims of crime are hereby granted the following basic and fundamental rights.

Upon notifying the prosecuting attorney, a victim of a crime charged as a felony shall have the right to be informed of and, *subject to the discretion of the individual presiding over the trial or court proceedings*, attend trial and all other court proceedings the defendant has a right to attend, and to make a statement at sentencing and at any proceeding where the defendant’s release is considered, *subject to the same rules of procedure which govern the defendant’s rights*. In the event the victim is deceased, incompetent, a minor, or otherwise unavailable, the prosecuting attorney may identify a representative to appear to exercise the victims’ rights. This provision shall not constitute a basis for error in favor of a defendant in a criminal proceeding nor a basis for providing a victim or the victim’s representative with court appointed counsel.

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above matter. This is appropriate pursuant to WA Const. Art. 1, section 35.

<sup>2</sup>See, e.g., Ala. Const. Amend. art. I, § 6.01; Alaska Const. art. I, § 24; Ariz. Const. art. II, § 2.1; Cal. Const. art. I, § 28; Colo. Const. art. II, § 16a; Conn. Const. art. I, § 8; Fla. Const. art. I, § 16(b); Idaho Const. art. I, § 22; Ill. Const. art. I, § 8.1; Ind. Const. art. I, § 13(b); Kan. Const. art. 15, § 15; La. Const. art. I, § 25; Md. Const. Decl. of Rights, art. 47; Mich. Const. art. I, § 24; Miss. Const. art. 3, § 26A; Mo. Const. art. I, § 32; Neb. Const. art. I, § 28; Nev. Const. art. I, § 8; N.J. Const. art. I, ¶ 22; N.M. Const. art. II, § 24; N.C. Const. art. I, § 37; Ohio Const. art. I, § 10a; Okla. Const. art. II, § 34; Or. Const. art. I, § 42; R.I. Const. art. I, § 23; S.C. Const. art. I, § 24; Tenn. Const. art. I, § 35; Tex. Const. art. I, § 30; Utah Const. art. I, § 28; Va. Const. art. I, § 8-A; Wash. Const. art. I, § 35; Wis. Const. art. I, § 9m.

[Emphasis added].

The importance of this constitutional amendment cannot be overstated. It confers constitutional rights on crime victims to attend and participate in the criminal proceedings, the only limiting factor being “the discretion” of the trial court judge. It also confers standing on victims within the criminal proceeding, just short of making them a party to the action. It demonstrates the State of Washington’s strong public policy and commitment to victims of crime – that crime victims are to be accorded the same “rules of procedure which govern the defendant’s rights” at any disposition or sentencing hearing. Under the constitution of the State of Washington, the crime victims are entitled to the same disclosure of information as the criminal defendant at the disposition hearing herein. Clearly, the trial court herein understood this in weighing out the factors and ordering the redaction and release of the defendant’s SSODA evaluation.

Importantly, the judge is given great latitude to weigh in favor of crime victims in the criminal proceedings as it is left to the judge’s “discretion” to decide the scope of the victims’ involvement and participation and enforce the rules of the hearing.

Further, the Washington legislature enacted a statute conferring additional rights to crime victims. See RCW 7.69 *et seq.*

...[T]he legislature declares its intent, in this chapter, to grant to the victims of crime and the survivors of such victims a *significant role* in the criminal justice system. The legislature further intends to ensure that all victims and witnesses of crime are treated with dignity, respect, courtesy, and sensitivity; and that the rights extended in this chapter to victims, survivors of victims, and witnesses of crime are honored and protected by law enforcement agencies, prosecutors, and judges *in a manner no less vigorous than the protections afforded criminal defendants.*

RCW 7.69.010 (2011) [Emphasis added]. The Washington legislature uses strong language, clarifying that it considers the rights of the crime victims to be as important to uphold as a criminal defendant's rights within the criminal justice system.

The legislature specifically provided rights to child victims as well:

Therefore, it is the intent of the legislature by means of this chapter, to insure that all child victims and witnesses of crime are treated with the sensitivity, courtesy, and special care that must be afforded to each child victim of crime and that their rights be protected by law enforcement agencies, prosecutors, and judges in a manner no less vigorous than the protection afforded the adult victim, witness, or criminal defendant.

RCW 7.69A.010 (2011). Thus, child victims are protected to the same extent as adult victims, adult witnesses, and the criminal defendant.

Additionally, courts are to treat them with “special care.”

The rights conferred on child victims are fairly broad, supporting a policy to keep these victims feeling safe and protected, so that they can meaningfully participate in the criminal proceedings, and also to assist in their healing from the emotional impact of the crime:

In addition to the rights of victims and witnesses provided for in RCW 7.69.030, there shall be every reasonable effort made by law enforcement agencies, prosecutors, and judges to assure that child victims and witnesses are afforded the rights enumerated in this section. Except as provided in RCW 7.69A.050 regarding child victims or child witnesses of violent crimes, sex crimes, or child abuse, the enumeration of rights shall not be construed to create substantive rights and duties, and the application of an enumerated right in an individual case is subject to the discretion of the law enforcement agency, prosecutor, or judge. Child victims and witnesses have the following rights, which apply to any criminal court and/or juvenile court proceeding:

(1) To have explained in language easily understood by the child, all legal proceedings and/or police investigations in which the child may be involved.

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(7) To be provided information or appropriate referrals to social service agencies to assist the child and/or the child's family with the emotional impact of the crime, the subsequent investigation, and judicial proceedings in which the child is involved.

RCW 7.69A.030.<sup>3</sup> There is little case law existing regarding the above

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<sup>3</sup> The following are the redacted provisions of RCW 7.69A.030:

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(2) With respect to child victims of sex or violent crimes or child abuse, to have a crime victim advocate from a crime victim/ witness program, or any other support person of the victim's choosing, present at any prosecutorial or defense interviews with the child victim. This subsection applies if practical and if the presence of the crime victim advocate or support person does not cause any unnecessary delay in the investigation or prosecution of the case. The role of the crime victim advocate is to provide emotional support to the child victim and to promote the child's feelings of security and safety.

(3) To be provided, whenever possible, a secure waiting area during court proceedings and to have an advocate or support person remain with the child prior to and during any court proceedings.

(4) To not have the names, addresses, nor photographs of the living child victim or witness disclosed by any law enforcement agency, prosecutor's office, or state agency without the permission of the child victim, child witness, parents, or legal guardians to anyone except another law enforcement agency, prosecutor, defense counsel, or private or governmental agency that provides services to the child victim or witness.

(5) To allow an advocate to make recommendations to the prosecuting attorney about the ability of the child to cooperate with prosecution and the potential effect of the proceedings on the child.

(6) To allow an advocate to provide information to the court concerning the child's ability to understand the nature of the proceedings.

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(8) To allow an advocate to be present in court while the child testifies in order to provide emotional support to the child.

(9) To provide information to the court as to the need for the presence of other supportive persons at the court proceedings while the child testifies in order to promote the child's feelings of security and safety.

(10) To allow law enforcement agencies the opportunity to enlist the assistance of other professional personnel such as child protection services, victim advocates or prosecutorial staff trained in the interviewing of the child victim.

(11) With respect to child victims of violent or sex crimes or child abuse, to

provisions and none of it applicable to the facts herein.

In analyzing the interplay between the Washington constitution's Victims' Rights amendment, the Washington Supreme Court stated that "the victim also now has constitutional rights and these must be harmonized with the defendant's rights." State v. Gentry, 125 Wn.2d 570, 626, 888 P.2d 1105, 1138 (1995). In the case at bar, there is an interplay between the law governing the records relating to the commission of juvenile offenses, RCW 13.50.050, the law governing the release of information about sex offenders, RCW 4.24.550, and the victims' rights laws. Pursuant to RCW 13.50.050(3): "All records other than the official juvenile court file are confidential and may be released only as provided in this section, RCW 13.50.010, RCW 13.40.215, and RCW 4.24.550."<sup>4</sup>

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receive either directly or through the child's parent or guardian if appropriate, at the time of reporting the crime to law enforcement officials, a written statement of the rights of child victims as provided in this chapter. The written statement shall include the name, address, and telephone number of a county or local crime victim/ witness program, if such a crime victim/ witness program exists in the county.

<sup>4</sup>The Court of Appeals has ruled that because chapter 13.50 does not conflict with the Public Records Act (PRA), RCW 42.56 et seq, it supplements the PRA and provides the *exclusive* process for obtaining juvenile justice and care agency records. In re Dependency of K.B., 150 Wn.App. 912, 919-921, 210 P.3d 330, 334 (2009). Thus, if RCW 13.50 exempts disclosure of juvenile records, then they are likely exempt under the PRA.

RCW 13.50.010 sets forth the intent of the chapter to be “accountable for, and responding to the needs of youthful offenders and *their victims...*” [Emphasis added]. Notably, this section includes specific provision for victims:

To effectuate these policies, the legislature declares the following to be equally important purposes of this chapter:

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- (k) Provide opportunities for victim participation in juvenile justice process, including court hearings on juvenile offender matters, and ensure that Article I, section 35 of the Washington State Constitution, the victim bill of rights, is fully observed; and
- (l) Encourage the parents, guardian, or custodian of the juvenile to actively participate in the juvenile justice process.

RCW 13.50.010(2) (2011).<sup>5</sup> Thus, the Juvenile Justice Act of 1977 is in accord with Washington’s Victim Bill of Rights and state constitution.

RCW 4.24.550 specifically provides for release of information to the public at large:

In addition to the disclosure under subsection (5) of this section [concerning creation of a statewide sex offender website], public agencies are authorized to release information to the public regarding sex offenders... when the agency determines that

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<sup>5</sup>This section does not address the release of information. RCW 13.40.215 also does not govern the release of information.

disclosure of the information is relevant and necessary to protect the public and counteract the danger created by the particular offender.

RCW 4.24.550(1). Except for information specifically required on the sex offender website pursuant to RCW 4.24.550(5), this section specifically limits the information that can be disseminated to the public to the sex offender's risk level, addresses, and information to enhance community members individual and collective safety. RCW 4.24.550(2). Only after the sex offender's risk level is assessed and only if he is determined to be risk level I does this section provide for release of information to a victim.

For offenders classified as risk level I... [t]he [local law enforcement] agency may disclose, upon request, relevant, necessary, and accurate information to any victim or witness.

RCW 4.24.550(3) (2011). At the disposition hearing herein, defendant's risk level had not been determined by local law enforcement.

Appellant's argument based upon RCW 4.24.550 assumes that releasing the SSODA evaluation to the crime victims' parents constitutes a release to the "public at large." See Appellants Brief, page 3-4. The appellant fails to distinguish between the special standing conferred to crime victims within the criminal process and the public at large. The State of Washington has conferred special status to crime victims based upon the importance of the victims' role in cooperating and assisting law

enforcement and prosecutorial agencies and in recognition of their particular vulnerability. Additionally, the state has recognized the special needs of crime victims by expressly conferring on victims the right to receive information about their criminal cases and to participate on a limited basis in the criminal proceedings. The underlying premise of appellant's argument is fatally flawed because crime victims play a special role in the criminal process and cannot be summarily equated to the "public at large."

However, assuming that RCW 4.24.550 is applicable, the trial court properly released the redacted SSODA evaluation because it is relevant and necessary to protect these child victims and their families and to counteract the danger created by the defendant herein.

An analysis of the information contained within the SSODA evaluation underscores why the crime victims should have special standing to obtain this information and why the court was correct to release a redacted version of the SSODA evaluation. Much of the SSODA evaluation concerns the crimes that the defendant committed against the child victims. It also concerns information about his history and how that related to the crimes he committed. Appellant seems to be arguing that this information is too sensitive and private to reveal to the victims, as

though they do not already have firsthand knowledge of his criminal acts, and do not already have access to the state's SSODA evaluation which contains similar information. The crux of the issue is that the victims and their families may need this information for their therapy. RCW 7.69A.030(7) specifically provides that child victims are entitled to information to assist them with the emotional impact of the crime.

Further, the judge released portions of the report so that the families would understand the underlying basis of the defendant's disposition.

Pursuant to Washington's broad and liberal crime victims' laws, either reason would be adequate to justify the release of the redacted evaluation to the crime victims and their parents.

### **III. THE COURT'S DECISION IN KOENIG V. THURSTON COUNTY PROVIDES GUIDANCE TO THIS COURT.**

Koenig addressed disclosure of a Special Sex Offender Sentencing Alternative (SSOSA) in an adult proceeding. Koenig v. Thurston County, 155 Wn.App. 398, 229 P.3d 910 (Div. II 2010). The issue before this court in Koenig was whether the SSOSA evaluation was a law enforcement investigative record and if so, whether it was essential to effective law enforcement. If the answer to both questions was

affirmative, then the SSOSA evaluation would fall under an exemption under the Public Records Act and would not be disclosed. Id. at 400-401, 413.<sup>6</sup> Interestingly, the court agreed that the SSOSA evaluation was an investigative record compiled by law enforcement, but held in favor of disclosure. Id. at 416. The court found that disclosure under the PRA would not harm effective law enforcement. Id. This court balanced the public's right to full access concerning the workings of government, and particularly in understanding a sentencing decision. Id. at 414. This court placed particular emphasis on the public's interest in protecting their family member from the offender:

Members of the public have a direct interest in disclosure. While SSOSA defendants may not wish for the details of their evaluation to be made public, those details are of great interest to the public at large in understanding the result in the sentencing decision. The same details are of even greater interest to adults who are concerned about protecting their family members from the offender upon release into the community.

Id. The court noted that registration and disclosure assists communities in developing constructive plans to keep their children safe and to provide counseling and education to their children. Id. 415. "Allowing for public disclosure of SSOSA evaluations would enable parents to better prepare

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<sup>6</sup>Notably, because the case at issue here is a juvenile case, it is not the Public Records Act that is controlling but RCW 13.50. *See supra In re Dependency of K.B.*, 150 Wn.App. at 919-921, 210 P.3d at 334 (2009).

and educate their children regarding the release of an offender to their community.” Id. The court did not believe that disclosure would chill the participation of criminal defendants in the SSOSA program due to the compelling incentives to participate. Id. The only limitation the court placed on disclosure was a requirement that any and all victim’s identifying information be redacted. Id. at 417.

The court’s decision in Koenig provides precedent for the court herein to rule in Respondent’s favor. The Koenig court held that disclosure of the SSOSA to the public was appropriate, and herein, we argue only for limited disclosure of the SSODA to the child victims - not the public. Further, Koenig supports the trial court’s reasoning that the victims’ families and victims are entitled to understand the underlying basis of the court’s disposition in this matter. The trial court expressly stated that it was only allowing disclosure of the portions of the SSODA upon which it relied in entering the disposition in this matter.

**IV. APPELLANT ARGUES THAT THIS COURT OVERTURN KOENIG BASED ON EARLIER CASE LAW THAT ADDRESSES ENTIRELY DIFFERENT LEGAL ISSUES.**

Appellant asks this court to reconsider Koenig v. Thurston County, 155 Wn.App. 398, 229 P.3d 910 (Div. II 2010) in light of State v. Ward,

123 Wn.2d 488, 869 P.2d 1062 (1994) and Russell v. Gregoire, 124 F.3d 1079 (9<sup>th</sup> Cir. 1997). However, State v. Ward addresses whether the sex offender registration requirement under RCW 9A.44.130 - .140 constitutes violations of the state and U.S. Constitutions as an *ex post facto* law, equal protection violation, and violation of due process. 123 Wn.2d at 492, 869 P.2d at 1064. The Ward court held that the registration requirements of sex offenders are constitutional. See Ward, 123 Wn.2d at 503, 510-11, and 515. This holding has no application to the case at bar or Koenig as it does not address any issue having to do with disclosure of a SSODA evaluation or in particular disclosure to victims. Appellant cites this case for the proposition that only under “limited circumstances” should information regarding sex offenders be released to the “general public.” See Page 4 of Appellant’s Brief. The state takes issue with applying dicta to overrule current case precedent, dicta concerning totally unrelated statutory provisions, and dicta that only addresses disclosure to the “general public” as crime victims have special standing.

Similarly, Russell v. Gregoire also addresses a constitutional challenge to the sex offender registration requirement and holds that sex offenders have no constitutional right to privacy with regard to the information in the registration, and that the registration requirements do

not violate the Ex Post Facto Clause of the U.S. Constitution. Russell v. Gregoire, 124 F.3d 1093. Obviously, this case is a federal case and therefore, is not controlling on the state level. Again, it concerns wholly different statutes and issues than the case at bar. Interestingly, however, defendant cites these cases as a basis to overrule Koenig, but the holdings of these cases have nothing to do with the issues addressed in Koenig. Further, Ward and Russell come out in favor of disclosure, ruling in essence contrary to appellant's argument herein.<sup>7</sup>

## V. CONCLUSION

In light of Washington's strong public policy in favor of crime victims, the trial court's release of the redacted SSODA evaluation adequately balanced the interests of the defendant in keeping the sensitive and irrelevant information private and the victims' rights to understand the proceedings and to have the information to assist in their therapy and healing. See RCW 7.69A.030(1), RCW 7.69A.030(7), RCW 13.50.010, RCW 4.24.550.

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<sup>7</sup>Appellant also cites QLM v. DSHS, 105 Wn.App. 532, 538-40, 20 P.3d 465 (2001) for the proposition that a juvenile's reasonable reliance on the confidentiality of a Sexually Aggressive Youth evaluation gives him an equitable right to nondisclosure. However, this court did not make any such finding therein.

The SSODA evaluation was not obtained for treatment purposes but to provide information to the judge in aid of determining what constitutes a proper disposition of the defendant's criminal matter. As such it is a law investigation document, not a treatment record, and not subject to a privilege.

The court properly allowed disclosure of the SSODA evaluation to the child victims and their parents, redacting those portions which it did not consider in the sentencing disposition of the matter. The state respectfully requests this court to affirm the trial court's ruling granting the state permission to disseminate a copy of the redacted SSODA evaluations to the requesting parents.

Respectively submitted this 13<sup>th</sup> day of May, 2011.

SUSAN I BAUR  
PROSECUTING ATTORNEY

By:

  
SARAH SILBERGER/WSBA#27030  
Attorney for Respondent

COURT OF APPEALS, STATE OF WASHINGTON  
DIVISION II

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STATE OF WASHINGTON, )  
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 Respondent, )  
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 vs. )  
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 Appellant. )  
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NO. 41081-8-II  
Cowlitz County No.  
08-8-00130-4  
  
CERTIFICATE OF  
MAILING

I, Michelle Sasser, certify and declare:

That on the 16<sup>th</sup> day of May, 2011, I deposited in the mails of the United States Postal Service, first class mail, a properly stamped and address envelope, containing Brief of Respondent addressed to the following parties:

Court of Appeals  
950 Broadway, Suite 300  
Tacoma, WA 98402

Valerie Marushige  
Attorney at Law  
23619 55<sup>th</sup> Place South  
Kent, WA 98032

I certify under penalty of perjury pursuant to the laws of the State of Washington that the foregoing is true and correct.

Dated this 16<sup>th</sup> day of May, 2011.

Michelle Sasser  
Michelle Sasser