

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Monday, April 22, 2019 8:03 AM
To: Tracy, Mary
Subject: FW: Comments re proposed rule CrRLJ 3.9

From: Guthrie, Stephanie [mailto:Stephanie.Guthrie@kingcounty.gov]
Sent: Sunday, April 21, 2019 11:23 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comments re proposed rule CrRLJ 3.9

I am writing to express my concern with many of the propose changes to the criminal rules. I neglected to include CrRLJ 3.9 in my comments about CrR 3.9. However, the same concerns apply that I set out regarding CrR 3.9:

CrR 3.9 IN-COURT EYEWITNESS IDENTIFICATION

In-court identifications are inadmissible where the perpetrator is unknown to the witness and there has been no prior out-of-court eyewitness identification procedure.

- **Determination of whether an in-court identification procedure should be excluded is already adequately covered by case law – a more restrictive rule is unnecessary.**
- **The argument that already is made is that in-court identification should be precluded if there has been a prior identification procedure.** This rule sets up a Catch-22 for the prosecution, resulting in exclusion of all in-court identifications.
- **This new rule apparently would apply to law enforcement witnesses, which would preclude prosecution of most traffic-related crimes (from DUI to vehicular homicide) unless the officer was previously acquainted with the defendant or was presented with a photographic montage – or perhaps the officer could do his or her own show-up?**
- Proposed CrR 3.9 codifies an unsupported conclusion that in-court identifications are all unreliable.
- The rule would force an identification procedure in every case, including in cases where there is no question that the correct person has been charged (bloody, weapon-wielding man caught leaving victim's home), or in-court identification would not be permitted.
- The term "unknown" is unreasonably vague. Must the witness know the perpetrator's name or be socially acquainted? Is an unnamed stalker "unknown"? The lack of a clear standard will force law enforcement to conduct unnecessary identification procedures because of the possibility that the court will interpret the term broadly.
- The proposed rule does not make sense when the crime itself occurs over an extended period of time, allowing the witness a substantial opportunity to observe the perpetrator.
- If the court precludes an in-court identification under this rule, in the interest of truth, the jury must be informed that the court has prevented that, so that the jury will not draw any inferences against the prosecution based on the failure to do so.
- This prevents the jury from hearing relevant evidence. The weight of that evidence is properly developed through cross-examination and determined by the jury, not an arbitrary bright-line rule.

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