Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Wednesday, May 1, 2019 8:25 AM
To: Tracy, Mary
Subject: FW: Comment on proposed changes to Superior Court Criminal Rules.

From: mick@gordonsaunderslaw.com [mailto:mick@gordonsaunderslaw.com]
Sent: Tuesday, April 30, 2019 11:58 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comment on proposed changes to Superior Court Criminal Rules.

Good evening,

I am writing to submit comments regarding several proposed Superior Court Criminal Rule changes. I have been a licensed attorney here in Washington State since 2002. The entirety of my legal career has been criminal defense work. I have practiced in courts of limited jurisdiction, superior courts throughout the state, all three divisions of the court of appeals, and the state supreme court. The majority of my practice now is serious felony defense work, at trial, on appeal, and in post-conviction proceedings. I have been counsel of record on thousands of criminal cases in Washington. I have also taught law students and fellow lawyers on matters pertaining to criminal procedure.

I support the WACDL-suggested amendments to CrR 4.7. The rule should embody the constitutional requirement, under Brady v. Maryland, Kyles v. Whitley, and Giglio v. United States, that the State has an affirmative duty to turn over to the defense material that tends to negate guilt, including impeachment information, and including information held by others. The proposed amendment, through a statewide rule, would have the benefit of ensuring uniformity of practice across county prosecutor's offices. Additionally, the proposed rule change may help force the State on the whole to develop, maintain, and disseminate information about incentivized witnesses. As things stand, there is no "global" database of incentivized witnesses and the benefits that have been bestowed upon them for work on behalf of law enforcement. It has been my experience that these incentivized witnesses – whose participation in criminal cases is known to create the risk of wrongful convictions – often work across jurisdictions, for assorted police departments and varying task forces, etc. As such, it is very difficult to ferret-out when, and how, an incentivized witness has benefitted from their work for the government. Our jurisdiction should be committed to the public and open administration of justice. A robust criminal rule protecting Brady is a necessary step toward that goal.

Additionally, the proposed rule change that would allow defense counsel to take care of some simple discovery redactions, and then provide discovery to a client, is a simple fix for a recurring and costly problem. I can speak from personal experience that jailed defendants awaiting trial, regularly get frustrated at not being able to participate in their own defense while in custody. Giving them access to the discovery makes good sense, both in terms of trial fairness, but also for courtroom efficiency. Clients frustrated with lack of access to key information about their cases can make all kinds of rash decisions, ranging from rejecting favorable plea offers, through firing court-appointed counsel and requesting to go pro se. I have personally observed these occurrences in King County, where it is very difficult to get the State to redact discovery for a client. Making it easier to get discovery to defendants would alleviate some of those costly externalities.

I support proposed changes to CrR 3.7 - Recording Interrogations, and CrR 3.8 - Recording Eyewitness Identification Procedure, and CrR 3.9 - In-Court Eyewitness Identification. Recording interrogations would go a long ways to resolving potential claims of coercion or false confessions. This would be good both for the accused and the police. A uniform

court rule is the right step. Likewise, because suggestive witness identification is known to contribute to wrongful convictions, recording these procedures should be mandatory, also statewide.

Thank you for considering my comments.
Mick Woynarowski
WSBA #32801

Mick Woynarowski
Attorney
Gordon & Saunders PLLC
1000 2nd Avenue
Suite 3140
Seattle, WA 98104
United States
Office: (206) 682-3222
Direct: (206) 743-8729