

92352-3

SUPREME COURT # 45411-4-II

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**FILED**  
OCT 14 2015

THE SUPREME COURT  
IN THE STATE OF WASHINGTON

CLERK OF THE SUPREME COURT  
STATE OF WASHINGTON *OR*

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Belated Discretionary Review RAP 13.4

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APPEAL FROM THE COURT OF APPEALS DIVISION II

COA No. #45411-4-II

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DAN ALLEN PHILLIPS DOC# 785463  
WASHINGTON STATE PENITENTIARY  
1313 N. 13th Avenue  
Walla Walla, Washington 99362



1. telephone to record the taylorred evidence jail house agents  
2. plotted, planted and negotiate and finally record on the phone.  
3. This is a violation of Miranda v. Arizona and the Washington  
4. Privacy Act, RCW 9.93.030(1) & RCW 9.72.050 Rules.

5. The state was able to use this evidence to convict the  
6. Defendant for the severance issue. Op. page 7-8 And 9 through  
7. 18. The defense was not able to argue there theory of the case.  
8. Op. page 10.

9. The panel unreasonable determined that the jury was able  
10. to follow the instruction but never applied the prejudicial  
11. and omitted evidence to reach what the jury had been thinking.

12. The Op. at 13-15 makes the unreasonable finding that there  
13. is a conscious of guilt by the defendant but never distinguished  
14. the illegal jail house agents of the police and jail house agents  
15. motive to weigh in so heavy to fabricate a plan to manifest  
16. evidence. The Panel never considered the jail house agents  
17. to "go in" and get information so the jail house agents can  
18. go free on their crime.

19. The possible outcome of the "Jail Agents" to come back  
20. and say "oh we didnt' get any information" and expect to go  
21. free on there own crimes was inprobable.

22. This was not the case were the defendant started talking  
23. to his cell mates about his incident and incriminate himself.  
24. The State's case was weak and the police and prosecution taylorred  
25. and sent in the criminal agents to make a weak case solid.  
Without the JaIL House Agent information there would be no  
conviction. There would be no need to sever the assault case

1. to the solicitation offenses but for the highly motivated  
2. official sanctioned entrapment of the defendant. The defendant  
3. did not wake up in jail and started looking for someone to kill  
4. the victim of the assault or just to find a ear to talk to about  
5. his case. The agents of the police and prosecutor was pulling  
6. the strings when they sent in prisoners with troubles and was  
7. willing to do anything to get out of their own legal troubles

8. " But for saying ,there was a defense counsel and,so it was  
9. legal for admission into the trial,is not well taken.  
10. Counsel's actions or inactions was just following suit of the  
11. state officials and was not a advocate of defendant's.

12. This issue of Ineffective Assistance of Counsel the COA  
13. had the authority to expand the record and order the Evidentiary  
14. Hearing to expand the record. Appellate urges this Court to  
15. go fourward with expanding the record to determine the amount  
16. of prejudice the omissions of counsel had effected the verdict  
17. and to reach whether the counsel's actions or lack of action  
18. was a result of a trial tactic or rather a federal constitutional  
19. violation of defendants right to effective counsel.

20. Appellate asks This Court to accept his belated  
21. Discretionary Review because W.S.P. has been on a lockdown and  
22. unable to go to the law library. Appellate counsel was  
23. ineffective for not fileing his Discretionary Review or  
24. "federalize" his issues under the U.S. Authority & Constitution.  
25.

11. **II. LEGAL ARGUEMENT AND WHY REVIEW SHOULD BE ACCEPTED**

1. RAP 13.4(b) sets forth the considerations governing this Court's  
2. acceptance of review:

3. A petition for review will be accepted by the Supreme Court  
4. only : (1) If the decision of the Court of Appeals is in  
5. conflict with a decision by the Supreme Court; or (2) If  
6. the decision of the Court of Appeals is in conflict with  
7. a decision of another division of the Court of Appeals;  
8. or (3) If a significant question of law under the  
9. Constitution of the State of Washington or of the United  
10. States is involved; or (4) if the petition involves an  
issue of substantial public interest that should be  
determined by The Supreme Court?

11. **III. ISSUES PRESENTED FOR REVIEW**

12. **I. THIS COURT CAN HOLD A HEARING TO EXPAND THE RECORD ON THE**  
13. **APPELLATE'S ISSUE OF INEFFECTIVE ASSISTANCE OF COUNSEL AND**  
14. **APPELLATE'S U.S. AND STATE CONSTITUTIONAL ISSUS..**

15. **II. THE SUPREME COURT SHOULD ACCEPT REVIEW, HOLD TRIAL COUNSEL**  
16. **NEVER HELD THE STATE TO THEIR BURDEN OF PROOF IN LIGHT OF THE**  
17. **SUFFICIENCY OF THE EVIDENCE; FAILING TO ARGUE THE ADMISSION**  
18. **OF THE UNCONSTITUTIONAL RECORDED CONVERSATION TO ESTABLISH IT'S**  
19. **ADMISSIBILITY OF WASHINGTON PRIVACY ACT AND THE U.S. AUTHORITY**  
20. **OF Miranda V. Arizona AND ARTICULATE THE REQUIRED SHOWING OF**  
21. **reliability before admission into evidence. this issues is**  
22. **SUBSTANTIAL PUBLIC INTEREST AND SHOULD BE DETERMINED BY THE**  
23. **SUPREME COURT. RAP 13.4(b)(4); AND SIGNIFICANT QUESTION OF LAW**  
24. **UNDER THE CONSTITUTION OF THE STATE OF WASHINGTON OR THE UNITED**  
25. **STATES IS INVOLVED. RAP 13.4(b)(3).**

26. **III. THE SUPREME COURT SHOULD ACCEPT REVIEW AND HOLD THAT THE**  
27. **SIXTH AMENDMENT ENTITLES AN ACCUSED PERSON TO CROSS-EXAMINE**  
28. **AND CONFRONT. TRIAL COUNSEL WANTED TO INQUIRE ABOUT THE**  
29. **UNDERLYING FACTS AND THE COA MADE A UNREASONABLE APPLICATION**  
30. **OF FACTS-FINDING TRIAL COUNSEL WAS LIMITED TO THIS PURPOSE AND**  
31. **NOT EXTENDED TO IMPEACHMENT PURPOSES.**

32. **THIS IS A SIGNIFICANT QUESTION OF CONSTITUTIONAL LAW THAT**  
33. **IS SUBSTANTIAL PUBLIC INTEREST AND SHOULD BE DETERMINED BY THE**  
34. **SUPREME COURT. RAP 13.4(b) and (4). THIS FINDING IS ALSO IN**  
35. **CONFLICT WITH THIS COURTS AUTHORITY RAP 13.4)(3) and (4).**

1. This Court should accept Belated review because Appellate's  
2. counsel abandoned him without warning he would be left to do  
3. his Discretionary Review combined with the Month long prison  
4. "lock down" because of fights and riots Appellate has cause  
5. to have his petition accepted. Murry v. Carrier, 106 U.S. 478  
6. (1986). Further Appellate has asked his appeal counsel for  
7. the trial record (RP), but counsel want's indigent client to  
8. pay for copys. Could the Court Order the counsel in possession  
9. of trial Transcripts forward appellate a copy?

10. This Court can "perform all acts necessary or appriate  
11. to secure the fair and orderly review of a casw. RAP 7.3 .  
12. The Rules of Appewllate Procedure will be liberally interpreted  
13. to promote justice and facilitate the decision of cases on the  
14. merits RAP 1.2(a).

15. **THIS COURT CAN ISSUE A HEARING**

16. Appellate has made a showing that expantion of the record  
17. on the issues of Ineffective Assistance of trial Counsel and  
18. Ineffective Asistance of counsel on appeal to establish facts  
19. that entitle him to relief for a hearing. State v. McFarland,  
20. 127 Wn.2d 322 (1995). This hearing should extend to Appeal  
21. Counsels failure to forward trial transcripts and "federalize"  
22. appeallate's U.S. Consitutional issues on direct appeal.  
23. Thus abandon—ing appellate at a critical stage of his appeal  
24. proceedings.

25. Appellate asks for a hearing for his federal questions

1. to this Court as argued below.

2. A hearing to determine the federal issues appeal counsel  
3. and trial counsel never preserved under appellate's federal  
4. constitutional circumstances because; (1) The merits of the  
5. factual dispute are not resolved; (2) the factual determination  
6. is not fairly supported by the record as a whole; (3) the fact-  
7. finding procedure employed by the state was not adequate to  
8. afford a full and fair hearing; (4) the material facts were  
9. not adequately developed at the lower court, (5) the trier of  
10. fact did not afford a full and fair fact hearing. Townsend  
11. v. sain, 83 S.Ct. 745 (1963).

12. ISSUE 1.

13. THE SUPREME COURT SHOULD ACCEPT REVIEW, HOLD TRIAL COUNSEL NEVER  
14. HELD THE STATE TO THEIR BURDEN OF PROOF IN LIGHT OF SUFFICIENCY  
15. OF THE EVIDENCE ; FAILING TO ARGUE THE ADMISSION OF THE UN-  
16. CONSTITUTIONAL RECORDED CONVERSATION TO ESTABLISH IT'S  
17. ADMISSIBILITY OF WASHINGTON PRIVACY ACT AND THE U.S. AUTHORITY  
18. OF Miranda v. Arizona AND ARTICULATE THE REQUIRED SHOWING OF  
19. RELIABILITY BEFORE ADMISSION INTO EVIDENCE. THIS ISSUES IS  
20. SUBSTANTIAL PUBLIC INTEREST AND SHOULD BE DETERMINED BY THE  
21. SUPREME COURT. RAP 13.4(b)(4); AND THERE IS A SIGNIFICANT  
22. QUESTION OF LAW UNDER THE CONSTITUTION OF THE STATE OF WASHINGTON  
23. OR THE UNITED STATES IS INVOLVED: OR RAP 13.4(b)(3).

24. The COA panel's op. at page 6 finds that "two of Phillip's  
25. former cell mates testified..." However here the court may  
rely on facts considered in light most favorable to the verdict,

1. though, in order to determine whether Mr. Phillips was denied  
2. effective assistance the COA must consider the whole record,  
3. both the evidence that was admitted, and the evidence that could  
4. have been admitted had the trial counsel's performance been  
5. within the Constitutional Standard of Strickland v. Washington,  
6. 466 U.S. 668, 687-88 (1984). Rompilla v. Beard, 545 U.S. 374  
7. (2005); Wiggins v. Smith, 539 U.S. 510 (2003); Williams (Terry)  
8. v. Taylor, 529 U.S. 362 (2000).

9. Thus, Mr. Phillips summary of the evidence and  
10. Constitutional argument of this case, which includes  
11. contradictory and impeaching evidence, should be the ground  
12. work for this Court's analysis.

13. On the state level in State v. Hag, 166 Wn.App. 221 (2012),  
14. the inmate phone was used and the court held that it was not  
15. meant to elicit a confession. In Mr. Phillip's case the police  
16. officials put there agents to get Mr. Phillips to call on the  
17. phone for the purpose to gain a confession. This is also the  
18. case with the Jail House agents police officials made a deal  
19. with & Taylor a confession to a otherwise weak assault case  
20. against Mr. Phillips. The deal was for the jailhouse agents  
21. to get information on the defendant and they would have there  
22. legal troubles reduced.

23. This was violative of Massiah v. United States, 377 U.S.  
24. 201 (1964) (Defendant made incriminating statements to a fellow  
25. conspirator, who had agreed to work for the government agents

1. had been instructed to engage Massiah in conversation.); also,  
2. United States v. Hearst, 563 F.2d 1331 (9th Cir. 1977)(While  
3. in custody the defendant, communicated with a visitor).  
4. Washington's Privacy Act requires the consent of all participants  
5. before a private conversation may be recorded. RCW 9.73.030(1);  
6. Recordings made in violation of the Privacy Act are inadmissible  
7. in court. RCW 9.73.050.

8. The Washington Constitution, Article I, § 7, Provides Greater  
9. Protection For the Petitioner.

10. Turning to the applicable law, the COA misapplied Strickland  
11. v. Washington, 466 U.S. 668, 687-88 (1984), Holding:

12. Failure to object to objectionable evidence or argument  
13. constitutes ineffective assistance of counsel only where  
14. the comment was of such a character that it resulted in  
15. a substantial deprivation of the accused's right to a fair  
16. trial.

17. The Strickland v. Washington prejudice standard is NOT  
18. whether the trial counsel's actions "substantially deprived"  
19. or "denied" the defendant a fair trial. That standard was  
20. specifically rejected in Williams (Terry) v. Taylor, 529 U.S.  
21. 362 (2000). There the court reiterated that under Strickland  
22. the defendant must only show a reasonable probability of a  
23. different outcome,

24. The COA applied the wrong standard. Never the less the  
25. Prejudice for instance in using the Jail House Agents evidence  
for the assault charge was "highly prejudicial". Without this

1. evidence there would have been no conviction on that charge.

2. The COA at page 10-11 suggested that the evidence against  
3. Mr. Phillips was "overwhelming," and therefore there was no  
4. basing the jury finding of guilt on any one count on the strength  
5. of the other. This conclusion is likewise an unreasonable inter-  
6. pretation of Strickland and its progeny. Williams (Terry)  
7. v. Taylor, 529 U.S. 362 (2000) The court must examine both  
8. the trial testimony and had the omitted renewal of the motion  
9. to sever the solicitation charges from each other and from the  
10. assault charges, there is a reasonable probability of a different  
11. outcome. A "reasonable probability" of a different outcome  
12. does not mean a certainty that the motion to sever would have  
13. been granted, but means that the confidence of the court in  
14. the outcome is undermined.

15. The reading of the facts as applied to severance, sufficiency  
16. of the evidence, ineffective assistance of counsel, the cross-  
17. admissibility and the findings as applied to the Confrontation  
18. Clause because there is a real, credible doubts about the  
19. veracity of essential evidence and the person who created it,  
20. the Appeal Review rules does not require this Court to turn  
21. a blind eye to it. The Eighth Circuit granted relief in Simmons  
22. v. Luebbers, 299 F.3d 929, 937 (8th Cir 2000). There, the court  
23. held that the Missouri Supreme Court's finding that certain  
24. evidence was introduced during trial was an "unreasonable  
25. determination of the facts and evidence presented in the State  
court proceeding."

1.  
2. THE SUPREME COURT SHOULD ACCEPT REVIEW AND HOLD THAT THE SIXTH AMENDMENT  
3. ENTITLES AN ACCUSED PERSON TO CROSS-EXAMINE AND CONFRONT. TRIAL COUNSEL  
4. WANTED TO INQUIRE ABOUT THE UNDERLYING FACTS AND THE COA MADE A UNREASONABLE  
5. APPLICATION OF FACTS-FINDING TRIAL COUNSEL WAS LIMITED TO THIS PURPOSE AND  
6. NOT EXTENDED TO IMPEACHMENT PURPOSES.  
7. THIS IS A SIGNIFICANT QUESTION OF CONSTITUTIONAL LAW THAT IS SUBSTANTIAL  
8. PUBLIC INTEREST AND SHOULD BE DETERMINED BY THE SUPREME COURT. RAP 13.4(b)  
9. and (4). THIS FINDING IS ALSO IN CONFLICT WITH THIS COURT'S AUTHORITY.  
10. RAP 13.4(b)(3) and (4).

11. The Sixth Amendment secures an accused person's right to cross examine adverse witnesses.  
12. Idaho v. Wright, 497 U.S. 805, 614 (1990) U.S. Const. Amend VI; also under the standards of  
13. State v. Foster, 135 Wn.2d 441, 455-56, 957 P.2d 712 (1999); Davis v. Alaska, 415 U.S. 306,  
14. 94 S.Ct. 1105 (1974) The accused person is afforded wide latitude to explore matters that affect  
15. credibility. State v. York, 28 Wn.App. 33 (1960). Where evidence is highly probative, no state  
16. interest can be compelling enough to preclude its introduction. State v. Hudlow, 99 Wn.2d 1,  
17. 16, 659 P.2d 514 (1983).

18. Here, the COA failed to distinguish the issue appeal counsel raised on "Brandon's" reason  
19. to fabricate because he was a possible suspect. (Counsel's brief at page 39).

20. Appellate at trial would have called witnesses about Brandon's prior crime. Like the  
21. evidence used to prejudice defendant's assault & Solicitation charges used, the evidence was  
22. applied unreasonably to the authority.

23. One standard was applied to Brandon and a different one to the defendant.  
24. The defendant has established by not allowing evidence and witness  
25. circumstances that evidence would be damaging to the state.  
The Supreme Court should accept review and hold that the Sixth Amendment  
entitles an accused person to cross-examine about prior similar acts. This  
is a significant question of constitutional law that is also of substantial  
public interest.

1. The COA op. at page 16 & 17 applied the "relevance and  
2. prejudice" standard.

3. The COA correctly identifies the applicable State & Federal  
4. standards contained in the precedent, but applies them  
5. unreasonably to the facts of Appellate's case. This qualifies  
6. this Court's review under decisions involving an unreasonable  
7. applicaion of clearly established law. Williams (Terry) v.  
8. Taylor, 529 U.S. 362, 407-08 (2000).

9. The Supreme court in Williams (Terry) that an incorrect  
10. application of law is not the same as an unreasonable application  
11. of law. The trial court in this present case was a abuse of  
12. the Courts discretion.

13. This did not allow the defendant a complete opportunity  
14. by not allowing a impartial jury violative of its most  
15. important element, the right to have the jury, rather than the  
16. Judge, to reach the requisite finding of guilt. California  
17. v. Tombetta, 467 U.S. 479, 485 (1984). "The Sixth Amendment  
18. and the Due Process Clause of the Fourteenth Amendment require  
19. that criminal defendants be afforded a meaningful opportunity  
20. to present a complete defense."

21. **THE JURY INSTRUCTIONS** The Jury Instruction as applied at COA  
22. op. at page 11 & 12 is violative of Defendant/Appellate's  
23. right as part of the Constitutionally protected right to present  
24. a defense, as in each side in a case is entitled to instructions  
25. embodying it's theory. State v. Benn, 120 Wn.2d 631, 654, 845  
P.2d 289, Cert. denied, 510 U.S. 944 (1993); Homes v. South

1. Carolina, 126 S.Ct. 1727 ( ); A violation of defendant's  
2. rights under the Confrontation Clause is Constitutional error.  
3. Harrington v. California, 395 U.S. 250, 251-52 (1996). The  
4. error had a substantial and injurious effect or influence in  
5. determining of the jury verdict in Dan Phillip's trial.  
6. Brecht v. Abranhamson, 507 U.S. 619, 623 (1993), "When the court  
7. is in grave doubt as to the harmlessness of an error that affects  
8. substantial rights it should grant relief. O'Neal V. McAninch,  
9. 513 U.S. 423 445, (1985).

10. Appellate's Counsel never objected to the issuance of a  
11. warrant based on what the police officials knew was false.  
12. Then sent to Mr. Phillips cell agents the obtained  
13. unconstitutional evidence that was not objected to based in  
14. part of the reasons appelleate argues above. It can be said  
15. the police did not have a valid or expired warrant. It can  
16. be said that counsel never objected or renewed the motion to  
17. sever. It can be said the evidence was "taylored" against the  
18. defendant. These things are important for the Court to consider  
19. upon accepting review.

20. Taking away the untrust-worthy testimony of the Jail-house  
21. Agents of the police, and the confronting evidence of Brandon,  
22. the illegal recordings and prejudice it entwined. It would  
23. come down to the word of Brandon & Phillips on who assaulted  
24. Ms. Contrano.

25. Defense counsel was paid by Dan Phillips \$101,000.00 worth  
of property to defend him. Counsel "Clipped" Mr. Phillips and

1. not only sold his property for less than market value, counsel  
2. never provided the effective assistance. But he did keep over  
3. the amount for his services. Mr. Phillips trusted his counsel  
4. and expected to have the trial transcripts or discovery and/or  
5. instructions for the payment. Appeal counsel said if he sent  
6. some money to pay for the transcripts they would have there  
7. assistant copy them for him. This is said not in a complaine-  
8. -ing way but for this Court to over look the problem Appellate  
9. is having in presenting his issues in light of the record.

10. Appellate has been on lockdown and not been able to submit  
11. a timely petition for review because of this prison lockdown  
12. for the last month.

13. **RELIEF IS WARRENTD AS FOLLOWS:**

- 14.
15. 1). Accept Review of the issues and if there is need for a more  
16. defenate statement to clairify the record the Court ORDER in  
17. the Intrests of Justice.  
18. 2). Grant a New Trial;  
19. 3). ORDER a Evidentairy Hearing;  
20. 3). Any other relief in the Interest of Justice require.

21. Dated: September 30, 2015.

22.

23. *PHILLIPS Dan ALLEN*  
24. **DAN ALLAN PHILLIPS # 785463**  
25. **WASHINGTON STATE PENITENTIARY**  
**1313 N. 13th Avenue**  
**Walla Walla, Washington 99362**

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

DAN A. PHILLIPS,

Appellant.

FILED  
COURT OF APPEALS  
DIVISION II

2015 AUG -4 AM 9:57

STATE OF WASHINGTON

No. 45410-4-II

DEPUTY

UNPUBLISHED OPINION

BJORGEN, J. — Dan Phillips appeals his convictions for domestic violence first and fourth degree assault, first degree unlawful possession of a firearm, and two counts of domestic violence criminal solicitation to commit first degree murder. Phillips contends that (1) insufficient evidence supported the domestic violence first degree assault conviction, (2) the trial court abused its discretion when it denied his motion to sever the trials on the two solicitation charges from each other and from the assault charges, (3) his trial counsel rendered ineffective assistance by failing to move during trial to sever the solicitation and assault charges and by failing to object to the admission of some evidence, and (4) the trial court violated his right to confront the witnesses against him by limiting cross-examination of one of the State’s witnesses.

We hold that (1) sufficient evidence supported the challenged assault conviction, (2) Phillips waived any claim of error in the denial of the severance motion, (3) Phillips’s attorney did not render ineffective assistance, and (4) the trial court permissibly limited Phillips’s cross-examination of the State’s witness. We affirm.

## FACTS

Phillips's former girlfriend, Kelly Contraro, arrived at his house in the early hours of August 1, 2012 to find Phillips and his nephew, Brandon Phillips, there.<sup>1</sup> An argument ensued. Eventually, enraged, Phillips went into his room and returned with a rifle, which he "put . . . to [Contraro's] head, . . . heart, . . . stomach, [and] . . . legs" before firing it into the ground just in front of her. Verbatim Report of Proceedings (VRP) (Sept. 5, 2013) at 957.

At trial, Contraro, Phillips, and Brandon offered conflicting testimony as to what happened next, but all agreed that approximately 15 seconds after that first shot, a second shot was fired that inflicted a grievous wound to Contraro's leg. In the aftermath of the second shot, Phillips and Brandon discussed what to do with Contraro, considering dragging her out into the nearby woods and leaving her there.

Phillips eventually decided to take Contraro to the hospital and dragged her to her truck, which he drove into a ditch while backing up. While Phillips was outside the truck, Contraro called her nephew and his girlfriend, telling them both that Phillips had shot her. Contraro also called 911 dispatch, stating that she had been shot and naming Brandon as the shooter. Officers responded and arrested Phillips.

While jailed for the shooting, Phillips discussed the incident with his cell mate, admitting that he had shot Contraro but stating that he was "going with" the story that Brandon had shot her. VRP (Sept. 5, 2013) at 807. Phillips later told his cell mate that he had real property worth "a hundred to 110,000 dollars" and said he would give it to the cell mate for "tak[ing] [Contraro] out." VRP (Sept. 5, 2013) at 809. Phillips clarified this statement by telling the cell mate that

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<sup>1</sup> We refer to the appellant by his surname and Brandon Phillips by his first name for clarity's sake. We intend no disrespect by doing so.

“[h]e wanted [Contraro] dead.” VRP (Sept. 5, 2013) at 809. His cell mate declined the offer and later informed the State about it.

Phillips had similar conversations with another inmate who later became his cell mate. Phillips discussed how he had ended up in jail, admitting that he had shot Contraro in the leg. According to Phillips, the shooting left him “in a bad spot, legally,” but “with [Contraro] out of the picture . . . there would be no witnesses in his case.” VRP (Sept. 5, 2013) at 820. Consequently, Phillips also offered to give this cell mate real property if he would kill Contraro. This cell mate also informed police of Phillips’s offer, and police later arranged to record a call Phillips made to the cell mate where the two confirmed the plan to kill Contraro.

The State ultimately charged Phillips with domestic violence first degree assault, unlawful possession of a firearm, two counts of domestic violence criminal solicitation to commit first degree murder, and domestic violence fourth degree assault.<sup>2</sup>

Before trial, the State moved in limine to exclude the testimony of Brandon’s former girlfriend, whom the defense wanted to testify about a 2009 incident in which Brandon apparently fired a gun either near her or at her and had been convicted of unlawful possession of a firearm. Phillips explained that he intended to call the girlfriend only after cross-examining Brandon about the episode. When the trial court asked how any testimony from Brandon on the matter would be relevant, Phillips essentially argued the testimony would show Brandon’s propensity to commit assault with a firearm. When the trial court then asked, “Well, is propensity evidence admissible for purposes of impeachment,” Phillips’s counsel answered, “No, it’s relevant to my client’s defense.” VRP (Aug. 21, 2013) at 107. The trial court ultimately

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<sup>2</sup> The domestic violence fourth degree assault charge arose from an incident occurring months before the shooting. The facts of the incident are not relevant to this appeal.

granted the State's motion and prohibited cross-examination of Brandon about the incident or evidence about it in Phillips's case-in-chief.

Phillips moved, before trial, to sever the solicitation charges from the assault charges. When the trial court denied this motion, he did not renew it at any point during trial.

At trial, Contraro testified that, just before the shooting, she and Phillips had a fight and that Phillips responded to the fight by retrieving a gun from his room and threatening her with it. Contraro acknowledged that she could not see who had fired the shot that hit her leg, because she curled up into a fetal position and closed her eyes when Phillips began threatening her. She testified, though, that she believed Phillips had been the shooter, because he had the gun just before the shot was fired. She admitted that she initially told 911 dispatch that Brandon was the shooter, but explained this as an irrational desire to protect Phillips, who she had dated for nine years and who she lived with until he assaulted her in the incident giving rise to the domestic violence fourth degree assault conviction currently before us.

Brandon testified that he, Phillips, and Contraro had been the only three people in the house at the time of the shooting. He also testified that Phillips had become angry with Contraro, got his gun, and pointed it at Contraro. Brandon testified that he then turned his head away and heard a shot. Brandon denied that he shot Contraro.

Contraro's nephew and her nephew's girlfriend both testified about the frantic calls they had received from Contraro after the shooting. Both testified that Contraro had told them that Phillips had shot her.

Both of Phillips's former cell mates testified against him. Each testified that, during their incarceration with him, Phillips admitted to shooting Contraro. Both also testified that Phillips had told them that if they killed Contraro, he would give them real property. One former cell

mate stated that Phillips explicitly linked his desire to kill Contraro to a desire to prevent her from testifying against him. Both former cell mates admitted that they had received reduced jail time for their cooperation with the State.

Phillips took the stand in his own defense. He denied shooting Contraro, claiming that Brandon had done so. Phillips offered no testimony about the solicitation charges. The jury convicted Phillips on all counts. He now appeals.

## ANALYSIS

### I. SUFFICIENCY OF THE EVIDENCE

Phillips argues that insufficient evidence supports the domestic violence first degree assault conviction because no witness testified to seeing Phillips shoot Contraro. We disagree, finding the evidence sufficient.

Due process requires the State to prove every element of a charged crime beyond a reasonable doubt before the jury may convict a defendant. *State v. O'Hara*, 167 Wn.2d 91, 105, 217 P.3d 756 (2009) (citing U.S. CONST. amend. XIV; WASH CONST. art. I, § 22; *Jackson v. Virginia*, 443 U.S. 307, 311, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979); *In re Winship*, 397 U.S. 358, 365-66, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970)). When reviewing a claim that the State has failed to introduce sufficient evidence to discharge that burden, we view all the evidence in the light most favorable to the State to determine whether any rational trier of fact could have found the elements of the crime beyond a reasonable doubt. *State v. Kintz*, 169 Wn.2d 537, 551, 238 P.3d 470 (2010). A defendant making a sufficiency challenge admits the truth of the State's evidence and all inferences that may reasonably be drawn therefrom. *Kintz*, 169 Wn.2d at 551. We do not distinguish between circumstantial and direct evidence when determining whether the

State introduced sufficient evidence for a conviction: either suffices to meet the State's burden. *Kintz*, 169 Wn.2d at 551.

Under RCW 9A.36.011, a person commits first degree assault, among other ways, if "he or she, with intent to inflict great bodily harm . . . [a]ssaults another and inflicts great bodily harm." The trial court instructed the jury on only one of the three common law definitions of assault, actual battery, informing jurors that "[a]n assault is an intentional touching or striking or shooting of another person that is harmful or offensive." Clerk's Papers at 306. RCW 10.99.020(5), which defines domestic violence as used in the State's special allegation; provides that first degree assault is a crime of domestic violence "when committed by one family or household member against another." "Family or household members," as relevant here, include "person sixteen years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship" as well as "adult persons who are presently residing together or who have resided together in the past." RCW 10.99.020(3).

The State presented sufficient evidence for a rational fact finder to determine that he had committed domestic violence first degree assault. Two of Phillips's former cell mates testified that he admitted to shooting Contraro. Similarly, Contraro's nephew and his girlfriend testified to speaking with Contraro shortly after the shooting; both testified that Contraro named Phillips as the shooter. Contraro herself testified at trial that she believed Phillips had shot her and that he had done so after threatening her with the rifle. Brandon and Phillips both testified that they and Contraro were the only three in the house at the time of the shooting, and Brandon denied that he had fired the shot that struck her. The gun used in the shooting was Phillips's, and Phillips, Contraro, and Brandon all testified that Phillips had the gun in his hand shortly before

the shooting. The shooting inflicted a grievous injury on Contraro. In addition, Contraro and Phillips had shared a romantic relationship in the past and had lived together before the assault. From this evidence a rational jury could find that the necessary assault, intent, injury, and familial or household relationship existed.

Phillips, nevertheless, argues that without a witness testifying to watching him assault Contraro, the State presented insufficient evidence, citing *State v. Johnson*, 90 Wn. App. 54, 73-74, 950 P.2d 981 (1998). *Johnson*, however, held that eyewitness testimony was sufficient for an assault conviction, which does not imply that it is necessary for one. 90 Wn. App. at 73-74. *Johnson* does not require that we reverse an assault conviction based on sufficiency grounds absent an eyewitness testifying that he or she saw the shooting. See *Johnson*, 90 Wn. App. at 73-74. Indeed, binding precedent requires us to reject that argument. *Kintz*, 169 Wn.2d at 551 (circumstantial evidence sufficient to sustain a conviction in the face of a sufficiency challenge).

## II. SEVERANCE

Phillips next contends that the trial court abused its discretion when it denied his motion to sever the solicitation charges from each other and from the remaining offenses. The State argues that Phillips waived any direct challenge to the trial court's denial of his motion. We agree with the State.

The court rule governing the severance of offenses for trial has specific provisions governing waiver. Where the trial court denies a pretrial motion for severance, the defendant must "renew the motion on the same ground before or at the close of all the evidence" at trial to avoid waiving any challenge to the denial of the motion to sever. CrR 4.4(a)(2); *State v. Henderson*, 48 Wn. App. 543, 551, 740 P.2d 329 (1987); *State v. Ben-Neth*, 34 Wn. App. 600, 606, 663 P.2d 156 (1983).

Phillips made a pretrial motion for severance that the trial court denied. He did not renew his motion at trial either before or at the close of evidence. He thus waived any claim of error related to the denial of his motion for severance. CrR 4.4(a)(2); *Henderson*, 48 Wn. App. at 551; *Ben-Neth*, 34 Wn. App. at 606.

### III. INEFFECTIVE ASSISTANCE OF COUNSEL

Phillips also contends that his counsel rendered ineffective assistance by (1) failing to move to sever the charges at trial in accordance with CrR 4.4 and (2) failing to object to the admission of the evidence of solicitation for purposes of Phillips's assault trial. Both of these claims fail.

The state and federal constitutions guarantee criminal defendants the right to effective assistance from counsel.<sup>3</sup> *State v. Grier*, 171 Wn.2d 17, 32, 246 P.3d 1260 (2011), *cert. denied*, 135 S. Ct. 153 (2014). Prevailing on an ineffective assistance claim requires the defendant to show two elements. *Grier*, 171 Wn.2d at 32-33 (quoting *State v. Thomas*, 109 Wn.2d 222, 225-26, 743 P.2d 816 (1987) (quoting *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984))).

First, the defendant must show that his or her counsel performed deficiently. *Grier*, 171 Wn.2d at 32-33 (quoting *Thomas*, 109 Wn.2d at 225-26). To do so, the defendant must establish that counsel's performance fell below objective standards of reasonableness. *Grier*, 171 Wn.2d at 33 (quoting *Thomas*, 109 Wn.2d at 225-26). Our review is deferential to trial counsel's choices, and we strongly presume counsel performed reasonably. *Grier*, 171 Wn.2d at 33 (quoting *State v. Kyлло*, 166 Wn.2d 856, 862, 215 P.3d 177 (2009)).

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<sup>3</sup> The due process clause of the Fourteenth Amendment to the United States Constitution renders the Sixth Amendment's guarantee of the right to counsel applicable to state criminal proceedings. *Gideon v. Wainwright*, 372 U.S. 335, 342, 83 S. Ct. 792, 9 L. Ed. 2d 799 (1963).

Second, the defendant must show that counsel's deficient performance prejudiced him or her. *Grier*, 171 Wn.2d at 32-33 (quoting *Strickland*, 466 U.S. at 691). This requires the defendant to "establish that 'there is a reasonable probability that, but for counsel's deficient performance, the outcome of the proceedings would have been different.'" *Grier*, 171 Wn.2d at 34 (quoting *Kyllo*, 166 Wn.2d at 862). Where the defendant claims that counsel performed deficiently by failing to make a motion, the defendant, to show prejudice, must show that the trial court would probably have granted the motion, *State v. McFarland*, 127 Wn.2d 322, 337 n.4, 899 P.2d 1251 (1995), and that had the motion been granted, the jury likely would have found him or her not guilty beyond a reasonable doubt. *State v. Sutherby*, 165 Wn.2d 870, 884, 204 P.3d 916 (2009).

A. Severance<sup>4</sup>

Phillips first argues that his attorney rendered ineffective assistance by failing to renew the motion to sever the solicitation charges from each other and from the assault charges at trial. Assuming that counsel performed deficiently, Phillips's claim fails because he cannot show that the trial court would probably have granted the motion. Consequently, he cannot make the necessary showing of prejudice.

Washington law "disfavors separate trials," *State v. McDaniel*, 155 Wn. App. 829, 860, 230 P.3d 245 (2010), based on concerns about judicial economy. *See State v. Bryant*, 89 Wn. App. 857, 864, 950 P.2d 1004 (1998). However, severance is appropriate where "there is a risk that the jury will use the evidence of one crime to infer the defendant's guilt for another crime or

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<sup>4</sup> Although a failure to renew a motion for severance at trial waives any claim of error in the denial of a pretrial motion for severance, defendants may raise the issue through an ineffective assistance of counsel claim. *State v. McDaniel*, 155 Wn. App. 829, 859, 230 P.3d 245 (2010).

to infer a general criminal disposition.” *Sutherby*, 165 Wn.2d at 883. Accordingly, CrR 4.4(b) provides that the trial court “shall grant a severance of offenses whenever . . . the court determines that severance will promote a fair determination of the defendant’s guilt or innocence of each offense.”

To determine whether severance is warranted, courts consider four factors:

“(1) the strength of the State’s evidence on each count; (2) the clarity of defenses as to each count; (3) court instructions to the jury to consider each count separately; and (4) the admissibility of evidence of the other charges even if not joined for trial.”

*Sutherby*, 165 Wn.2d at 884-85 (quoting *State v. Russell*, 125 Wn.2d 24, 63, 882 P.2d 747 (1994)).

i. Strength of the State’s Evidence on Each Count

The first factor requires us to evaluate the strength of the State’s case for each charge. Where the State presents “strong [evidence] on each count, there is no necessity for the jury to base its finding of guilt on any one count on the strength of the evidence of another.” *State v. Bythrow*, 114 Wn.2d 713, 721-22, 790 P.2d 154 (1990).

Phillips contends that the evidence adduced by the State was of differing quality for the assault and solicitation charges because no one saw him fire the shot that struck Contraro, but both cell mates testified to witnessing him offer property to kill Contraro. We disagree. Brandon testified that he did not fire the shot that struck Contraro. Contraro testified that she believed Phillips had shot her and that he was in possession of the firearm just before the shooting. Phillips and Brandon also testified that they were the only two in the house with Contraro at the time she was shot. Both of Phillips’s former cell mates testified that Phillips admitted to shooting Contraro. The jury’s verdict on the assault charge came down to whether it believed Brandon, Contraro, and Phillips’s former cell mates, just as its verdicts on the

solicitation charges came down to whether it believed the former cell mates. The strength of the State's case was similar for each of the charges. This factor does not weigh in Phillips's favor.

ii. Clarity of the Defenses

The second factor concerns the possibility that failure to sever charges will force defendants to present antagonistic defenses. The defendant bears the burden of showing "specific prejudice" from any possible antagonistic defenses. *State v. Grisby*, 97 Wn.2d 493, 507, 647 P.2d 6 (1982). The likelihood of prejudice is "very small" where the defendant offers identical defenses on each charge. *Russell*, 125 Wn.2d at 64.

Phillips contends that he was prejudiced because he defended against the assault charge on self-defense grounds, but against the solicitation charges on denial grounds. The record does not bear out this claim. Phillips defended against the assault charge at trial by denying that he had shot Contraro. He defended against the solicitation charges by impeaching the State's witnesses, implying with questions that they had fabricated their testimony in order to bargain for reduced sentences. That amounts to a defense of denial. *See State v. Hernandez*, 58 Wn. App. 793, 799, 794 P.2d 1327 (1990), *overruled on other grounds by State v. Kjorsvik*, 117 Wn.2d 93, 812 P.2d 86 (1991). Phillips's defenses were clear and consistent. There was little, if any, possible prejudice to Phillips related to the presentation of his defenses. This factor weighs against severance.

iii. Jury Instructions

The third factor examines the trial court's jury instructions. Here, the trial court instructed the jury that it "must decide each count separately" and that its "verdict on one count should not control [its] verdict on any other count." Clerk's Papers at 302. We presume that jurors follow such instructions, *State v. Swan*, 114 Wn.2d 613, 661-62, 790 P.2d 610 (1990),

meaning that this factor weighs against severance unless the defendant overcomes that presumption. Given that presumption, this factor weighs against severance. *See McDaniel*, 155 Wn. App. at 861.

Phillips argues that we should disregard the presumption that jurors follow instructions, citing *Sutherby*, 165 Wn.2d at 884, and *State v. Harris*, 36 Wn. App. 746, 750, 677 P.2d 202 (1984). These cases, however, were sex offense cases, and both recognized that the unique nature of that type of offense could often lead jurors to disregard the trial court's instructions. *Sutherby*, 165 Wn.2d at 884, 886-87; *Harris*, 36 Wn. App. at 752 (quoting *State v. Saltarelli*, 98 Wn.2d 358, 364, 655 P.2d 697 (1982)). Phillips was not charged with a sex offense, and he makes no argument why the charges made against him were so inflammatory that we should treat them in a manner similar to the offenses at issue in *Sutherby* and *Harris*. His argument fails.

iv. Cross-admissibility

The final factor looks to whether the evidence to support one charge was admissible on the others. There is no prejudice to the defendant in trying offenses together where the State could admit the evidence in each of the separate trials. *State v. Smith*, 74 Wn.2d 744, 756, 446 P.2d 571 (1968), *vacated in part by Smith v. Washington*, 408 U.S. 934, 92 S. Ct. 2852, 33 L. Ed. 2d 747 (1972).

Several rules are relevant to the admissibility of the evidence involved here. ER 402 provides that “[e]vidence which is not relevant is not admissible.”<sup>5</sup> ER 403 provides that the

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<sup>5</sup> Relevant evidence is defined by ER 401, which provides that evidence is relevant if it has “any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.”

trial court may exclude even relevant evidence “if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury” or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. Finally, ER 404(b) forbids the admission of evidence to show a person’s propensity to act a certain way to urge a verdict based on that propensity.<sup>6</sup> However, ER 404(b) provides that evidence “may be admissible for other purposes, such as [to show] proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.” The list of permissible uses for evidence in ER 404(b) is not exclusive; evidence is admissible under the rule if it “serves a legitimate purpose, is relevant to prove an element of the crime charged, and, on balance, the probative value of the evidence outweighs its prejudicial effect.” *State v. DeVries*, 149 Wn.2d 842, 848, 72 P.3d 748 (2003).

Evidence of the solicitation offenses would have been cross-admissible in a separate trial for the assault charges. Evidence that a defendant has attempted to prevent a witness from testifying is relevant and probative because it shows consciousness of guilt. *State v. Kosanke*, 23 Wn.2d 211, 215, 160 P.2d 541 (1945). Accordingly, courts have found that ER 401, ER 403, and ER 404(b) do not require exclusion of such evidence.<sup>7</sup> *State v. McGhee*, 57 Wn. App. 457, 459-62, 788 P.2d 603 (1990).

Phillips argues that evidence of the solicitation offenses was not admissible in the assault trials because his intent to kill Contraro was irrelevant to his state of mind at the time of the

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<sup>6</sup> ER 404(b) provides, in relevant part, that “[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith.”

<sup>7</sup> ER 404(b) encompasses the relevance concepts found in ER 401 and ER 402 as well as the balancing of the probative value of evidence against its prejudicial effect found in ER 403. *DeVries*, 149 Wn.2d at 848.

assault, overly prejudicial, and intended to show his propensity to commit criminal offenses. However, the State was not offering the evidence to show his state of mind at the time of the assault: it offered the evidence to show his consciousness of guilt after the fact. It was relevant and admissible for that purpose. *Konsanke*, 23 Wn.2d at 215. Further, the fact that the evidence was adverse to Phillips does not make it unfairly prejudicial, *State v. Gould*, 58 Wn. App. 175, 183, 791 P.2d 569 (1990), and ER 403 did not require its exclusion. ER 403 requires that the unfairly prejudicial effect of evidence outweigh its probative value before the trial court excludes it. As noted above, this evidence was probative in that it showed Phillips's consciousness of guilt. *McGhee*, 57 Wn. App. at 459. With regard to Phillips's ER 404(b) claim, the State did not introduce the evidence to show that Phillips had a propensity to commit criminal acts. Again, it sought to introduce it for the legitimate purpose of showing Phillips's consciousness of guilt. Neither ER 403 nor ER 404(b) required exclusion of the solicitation evidence. *McGhee*, 57 Wn. App. at 460-62.

In addition, evidence of each solicitation would have been cross-admissible with regard to the other solicitation offense. Evidence that a “[d]efendant committed markedly similar acts of misconduct against similar victims under similar circumstances” is admissible to show a common scheme or plan. *State v. Lough*, 125 Wn.2d 847, 852, 889 P.2d 487 (1995). Here Phillips made the same offer, to kill Contraro in exchange for real property, to two separate cell mates. He thus committed two markedly similar acts of misconduct against the same victim under markedly similar circumstances. Under this authority the evidence of each would be cross-admissible in a trial for the other to show a common scheme or plan.

Phillips contends, though, that under *Harris*, 36 Wn. App. at 751-52, evidence of one solicitation was not cross-admissible with regard to the other under the common scheme or plan

exception to ER 404(b). *Harris* applied a restrictive version of the common scheme or plan exception to ER 404(b) incompatible with the Supreme Court's later explanation of the exception in *Lough*. Compare *Harris*, 36 Wn. App. at 751-52 with *Lough*, 125 Wn.2d at 852-61. Evidence of each solicitation offense was admissible in the trial for the other solicitation offense under the holding in *Lough*, and we are bound by that holding.

v. Balancing the Severance Factors

Balancing the factors used to determine the propriety of severance weighs plainly against it. Phillips has therefore failed to show that the trial court would probably have granted the motion to sever if he had renewed it. With that, he has failed to make the showing of prejudice necessary for an ineffective assistance claim. See *McFarland*, 127 Wn.2d at 337 n.4.

B. Failure to Object

Phillips also argues that counsel was ineffective for failing to object to the admission of evidence of the two solicitation offenses for purposes of adjudicating the assault charge and by failing to object to the admission of evidence about each solicitation offense for purposes of adjudicating the charge for the other. We disagree, because Phillips cannot show prejudice.

As discussed above in the severance context, the evidence that Phillips claims his counsel should have objected to was admissible. The trial court, therefore, would have denied any objection, and Phillips cannot show prejudice. *McFarland*, 127 Wn.2d at 337 n.4.

IV. CONFRONTATION CLAUSE

Finally, Phillips contends that the trial court abridged his right to confront witnesses against him by preventing him from cross-examining Brandon about a conviction for unlawful

possession of a firearm. We disagree, because the evidence Phillips wished to present was inadmissible and unduly prejudicial propensity evidence that the trial court properly excluded.<sup>8</sup>

Both the state and federal constitutions guarantee criminal defendants the right to confront witnesses against them.<sup>9,10</sup> U.S. CONST. amend. VI; WASH. CONST. art. I, § 22. “[A] primary interest secured by [the confrontation clause] is the right of cross-examination.” *Davis v. Alaska*, 415 U.S. 308, 315, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974) (quoting *Douglas v. Alabama*, 380 U.S. 415, 418, 85 S. Ct. 1074, 13 L. Ed. 2d 934 (1965)). The right to cross-examine witnesses has historically included the right to discredit them through impeachment with, among other things, evidence of prior criminal convictions. *Davis*, 415 U.S. at 316.

ER 611(b) provides the trial court with the discretion to limit the scope of cross-examination. *State v. Darden*, 145 Wn.2d 612, 620-21, 41 P.3d 1189 (2002). A trial court abuses its discretion when it exercises that discretion in a manifestly unreasonable manner or based on untenable grounds or for untenable reasons. *State v. Sisouvanh*, 175 Wn.2d 607, 623, 290 P.3d 942 (2012) (quoting *State v. Rohrich*, 149 Wn.2d 647, 654, 71 P.3d 638 (2003)). Impermissibly limiting the scope of cross-examination in violation of the confrontation clause would be an abuse of the trial court’s discretion. *State v. Perez*, 137 Wn. App. 97, 105, 151 P.3d 249 (2007).

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<sup>8</sup> We do not address the State’s waiver argument because we hold that the trial court did not err in limiting Phillips’s cross-examination of Brandon.

<sup>9</sup> Under the due process clause of the Fourteenth Amendment to the United States Constitution, the Sixth Amendment’s confrontation clause applies in state criminal proceedings. *Pointer v. Texas*, 380 U.S. 400, 406, 85 S. Ct. 1065, 13 L. Ed. 2d 923 (1965).

<sup>10</sup> Phillips does not argue that article I, section 22 provides greater protection than the Sixth Amendment. Consequently, we analyze his claim only under the Sixth Amendment. *State v. Gonzalez-Morales*, 91 Wn. App. 420, 424 & n.2, 958 P.2d 339 (1998).

Whether the trial court has impermissibly restricted cross-examination, thereby infringing the defendant's right of confrontation, depends on two factors. The first is the relevance of the evidence. *Darden*, 145 Wn.2d at 621 (citing *State v. Hudlow*, 99 Wn.2d 1, 15, 659 P.2d 514 (1983)). The second is the balance between the defendant's need for relevant and probative information and the State's compelling interest in excluding evidence so prejudicial that it disrupts the "fact-finding process at trial." *Darden*, 145 Wn.2d at 622 (citing *Hudlow*, 99 Wn.2d at 15).

We hold that the trial court did not err by limiting Phillips's ability to cross-examine Brandon. Phillips's counsel made clear that he wanted to inquire, not about the conviction itself, but about the facts underlying the conviction. Counsel further made clear that he wanted to ask about those underlying facts, not for impeachment purposes, but in order to show the jury Brandon's alleged propensity to shoot at other people. In short, counsel wanted the court's leave to ask the jurors to make the impermissible inference that Phillips was not guilty beyond a reasonable doubt because Brandon was the type of person who committed assault with a firearm.

Washington has expressed its compelling interest in preventing jurors from making that sort of inference in the form of ER 404(b).

ER 404(b) reflects the long-standing policy of Anglo-American law to exclude most character evidence because "it is said to weigh too much with the jury and to so overpersuade them. . . . The overriding policy of excluding such evidence, despite its admitted probative value, is the practical experience that its disallowance tends to prevent confusion of issues . . . and undue prejudice."

*State v. Slocum*, 183 Wn. App. 438, 456, 333 P.3d 541 (2014) (alteration in original) (quoting *Michelson v. United States*, 335 U.S. 469, 476, 69 S. Ct. 213, 93 L. Ed. 168 (1948)). Assuming that Phillips wanted to adduce relevant evidence, the State had a compelling interest, given form

in ER 404(b), in keeping propensity evidence from the jury. The trial court recognized this and properly excluded the evidence.

Further, confrontation clause violations are subject to harmless error analysis. *Delaware v. Van Arsdall*, 475 U.S. 673, 684, 106 S. Ct. 1431, 89 L. Ed. 2d 674 (1986). We may affirm any conviction tainted by a confrontation clause violation where the error appears harmless beyond a reasonable doubt. *Van Arsdall*, 475 U.S. at 684. Among the factors relevant to the harmless error analysis in this context are the importance of the witness's testimony in the prosecution's case, whether the witness provided only cumulative testimony, whether other evidence corroborated the witness on material points, the extent of cross-examination permitted, and the strength of the State's case. *Van Arsdall*, 475 U.S. at 684.

Even if we assumed that the trial court erred, the error was harmless. Phillips was the one last seen by Contraro with the gun used to shoot her; he had held the gun to her head, heart, and stomach just before it fired a bullet into her leg. Contraro testified that she believed that Phillips had shot her, and Phillips himself told two different cell mates that he had done so. Further, the jury heard that Phillips had attempted to contract for Contraro's murder at the hands of two different cell mates, and one of them testified that Phillips specified that he wanted her dead to eliminate his legal difficulties. In the face of this overwhelming untainted evidence of Phillips's guilt of assault, any alleged error in restricting Phillips's cross-examination of Brandon was harmless.

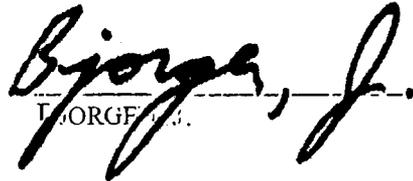
#### CONCLUSION

We affirm Phillips's convictions for domestic violence first degree assault, domestic violence fourth degree assault, unlawful possession of a firearm, and domestic violence criminal

No. 45411-4-II

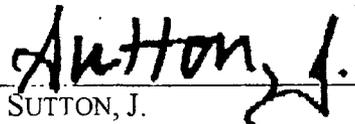
solicitation to commit first degree murder.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

  
\_\_\_\_\_  
GEORGE J.

We concur:

  
\_\_\_\_\_  
JOHANSON, C.J.

  
\_\_\_\_\_  
SUTTON, J.

# Washington State Penitentiary

## Echo Unit Offender Notification

Operational Period 08/23/2015 1300hrs. to 08/24/2015 1000hrs

**Deviations to this plan require the Authorization of the Incident Commander**

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Inmate Workers – No unit workers allowed during this operational period.

Education – No attendance of education classes is authorized during this operational period.

Dog Program – No Dog handlers will be authorized.

Meals – Meals will be served at cell front by staff.

Health Care –

- Pill line - Health Care staff will be escorted down the tier by staff.
- Diabetic services - Will be provided by Health Services three times daily escorted by staff.
- Mental Health - As normal. If an emergency request exists, unit staff will contact MHU.
- Emergency medical needs will be assessed by medical personnel, as required.

All inmate movement will be restrained.

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Showers – No Showers during this operational period.

Telephone Calls – No telephone calls during this period.

Legal phone calls will be requested through the Unit Manager and approved through the Incident Commander

Laundry – No laundry services during this operational period

Recreation – No Recreation during this operational period.

Mail – Mail will be delivered and picked up at cell front.

JPay/KIOSK – No access during this operational period.

Property/Clothing Room – No property/clothing will be issued during this operational period.

Store Order/Delivery – Store will be delivered at cell front at the discretion of the Unit Manager. Store order forms will be picked up at cell front.

Law Library Access – Offenders with verifiable deadlines, not already on Priority Scheduling, as per 590.500 may request priority scheduling by submitting form DOC 02-247 to the Law Librarian. Clearance to the Legal Library will be determined on a case-by-case basis by the Law Librarian in coordination with the Incident Commander.

Video Visiting/Visiting – No video visiting during this operational period.

Classification – Counselors will continue to initiate classification reviews as required during this operational period. No callouts will take place during this operational period.

Religious Service - Facility Chaplain will complete a walk through of the unit on a daily basis. No religious call outs are authorized during this operational period. Ramadan prayer will be conducted in cells.

Hearings/Ad Seg and Disciplinary – No Hearings during this operational period. Inmate Workers – No unit workers allowed during this operational period.

Incident Commander: Lt. S. Taylor #7162

Date: 8/23/2015

*Lt. S. Taylor #7162*

# Washington State Penitentiary

## (Delta and Echo Units) Offender Notification

Operational Period (8-24-15 @ 2100pm to 8-26-15 @ 0900 am)

**Deviations to this plan require the Authorization of the Incident Commander**

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Inmate Workers – No unit workers allowed during this operational period.

Education – No attendance of education classes is authorized during this operational period.

Dog Program – Dog handlers will be authorized at the discretion of the Shift Commander/Unit Manager.

Meals – Meals will be served at cell front by staff.

Health Care – All inmate movement will be restrained.

- Pill line - Health Care staff will be escorted down the tier by staff.
- Diabetic services - Will be provided by Health Services three times daily escorted by staff.
- Mental Health - As normal. If an emergency request exists, unit staff will contact MHU.
- Emergency medical needs will be assessed by medical personnel, as required.

Showers – No Showers during this operational period.

Telephone Calls – No telephone calls during this period. Legal phone calls will be requested through the Unit Manager and approved through the Incident Commander.

Laundry – No laundry services during this operational period

Recreation – No Recreation during this operational period.

Mail – Mail will be delivered and picked up at cell front.

JPAY/KIOSK – No access during this operational period.

Property/Clothing Room – No property/clothing will be issued during this operational period.

Store Order/Delivery – Store will be delivered at cell front at the discretion of the Unit Manager. Store order forms will be picked up at cell front.

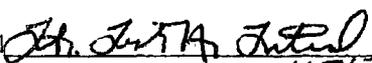
Law Library Access – Offenders with verifiable deadlines, not already on Priority Scheduling, as per 590.500 may request priority scheduling by submitting form DOC 02-247 to the Law Librarian. Clearance to the Legal Library will be determined on a case-by-case basis by the Law Librarian in coordination with the Incident Commander.

Video Visiting/Visiting – No visiting or video visiting during this operational period.

Classification – No callouts will take place during this operational period.

Religious Service - Facility Chaplain will complete a walk-through of the unit on a daily basis. No religious call outs are authorized during this operational period.

Hearings/Ad Seg and Disciplinary – No Hearings during this operational period.

Incident Commander: Lester Literal  Date: 8-24-15  
#7174

# Washington State Penitentiary offender Notification

**Operational Period: 8/26/15 at 0700 thru 8/27/15 at 0700**

## **Deviations to this plan require the Authorization of the Incident Commander**

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**Note from the Superintendent:** At this time, we are continuing to investigate the incident that occurred in Yard 1 on the evening of August 24<sup>th</sup>. Interviews are being conducted in order to ascertain to reasons behind this event. It is important to note that until such time that we get a clear understanding of the causes and any residual issues, Delta and Echo will remain on restricted movement.

Inmate Workers – No unit workers allowed during this operational period.

Education – No attendance of education classes is authorized during this operational period.

Dog Program – Dog handlers will be authorized at the discretion of the Shift Commander/Unit Manager.

Meals – Meals will be served at cell front by staff.

Health Care – All inmate movement will be restrained.

- Pill line - Health Care staff will be escorted down the tier by staff.
- Diabetic services - Will be provided by Health Services three times daily escorted by staff.
- Mental Health - As normal. If an emergency request exists, unit staff will contact MHU.
- Emergency medical needs will be assessed by medical personnel, as required.

Showers – Showers will begin on 8/26/15. Offenders will be restrained going to and from the showers. Leg restraints will remain on while showering. Offenders may take hygiene products to the shower area.

Telephone Calls – Phone calls will be conjunction with showers. Offenders will remain in waist restraints while accessing the phones. Calls are limited to ten minutes.

Laundry – No laundry services during this operational period

Recreation – No Recreation during this operational period.

Mail – Mail will be delivered and picked up at cell front.

JPay/KIOSK – No access during this operational period.

Property/Clothing Room – No property/clothing will be issued during this operational period.

Store Order/Delivery – Store will be delivered at cell front at the discretion of the Unit Manager. Store order forms will be picked up at cell front.

Law Library Access – Offenders with verifiable deadlines, not already on Priority Scheduling, as per 590.500 may request priority scheduling by submitting form DOC 02-247 to the Law Librarian. Clearance to the Legal Library will be determined on a case-by-case basis by the Law Librarian in coordination with the Incident Commander.

Video Visiting/Visiting – No visiting or video visiting during this operational period.

Classification – No callouts will take place during this operational period.

Religious Service - Facility Chaplain will complete a walk-through of the unit on a daily basis. No religious call outs are authorized during this operational period.

Hearings/Ad Seg and Disciplinary – No Hearings during this operational period.

Incident Commander: Brent Caulk



Date: 8-25-15

# Washington State Penitentiary ECHO Unit offender Notification

**Operational Period: 8/27/15 at 0700 thru 8/28/15 at 0700**

**Deviations to this plan require the Authorization of the Incident Commander**

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*Note from the Superintendent: At this time, we are continuing to investigate the incident that occurred in Yard 1 on the evening of August 24<sup>th</sup>. Interviews are being conducted in order to ascertain to reasons behind this event. It is important to note that until such time that we get a clear understanding of the causes and any residual issues, Delta and Echo will remain on restricted movement.*

Inter-facility Transfers- No inter-facility transfers from ECHO Unit during this operational period.

Inmate Workers – No unit workers allowed during this operational period.

Education – No attendance of education classes is authorized during this operational period.

Meals — Meals will be served at cell front by staff.

Health Care —

- Pill line - Health Care staff will be escorted down the tier by staff.
- Diabetic services - Will be provided by Health Services three times daily escorted by staff.
- Mental Health - As normal. If an emergency request exists, unit staff will contact MHU.
- Emergency medical needs will be assessed by medical personnel, as required.

All inmate movement will be restrained.

Showers — Showers will begin on the morning of 8/27/15.

Telephone Calls — Phone calls will be conjunction with showers, 10minute duration.

Legal phone calls - Will be requested through the Unit Manager and approved through the Incident Commander

Unit Inspections/Logs — Staff will report completion to the operations center to be included in the log.

- Chaplains @ a minimum, once every 24 hours. and
- Supervisory staff @ a minimum, once every 24 hours.
- Mental Health staff @ a minimum, once every 24 hours.
- Medical staff @ a minimum, once every 24 hours.

Laundry — No laundry services during this operational period

Recreation – No Recreation during this operational period.

Mail – Mail will be delivered and picked up at cell front.

# Washington State Penitentiary DELTA Unit Offender Notification

Operational Period: 8/28/15 at 0700 thru 8/29/15 at 0700

## Deviations to this plan require the Authorization of the Incident Commander

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**Note from the Superintendent:** At this time, we are continuing to investigate the incident that occurred in Yard 1 on the evening of August 24<sup>th</sup>. Interviews are being conducted in order to ascertain to reasons behind this event. It is important to note that until such time that we get a clear understanding of the causes and any residual issues, Delta and Echo will remain on restricted movement.

Offender Workers – Unit workers allowed as directed by the Unit Sergeant/Unit Manager.

Education – No attendance of education classes is authorized during this operational period.

Meals – Meals will be ran a section at a time

Showers – Showers will be run at the discretion of the Unit Sergeant/Unit Manager.

Cleaning Gear- None during this operational period.

Telephone Calls – Telephone calls in conjunction with Unit Yard rotation.

Legal Phone Calls- Will be requested through the Unit Manager and approved through the Incident Commander.

Laundry – Laundry services as directed by the Unit Sergeant/Unit Manager

Recreation – Starting after lunch, Unit yard will be ran one section at a time for 30 minutes in duration each.

Mail – Mail will be delivered and picked up at cell front.

JPAY/KIOSK – At the discretion of the Unit Sergeant/Unit Manager.

Property/Clothing Rooms – No property/clothing will be issued during this operational period. Property can be picked up/dropped off as needed by Property Room Staff.

Store/Order/Delivery- Store will be delivered at cell front at the discretion of the Unit Manager. Store order forms will be picked up at cell front.

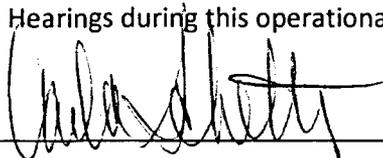
Law Library Access – Offenders with verifiable deadlines, not already on Priority Scheduling, as per 590.500 may request priority scheduling by submitting form DOC 02-247 to the Law Librarian. Clearance to the Legal Library will be determined on a case-by-case basis by the Law Librarian in coordination with the Incident Commander.

Video Visiting/Visiting – Video Visiting will be at the discretion of the Unit Sergeant/Unit Manager. Delta Unit is not scheduled for visits during this operational period.

Religious Service - Facility Chaplain will complete a walk-through of the unit on a daily basis. No religious call outs are authorized during this operational period.

Hearings/Ad Seg and Disciplinary – No Hearings during this operational period.

Incident Commander: Carla Schettler



Date: 08-27-15

# Washington State Penitentiary ECHO Unit offender Notification

Operational Period: 8/28/15 at 0700 thru 8/29/15 at 0700

## Deviations to this plan require the Authorization of the Incident Commander

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*Note from the Superintendent: At this time, we are continuing to investigate the incident that occurred in Yard 1 on the evening of August 24<sup>th</sup>. Interviews are being conducted in order to ascertain to reasons behind this event. It is important to note that until such time that we get a clear understanding of the causes and any residual issues, Delta and Echo will remain on restricted movement.*

Offender Workers – Unit workers allowed as directed by the Unit Sergeant/Unit Manager; there will be no more than 6 offenders out at a time

Education – No attendance of education classes is authorized during this operational period.

Meals – Meals will be ran half a section at a time

Showers – No showers during this operational period

Cleaning Gear- As normal and at the direction of the Unit Sergeant/Unit Manager

Telephone Calls – Telephone calls will be allowed at the discretion of the Unit Sergeant/Unit Manager, for 10 minutes. Staff will utilize rosters for sign up.

Legal Phone Calls- Will be requested through the Unit Manager and approved through the Incident Commander.

Laundry – Laundry services as directed by the Unit Sergeant/Unit Manager

Recreation – No Recreation during this operational period.

Mail – Mail will be delivered and picked up at cell front.

JPay/KIOSK – Will be allowed at the discretion of the Unit Sergeant/Unit Manager, for 10 minutes. Staff will utilize rosters for sign up.

Property/Clothing Rooms – No property/clothing will be issued during this operational period. Property can be picked up/dropped off as needed by Property Room Staff.

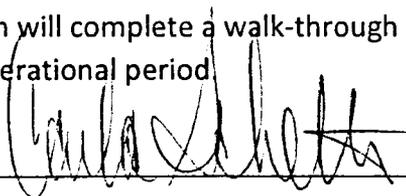
Store/Order/Delivery- Store will be delivered at cell front at the discretion of the Unit Manager. Store order forms will be picked up at cell front.

Law Library Access – Offenders with verifiable deadlines, not already on Priority Scheduling, as per 590.500 may request priority scheduling by submitting form DOC 02-247 to the Law Librarian. Clearance to the Legal Library will be determined on a case-by-case basis by the Law Librarian in coordination with the Incident Commander.

Video Visiting/Visiting – No Video Visiting will be authorized during this operational period. Echo Unit is not scheduled for visits during this operational period.

Religious Service - Facility Chaplain will complete a walk-through of the unit on a daily basis. No religious call outs are authorized during this operational period.

Incident Commander: Carla Schettler



Date: 08-27-15

# Washington State Penitentiary ECHO Unit offender Notification

**Operational Period: 8/30/15 at 0700 thru 8/31/15 at 0700**

## ***Deviations to this plan require the Authorization of the Incident Commander***

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**Note from the Superintendent:** *At this time, we are continuing to investigate the incident that occurred in Yard 1 on the evening of August 24<sup>th</sup>. Interviews are being conducted in order to ascertain to reasons behind this event. It is important to note that until such time that we get a clear understanding of the causes and any residual issues, Delta and Echo will remain on restricted movement.*

Offender Workers – Unit workers up to eight (8) offender will be allowed as directed by the Unit Sergeant/Unit Manager.

Education – No attendance of education classes is authorized during this operational period.

Meals — Normal. The Unit Sgt. has the discretion to determine the pace of movement.

Health Care —

- Pill line – As Normal.
- Diabetic services – As Normal
- Mental Health - As normal. If an emergency request exists, unit staff will contact MHU.
- Emergency medical needs will be assessed by medical personnel, as required.

Showers — Showers will be run as normal with the Sgt. having the discretion to determine the pace.

Cleaning Gear- As normal and at the direction of the Unit Sergeant/Shift Lt.

Telephone Calls — Telephones are authorized in conjunction with unit yards.

Legal Phone Calls- Will be requested through the Shift Lt.

Laundry — Laundry services as directed by the Unit Sergeant/Shift Lt.

Recreation – Offenders will be allowed to recreate in the unit yard for ½ hour at a time by section beginning after lunch.

Mail – As Normal.

JPay/KIOSK – As Normal.

Property/Clothing Rooms – Staff may issue property as needed

Store/Order/Delivery- As normal.

Law Library Access – Offenders with verifiable deadlines, not already on Priority Scheduling, as per 590.500 may request priority scheduling by submitting form DOC 02-247 to the Law Librarian. Clearance to the Legal Library will be determined on a case-by-case basis by the Law Librarian in coordination with the Incident Commander.

Video Visiting/Visiting – Video visiting may occur during this operational period.

Classification – None scheduled.

Religious Service - Facility Chaplain will complete a walk-through of the unit on a daily basis. No religious call outs are authorized during this operational period.

Hearings/Ad Seg and Disciplinary – No Hearings during this operational period.

Incident Commander: Steve Barker Date: 08-29-15

# Washington State Penitentiary ECHO Unit offender Notification

Operational Period: 8/29/15 at 0700 thru 8/30/15 at 0700

## Deviations to this plan require the Authorization of the Incident Commander

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*Note from the Superintendent: At this time, we are continuing to investigate the incident that occurred in Yard 1 on the evening of August 24<sup>th</sup>. Interviews are being conducted in order to ascertain to reasons behind this event. It is important to note that until such time that we get a clear understanding of the causes and any residual issues, Delta and Echo will remain on restricted movement.*

Offender Workers – Unit workers (up to 8) allowed as directed by the Unit Sergeant/Unit Manager.

Education – No attendance of education classes is authorized during this operational period.

Meals – Normal. The Unit Sgt. has the discretion to determine the pace of movement.

Showers – Showers will be run up to 8 offenders at a time at the discretion of the Unit sergeant..

Cleaning Gear- As normal and at the direction of the Unit Sergeant/Unit Manager

Telephone Calls – Telephones are authorized in conjunction with unit yards.

Legal Phone Calls- Will be requested through the Unit Manager/Shift Lt.

Laundry – Laundry services as directed by the Unit Sergeant/Unit Manager

Recreation – Unit yard by section, 30 minutes at a time in the afternoon and evening (one side of unit in PM, other side in evening). No big yard or gym.

Mail – As Normal.

JPay/KIOSK – As normal at a pace determined by the unit sergeant.

Property/Clothing Rooms – Staff may issue property as needed.

Store/Order/Delivery- As normal.

Law Library Access – Offenders with verifiable deadlines, not already on Priority Scheduling, as per 590.500 may request priority scheduling by submitting form DOC 02-247 to the Law Librarian. Clearance to the Legal Library will be determined on a case-by-case basis by the Law Librarian in coordination with the Incident Commander.

Video Visiting/Visiting – Video visiting may occur as scheduled. No visiting is scheduled.

Religious Service - Facility Chaplain will complete a walk-through of the unit on a daily basis. No religious call outs are authorized during this operational period.

Hearings/Ad Seg and Disciplinary – No Hearings during this operational period.

Incident Commander: Lynn Clark

Date: 08-29-15

# Washington State Penitentiary ECHO Unit Offender Notification

Operational Period: 8/31/15 at 0700 thru 9/1/15 at 0700

## Deviations to this plan require the Authorization of the Incident Commander

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*Note from the Superintendent: At this time, we are continuing to investigate the incident that occurred in Yard 1 on the evening of August 24<sup>th</sup>. Interviews are being conducted in order to ascertain the reasons behind this event. It is important to note that until such time that we get a clear understanding of the causes and any residual issues, Delta and Echo will remain on restricted movement.*

Offender Workers – Unit workers allowed as directed by the Unit Sergeant/Unit Manager.

Education – No attendance of education classes is authorized during this operational period.

Meals – Meals will be run at a pace determined by the Unit Sergeant.

Health Care – As normal.

Showers – Showers will run normal. The Unit Sgt./Unit Manager has the discretion to slow the showers at any time.

Cleaning Gear- As normal.

Telephone Calls – Telephone calls in conjunction with Yard rotation either Unit or Big Yard.

Legal Phone Calls- Will be requested through the Unit Manager.

Laundry – Laundry services as directed by the Unit Sergeant/Unit Manager.

Recreation – No unit yards and gym. Echo Unit big yard will be as follows:

Morning yard East side upper tier yard 1. East side lower tier yard 2.

Afternoon yard West side upper tier yard 1. West side lower tier yard 2.

Mail – As normal.

JPAY/KIOSK – At the discretion of the Unit Sergeant/Unit Manager.

Property/Clothing Rooms – As normal.

Store/Order/Delivery- As normal

Law Library Access – As normal.

Video Visiting/Visiting – No visiting scheduled for this day. Video visiting as normal.

Classification – Counselors will continue to initiate classification reviews as required during this operational period. As approved by Unit Sergeant/Unit Manager.

Religious Service - Chapel services will run as normal.

Incident Commander: Jared Sumerlin



Date: 08-30-15

# Washington State Penitentiary

## (Delta and Echo Units) Offender Notification

Operational Period (8-31-15 @ 2100pm to 9-3-15 @ 0900 am)

### Deviations to this plan require the Authorization of the Incident Commander

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Offender Workers – No unit workers allowed during this operational period.

Education – No attendance of education classes is authorized during this operational period.

Dog Program – No Dog handlers will be authorized.

Meals – Meals will be served at cell front by staff.

Health Care – All inmate movement will be restrained.

- Pill line - Health Care staff will be escorted down the tier by staff.
- Diabetic services - Will be provided by Health Services three times daily escorted by staff.
- Mental Health - As normal. If an emergency request exists, unit staff will contact MHU.
- Emergency medical needs will be assessed by medical personnel, as required.

Showers – No Showers during this operational period.

Telephone Calls – No telephone calls during this period.

Legal phone calls - Will be requested through the Unit Manager and approved through the Incident Commander.

Laundry – No laundry services during this operational period.

Recreation – No Recreation during this operational period.

Mail – Mail will be delivered and picked up at cell front.

JPay/KIOSK – No access during this operational period.

Property/Clothing Room – No property/clothing will be issued during this operational period.

Store Order/Delivery – Store will be delivered at cell front at the discretion of the Unit Manager. Store order forms will be picked up at cell front.

Law Library Access – Offenders with verifiable deadlines, not already on Priority Scheduling, as per 590.500 may request priority scheduling by submitting form DOC 02-247 to the Law Librarian. Clearance to the Legal Library will be determined on a case-by-case basis by the Law Librarian in coordination with the Incident Commander.

Video Visiting/Visiting – No visiting or video visiting during this operational period.

Classification – No callouts will take place during this operational period.

Religious Service - Facility Chaplain will complete a walk-through of the unit on a daily basis. No religious call outs are authorized during this operational period.

Hearings/Ad Seg and Disciplinary – No Hearings during this operational period.

Incident Commander: Lester Literal  Date: 8-31-15

#7174

# Washington State Penitentiary DELTA/ECHO Unit offender Notification

Operational Period: 9/02/15 at 0700 thru 9/03/15 at 0700

**Deviations to this plan require the Authorization of the Incident Commander**

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*Note from the Superintendent: At this time, we are continuing to investigate the incident that occurred in Yard 1 and Yard 2 on the evening of August 31st. It is important to note that until such time that we get a clear understanding of the causes and any residual issues, Delta and Echo will remain on restricted movement.*

**Offender Workers** – No unit workers allowed during this operational period.

**Education** – No attendance of education classes is authorized during this operational period.

**Dog Program**- No Dog Handlers will be authorized.

**Meals** — Meals will be served at cell front by staff.

**Showers** — No Showers during this operational period

**Telephone Calls** — No telephone calls during this period.

**Legal phone calls** - will be requested through the Unit Manager and approved through the Incident Commander

**Laundry** — No laundry services during this operational period

**Recreation** – No Recreation during this operational period.

**Mail** – Mail will be delivered and picked up at cell front.

**JPay/KIOSK** – No access during this operational period.

**Property/Clothing Room** – No property/clothing will be issued during this operational period. Property Strike Team will be in Delta Unit to assist in processing effected Offender's Property.

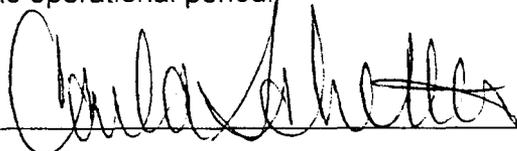
**Store Order/Delivery** – Store will be delivered at cell front at the discretion of the Unit Manager. Store order forms will be picked up at cell front.

**Law Library Access** – Offenders with verifiable deadlines, not already on Priority Scheduling, as per 590.500 may request priority scheduling by submitting form DOC 02-247 to the Law Librarian. Clearance to the Legal Library will be determined on a case-by-case basis by the Law Librarian in coordination with the Incident Commander.

**Video Visiting/Visiting** – No visiting or video visiting during this operational period.

**Religious Service** - Facility Chaplain will complete a walk-through of the unit on a daily basis. No religious call outs are authorized during this operational period.

Incident Commander: Carla Schettler



Date: 09/02/15

# Washington State Penitentiary DELTA/ECHO Unit Offender Notification

**Operational Period:** 9/04/15 at 0700 thru 9/05/15 at 0700

## **Deviations to this plan require the Authorization of the Incident Commander**

*Note from the Superintendent: At this time, we are continuing to investigate the incident that occurred in Yard 1 and Yard 2 on the evening of August 31st. It is important to note that until such time that we get a clear understanding of the causes and any residual issues, Delta and Echo will remain on restricted movement.*

**Offender Workers** – No unit workers allowed during this operational period.

**Education** – No attendance of education classes is authorized during this operational period.

**Meals** — Meals will be served at cell front by staff.

### **Health Care** —

- Pill line - Health Care staff will be escorted down the tier by staff.
- Diabetic services - Will be provided by Health Services three times daily escorted by staff.
- Mental Health - As normal. If an emergency request exists, unit staff will contact MHU.
- Emergency medical needs will be assessed by medical personnel, as required.
- All inmate movement will be restrained.

**Showers** — Offenders will be allowed to shower, no more than 6 offenders at a time. This will be a completion of the cycle started on 9/3/15.

**Telephone Calls** — 10 minute phone calls in restraints following showers.

**Legal phone calls** - will be requested through the Unit Manager and approved through the Incident Commander

**Laundry** — Laundry services will be provided at cell front during this operational period. Staff will ensure that all laundry is secured in the carts.

**Recreation** – No Recreation during this operational period.

**Mail** – Mail will be delivered and picked up at cell front.

**JPay/KIOSK** – No access during this operational period.

**Property/Clothing Room** – No property/clothing will be issued during this operational period. Property Strike Team will be in Delta Unit to assist in processing effected offender's property.

**Store Order/Delivery** – There is no store scheduled.

**Law Library Access** – Offenders with verifiable deadlines, not already on Priority Scheduling, as per 590.500 may request priority scheduling by submitting form DOC 02-247 to the Law Librarian. Clearance to the Legal Library will be determined on a case-by-case basis by the Law Librarian in coordination with the Incident Commander.

**Video Visiting/Visiting** – No visiting or video visiting during this operational period.

**Religious Service** - Facility Chaplain will complete a walk-through of the unit on a daily basis. No religious call outs are authorized during this operational period.

Incident Commander: Carla Schettler



Date: 09/03/15

# Washington State Penitentiary DELTA/ECHO Unit Offender Notification

**Operational Period: 9/05/15 at 0700 thru 9/06/15 at 0700**

***Deviations to this plan require the Authorization of the Incident Commander***

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*Note from the Superintendent: At this time, we are continuing to investigate the incident that occurred in Yard 1 and Yard 2 on the evening of August 31st. It is important to note that until such time that we get a clear understanding of the causes and any residual issues, Delta and Echo will remain on restricted movement.*

**Offender Workers** – No unit workers allowed during this operational period.

**Education** – No attendance of education classes is authorized during this operational period.

**Meals** — Meals will be served at cell front by staff.

**Showers** — No Showers during this operational period.

**Telephone Calls** — No telephone calls during this operational period.

**Legal phone calls** - will be requested through the Unit Manager and approved through the Incident Commander

**Laundry** — Laundry should be loaded in the carts Monday night.

**Cleaning supplies**- Will be distributed at cell front, through the cuff port by staff for those cells not completed on 5/4/15.

**Recreation** – No Recreation during this operational period.

**Mail** – Mail will be delivered and picked up at cell front.

**JPAY/KIOSK** – No access during this operational period.

**Property/Clothing Room** – No property/clothing will be issued during this operational period.

**Store Order/Delivery** – There is no store scheduled.

**Law Library Access** – Offenders with verifiable deadlines, not already on Priority Scheduling, as per 590.500 may request priority scheduling by submitting form DOC 02-247 to the Law Librarian. Clearance to the Legal Library will be determined on a case-by-case basis by the Law Librarian in coordination with the Incident Commander.

**Video Visiting/Visiting** – No visiting or video visiting during this operational period.

**Religious Service** - Facility Chaplain will complete a walk-through of the unit on a daily basis. No religious call outs are authorized during this operational period.

Incident Commander: Brent Caulk

*Brent Caulk*

Date: 09/04/15

# Washington State Penitentiary DELTA/ECHO Unit Offender Notification

**Operational Period: 9/06/15 at 0700 thru 9/07/15 at 0700**

## **Deviations to this plan require the Authorization of the Incident Commander**

*Note from the Superintendent: At this time, we are continuing to investigate the incident that occurred in Yard 1 and Yard 2 on the evening of August 31st. It is important to note that until such time that we get a clear understanding of the causes and any residual issues, Delta and Echo will remain on restricted movement.*

**Offender Workers** – No unit workers allowed during this operational period.

**Education** – No attendance of education classes is authorized during this operational period.

**Meals** – Meals will be served at cell front by staff.

**Health Care** –

- Pill line - Health Care staff will be escorted down the tier by staff.
- Diabetic services - Will be provided by Health Services three times daily escorted by staff.
- Mental Health - As normal. If an emergency request exists, unit staff will contact MHU.
- Emergency medical needs will be assessed by medical personnel, as required.

**Showers** – **Echo Unit:** Showers will be offered during this operational period. **Delta Unit:** There will be no showers during this operational period for Delta Unit. Showers will be provided in Delta Unit on Monday.

**Telephone Calls** – **Echo Unit:** 10 minute telephone calls will be provided in conjunction with showers in Echo Unit. **Delta Unit:** No telephone calls during this operational period. Phone calls will be offered with showers on Monday for Delta Unit.

**Legal phone calls** - will be requested through the Shift Lt. and approved through the Incident Commander.

**Laundry** – Laundry should be loaded in the carts Monday night.

**Cleaning supplies**- No cleaning supplies during this operational period.

**Recreation** – No Recreation during this operational period.

**Mail** – Mail will be delivered and picked up at cell front.

**J-Pay/KIOSK** – No access during this operational period.

**Property/Clothing Room** – No property/clothing will be issued during this operational period.

**Store Order/Delivery** – There is no store scheduled.

**Law Library Access** – Offenders with verifiable deadlines, not already on Priority Scheduling, as per 590.500 may request priority scheduling by submitting form DOC 02-247 to the Law Librarian. Clearance to the Legal Library will be determined on a case-by-case basis by the Law Librarian in coordination with the Incident Commander.

**Video Visiting/Visiting** – No visiting or video visiting during this operational period.

**Religious Service** - Facility Chaplain will complete a walk-through of the unit on a daily basis. No religious call outs are authorized during this operational period.

Incident Commander: Jarrod Sumerlin



Date: 09/05/15

# Washington State Penitentiary DELTA/ECHO Unit Offender Notification

**Operational Period: 9/07/15 at 0700 thru 9/08/15 at 0700**

## **Deviations to this plan require the Authorization of the Incident Commander**

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**Note from the Superintendent:** At this time, we are continuing to investigate the incident that occurred in Yard 1 and Yard 2 on the evening of August 31st. It is important to note that until such time that we get a clear understanding of the causes and any residual issues, Delta and Echo will remain on restricted movement.

**Offender Workers** – No unit workers allowed during this operational period.

**Education** – No attendance of education classes is authorized during this operational period.

**Meals** — Meals will be served at cell front by staff.

### **Showers:**

**Delta Unit:** 10 minute showers will be offered in Delta Unit during this operational period beginning at approximately 0900. An ERT Strike Team will be assigned to assist with showers. Refer to ERT Group 204 for specific directions.

**Echo Unit:** There will be no showers during this operational period for Echo Unit. Showers will be provided on Wednesday, 9/9.

### **Telephone Calls:**

**Delta Unit:** 10 minute telephone calls will be in conjunction with showers in Delta Unit. An ERT Strike Team will be assigned to assist with showers. Refer to ERT Group 204 for specific directions.

**Echo Unit:** No telephone calls during this operational period. Phone calls will be offered with showers on Wednesday for Echo Unit.

**Legal phone calls** - will be requested through the Unit Manager and approved through the Incident Commander

**Cleaning supplies**- No cleaning supplies during this operational period.

**Recreation** – No Recreation during this operational period.

**Mail** – Mail will be delivered and picked up at cell front.

**JPAY/KIOSK** – No access during this operational period.

**Property/Clothing Room** – No property/clothing will be issued during this operational period.

**Store Order/Delivery** – There is no store scheduled.

**Law Library Access** – Offenders with verifiable deadlines, not already on Priority Scheduling, as per 590.500 may request priority scheduling by submitting form DOC 02-247 to the Law Librarian. Clearance to the Legal Library will be determined on a case-by-case basis by the Law Librarian in coordination with the Incident Commander.

**Video Visiting/Visiting** – No visiting or video visiting during this operational period.

**Religious Service** - Facility Chaplain will complete a walk-through of the unit on a daily basis. No religious call outs are authorized during this operational period.

Incident Commander: Steve Barker



Date: 09/06/15

# Washington State Penitentiary DELTA/ECHO Unit Offender Notification

**Operational Period: 9/08/15 at 0700 thru 9/09/15 at 0700**

## ***Deviations to this plan require the Authorization of the Incident Commander***

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**Note from the Superintendent:** *At this time, we are continuing to investigate the incident that occurred in Yard 1 and Yard 2 on the evening of August 31st. It is important to note that until such time that we get a clear understanding of the causes and any residual issues, Delta and Echo will remain on restricted movement.*

**Offender Workers** – No unit workers allowed during this operational period.

**Education** – No attendance of education classes is authorized during this operational period.

**Meals** — Meals will be served at cell front by staff.

**Health Care** —

- Pill line - Health Care staff will be escorted down the tier by staff.
- Diabetic services - Will be provided by Health Services three times daily escorted by staff.
- Mental Health - As normal. If an emergency request exists, unit staff will contact MHU.
- Emergency medical needs will be assessed by medical personnel, as required.
- All inmate movement will be restrained.

**Showers** — No showers during this operational period.

**Telephone Calls** — No telephone calls during this operational period.

**Legal phone calls** – Legal phone calls will be requested through the Unit Manager and approved through the Incident Commander

**Laundry** — Laundry should be addressed as needed for unit operations at cell front.

**Cleaning supplies**- No cleaning supplies during this operational period.

**Recreation** – No Recreation during this operational period.

**Mail** – Mail will be delivered and picked up at cell front.

**JPay/KIOSK** – No access during this operational period.

**Store Order/Delivery** – Store order forms will be picked up at cell front.

**Law Library Access** – Offenders with verifiable deadlines, not already on Priority Scheduling, as per 590.500 may request priority scheduling by submitting form DOC 02-247 to the Law Librarian. Clearance to the Legal Library will be determined on a case-by-case basis by the Law Librarian in coordination with the Incident Commander.

**Video Visiting/Visiting** – No visiting or video visiting during this operational period.

Incident Commander: Brent Caulk

*Brent Caulk*

Date: 09/07/15

# Washington State Penitentiary ECHO Unit Offender Notification

**Operational Period: 9/09/15 at 0700 thru 9/10/15 at 0700**

## **Deviations to this plan require the Authorization of the Incident Commander**

**Note from the Superintendent:** At this time, we are continuing to investigate the incident that occurred in Yard 1 and Yard 2 on the evening of August 31st. It is important to note that until such time that we get a clear understanding of the causes and any residual issues, Delta and Echo will remain on restricted movement.

**Offender Workers** – No unit workers allowed during this operational period.

**Education** – No attendance of education classes is authorized during this operational period.

**Meals** — Meals will be served at cell front by staff.

**Showers** — Showers will take place in restraints, no more than six (6) at a time, every other shower.

**Telephone Calls** — Telephone calls are authorized immediately following showers in restraints, for ten minutes.

**Legal phone calls** – Legal phone calls will be requested through the Unit Manager and approved through the Incident Commander

**Laundry** — Laundry should be addressed as needed for unit operations at cell front using the wicket to exchange laundry.

**Cleaning supplies**- No cleaning supplies during this operational period.

**Recreation** – No Recreation during this operational period.

**Mail** – Mail will be delivered and picked up at cell front.

**JPay/KIOSK** – Offenders may access the JPay to check or send mail only (no music downloads), in waist restraints.

**Property/Clothing Room** – No property/clothing will be issued during this operational period.

**Store Order/Delivery** – No store scheduled for this week.

**Law Library Access** – Offenders with verifiable deadlines, not already on Priority Scheduling, as per 590.500 may request priority scheduling by submitting form DOC 02-247 to the Law Librarian. Clearance to the Legal Library will be determined on a case-by-case basis by the Law Librarian in coordination with the Incident Commander.

**Video Visiting/Visiting** – No visiting or video visiting during this operational period.

**Classification** – Counselors will continue to initiate classification reviews as required during this operational period. No callouts will take place during this operational period.

**Religious Service** - Facility Chaplain will complete a walk-through of the unit on a daily basis. No religious call outs are authorized during this operational period.

Incident Commander: Brent Caulk

*Brent Caulk*

Date: 09/08/15

# Washington State Penitentiary ECHO Unit Offender Notification

**Operational Period: 9/10/15 at 0700 thru 9/11/15 at 0700**

**Deviations to this plan require the Authorization of the Incident Commander**

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*Note from the Superintendent: At this time, we are continuing to investigate the incident that occurred in Yard 1 and Yard 2 on the evening of August 31st. It is important to note that until such time that we get a clear understanding of the causes and any residual issues, Delta and Echo will remain on restricted movement.*

**Offender Workers** – No workers during this operational period.

**Education** – No attendance of education classes is authorized during this operational period.

**Meals** – Meals will be served at cell front by staff.

**Showers** – No Showers during this review period.

**Telephone Calls** – No phone calls during this operational period.

**Legal phone calls** – Legal phone calls will be requested through the Unit Manager and approved through the Incident Commander

**Laundry** – All laundry services will occur at cell front.

**Cleaning supplies**- Cleaning supplies will be issued by staff at cell front.

**Recreation** – No Recreation during this operational period.

**Mail** – Mail will be delivered and picked up at cell front.

**JPay/KIOSK** – None during this review period.

**Property/Clothing Room** – Property and/or clothing may be issued at cell front during this operational period.

**Store Order/Delivery** – No store scheduled this week.

**Law Library Access** – Offenders with verifiable deadlines, not already on Priority Scheduling, as per 590.500 may request priority scheduling by submitting form DOC 02-247 to the Law Librarian. Clearance to the Legal Library will be determined on a case-by-case basis by the Law Librarian in coordination with the Incident Commander.

**Video Visiting/Visiting** – No visiting or video visiting during this operational period.

**Classification** – Counselors will continue to initiate classification reviews as required during this operational period. No callouts will take place during this operational period.

Incident Commander: Carla Schettler



Date: 09/09/15

# Washington State Penitentiary DELTA/ECHO Unit Offender Notification

**Operational Period: 9/11/15 at 0700 thru 9/12/15 at 0700**

## ***Deviations to this plan require the Authorization of the Incident Commander***

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**Note from the Superintendent:** At this time, we are continuing to investigate the incident that occurred in Yard 1 and Yard 2 on the evening of August 31st. It is important to note that until such time that we get a clear understanding of the causes and any residual issues, Delta and Echo will remain on restricted movement.

**Offender Workers** – No unit workers during this operational period.

**Education** – No attendance of education classes is authorized during this operational period.

**Meals** — Meals will be completed a cell front by staff.

### **Health Care** —

- Pill line - Health Care staff will be escorted down the tier by staff.
- Diabetic services - Will be provided by Health Services three times daily escorted by staff.
- Mental Health - As normal. If an emergency request exists, unit staff will contact MHU.
- Emergency medical needs will be assessed by medical personnel, as required.
- All inmate movement will be restrained.

**Showers** — Delta/Echo Unit offenders will have showers during this operational period. Offenders are authorized to bring hygiene items to the shower area.

**Telephone Calls** — 10 minute Telephone calls will be in conjunction with showers.

**Legal phone calls** – Legal phone calls will be requested through the Unit Manager and approved through the Incident Commander

**Laundry** — Laundry services will occur at cell front.

**Cleaning supplies**- Cleaning supplies will be offered during this operational period.

**Recreation** – No Recreation during this operational period.

**Mail** – Mail will be delivered and picked up at cell front.

**JPAY/KIOSK** – JPAY/Kiosk will be offered during this operational period.

**Property/Clothing Room** – Property and/or clothing may be issued at cell front during this operational period.

**Store Order/Delivery** – No store is scheduled for this week.

**Law Library Access** – Offenders with verifiable deadlines, not already on Priority Scheduling, as per 590.500 may request priority scheduling by submitting form DOC 02-247 to the Law Librarian. Clearance to the Legal Library will be determined on a case-by-case basis by the Law Librarian in coordination with the Incident Commander.

**Video Visiting/Visiting** – Visiting for Echo Unit will resume on September 11. Visiting for Delta will resume on September 12th and the 13<sup>th</sup>. No video visiting.

**Religious Service** - No religious call outs are authorized during this operational period.

Incident Commander: Chris Bowman  Date: 09/10/15

# Washington State Penitentiary DELTA/ECHO Unit Offender Notification

Operational Period: 9/12/15 at 0700 thru 9/13/15 at 0700

## Deviations to this plan require the Authorization of the Incident Commander

*Note from the Superintendent: At this time we are continuing to investigate the incident that occurred in Yard 1 and Yard 2 on the evening of August 31st. It is important to note that until such time that we get a clear understanding of the causes and any residual issues, Delta and Echo will remain on restricted movement.*

**Offender Workers** – Four Offender workers will be allowed out a time at the Sgt. and Incident Commander's discretion.

**Education** – No attendance of education classes is authorized during this operational period.

**Meals** – Offenders will be allowed to pick up their meals half a section at a time, which can be adjusted by at the Unit Sergeant's discretion. Slow and controlled movement.

**Health Care** —

- Pill line - Health Care staff will be escorted down the tier by staff.
- Diabetic services - Will be provided by Health Services three times daily escorted by staff.
- Mental Health - As normal. If an emergency request exists, unit staff will contact MHU.
- Emergency medical needs will be assessed by medical personnel, as required.
- All inmate movement will be restrained.

**Showers** — Delta/Echo Unit offenders may shower up to 6 at a time, every other shower, and unrestrained. They are authorized to bring hygiene items to the shower area.

**Telephone Calls** — 10 minute Telephone calls will be in conjunction with showers.

**Legal phone calls** – Legal phone calls will be requested through the Unit Manager and approved through the Incident Commander

**Laundry** — All laundry services will occur at cell front.

**Cleaning supplies**- Cleaning supplies will be offered during this operational period.

**Recreation** – No Recreation during this operational period.

**Mail** – As normal.

**JPAY/KIOSK** – Will be run on the opposite side as showers at the discretion of the Unit Sgt., unrestrained.

**Property/Clothing Room** – Property and/or clothing may be issued at cell front during this operational period.

**Store Order/Delivery** – No store is scheduled for this week.

**Law Library Access** – Offenders with verifiable deadlines, not already on Priority Scheduling, as per 590.500 may request priority scheduling by submitting form DOC 02-247 to the Law Librarian. Clearance to the Legal Library will be determined on a case-by-case basis by the Law Librarian in coordination with the Incident Commander.

**Video Visiting/Visiting** – No visiting for Echo during this operation period. Visiting for Delta will resume on September 12th and the 13<sup>th</sup>. No video visiting.

**Classification** – None during this operational period. Counselors will continue to initiate classification reviews as required during this operational period. No callouts will take place during this operational period.

**Religious Service** - Facility Chaplain will complete a walk-through of the unit on a daily basis. No religious call outs are authorized during this operational period.

**Hearings/Ad Seg and Disciplinary** – No Hearings during this operational period.

Incident Commander: Brent Caulk *Brent Caulk* Date: 09/12/15

# Washington State Penitentiary DELTA/ECHO Unit Offender Notification

**Operational Period: 9/13/15 at 0700 thru 9/14/15 at 0700**

## ***Deviations to this plan require the Authorization of the Incident Commander***

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**Note from the Superintendent:** At this time we are continuing to investigate the incident that occurred in Yard 1 and Yard 2 on the evening of August 31st. It is important to note that until such time that we get a clear understanding of the causes and any residual issues, Delta and Echo will remain on restricted movement.

**Offender Workers** – Four Offender workers will be allowed out a time at the Sgt. and Incident Commander's discretion.

**Education** – No attendance of education classes is authorized during this operational period.

**Meals** — Offenders will be allowed to pick up their meals half a section at a time, which can be adjusted by at the Unit Sergeant's discretion. Slow and controlled movement.

### **Health Care** —

- Pill line - Health Care staff will be escorted down the tier by staff.
- Diabetic services - Will be provided by Health Services three times daily escorted by staff.
- Mental Health - As normal. If an emergency request exists, unit staff will contact MHU.
- Emergency medical needs will be assessed by medical personnel, as required.
- All inmate movement will be unrestrained.
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**Showers** — Delta/Echo Unit offenders will be allowed to shower during this operational period.

**Telephone Calls** — 10 minute Telephone calls will be in conjunction with showers.

**Legal phone calls** – Legal phone calls will be requested through the Unit Manager and approved through the Incident Commander.

**Laundry** — All laundry will be placed in carts for pick-up on 9/13/15.

**Cleaning supplies**- Cleaning supplies will be offered during this operational period.

**Recreation** – Delta/Echo Offenders will be allowed to utilize the Unit yard, ½ section at a time for 30 minutes.

**Mail** – As normal.

**JPay/KIOSK** – Will be run on the opposite side as showers at the discretion of the Unit Sgt., unrestrained.

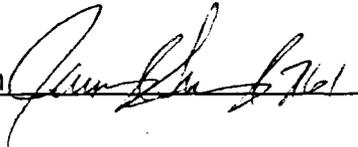
**Property/Clothing Room** – Property and/or clothing may be issued at cell front during this operational period.

**Store Order/Delivery** – No store is scheduled for this week.

**Law Library Access** – Offenders with verifiable deadlines, not already on Priority Scheduling, as per 590.500 may request priority scheduling by submitting form DOC 02-247 to the Law Librarian. Clearance to the Legal Library will be determined on a case-by-case basis by the Law Librarian in coordination with the Incident Commander.

**Video Visiting/Visiting** – Delta will have regularly scheduled visits, Echo is not scheduled for visiting. No video visiting.

**Classification** – None during this operational period. Counselors will continue to initiate classification reviews as required during this operational period. No callouts will take place during this operational period.

Incident Commander: Jarrod Sumerlin  Date: 09/13/15

# Washington State Penitentiary DELTA/ECHO Unit Offender Notification

**Operational Period: 9/14/15 at 0700 thru 9/15/15 at 0700**

***Deviations to this plan require the Authorization of the Incident Commander***

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**Offender Workers** – Offender workers will be allowed at the Unit Sergeant/Manager's discretion.

**Education** – No attendance of education classes is authorized during this operational period.

**Meals** — Offenders will be allowed to pick up and return their meals one-half a section at a time.

**Showers** — Delta/Echo Unit offenders may shower unrestrained as normal. Offenders are authorized to bring hygiene items to the shower area.

**Telephone Calls** — Telephone calls will return to access during in-unit recreation.

**Legal phone calls** – Legal phone calls may be requested through the assigned counselor and approved through the Unit Manager as appropriate.

**Laundry** — As normal.

**Cleaning supplies**- As normal.

**Recreation** – Delta/Echo Offenders will be allowed to utilize the Unit yard, 1 section at a time for 30 minutes.

**Mail** – As normal.

**JPAY/KIOSK** – Will be run on the opposite side as showers at the discretion of the Unit Sgt., unrestrained.

**Property/Clothing Room** – As normal.

**Store Order/Delivery** – Delta Unit store orders will be delivered and distributed by staff on 9/14/15. Echo Unit is scheduled for delivery on 9/15/15.

**Law Library Access** – Offenders with verifiable deadlines, not already on Priority Scheduling, as per 590.500 may request priority scheduling by submitting form DOC 02-247 to the Law Librarian. Clearance to the Legal Library will be determined on a case-by-case basis by the Law Librarian in coordination with the Incident Commander.

**Video Visiting/Visiting** – Video visiting to resume on Tuesday, 9/15/15. There is no regular visiting scheduled during this operational period.

**Classification** – Counselors will resume classification callouts.

**Religious Service** - Facility Chaplain will complete a walk-through of the unit on a daily basis. No religious call outs are authorized during this operational period.

**Hearings**– All minor and major hearing processes will resume on Tuesday, 9/15/15.

Incident Commander: Lynn Clark

Date: 09/14/15

# Washington State Penitentiary DELTA/ECHO Unit Offender Notification

**Operational Period:** 9/15/15 at 0700 thru 9/16/15 at 0700

***Deviations to this plan require the Authorization of the Incident Commander***

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**Offender Workers** – Offender workers will be allowed at the Unit Sergeant/Manager's discretion.

**SPL Workers**-Echo Unit SPL workers are authorized to go to work as normal. Delta Unit SPL workers are not authorized during this operational period.

**Education** – No attendance of education classes is authorized during this operational period.

**Offender Change Classes**-As normal.

**Meals** — Offenders will be allowed to pick up and return their meals one-half a section at a time.

**Showers** — As normal

**Telephone Calls** — As normal.

**Legal phone calls** – As normal.

**Laundry** — As normal.

**Cleaning supplies**- As normal.

**Recreation** – Delta/Echo Offenders will be allowed to utilize the Unit yard, 1 section at a time for 30 minutes.

**Echo Unit Big Yard in the afternoon.**

West 1-Yard 1 (1230-1330)

West 2-Yard 2 (1230-1330)

East 1- Yard 1 (1430-1530)

East 2-Yard 2 (1430-1530)

**Mail** – As normal.

**JPay/KIOSK** – As normal.

**Property/Clothing Room** – As normal.

**Store Order/Delivery** – As normal.

**Law Library Access** – As normal

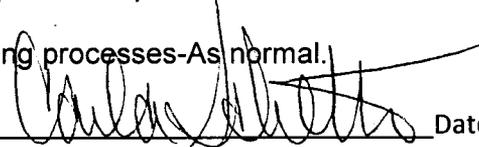
**Video Visiting/Visiting** – As normal, there is no regular visiting scheduled during this operational period.

**Classification** – Counselors will resume classification callouts.

**Religious Service** - Facility Chaplain will complete a walk-through of the unit on a daily basis. No religious call outs are authorized during this operational period.

**Hearings**– All minor and major hearing processes-As normal.

Incident Commander: Carla Schettler

 Date: 09/14/15

# Washington State Penitentiary DELTA/ECHO Unit Offender Notification

**Operational Period: 9/16/15 at 0700 thru 9/17/15 at 0700**

***Deviations to this plan require the Authorization of the Incident Commander***

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**Offender Workers** – As normal, with the exception of Delta and Echo HUB workers that are scheduled to return to work on Thursday, 9/17/15.

**Education** – No attendance of education classes are authorized during this operational period.

**Offender Change Classes**- As scheduled.

**Dog Program** – As normal.

**Meals** — As normal.

**Showers** — As normal.

**Telephone Calls** — As normal with recreation.

**Legal phone calls** – As normal.

**Laundry** — As normal.

**Cleaning supplies**- As normal.

**Recreation** – In-Unit yards will run one section at a time for 30 minutes beginning at 1230 hrs.

**Delta Unit Big Yard in the morning**

East 1-Yard 2 (0830-0930)  
East 2-Yard 1 (0830-0930)  
West 1- Yard 2 (0945-1045)  
West 2-Yard 1 (0945-1045)

**Echo Unit Big Yard in the evening**

East 1-Yard 2 (1230-1330)  
East 2-Yard 1 (1230-1330)  
West 1- Yard 2 (1430-1530)  
West 2-Yard 1 (1430-1530)

**Mail** – As normal.

**JPay/KIOSK** – As normal.

**Property/Clothing Room** – As normal.

**Store Order/Delivery** – As normal.

**Regular Library/Law Library Access** – As scheduled.

**Video Visiting/Visiting** – Authorized as scheduled.

**Classification** – As normal.

**Religious Service** – As scheduled.

Incident Commander: Brent Caulk *Brent Caulk* Date: 09/15/15

# Washington State Penitentiary WC Close Custody Offender Notification

Operational Period: 9/17/15 at 0700 thru 9/22/15 at 0700

*Deviations to this plan require the Authorization of the Incident Commander*

West Complex Close Custody  
**Unit Operations**

All operations for Delta/Echo/Fox/Golf will return to normal, with the exception of recreation. This includes all callouts as scheduled.

For this operational period, recreation will run as follows:

**In-Unit Recreation** --- All units will continue to run in-unit yards by section rotations for 30 minutes at a time. Dayrooms will be included in the evenings on the weekdays, and in the afternoon and evenings on the weekends. When both dayroom and small yard are running, staff will have only one section out and the offenders may choose between dayroom or small yard during their time period. Showers may run on the opposite side of the unit where recreation is occurring.

**Big Yards/Gym** – Big Yards and gym will continue to run by tiers for one hour based on the current schedule with the following time slots (unless an emergency occurs):

Morning: 0830-0930 & 0945-1045

Afternoon: 1230-1330 & 1430-1530

Evening: 1830-1930 & 1945-2045

17	Gym/Yard 1	Wt/Yard 2	18	Gym/Yard 1	Wt/Yard 2	19	Gym/Yard 1	Wt/Yard 2
AM	F east 1	F east 2	AM	E east 1	E east 2	AM	G west 1	G west 2
AM	F west 1	F west 2	AM	E west 1	E west 2	AM	G east 1	G east 2
AFT	D east 1	D east 2	AFT	F west 2	F west 1	AFT	E west 2	E west 1
AFT	D west 1	D west 2	AFT	F east 2	F east 1	AFT	E east 2	E east 2
EVE	G east 2	G east 1	EVE	D west 2	D west 1	EVE	F east 2	F east 1
EVE	G west 2	G west 1	EVE	D east 2	D east 1	EVE	F west 2	F west 1
20	Gym/Yard 1	Wt/Yard 2	21	Gym/Yard 1	Wt/Yard 2	22	Gym/Yard 1	Wt/Yard 2
AM	D east 1	D east 2	AM	Yard maintenance		AM	E west 2	E west 1
AM	D west 1	D west 2	AM	Yard maintenance		AM	E east 2	E east 1
AFT	G east 2	G east 1	AFT	D west 2	D west 1	AFT	F west 1	F west 2
AFT	G west 2	G west 1	AFT	D east 2	D east 1	AFT	F east 1	F east 2
EVE	E east 1	E east 2	EVE	G west 1	G west 2	EVE	D east 1	D east 2
EVE	E west 1	E west 2	EVE	G east 1	G east 2	EVE	D west 1	D west 2

**\*\*Any deviations from this plan require permission from the WC Shift Commander.**

Incident Commander: Brent Caulk  Date: 09/16/15

# Washington State Penitentiary

## West Complex Offender Notification for Planned Restricted Movement

Operational Period September 18, 2015 from 0600 am to 1400 pm

*Deviations to this plan require the Authorization of the Incident Commander*

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In order to allow WSP Staff the ability to attend the Medal of Honor Ceremony the entire facility will be placed on restricted movement with a few exceptions,

See facility operation below:

WSP Chains — Chains will operate as scheduled.

Inmate Workers — Unit workers allowed at the discretion of the Unit Manager/Sergeant.

Education — No attendance of education classes is authorized during this operational period.

Dog Program — Dog handlers will be authorized at the discretion of the Shift Commander.

Meals — Meals for lunch on the 18<sup>th</sup> will be served as a sack meal with the dinner meal on the 17<sup>th</sup>.

Health Care —

- Pill line — As Normal.
- Diabetic services — As Normal.
- Mental Health - As Normal. If an emergency request exists, unit staff will contact MHU.
- Emergency medical needs will be assessed by medical personnel, as required.
- Medical outside of the unit — As Normal.

Showers — No Showers during this operational period.

Telephone Calls — No telephone calls during this period.

Legal phone calls - Will be requested through the Unit Manager and approved through the Incident Commander

Unit Inspections/Logs — As Normal.

Laundry — No laundry services during this operational period.

Recreation — No Recreation during this operational period.

Mail — No Mail during this operational period.

JPay/KIOSK — No access during this operational period.

# Washington State Penitentiary

## INTERNAL MEMORANDUM

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August 24, 2015

**TO:** Echo Unit Offenders

**FROM:** D. Holbrook, Superintendent



**RE:** Group Violence Reduction Strategy

On Saturday evening, August 22nd, Echo Unit was placed on restricted movement after an offender attacked another offender with a weapon. DOC 470.540 Group Violence Reduction Strategy was developed to deter offenders from committing violent acts and specifically:

Staff Assaults

Multi-man Fights/Assaults

Assaults where weapons are present

Part of this process is to review the perpetrators of the event and identify known associates through a multi-disciplinary process. As part of this event, we gathered information from staff from multiple shifts and disciplines in order to provide the correct information and validate any information received. In this case, the investigation did not reflect the perpetrator having any recurrent associations with offenders in Echo Unit.

What this means to you is that no offenders in Echo Unit will be placed on restrictions in conjunction with Group Violence Reduction protocols as a result of this event. At this time, the information does not support this being a result of any one's influence other than that of the perpetrator. However, it is very important to note that these acts will not be tolerated and are reviewed very carefully each time they occur.

Keep in mind that violent acts only prevent opportunities for positive programming and incentive based activities for those who promote a safe environment and remain free of negative behaviors. It is the goal of the Washington State Penitentiary to provide you opportunities to learn, recreate, change and grow in a proactive fashion. This can only be done when your environment is free of violence and you are not placed on restricted movement to verify safety concerns for yourselves and the staff at this facility.

If you have any questions, please feel free to work with your unit staff. If you are interested in the many programs offered at the West Complex, please contact your counselor.

cc: West Complex Staff

WE VALUE PRIDE-INTEGRITY-COMMUNITY-HONESTY-ACCOUNTABILITY-RESPECT-COMMUNICATION

# Washington State Penitentiary **WC Close Custody Offender Notification**

**Operational Period: 9/22/15 at 0700 thru 9/25/15 at 0700**

***Deviations to this plan require the Authorization of the Incident Commander***

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West Complex Close Custody  
**Unit Operations**

All operations for Delta/Echo/Fox/Golf will return to normal, with the exception of in-unit recreation. This includes all callouts as scheduled.

For this operational period, recreation will run as follows:

**Big Yards/Gym** – Big Yards and gym will return to the ½ unit schedule in place prior to the recent lockdown. Please refer to that schedule for those opportunities.

**In-Unit Recreation** --- All units will continue to run in-unit yards by section rotations (same as mainline rotations) increasing to 45 minutes at a time. Dayrooms will be included in the evenings on the weekdays, and in the afternoon and evenings on the weekends. When both dayroom and small yard are running, staff will have only one section out and the offenders may choose between dayroom or small yard during their time period. Showers may run on the opposite side of the unit where recreation is occurring.

**NOTE:** This in-unit recreation schedule will last throughout the week in order to meet with OCL's and others to assess the existing schedule, rotation and allowances in accordance with the Earned Incentives Program policy. We are also interested in what other incentives offenders might be interested in to incorporate into the policy.

***\*\*Any deviations from this plan require permission from the WC Shift Commander.***

Incident Commander: Brent Caulk Date: 09/21/15