

FILED
SUPREME COURT
STATE OF WASHINGTON
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BY ERIN L. LENNON
CLERK

No. 100718-3

THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

LEONEL GONZALEZ,

Petitioner

ON DISCRETIONARY REVIEW FROM THE
SUPERIOR COURT OF THE STATE OF
WASHINGTON FOR KING COUNTY

MOTION FOR DISCRETIONARY REVIEW

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*Race and Washington’s Criminal Justice System 2021, Report
to the Washington Supreme Court* 2, 17

A. Introduction and Opinion Below¹

Article I, section 20 requires a trial court set bail in most cases. Courts may deny bail only in those cases in which a life sentence is actually possible. The state charged Leonel Gonzalez with an offense that cannot result in a life sentence. Nonetheless, the trial court denied bail.

The trial court did so based upon a recent Court of Appeals case substantially restricting the constitutional right to bail. The opinion reads Article I, section 20 as permitting denial of bail any time the state charges a person with a class A felony. That new and overly broad interpretation permits widespread denial of a fundamental right enshrined in the constitution since statehood.

Additionally, these broad violations of the constitutional right to bail raise significant public interest concerns. Research

¹ On March 4, 2022, Mr. Gonzalez filed a “Statement of Grounds for Direct Review.” That pleading was also intended as the “Motion for Discretionary Review” and addresses the criteria of RAP 2.3. The Court has instructed counsel to separately file a Motion for Discretionary Review.

reveals the prevalence of racially disparate outcomes in pretrial release decisions. *Race and Washington's Criminal Justice System 2021, Report to the Washington Supreme Court*, p. 7.

The trial court's interpretation of Article 1, section 20 permitting denial of bail for a broader class of offense creates a very real risk of exacerbating those disparities.

Normal appellate procedures cannot provide timely relief. This Court's guidance on the matter is necessary to ensure trial courts respect the constitutional guarantee of bail. Direct discretionary review is appropriate under RAP 2.3 and RAP 4.2.

B. Issue Presented

Bail is required in every case with two narrow exceptions: (1) capital cases; and (2) "offenses punishable by the possibility of life in prison upon a showing by clear and convincing evidence of a propensity for violence that creates a substantial likelihood of danger to the community or any persons." The term "possibility of life in prison" means cases in

which the charged offense can actually result in a life sentence and cannot include those cases for which imposition of a life sentence is legally impossible.

C. Summary of the Case

The state charged Mr. Gonzalez with first-degree murder and unlawful possession of a firearm. Appendix 3-4. At an ex parte hearing, the state asked the court to hold him without bail. Appendix 18. The court granted that request. *Id.*

After counsel was appointed, counsel promptly filed an objection to the denial of bail. Appendix 20-21, 29-38. Pointing to the plain language of Article I, section 20, counsel explained that as charged, Mr. Gonzalez could not receive a life sentence.

Despite the fact that Mr. Gonzalez cited to the constitution, the state claimed Mr. Gonzalez had not provided any legal authority requiring the court to give effect to the plain language of the constitutional text. Appendix 21. Instead, the state seized upon a recent decision in *In re the Personal Restraint of Sargent*, __ Wn. App. 2d __, 499 P.3d 241 (2021)

rewriting that plain text to permit courts to deny bail for all class A felonies. Appendix 22.

The trial court concluded it could constitutionally deny bail regardless of whether a life sentence was legally possible. Appendix 26-27.

D. Argument

The trial court violated Article I, section 20 when it denied bail. Mr. Gonzalez’s resulting confinement is unlawful.

The Washington Constitution guarantees Mr. Gonzalez the right to bail on his current charge. Const. Art. I, § 20. A court may deny bail only “for offenses punishable by the possibility of life in prison” *Id.* Because the offense the state has charged Mr. Gonzalez with committing cannot result in a life sentence, the trial court unconstitutionally denied bail.

The trial court’s ruling and the decision in *Sargent* rest on construing the phrase “possibility of life in prison” to include an array of cases in which such a sentence is legally

impossible. This Court must reject that patently absurd outcome.

Discretionary review under RAP 2.3 is appropriate in this case. The trial court's denial of bail for a charged offense where the accused person does not face a possible a life sentence is a plain violation of Article I, section 20 and an obvious error. It cannot be remedied by permitting the trial to run its course. There are no further proceedings which can remedy that error. Moreover, that error requires Mr. Gonzalez to remain in jail pending trial, substantially altering the status quo. The constitutional requirement of bail in most case, including this one, is plain and unambiguous. The trial court's refusal to follow the plain dictates of the constitution is a gross departure from the usual course of judicial proceedings. Discretionary review is warranted under RAP 2.3. Additionally, as stated in Mr. Gonzales's Statement of Grounds for Direct Review, this is the sort of significant and urgent issue which

RAP 4.2 contemplates when it allows for direct review in this Court.

1. The plain constitutional text limits a court's discretion to deny bail to only those cases in which a life sentence is actually possible.

Courts employ familiar statutory construction tools when examining constitutional text, beginning with the plain language of the constitutional provision at issue. *Wash. Water Jet Workers Ass'n v. Yarbrough*, 151 Wn.2d 470, 477, 90 P.3d 42 (2004). The court gives the words “their common and ordinary meaning, as determined at the time they were drafted.” *Id.* (citing *State ex rel. O'Connell v. Slavin*, 75 Wn.2d 554, 557, 452 P.2d 943 (1969)). If constitutional language is plain and unambiguous a court must give the words the plain, natural, and most obvious meaning the framers intended. *Auto. United Trades Org. v. State*, 175 Wn.2d 537, 545, 286 P.3d 377, 381 (2012) (internal citations omitted). The Court should not resort to “forced construction for the purpose of limiting or extending” the meaning of the text. *Id.* Where an amendment is

enacted by a vote of the people the focus is on the voters' intent. *City of Spokane v. Taxpayers of City of Spokane*, 111 Wn.2d 91, 97, 758 P.2d 480 (1988).

The words “offenses punishable by the possibility of life in prison” are clear and unambiguous. Courts look to the dictionary to determine a term’s plain meaning. *Nissen v. Pierce Cty.*, 183 Wn.2d 863, 881, 357 P.3d 45 (2015).

“Possibility” means “something that can develop or become actual.” <https://www.merriam-webster.com/thesaurus/possibility>. Thus, “the possibility of life in prison” means only those offenses for which a court could actually impose a life sentence.

There only four instances in which an offense can actually result in a life sentence: (1) an offense which would make the person a persistent offender under RCW 9.94A.570; (2) certain class A sex offenses under RCW 9.94A.507; (3) the crime of aggravated first degree murder; and (4) a class A felony committed prior to the effective date of the SRA in

1984. For any other charge, including the one pending against Mr. Gonzalez, a life sentence is legally impossible. The court wrongly denied bail.

2. Rather than give effect to the plain text, Sargent improperly and illogically interpreted the term “possible” to include cases in which a life sentence is impossible.

The only “offense” relevant to a bail determination is the offense charged. Thus, when determining if an offense can possibly result in a life sentence the only relevant “offense” is the charged offense. Beyond the plain text of Article I, section 20, statutes makes this point clear.

A judge makes a bail and release determination “[u]pon the appearance . . . of a person **charged** with an offense. . . .” RCW 10.21.020 (Emphasis added). Bail decisions must be case specific. RCW 10.19.055. Both RCW 10.19.055 and RCW 10.21.020 were part of the enabling legislation for the 2010 amendment of Article 1, section 20, which permitted the denial of bail in limited cases. Laws 2010, ch. 254; Engrossed

Substitute House Joint Resolution 4220. These enabling statutes make clear the provisions of Article 1, section 20 come into play when the State charges a person with an offense. The drafters of the amendment could only have intended “offense” to refer to the charged offense as that is the trigger for the amendment’s discretionary provisions and for which the judge must make a case-specific determination.

Nonetheless, the trial court reasoned the constitutional language focuses on the offense in the abstract rather than the actual charge: “we’re not talking about subjective possibilities, we’re talking about objective possibilities.” Appendix 27. But even that is a distinction without a difference. There are no circumstances where the offense of first degree murder, by itself, carries a possibility of a court imposing a life sentence.

Moreover, it is an illogical distinction and requires a conclusion that voters intended to permit courts to deny bail even where the charged offense could not be punished by life in prison. Even though the words appear nowhere in the text of the

constitutional amendment, the trial court and *Sargent* imagined that voters really meant to permit the denial of bail for all class A felonies. *Sargent*, 499 P.3d at 248.

Rather than give effect to the plain language of the constitutional text, the court concluded “‘possibility of life in prison’ is a term of art referring to the statutory maximum sentence” for class A felonies. *Sargent* 499 P.3d at 248. A “term of art” is “a term that has a specialized meaning in a particular field or profession.” <https://www.merriam-webster.com/dictionary/term%20of%20art>. Typically a term of art appears regularly and means the same thing. “Possibility of life in prison” is not a regularly used term in statutory or constitutional provisions and seems to have appeared for the first time in the 2010 constitutional amendment. Certainly “statutory maximum” and “class A felony” are terms of art. But neither of those terms appears anywhere in the constitutional provision.

Further, because this was an amendment enacted by the voters rather than judges or the Legislature, it does not matter how courts have interpreted other terms. Interpretation of voter approved measures must focus on “the voters’ intent and the language of the initiative as the average informed lay voter would read it.” *City of Spokane v. Taxpayers of City of Spokane*, 111 Wn.2d at 97. The average voter could not have known of the jurisprudence regarding the meaning of the term “statutory maximum” in case law. Nor should anyone have expected anything else as the terms “statutory maximum” and “class A felony” appear nowhere in the amendment’s language. Instead, all that matters is what voters understood the word “possible” to mean. A court must assume voters intended “the natural and most obvious import” of the word “possible.” *Auto. United Trades Org*, 175 Wn.2d at 545. There is no reasonable interpretation of the word “possible” that includes that which is impossible.

Sargent never bothers to ask much less answer the question of why, if the drafters intended the amendment to simply mean “class A felonies,” admittedly a term of art, they would instead employ phrasing that uses none of those terms. If the drafters had simply meant “class A felonies” there is no doubt they would have said just that. That phrase appears throughout the criminal code and the sentencing statutes. Its use predates the 2010 amendment of Article I, section 20. It predates the 1981 enactment of the Sentencing Reform Act and the 1974 comprehensive revision of the criminal code. The term “class A felony” has existed in Washington law for decades, and throughout that time the phrase has been readily understood to mean a felony with a statutory maximum of life.

It is illogical to assume that after decades of using that simple term of art, the drafters of the amendment to Article I, section 20 would have minted a new phrase to mean the same thing. More importantly, it is nonsensical to assume voters would have understood that new term to mean the same thing.

Instead, by choosing a different phrase, it is clear the drafters and the voters understood and intended the term mean something else.²

3. Beyond ignoring the plain text, Sargent's interpretation leads to absurd results.

Sargent's construction of the term “possible” leads to the absurd result of requiring bail for offenses which actually

² In support of its conclusion of what legislators intended, the *Sargent* court points to bill reports as evidence of legislative intent. *Sargent*, 499 P.3d at 249. Setting aside the irrelevance of any legislator’s intent when interpreting a voter approved amendment, the cited bill reports expressly state they are not statements of legislative intent. Emblazoned on the first page of each is the language:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. **This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.**

Final Bill Report, Final Bill Report Engrossed Substitute House Joint Resolution 4220. What legislative staff believed the effect of the legislation would be is wholly irrelevant to what legislators thought. And more importantly it sheds no light on what voters intended. In short, they offer no support for the court’s conclusion.

require a life sentence while permitting the denial of bail for an offense for which a life sentence is impossible. The court concluded that “offense punishable by possibility of life in prison” means class A felony. *Sargent*, 499 P.3d at 248. By that logic, a trial court could not deny bail for a person charged with second degree assault as a persistent offender as it is only a class B felony, which carries a statutory maximum of 10 years, even though a conviction on the charge would require a sentence of life without parole. *See* RCW 9A.36.021; RCW 9.94A.030(32), (37); RCW 9.4A.570. Yet *Sargent* concludes a trial court may deny bail for an offense which could not yield a life sentence merely because it has a statutory maximum of life.

In the first scenario, the court could not deny bail because an assault in the second degree is only a class B felony, with a statutory maximum of just 10 years, even though a life sentence is mandatory. But in the second scenario a court could deny bail even though a life sentence, or anything approaching a life sentence, is not legally possible. That is absurd, and violates the

guiding principle of statutory construction: to avoid absurd results. *State v. Schwartz*, 194 Wn.2d 432, 443, 450 P.2d 141 (2019).

4. Mr. Gonzalez is constitutionally entitled to bail.

The term “offenses punishable by the possibility of life in prison” does not mean class A felony. The term cannot include offenses for which a life sentence is not legally authorized under any circumstances. *Sargent’s* interpretation of the term “possible” to include offenses for which a life sentence is legally impossible, all the while excluding offense where a life sentence is required, is patently absurd.

The state did not charge Mr. Gonzalez with committing a crime that can result in life imprisonment. The charged offense is not a sex offense or aggravated first degree murder. Mr. Gonzalez is not alleged to have committed the current offense prior to the effective date of the SRA. A conviction for the charged offense would not render Mr. Gonzalez a “persistent

offender.” Thus, a life sentence is not possible based upon the charges Mr. Gonzalez faces.

Even if the state had alleged aggravating factors supporting an exceptional sentence, a life sentence is not possible. Instead, such a sentence must be a determinate term of months. RCW 9.94A.535. Thus a court could not impose a life sentence. In any event, the state has not alleged any aggravating factors.

The maximum possible sentence a court could impose if Mr. Gonzalez were convicted is a standard range sentence of several hundred months. While lengthy, that is not a life sentence. A life sentence is not “possible” in this case. The court did not have discretion to deny bail.

5. Discretionary review is necessary to protect the constitutional right to bail.

The wrongful denial of bail will always result in improper pretrial incarceration. In the current environment, as courts attempt to address the backlog of cases occasioned by

pandemic-driven court slowdowns or closures, the denial of bail may mean months, if not years, of unlawful pretrial detention. That becomes even more problematic in light of the reality that a person's race matters when courts decide who gets bail and who will sit in jail for months or years awaiting trial. *Race and Washington's Criminal Justice System 2021*, p. 7. This report found "disparate treatment" in pretrial release decisions in this state. *Id.*

The report's use of the term "disparate" to describe different outcomes is critical. As the report explains, it uses the term "disproportionate" to refer to different outcomes across groups where the evidence does not show those different outcomes are driven by the composition of the groups. *Id.* at ix. By contrast the report uses "disparity" when there is sufficient evidence to indicate that race accounts at least in part to unequal outcomes for one group when compared with outcomes for another group." In short, when the report observes racially disparate outcomes in pretrial release decisions it means "race

is a significant contributing factor driving trial courts' pretrial release decisions.”

That race is already a significant factor in bail decisions is bad enough. *Sargent* and the trial court's decisions permit, but do not require, a trial court to deny bail for any class A felony. Broadening courts' discretionary authority to deny bail simply broadens the opportunity for courts to wrongly allow race to impact the decision to deny bail. That is what the trial court and *Sargent* have done.

The constitutional violation is plain and substantially limits Mr. Sargent's ability to act as he has no other timely means to challenge that error. An appeal following a possible conviction affords no relief at all for lengthy and unlawful pretrial confinement. Unlawfully detaining him for months or even years while he awaits trial substantially alters the status quo. This Court should grant direct discretionary review under RAP 2.3 and RAP 4.2.

E. Conclusion

Article I, section 20 is not ambiguous; its plain language controls. A court may only deny bail where the charge carries the possibility of a life sentence. There are no circumstances in which the charge against Mr. Gonzalez could result in a life sentence. It is impossible. The court clearly erred and violated the provisions of Article I, section 20 in denying bail.

This Court should accept direct discretionary review and reverse the trial court's decision.

I certify this document contains 3319 words and complies with RAP 18.17.

Respectfully submitted this 17th day of March, 2022.



Gregory C. Link – 25228
Attorney for Petitioner
Washington Appellate Project - 91052
greg@washapp.org

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COPY TO JAIL FEB - 3 2022 ✓

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

FILED KING COUNTY WASHINGTON

FEB 03 2022

SUPERIOR COURT CLERK BY Molly Simon DEPUTY

STATE OF WASHINGTON,

No. 22-1-00251-1 KNT

Plaintiff,

vs.

CONDITIONS OF RELEASE FOR DEFENDANT

LEONEL GONZALEZ,

(ORECRP) Clerk's action required

Defendant,

Defense reserved argument on conditions of release argued for less restrictive conditions of release:

IT IS HEREBY ORDERED that the above-named defendant shall be released from the King County jail on the following conditions until further order of the court:

- On personal recognizance
- On personal recognizance on condition that the defendant report to
 - Community Center for Alternative Programs (CCAP) Basic and follow Conditions of Conduct.
 - Community Center for Alternative Programs (CCAP) Enhanced and follow Conditions of Conduct.
- On execution of a surety bond or other surety or cash in the amount of \$ _____ already posted
- On execution of a surety bond or other surety in the amount of ~~\$~~ **NO BAIL** or on posting of cash in the amount of \$ _____
- Electronic Home Monitoring (EHM) with GPS monitoring, and follow Conditions of Conduct if bond posted
- South King County Pretrial Assessment and Linkage Services (PALS) and follow Conditions of Conduct
- Have no contact, directly, or indirectly in person, in writing, or by phone, personally or through another person, with: Nona Hook, any member of Ruvim Skokob family
- Above-named defendant is not to leave the State of Washington without specific approval by court order.
- On condition: no new law violations, maintain contact with counsel, abide by all no contact orders.

In addition to the above conditions, the above-named defendant shall commit no crimes.

Warning to defendant: IF you have been charged with a serious offense as defined in RCW 9.41.010** or have otherwise been prohibited from possessing firearms you may NOT legally possess, or control a firearm. If so, and you are free on bond or personal recognizance and own, possess, or control a firearm, you can be charged with a felony.

DATED this FEB 03 2022 day of _____, 20_____.

Judge

Statement by the defendant: My address and telephone number will be _____

I HAVE READ THIS ORDER. I understand that if I violate conditions of release, I may face consequences including but not limited to additional charges and or the issuance of bench warrant pursuant to CrR 3.2.

Defendant

The defendant appeared In person; Through counsel; Remotely

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Interpreter: _____ Date: _____

CONDITIONS OF RELEASE FOR DEFENDANT

(ORECRP) - Page 1 of 2 Revised: 3/2021

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THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

STATE OF WASHINGTON ,

Plaintiff/Respondent.

v.

LEONEL GONZALEZ,

Defendant/Appellant.

Superior Court No.: 22-1-00251-1 KNT

NOTICE OF DISCRETIONARY
REVIEW TO THE WASHINGTON
SUPREME COURT

Leonel Gonzalez, Defendant/Appellant, seeks review by the designated appellate court of the decision of the King County Superior Court granting the State’s request for pretrial detention without bail. A copy of the Court’s Order entered on February 3, 2022 is attached.

DATED this 3rd day of March, 2022.

 /s/ Whitney Sichel
Whitney H. Sichel, WSBA #44474
Attorney for Defendant/Appellant Leonel Gonzalez

COPY TO JAIL FEB - 3 2022 ✓

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

FILED KING COUNTY WASHINGTON

FEB 03 2022

SUPERIOR COURT CLERK BY Molly Simon DEPUTY

STATE OF WASHINGTON,

No. 22-1-00251-1 KNT

Plaintiff,

vs.

CONDITIONS OF RELEASE FOR DEFENDANT

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(ORECRP) Clerk's action required

Defendant,

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- On execution of a surety bond or other surety or cash in the amount of \$ _____ already posted
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- South King County Pretrial Assessment and Linkage Services (PALS) and follow Conditions of Conduct
- Have no contact, directly, or indirectly in person, in writing, or by phone, personally or through another person, with: Nona Hook, any member of Ruvim Skokob family
- Above-named defendant is not to leave the State of Washington without specific approval by court order.
- On condition: no new law violations, maintain contact with counsel, abide by all no contact orders.

In addition to the above conditions, the above-named defendant shall commit no crimes.

Warning to defendant: IF you have been charged with a serious offense as defined in RCW 9.41.010** or have otherwise been prohibited from possessing firearms you may NOT legally possess, or control a firearm. If so, and you are free on bond or personal recognizance and own, possess, or control a firearm, you can be charged with a felony.

DATED this FEB 03 2022 day of _____, 20_____.

Judge _____

Statement by the defendant: My address and telephone number will be _____

I HAVE READ THIS ORDER. I understand that if I violate conditions of release, I may face consequences including but not limited to additional charges and or the issuance of bench warrant pursuant to CrR 3.2.

Defendant _____

The defendant appeared In person; Through counsel; Remotely

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Interpreter: _____ Date: _____

CONDITIONS OF RELEASE FOR DEFENDANT

(ORECRP) - Page 1 of 2 Revised: 3/2021

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

THE STATE OF WASHINGTON,)
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) Plaintiff,)
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) v.) No. 22-1-00251-1 KNT
)
) LEONEL GONZALEZ,) INFORMATION
)
) Defendant.)
)
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)

I, Daniel T. Satterberg, Prosecuting Attorney for King County in the name and by the authority of the State of Washington, do accuse LEONEL GONZALEZ of the following crime[s]: **Murder In The First Degree, Unlawful Possession of a Firearm in the First Degree**, committed as follows:

Count 1 Murder In The First Degree

That the defendant LEONEL GONZALEZ in King County, Washington, on or about December 8, 2021, while committing and attempting to commit the crime of Robbery in the First Degree, and in the course of and in furtherance of said crime and in immediate flight therefrom, did cause the death of Ruvim Stukov, a human being, who was not a participant in the crime, and who died on or about December 8, 2021;

Contrary to RCW 9A.32.030(1)(c), and against the peace and dignity of the State of Washington.

And further do allege the defendant, Leonel Gonzalez at said time of being armed with a .40 caliber handgun, a firearm as defined in RCW 9.41.010, under the authority of RCW 9.94A.533(3).


Count 2 Unlawful Possession of a Firearm in the First Degree

That the defendant LEONEL GONZALEZ in King County, Washington, on or about December 8, 2021, previously having been convicted in King County Superior Court of the crime of Attempted Robbery in the First Degree, a serious offense as defined in RCW 9.41.010,

1 knowingly did own, have in his possession, or have in his control, a .40 caliber handgun, a
2 firearm as defined in RCW 9.41.010;

3 Contrary to RCW 9.41.040(1), and against the peace and dignity of the State of
4 Washington.

DANIEL T. SATTERBERG
Prosecuting Attorney

6
7 
8 By: Jennifer Petersen, WSBA #35397
9 Senior Deputy Prosecuting Attorney

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1
2 CAUSE NO. 22-1-00251-1 KNT

3 PROSECUTING ATTORNEY CASE SUMMARY AND REQUEST FOR BAIL AND/OR
4 CONDITIONS OF RELEASE

5 The State incorporates by reference the Certification for Determination of Probable
6 Cause prepared by Detective Justin Wilson of the Federal Way Police Department for case
7 number 210013772.

8 Pursuant to Art. 1, § 20 of the Washington State Constitution, the State requests that the
9 defendant **Leonel Gonzalez** be held with **NO BAIL**. Wa. Const. Art. 1, § 20 states:

10 All persons charged with crime shall be bailable by sufficient sureties, except for
11 capital offenses when the proof is evident, or the presumption great. *Bail may be*
12 *denied for offenses punishable by the possibility of life in prison upon a showing*
13 *by clear and convincing evidence of a propensity for violence that creates a*
14 *substantial likelihood of danger to the community or any person, subject to such*
15 *limitations as shall be determined by the legislature.*

16 (Emphasis added).

17 The crime of Murder in the First Degree carries a maximum punishment of life in prison.
18 The defendants' actions in the present crime combined with his criminal history, and his history
19 of possession of firearms, show by clear and convincing evidence that he has a propensity for
20 violence that creates a substantial likelihood of danger to the community.

21 In the present case, the defendant shot and killed the 20-year-old victim, a complete
22 stranger, in what appears to be a random, brutal and senseless carjacking. The defendant
23 approached the victim as he sat eating takeout alone in his car. According to witnesses, the
24 defendant was holding a gun above his head, pointing it down toward the car. Within just a few
seconds of approaching the victim's car, the defendant shot the victim three times killing him.
The defendant pulled the victim's body from the car and drove off in the victim's car.

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The defendant has Washington adult felony convictions for Bail Jumping (2005), Attempt to Elude (2005), Assault 3 (2009), Assault 3 (2009) and Tampering with a Witness (2015).

The defendant was sentenced on August 12, 2016 to 96.75 months in DOC after pleading guilty to Attempted Robbery in the First Degree under King County Cause 15-1-04388-5. At that time, his offender score was calculated to be 15. Following the Court’s decision in State v. Blake, the defendant was re-sentenced on June 9, 2021. The defendant’s original offender score of 15 included convictions for violations of RCW 69.50.4013 in addition to two convictions for Unlawful Possession of a Firearm that were based on convictions for violations of RCW 69.50.4013. Those convictions were found to be unconstitutional pursuant to Blake and his offender score was recalculated to be 5. He was re-sentenced to 56.2 months and was released from prison.

The defendant is currently held in Pierce County on a pending Rape 3 that is alleged to have occurred on July 17, 2021 – one month after the defendant’s release from prison. Bail is set in that matter in the amount of \$100,000. In addition, he has a DOC escape warrant out of Pierce County for failure to comply with DOC conditions on his Attempted Robbery 1 conviction.

Based on his incredibly violent conduct in this case, his pending matters in Pierce County, his history of possessing firearms, his criminal history, and his failure to comply with DOC conditions, the defendant should be held without bail.

Signed and dated by me this 21st day of January, 2022.



Jennifer Petersen, WSBA #35397
Senior Deputy Prosecuting Attorney

That Justin Wilson is a Detective with the Federal Way Police Department and has reviewed the investigation conducted in Federal Way Police Department **210013772**; There is probable cause to believe that **Leonel Gonzalez DOB 04/24/1986** committed the crime of **RCW 9A.32.030(1)C Murder in the 1st Degree, in King County, Washington.**

This belief is predicated on the following facts and circumstances:

On December 8, 2021 at 2147 hours, uniformed patrol officers for the City of Federal Way responded to a shooting in the parking lot in front of Menchie's Frozen Yogurt located at 1409 S 348th Street. This establishment is located in a Federal Way shopping center known as "The Crossings" which is comprised of multiple store fronts, restaurants and businesses.

The 911 caller, 17-year old K.C., reported that a subject had been shot in the Menchie's parking lot a minute or so prior. At 2149, K.C. relayed to the 911 dispatcher that the suspect in the shooting had fled in a silver vehicle toward S 348th St. She described the vehicle as possibly being a silver Acura.

Responding officers located the victim laying in the parking lot just north of the Menchie's store front. He was later identified as **Ruvim Stukov, DOB 01/17/2001**. Ruvim was not responsive, and officers rolled him over onto his back. At this point the officers saw a large pool of bright red blood around Ruvim's head. Officers attempted to render aid with medical personnel, however Ruvim was declared deceased at the scene. Officers reported seeing gunshot wounds to Ruvim's chest and head. There were .40 caliber cartridge casings located at the scene and near Ruvim's body. Officers did not locate identification or a cell phone belonging to Ruvim.

Officers at the scene were flagged down by Daniel Bronitskiy DOB 02/22/1999. Daniel said he had been contacted by the family of Ruvim after they had grown worried that he had not returned home from a church he attended in Edgewood, WA. Daniel explained that he is a friend of Ruvim from church and he last saw him at church around 2100 hours the night of the shooting. Daniel told officers that Ruvim typically attends the Salvation Baptist Church in Edgewood, WA and would stop to get dinner at the Panda Express restaurant at The Crossings before driving home. The Panda Express restaurant is in the same shopping center where the shooting occurred. Daniel told officers that Ruvim's family utilized the "find my iPhone" app and saw the last known location for Ruvim's cell phone was at the Panda Express restaurant at 2140 hours.

Detectives conducted a follow up interview with K.C. KC said she and her friend were in a vehicle in the Menchie's parking lot. They recalled Ruvim's vehicle had been there for quite some time and it appeared to be occupied with the engine running. K.C. saw a person approach the rear driver's side of Ruvim's parked vehicle. She described this person as a black male, thirty to forty years old, wearing a dark colored beanie cap and dark, bulky jacket. The suspect was holding a black handgun above his head, pointed downward toward the car. K.C. heard gunfire and ducked out of fear. When she looked up again she saw Ruvim's car quickly leave the shopping center.

Eventually several of Ruvim's family members arrived at the scene, including Ruvim's brother, Daniil Stukov DOB 08/24/1991. They grew concerned that Ruvim had not returned home and was not answering his phone. They checked the last known location for Ruvim's iPhone, which led them to the Crossings shopping center. The family advised Ruvim has no prior involvement with narcotics or criminal activity, and it was unusual for Ruvim to not answer his phone. The family described Ruvim as very active in his church, including the choir and as a teacher in Sunday school. Daniil told detectives that Ruvim had been driving Daniil's vehicle that night, described as a 2019 silver Toyota Camry WA plate BWE8015. Detectives canvassed the parking lot and did not locate this vehicle at the scene. Detectives

checked the registration and confirmed this vehicle is registered to Daniil. Daniil reported the car as stolen and initiated GPS capabilities on the vehicle in an attempt to recover the Camry.

On December 9, 2021 at 2153 hours Sirius XM radio contacted South Sound 911 to report they received a signal and location to the stolen Camry. They provided the address of 707 Martin Luther King Jr. Way in Tacoma, WA. Tacoma police officers responded to this location and observed the vehicle was unoccupied and locked. The vehicle was searched pursuant to a search warrant. DNA samples and latent fingerprints were collected from inside of the vehicle. Detectives observed the front license plate to the Camry was found on the front passenger seat along with several items that appeared consistent with items being rummaged through. Detectives also would later learn by watching video surveillance, that the front license plate to this vehicle was not displayed on the front of the Camry while Ruvim was driving the vehicle prior to his murder. This led investigators to believe the license plate had been inside of the Camry at the time of the murder.

Detectives obtained several surveillance videos from surrounding businesses. One of those was from the Panda Express drive thru. The video showed Ruvim in the drive thru at about 2124 hours and he appeared to be alone in the vehicle. Video from neighboring businesses shows Ruvim parking his vehicle in the area where he was later murdered.

Ruvim's murder was captured on video at approximately 2146 hours. Utilizing numerous cameras in the area from several businesses and city owned cameras in public intersections and roadways, detectives identified a suspect in Ruvim's murder. Detectives observed the person believed to be the suspect, on camera beginning around 2026 hours and up until the time of the murder. Video also shows Ruvim's vehicle leaving the scene and going southbound of Interstate 5 at about 2147 hours. Video surveillance showed the suspect was on foot and appeared to be alone during the time leading up to the murder.

At about 2058 hours, approximately 45 minutes before the murder, the suspect entered a Walmart store located at 34520 16th Ave S. This location is 0.5 miles from the scene of the murder. The suspect attempted a transaction at the cell phone Eco ATM machine inside of the store. The suspect is a black male, wearing a black beanie, two lighter colored medical masks over the lower half of his face, black pants, a two-tone color (possibly gray, green or brown) bulky jacket with a hood, other clothing underneath and distinctive brown slip-on shoes with black soles. The suspect's appearance and clothing were consistent with what K.C. described to investigators.

At 2119 hours, approximately 20 minutes before the murder, a person believed to be the same suspect is captured on video walking on the sidewalk past Catapult Adventure Park, located at 35025 Enchanted Pkwy S. This location is 0.1 miles from the scene of the murder. As in the Walmart video, the suspect is a black male, wearing a light colored covid mask, black beanie, a two-tone color bulky jacket with dark pants, and distinctive brown slip-on shoes with black soles. A person believed to be the same suspect is captured on several different area cameras before walking into The Crossings driveway / parking lot at 2142 hours. At 2144 hours, the suspect walks in the direction of Ruvim's parked vehicle and approaches the rear driver's side. At 2146 hours, there is a flash of light consistent with a muzzle flash on the driver's side of Ruvim's vehicle. The vehicle quickly reverses and travels out of The Crossings parking lot, north on Pacific Highway S., east on S. 348th, and into the southbound I5 lane.

On December 9, 2020, Dr. Croom with the King County Medical Examiner's Officer performed an autopsy of Ruvim. He sustained three gunshot wounds: one to the top of his head, one to the left shoulder, and one to the left chest. There was gunshot residue on Ruvim's jacket suggesting the shots were fired at close range. The manner of death was ruled a homicide.

On January 7, 2022 Detectives received notification from King County AFIS that a fingerprint recovered from the license plate inside of the vehicle belonged to Leonel Gonzalez DOB 04/24/1986. Detectives

checked Gonzalez's name and observed Gonzalez has been convicted of thirteen felonies in the State of Washington, including for crimes of robbery, tampering with a witness, Assault 3rd, Controlled substance, eluding a police officer and multiple Unlawful possession of a firearm convictions. Gonzalez also had a felony warrant with the Department of Corrections stemming from a Robbery. Detectives also learned through the Pierce County Sheriff's Office that Gonzalez is charged with Rape in the Third Degree in Pierce County stemming from an incident that occurred in July 2021. Detectives obtained several photos of Gonzalez and Gonzalez appears to be the same person depicted in the surveillance video from the Walmart approximately 45 minutes before the murder. Detectives also determined that Gonzalez made a transaction at the same Walmart Eco ATM on November 22, 2021. This was approximately two weeks before Ruvim's murder.

Detectives learned Gonzalez was arrested on December 9, 2021 at about 1355 hours at 18000 Pacific Avenue in Pierce County, WA for possession of a stolen firearm, unlawful possession of a firearm and resisting arrest. Per the report, deputies were called earlier in the day for Gonzalez passed out on a bus. During a search of his person, medics located a firearm on Gonzalez's person. Before a check of the firearm could be done, Gonzalez fled the area and refused to stop for deputies. A check of the serial number for the firearm indicated it was reported stolen from Lynnwood Police. Gonzalez was later located and arrested after resisting arrest. The firearm and a Motorola cell phone were recovered as evidence by deputies.

Detectives later obtained video from Pierce County Transit which captured Gonzalez boarding the bus in Lakewood, WA at 0743 on December 8th (the day of the murder). Detectives also obtained body worn video from the deputies who arrested Gonzalez on December 9th. In both videos, Gonzalez is wearing what appears to be the same two-tone jacket, black beanie, black pants, and distinctive brown slip-on shoes with black soles, as depicted on the Walmart and Catapult video just minutes before the murder. During a search incident to arrest, deputies located a wallet that contained a bank card belonging to Ruvim. At the time of the arrest, deputies were unaware of the murder in Federal Way from December 8th.

Gonzalez's property at the Pierce County Jail was seized pursuant to a search warrant. Gonzalez's property included a wallet resembling the one that contained Ruvim's bank card, the distinctive brown slip-on shoes with black soles, and a receipt with the name "Petr Stukov" on it. Petr Stukov is Ruvim's father. Detectives also recovered a document with Gonzalez's name on it that appeared to have blood stains on it. Detectives tested the stain and preliminary results indicated positive as a source of blood. Gonzalez was also in possession of a cell phone charger that appeared to be consistent with the cell phone charger Ruvim was holding while in the drive thru of Panda Express. Gonzalez also had a document from a T Mobile store that showed he purchased the Motorola cell phone in the morning hours of December 8th.

Pursuant to a search warrant, detectives conducted a search of the Motorola cell phone recovered from Gonzalez at the time of his arrest. Detectives determined the assigned phone number for this device, matched with what was observed on the T Mobile invoice/receipt in Gonzalez's property. Detectives determined Gonzalez was active on this phone in the hours before and after Ruvim's murder. Gonzalez primarily communicated with a phone number which detectives later associated to a female in Tacoma, WA. The content of the messages indicated they knew each other and were possibly domestic partners. This female was identified as Nona L. Hook DOB 07/25/67. Hook's last known address is 801 S. G ST. in Tacoma, WA, approximately one third of a mile from where Ruvim's vehicle was located abandoned on December 9th.

On January 19, 2022 Detectives contacted Gonzalez at the Pierce County Jail. Detectives advised Gonzalez of Miranda with Gonzalez verbally stating he understood his rights and he agreed to give a statement. Post Miranda, Gonzalez admitted to being in Tacoma on December 8, 2021 in the morning hours. Gonzalez admitted he was on the bus and left his iPhone on the bus by accident. Upon realizing his phone was missing, Gonzalez provided details that corroborated him purchasing a Motorola cell phone at

a T Mobile store. Gonzalez confirmed it was the phone he was later in possession of at the time of his arrest on December 9th. Gonzalez went on to tell detectives that he was able to contact the person in possession of his lost iPhone (via his new Motorola) and agreed to meet an unknown named female at the Emerald Queen Casino to get his phone back. Gonzalez obtained his cell phone back and admitted he intended to sell his new Motorola phone that night via Eco ATM machine. Gonzalez admitted he later went to the Lakewood Walmart to use the Eco ATM, but denied being at the Federal Way location. When confronted with video surveillance images from the Federal Way Walmart, Gonzalez told detectives he thought the images were from the Lakewood location. Gonzalez denied being in Federal Way at any point and stated he had not been in Federal Way since about October 2021. Gonzalez said he spent the rest of the night on December 8th at Allenmore Hospital in Lakewood, WA getting treated for a back injury. Gonzalez said the next morning he began his day near a marijuana dispensary store somewhere “near 6th Avenue”. Gonzalez said he got high and ultimately passed out on the bus, which led to his contact with Pierce County Sheriff’s. Gonzalez was unable to explain the time gap between Allenmore Hospital and the next morning on 6th Avenue. Gonzalez said he does not own any vehicles nor has he driven any vehicles “for years”. Gonzalez admitted Nona Hook is Gonzalez’s girlfriend and he lives with her. Gonzalez said they rented a room at a Clarion Hotel on Tacoma mall Boulevard on or around the day of December 8, 2021.

Gonzalez also denied knowing or having ever met Ruvim Stukov. When asked how he came to be in possession of Ruvim’s property, Gonzalez was unable to explain why he was in possession of Ruvim’s property. Gonzalez admitted to prowling cars “two years ago” but said he has not prowled any vehicles since then. When confronted with information about his fingerprint located inside Ruvim’s car, Gonzalez told detectives “that’s a lie” and said it was not possible. Gonzalez could not offer any explanation as to why his fingerprint would be in Ruvim’s car. Gonzalez then ended the interview with the detectives.

On January 19, 2022 Detectives located and interviewed Nona Hook at her residence. Hook said she has known Gonzalez for about thirteen years, dating on and off. Hook said before Gonzalez went to jail on December 9th 2021, he called her several times. On December 8, 2021 Hook said she received a call from Gonzalez. Gonzalez told Hook he had a car and was going to pick her up, but Hook declined his offer.

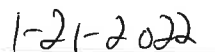
Detectives showed Hook two photos, one being from a bus in Tacoma on December 8, 2021 and the other from the Federal Way Walmart on December 8, 2021. Hook formally identified the person depicted in those images as Leonel Gonzalez.

Pursuant to a search warrant, Detectives received call detail records from T-Mobile from the phone number belonging to the Motorola cell phone Gonzalez was in possession of at time of arrest. Per the call records, Gonzalez was listed as the account subscriber. Additionally, records show the cell phone was used and was placed in Federal Way at about 2020 hours on December 8, 2021. Gonzalez’s phone continued connecting to cell towers in Federal Way, consistent with the direction of travel video surveillance shows Gonzalez walking prior to the murder. At about 2136 hours, Gonzalez’s cell phone connected to a tower located at 34919 Enchanted Parkway South in Federal Way. This address also happens to be the address of the Panda Express where Ruvim visited about ten minutes prior to the murder.

Under the penalty of perjury under the laws of the State of Washington, I certify that the foregoing is true and correct. Signed and dated by me, at Federal Way, Washington.



 J. Wilson #140



 Date

AGENCY: APPENDIX Federal Way Police Department	CASE NUMBER 210013772	FILE NUMBER	PCN NUMBER	APPENDIX SUPERFORM
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ARREST INFORMATION	
DATE & TIME OF VIOLATION 12/8/2021	CRIMINAL TRAFFIC CITATION ATTACHED? <input type="checkbox"/> YES <input type="checkbox"/> NO
DATE OF ARREST/TIME	ARREST LOCATION FEDERAL WAY, WA
ACCOMPLICES	

SUSPECT INFORMATION		
NAME (LAST, FIRST, MIDDLE/JR, SR, 1st, 2nd) GONZALEZ, LEONEL	DOB 4/24/1986	ALIAS, NICKNAMES
ARMED/DANGEROUS <input type="checkbox"/> YES <input type="checkbox"/> NO	IDENTITY IN DOUBT? <input type="checkbox"/> YES <input type="checkbox"/> NO	CITIZENSHIP

PHYSICAL DETAILS							
SEX M	HEIGHT 6'01	WEIGHT 200	SKIN TONE	RACE B	EYE BRO	HAIR BLK	SCARS, MARKS, TATTOOS, DEFORMITIES Scars, Marks, Tattoos: TAT NECK

IDENTIFICATION DETAILS							
UCN 10565297	PRIOR BA #	AFIS #	FBI #	STATE ID # WA19816296	DRIVERS LICENSE #	STATE	SSN
RESIDENCE				EMPLOYMENT / SCHOOL			
LAST KNOWN ADDRESS 10714 114 AVE SW TACOMA, WA 98498				EMPLOYER, SCHOOL (ADDRESS, SHOP/UNION NUMBER)			
RESIDENCE PHONE (253) 761-3654				BUSINESS PHONE		OCCUPATION	
EMERGENCY CONTACT							
PERSON TO BE CONTACTED IN CASE OF EMERGENCY			RELATIONSHIP	ADDRESS			PHONE

CHARGE INFORMATION			
OFFENSE <input type="checkbox"/> DV <input type="checkbox"/> FUGITIVE Murder In The First Degree	RCW / ORD#	COURT / CAUSE #	CITATION #
OFFENSE <input type="checkbox"/> DV <input type="checkbox"/> FUGITIVE	RCW / ORD#	COURT / CAUSE #	CITATION #

WARRANT / OTHER				
WARRANT DATE	WARRANT NUMBER	OFFENSE	AMOUNT OF BAIL	WARRANT TYPE
ORIGINATING POLICY AGENCY		ISSUING AGENCY	WARRANT RELEASED TO: (SERIAL # / UNIT / DATE / TIME)	

PROPERTY INFORMATION		
LIST VALUABLE ITEMS OR PROPERTY LEFT FOR ARRESTEE AT JAIL		
LIST VALUABLE ITEMS OR PROPERTY ENTERED INTO EVIDENCE (SIMPLE DESCRIPTION, IDENTIFYING MARKS, SERIAL #)		
LIST ITEMS ENTERED INTO SAFEKEEPING		
TOTAL CASH OF ARRESTEE \$0.00	WAS CASH TAKEN INTO EVIDENCE? <input type="checkbox"/> YES <input type="checkbox"/> NO AMOUNT: \$0.00	SIGNATURE OF JAIL STAFF RECEIVING ITEMS / SERIAL #

OFFICER INFORMATION		
ARRESTING OFFICER / SERIAL # Wilson, Justin 140	TRANSPORTING OFFICER / SERIAL #	SUPERVISOR SIGNATURE / SERIAL #
SUPERFORM COMPLETED BY (SIGNATURE/SERIAL #)		CONTACT PERSON FOR ADDITIONAL INFORMATION (NAME / SERIAL # / PHONE)

COURT FILE		
SUPERIOR COURT FILING INFO <input type="checkbox"/> IN CUSTODY <input type="checkbox"/> AT LARGE <input type="checkbox"/> OUT ON BOND	COURT CAUSE (STAMP OR WRITE)	
COURT/DIST. CT.NO.	DIST. CT. BONDS\$	SUP. CT. DATE

EXTRADITE				
PERSON APPROVING EXTRADITION	SEAKING-LOCAL ONLY WACIC-STATE WIDE <input type="checkbox"/>	NCIC-WILL EXTRADITE FROM ID & OR ONLY <input type="checkbox"/>	NCIC-WILL EXTRADITE FROM OR, ID, MT, WY, CA, NV, UT, CO, AZ, NM, HI, AK <input type="checkbox"/>	NCIC-WILL EXTRADITE FROM ALL 50 STATES <input type="checkbox"/>
E N T R Y	UCN 10565297	DOE _____	DOC _____	
	WAC _____	TOE _____	TOC _____	
	NCIC _____	OP _____	OP _____	

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

STATE OF WASHINGTON,)
)
 Plaintiff,)
)
 v.) NO. 22-1-00251-1 KNT
)
 LEONEL GONZALEZ,)
)
 Defendant.)
)

VERBATIM REPORT OF PROCEEDINGS

ARRAIGNMENT HEARING
FEBRUARY 3, 2022

JUDGE LeROY McCULLOUGH
KING COUNTY SUPERIOR COURT

Parties Appearing:

Jennifer R. Petersen, Attorney at Law, on behalf of the Plaintiff
Whitney H. Sichel, Attorney at Law, on behalf of the Defendant
Victoria Latus, Attorney at Law, on behalf of the Defendant

1 Court is convened on Thursday, February 3,
2 2022 in the matter of STATE OF WASHINGTON
3 v. LEONEL GONZALEZ, King County Cause No.
4 22-1-00251-1 KNT, before the HONORABLE
5 LeROY McCULLOUGH, Judge; JENNIFER R.
6 PETERSEN appearing on behalf of the
7 Plaintiff, STATE OF WASHINGTON; WHITNEY H.
8 SICHEL and VICTORIA LATUS, appearing on
9 behalf of the Defendant, LEONEL GONZALEZ.

10 MS. PETERSEN: Your Honor, this is State of Washington v.
11 Leonel Gonzalez, cause number 22-1-00251-1 KNT designation.
12 Jennifer Petersen on behalf of the State. Mr. Gonzalez is not
13 currently in the courtroom. He's represented by counsel. I'll
14 allow them to make their appearances for the record, and I believe
15 counsel has a motion.

16 MS. LATUS: Good morning, Your Honor. For the record,
17 Victoria Latus from the Defender Association for Mr. Gonzalez. I'm
18 also joined by Whitney Sichel on this matter.

19 We do have a motion. I -- I filed a written brief last night.
20 We are asking the Court to prohibit the media, who I believe is
21 present on this morning to observe Mr. Gonzalez's arraignment.
22 We're asking the Court to order that the media not film
23 Mr. Gonzalez's face. We have not received discovery in this case
24 yet, but based on the Certification for Determination of Probable
25 Cause, it is apparent that the State believes there's quite a bit
of video footage that they intend to attempt to connect
Mr. Gonzalez to the shooting in this instance. So we believe that
identity of the shooter in this case will be a significant issue at
trial.

1 Because of that, we are concerned about any prejudice coming
2 from the media displaying images of Mr. Gonzalez, specifically his
3 face, in his jail reds coming out into court. And so we are asking
4 the Court to restrict that.

5 General Rule 16 is the governing law in this instance, and just
6 requires the Court to prescribe reasonable conditions and
7 limitations with which the media can comply. And I do think the
8 rule does require the Court to -- to see if the media would like to
9 be heard with respect to any alternative restrictions. But it's
10 certainly our position that -- that just the restriction on filming
11 the face is the least restrictive condition the Court could impose
12 to ensure Mr. Gonzalez's right to a fair trial.

13 THE COURT: You also mention in your brief that this is
14 not a closure. And even if it is, the limits would still be
15 appropriate.

16 MS. LATUS: That's correct, Your Honor.

17 THE COURT: Go ahead.

18 MS. LATUS: So, Your Honor, there are two cases that
19 primarily deal with whether restrictions on filming constitute
20 court closures. I cited both of them in my brief. First is the
21 Russell case. In that case the Court prohibited the media from
22 photographing or filming juvenile witnesses during testimony --
23 during trial testimony. And the Court of Appeals upheld that
24 decision, although the Court did not engage in any analysis of the

25

1 Ishikawa factors, finding that that restriction on filming was not
2 even a partial closure.

3 Similarly in the Njonge case the Supreme Court of Washington
4 addressed an instance where the media was precluded from filming
5 any portions of voir dire during trial. And the Washington Supreme
6 Court found that -- that the disallowing the filming of voir dire
7 rather than the presence of the media was permissible, so -- so
8 long as the Court doesn't preclude the media from being present and
9 observing, then it's not a closure.

10 But if the Court does find that -- and the limit that we are
11 requesting is a closure. I think given the -- the issue of
12 identify potentially being a significant part of trial in this
13 case, it is still appropriate to limit the filming of
14 Mr. Gonzalez's face. We think that there is no less restrictive
15 condition that would ensure that Mr. Gonzalez is not prejudiced
16 because certainly the media is able to film the rest of the
17 proceedings, even can film part of Mr. Gonzalez. But we're just
18 asking for that specific limitation to protect his right to a fair
19 trial.

20 THE COURT: Thank you very much. I did not receive any
21 responsive briefing from the State, but I will hear from you now.

22 MS. PETERSEN: Your Honor, I'm not taking a position on
23 this motion.

24 THE COURT: All right. The Court has reviewed the -- the
25 motion, and would note that we're talking about a 2015 case, and

1 that identity appears to be an issue. Let me inquire whether or
2 not there's anyone that's objecting to the request. The
3 indications are there is no one (indecipherable) the body language
4 of -- from the persons present suggests that there is no objection.

5 So again, I am going to grant the request, noting the age of
6 this case, the allegations are of a 2015 event. Number two,
7 identity appears to be an issue. Number three, there's some
8 question about the video, and so we're talking about whether or not
9 the -- this is the person. And the issues will be turning again on
10 the video camera and so forth. So it's very important in honor of
11 the presumption of innocence, that there not be any undue jury or
12 public taint.

13 I do believe in line with the cases that were submitted that
14 this is not a closure. However even if it were, as has been
15 pointed out by defense counsel, there is a need for this
16 restriction, given the age and status of the case. The parties
17 have been given an opportunity to object. We've looked at the
18 least restrictive means, and we're not -- we're not restricting
19 anyone from being in the courtroom. We have an open courtroom with
20 cameras as well. And we are not prohibiting the filming of the
21 individual, we're simply restricting the filming of the face.
22 Weighing the competing interests of the Defendant and the public,
23 along with the presumption of innocence, the Court is going to
24 grant the motion.

25

1 MS. PETERSEN: Your Honor, if I may, I just want to
2 correct one thing. This is not a 2015 case. This incident just
3 occurred on December 8th of 2021.

4 THE COURT: Okay.

5 MS. PETERSON: I just wanted to correct that simple fact.

6 THE COURT: All right, thank you. Let me -- where did
7 that 2015 date come from? Hold on a minute. So the 2015 case has
8 to do with a different case. That's 15-1-04388-5 SEA. Thank you
9 very much.

10 Other than that the Court's going to grant the motion
11 prohibiting filming of Mr. Gonzalez's face.

12 MS. SICHEL: Thank you. And good morning again, Your
13 Honor. Whitney Sichel present now with Mr. Gonzalez. I did want
14 to let the Court know that we'll be asking to stipulate to name and
15 date of birth for purposes of this hearing only.

16 THE COURT: It is so noted.

17 MS. PETERSEN: Sir, you've been charged by way of
18 information as follows: Count I, Murder in the First Degree. The
19 State alleges that on or about December 8, 2021, while committing
20 the crime of Robbery in the First Degree, in the course of and in
21 furtherance of that crime, and the immediate therefrom, did cause
22 the death of Ruvim Stukov, a human being, who was not a participant
23 in the crime, and who died or about December 8, 2021.

24 The State further alleges that at the time of that crime you
25 were armed with a .40 caliber handgun.

1 Count II, Unlawful Possession of a Firearm in the First Degree.
2 State alleges again that on December 8, 2021, previously having
3 been convicted of the crime of Attempted Robbery in the First
4 Degree, knowingly did have in your possession a .40 caliber
5 handgun.

6 I've provided a copy of that Information to your counsel. I
7 ask that she acknowledge receipt, waive further formal reading, and
8 enter a plea at this time.

9 MS. SICHEL: And we will acknowledge receipt of the
10 complaint, waive further formal reading, and ask to enter pleas of
11 not guilty to each of the two counts.

12 THE COURT: The Court enters pleas of not guilty.

13 MS. PETERSEN: Your Honor, we're asking to set this matter
14 for an omnibus hearing on March 3rd, and trial date on March 31st,
15 making expiration April 4th.

16 THE COURT: Any objection to the dates?

17 MS. SICHEL: No objection to those dates, Your Honor.

18 THE COURT: Thank you. You have another motion?

19 MS. SICHEL: And Your Honor, this case is in somewhat of
20 an unusual posture because the State had previously made a motion
21 to the Court ex parte for a no bail hold which was granted. The
22 defense has filed a motion and believes that the State's request
23 violates Mr. Gonzalez's constitutional right to bail on this
24 offense, and also that the State has not met the Statutory elements
25

1 to obtain a no bail hold in terms of the factual elements that
2 support it.

3 So we are noting our objection at this time because we feel
4 that we have an obligation to do so. We are happy to explore that
5 more with the Court and explain more of our motion that was filed
6 yesterday. But we are not asking for a formal bond hearing at this
7 time, meaning that we would ask to reserve our right to argue the
8 amount of bail at some future date.

9 THE COURT: Thank you. Is the State prepared to address
10 that objection to the pretrial detention without bail?

11 MS. PETERSEN: I am, Your Honor.

12 THE COURT: All right. So Ms. Sichel, did you want to --
13 I've reviewed your written defense objection. Did you want to
14 quickly go forward and summarize your position? We will not -- if
15 we do get to the question of the amount of bail -- but that will
16 not be covered today.

17 MS. SICHEL: Thank you. And yes, Your Honor, just
18 briefly. We will, of course, rely on our written briefing with the
19 Court. But Article I, Section 20 of the Washington State
20 Constitution allows detention without bail only for offenses where
21 the Defendant faces the possibility of life in prison. As we've
22 outlined in our briefing, Mr. Gonzalez does not, as charged, face
23 such a possibility. At most, he's facing a 50 year jail sentence.
24 He's currently 35 years old.

25

1 We think that he may actually be facing less than that, but we
2 haven't been able to conclusively determine his offender score at
3 this point, so we can't say that with certainty.

4 It is true that Division II disagrees with this position in a
5 recent case out of -- out of Division II in November --

6 THE COURT: Uh huh.

7 MS. SICHEL: -- of 2021. However that case is currently
8 pending a petition for review before the Supreme Court. It has
9 not -- this issue has not been addressed by either Division I, or
10 the Supreme Court of our State, or my understanding, any other
11 appellate court in this State. So we believe that it is a -- an
12 open issue. In fact Division II called it a novel issue, or a
13 novel argument.

14 THE COURT: Uh huh.

15 MS. SICHEL: So we think that this is appropriate for the
16 Court to make an independent determination on, and not necessarily
17 consider Division II's position entirely binding on the Court at
18 this point.

19 Even if the Court were to conclude today that Article 1,
20 Section 20, allows for a no bail hold on this case, we believe that
21 the State has not met the Statutory requirement of showing by clear
22 and convincing evidence that Mr. Gonzalez has a propensity for
23 violence that would put the community, or any individual at
24 substantial risk of harm, and that no less restrictive conditions
25 such as bail would be able to ensure the safety of the community.

1 We've outlined the reasons for that in our briefing, but
2 essentially the State seems to primarily rely on the unproven
3 allegations both here and in Pierce County, which we believe the
4 Court should give limited weight in the sense that they are
5 unproven. Mr. Gonzalez is presumed innocent. And the defense,
6 obviously because there has not yet been a trial, has not had any
7 kind of substantive opportunity to respond to these allegations.

8 The State also notes Mr. Gonzalez's prior conviction for
9 Attempted Robbery in the First Degree. We would just note for the
10 Court that in reviewing the probable cause certification filed for
11 that case, it doesn't appear that there was any type of violence,
12 threats of violence or weapons involved in that case. So we don't
13 think that that case is particularly probative of any kind of
14 propensity for violence that is required under the Statute.

15 And the State has not introduced any other substantive
16 evidence, or underlying facts to show that Mr. Gonzalez has some
17 other history of threats or violence, or propensity for violence,
18 such as was discussed in the Sargent case in Division II where
19 there was an established history of repeated threats and attempts
20 to kill, or threats to attempt to kill family members in that case.

21 THE COURT: Thank you for your briefing, and for your
22 concise presentation. From the State --

23 MS. PETERSEN: Thank you, Your Honor. The State's request
24 to hold Mr. Gonzalez without bail was, of course, granted filing on
25 this matter. The Court at that time found that the State -- agreed

1 that the State had shown by clear and convincing evidence that the
2 Defendant shows a propensity for violence that creates a
3 substantial likelihood of danger to the community.

4 The defense argues in its brief that the language of Article I,
5 Section 20 that bail may be denied for offenses punishable by the
6 possibility of life in prison excludes all offenses, except for
7 Aggravated Murder in the First Degree, a third strike offense, or
8 certain sex offenses. They argue that it specifically includes
9 Murder in the First Degree which carries a Statutory maximum
10 possible sentence of life in prison.

11 The defense cites no legal authority whatsoever for this
12 argument. In fact the Court, as the defense points out in their
13 brief -- the Court in State v. Sargent held that the language of
14 Article I, Section 20, permits denial of bail for all Class A
15 offenses because the Statutory maximum for a Class A offense is
16 life in prison. The Court defined the possibility of life in
17 prison as the Statutory maximum for an offense.

18 This Court, judges here in King County, have granted in the
19 past the State's request to hold Defendants without bail on the
20 very same charge as Mr. Gonzalez is facing, on Murder in the First
21 Degree. Most recently in State v. Puloka, Judge Galvan made that
22 finding. In State v. Morgan, Judge Shaffer made that finding.

23 There is no legal authority for defense's interpretation of
24 Article I, Section 20. And the State is asking this Court to find
25

1 that Article I, Section 20, permits no bail in this case where the
2 Statutory maximum is the possibility of life in prison.

3 Moreover, Your Honor, the State has met the Statutory
4 requirements, and has made the showing, by clear and convincing
5 evidence, that the Defendant has a propensity for violence that
6 creates a substantial likelihood of danger to the community.

7 Here he is charged with Murder in the First Degree. He is
8 charged with shooting and killing a victim who was a stranger to
9 him, in a random and a brutal carjacking, where the Defendant
10 approached the victim's car with his gun drawn. And within seconds
11 of approaching that car, shot the victim multiple times as the
12 victim sat alone eating takeout in his car. He pulled the victim's
13 body from his car, left it on the ground, and drove away.

14 The Defendant has a lengthy criminal history which includes
15 convictions for Attempted Robbery in the First Degree, Bail
16 Jumping, Eluding, two counts of Assault 3, and Tampering with a
17 Witness. Most recently the Defendant was sentenced to prison after
18 pleading guilty to Attempted Robbery in the First Degree. He had a
19 (indecipherable) last summer under Blake.

20 He was released from prison on June 9th. One month after his
21 release from prison he is alleged to have committed a rape of a
22 young woman known to him. He's charged in Pierce County with Rape
23 in the Third Degree for that crime. He has a \$100,000 warrant in
24 Pierce County for that crime.

25

1 At that time that he was released from prison, at the time that
2 he is alleged to have committed that rape, he was on active DOC
3 supervision. He failed to comply with any of the conditions of his
4 DOC commitment. He failed to report to his DOC officer, and a DOC
5 escape warrant was issued. He was on DOC escape status when he
6 committed the instant crime -- or the crime before the Court today.
7 He has a DOC escape hold in addition to the pending Rape 3 charges
8 in Pierce County.

9 At the time of his arrest on this case one day after this
10 murder, he was found to be in possession of another firearm,
11 despite being a convicted felon, despite being repeatedly ordered
12 by the Court not to possess a firearm.

13 Counsel points out that the murder charge here, the rape charge
14 in Pierce County, are unproven allegations. But as this Court is
15 aware, unproven allegations may be considered by the Court at a
16 bail hearing. The Court at a bail hearing does not weigh the
17 evidence, but it focuses on facts that are relevant to community
18 safety. And those facts most certainly are. Thank you, Your
19 Honor.

20 THE COURT: Thank you, rebuttal.

21 MS. SICHEL: Oh, I'm sorry, just briefly, Your Honor. I
22 would just note that in terms of the constitutional argument that
23 we're making, the legal authority would be the tenet of statutory
24 interpretation; that when terms are clear and unambiguous, that the
25 Court gives them their plain meaning. And our argument, under that

1 tenet of statutory interpretation is that the possibility of life
2 in prison, given the clear meaning of that and the fact that those
3 terms are not used interchangeably with statutory maximum in the
4 SRA or elsewhere in the law, means that the Court should give them
5 their plain meaning; that Mr. Gonzalez would actually face a
6 possibility of life in prison, which as charged, he does not.

7 THE COURT: With respect to the other charges, the history
8 that the State has laid out, did you have any comment about that,
9 and the chronology?

10 MS. SICHEL: Your Honor, with respect to each of the
11 pending allegations, I would just note for the Court that we're --
12 the Court may consider those at a bail hearing. But we are asking
13 the Court to give those limited weight, given the fact that
14 Mr. Gonzalez is not in the position to be commenting on those in
15 front of the Court, and that he's presumed innocent of those
16 charges at this time.

17 In terms of his other criminal history, I would just note
18 that -- that other than the Attempted Robbery, any assaultive
19 history, the two Assault 3's that the State noted are over 10 years
20 old. And I'm not aware of any of the other history -- of
21 convictions that would be characterized as violent.

22 THE COURT: Thank you. And as far as the optivity under
23 Title 10 to call witnesses and/or to cross examine, you're not
24 requesting that at this time.

25

1 MS. SICHEL: I'm sorry, Your Honor, I couldn't hear you.

2 THE COURT: As far as the opportunity that's suggested in
3 Title 10 at such a hearing to call witnesses or anything, are you
4 requesting that at this time?

5 MS. SICHEL: No, Your Honor.

6 THE COURT: All right. If there's nothing further from
7 the State, the Court would note that Article 1, Section 20 of the
8 constitution does in fact provide that all persons charged with a
9 crime shall be bailable by sufficient surety, except for capital
10 offenses. We do know that the presumption of innocence dominates.

11 Article I, Section 20 also states that bail, and I quote, may
12 be denied for offenses. And this is -- the choice of the word says
13 offenses versus offender. Bail may be denied for offenses
14 punishable by the possibility of life in prison upon a showing by
15 clear and convincing evidence of a propensity for violence that
16 creates a substantial likelihood of danger to the community or any
17 person subject to such limitations as shall be determined by the
18 legislature.

19 This Court believes that this section does allow for bail to be
20 denied. The -- the precise language does not spell out, or limit,
21 the non-bail to those four categories that have been mentioned.
22 But it says for offenses punishable by the possibility. And it's
23 interesting to this Court that that language talks about offenses
24 versus the offender, because one would be subjective and the other
25 would be objective. Certainly the analysis of the case that was

1 presented -- and thank you, defense counsel, for submitting that
2 with your briefing -- state -- In Re: Sargent, would be adopted by
3 this Court. We're not talking about subjective possibilities.
4 We're talking about objective possibilities.

5 So I do believe adopting that analysis, that bail may be
6 denied.

7 So we go to the second question of whether or not the State has
8 made by clear and convincing -- shown by clear and convincing
9 evidence of a propensity for violence.

10 Certainly the information that the Court has here would support
11 the clear and convincing -- the finding that there is clear and
12 convincing evidence of a propensity for violence that creates a
13 substantial likelihood of danger to the community. This is based
14 on what I've been told. And we are aware that these are unproven
15 allegations in many of these instances. However they are properly
16 considered before the Court.

17 We are talking about an allegation of a random carjacking,
18 shooting multiple times, a drive-away, then an assault -- a sexual
19 assault, attempted robbery, and then the non-compliance with active
20 DOC supervision. And we're talking about escape holds as well as
21 the other issues in the Defendant's history.

22 Under certain circumstances, counsel, I would agree with you
23 that because these have not all been proven, that there would be a
24 question about it. But given the remarkable chronology of events,
25 and his apparent non-compliance with the previous conditions of the

1 Court, and with the Department of Corrections, I do believe that
 2 the sufficient showing has been made of a propensity for violence
 3 that creates a substantial likelihood of danger to the community.
 4 And so the defense motion would be denied.

5 MS. PETERSEN: Your Honor, I've completed a conditions of
 6 release. I am also asking this Court to order no contact with Nona
 7 Hook, and any member of Ruvim Stukov's family.

8 MS. SICHEL: No objection. Thank you, Your Honor. We've
 9 signed those conditions of release, and I don't believe we have any
 10 other matters before the Court.

11 THE COURT: All right. I thank you so much.

12
 13 Hearing adjourns on Thursday,
 14 February 3, 2022 at 10:18 a.m.

15
 16
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 18
 19 CERTIFICATE

20 I certify that the foregoing is a correct transcript from the
 21 electronic sound recording of the proceedings in the above-entitled
 22 matter.

23 *Sheri K Escalante*
 24 Sheri K. Escalante, Transcriber

25 DATED: February 17, 2022

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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
 IN AND FOR THE COUNTY OF KING**

STATE OF WASHINGTON

PLAINTIFF,

v.

LEONEL GONZALEZ,

DEFENDANT.

NO. 22-1-00251-1 KNT

**DEFENSE OBJECTION TO
 STATE’S REQUEST FOR
 PRETRIAL DETENTION
 WITHOUT BAIL**

RELIEF REQUESTED

COMES NOW the defendant, Leonel Gonzalez, by and through his attorneys of record, Whitney Sichel and Victoria Latus, and respectfully requests that this Court deny the State’s request to hold Mr. Gonzalez without bail. The State’s request violates Article 1, section 20 of the Washington State Constitution. The State has also failed to provide sufficient evidence under RCW 10.21.040 to establish by clear and convincing evidence that Mr. Gonzalez “shows a propensity for violence that creates a substantial likelihood of danger to the community or any persons,” and that no condition or combination of conditions will reasonably assure the safety of any other person and the community.

STATEMENT OF FACTS

1. I, Whitney Sichel, am the attorney for Leonel Gonzalez. I swear under penalty of perjury that the following facts are true to the best of my knowledge.
2. Mr. Gonzalez is charged with Murder in the First Degree and Unlawful Possession of a Firearm in the First Degree, both alleged to have occurred on December 8, 2021.
3. With respect to the murder allegation, Mr. Gonzalez is alleged to have caused the death of Mr. Ruvim Stukov in the course of committing the crime of Robbery in the First Degree. Specifically, the State alleges that Mr. Gonzalez shot Mr. Stukov while attempting to steal Mr. Stukov's vehicle.
4. Mr. Gonzalez is a 35 year old black man. *See* SUPERFORM.
5. The State alleges that the victim Mr. Stukov was "a complete stranger" to Mr. Gonzalez. *See* PROSECUTING ATTORNEY CASE SUMMARY AND REQUEST FOR BAIL AND/OR CONDITIONS OF RELEASE.
6. The State references that Mr. Gonzalez was released from prison in June of 2021 after serving a sentence for Attempted Robbery in the First Degree. *Id.* The State does not reference any of the facts or circumstances underlying that Attempted Robbery conviction. *Id.* Upon review of the Probable Cause Certification for that case (Case No. 15-1-04388-5), it is notable that the attempted robbery at issue involved no threats of violence, no acts of violence, and no possession or display of weapons. The facts describe Mr. Gonzalez handing a note to a bank teller asking for \$5,000 and then walking out of the bank before any money was ever exchanged. *See* Attachment A: Probable Cause Certification, Case No. 15-1-04388-5.

7. The State indicates that Mr. Gonzalez has prior adult felony convictions for Bail Jumping (2005), Attempt to Elude (2005), Assault 3 (2009), Assault 3 (2009) and Tampering with a Witness (2015). The State provides no details regarding the facts or events underlying those various convictions.
8. The State also notes that Mr. Gonzalez is held on bail for a pending Pierce County Case for Rape Third Degree but provides no details regarding the underlying facts of circumstances surrounding that case.

Signed this 2nd day of February, 2022, in Kent, Washington,

/s/ Whitney H. Sichel
 Whitney Sichel, WSBA# 44474
 Attorney for Leonel Gonzalez

ARGUMENT

1. ARTICLE 1, SECTION 20 OF THE WASHINGTON STATE CONSTITUTION PERMITS PRETRIAL DETENTION WITHOUT BAIL ONLY FOR OFFENSES WHERE THE DEFENDANT FACES THE POSSIBILITY OF LIFE IN PRISON; MR. GONZALEZ DOES NOT FACE THAT POSSIBILITY AS CHARGED.

Article 1, Section 20 of the Washington Constitution, provides:

All persons charged with crime shall be bailable by sufficient sureties, except for capital offenses when the proof is evident, or the presumption great. *Bail may be denied for offenses punishable by the possibility of life in prison* upon a showing by clear and convincing evidence of a propensity for violence that creates a substantial likelihood of danger to the community or any persons, *subject to such limitations as shall be determined by the legislature.*

Const. Art. I, § 20.

Thus, a court may deny bail only “for offenses punishable by the possibility of life in

prison” *Id.* Because Mr. Gonzalez is charged with Murder in the First Degree, which as charged carries a determinate sentence that does not result in a sentence of life in prison, this Court may not impose detention without bail.

The amendment’s words “offenses punishable by the possibility of life in prison” are clear and unambiguous. Courts look to the dictionary of words to determine their plain meaning. *Nissen v. Pierce Cty.*, 183 Wn.2d 863, 881, 357 P.3d 45 (2015). “Possibility” means “something that can develop or become actual.” <https://www.merriamwebster.com/thesaurus/possibility>. Thus, “the possibility of life in prison” must mean only those offenses for which a court could actually impose a life sentence upon conviction of the charged offense.

The Sentencing Reform Act (“SRA”) is a limitation on the scope of offenses under Article 1, section 20. Pursuant to the SRA, there only four instances in which a life sentence is a legal possibility: (1) a sentence as persistent offender under RCW 9.94A.570; (2) a sentence for certain Class A sex offenses under RCW 9.94A.507; (3) sentence for the crime for aggravated murder; and (4) a sentence for a Class A felony committed prior to the effective date of the SRA in 1984. For any other charge, including those against Mr. Gonzalez, a life sentence is legally impossible.

Murder in the First Degree is an offense subject to standard sentencing guidelines under the SRA. *See* RCW 9.94A.515. For the crime of Murder in the First Degree, the SRA mandates a determinate sentence range dictated by the level of the offense (XV) and the defendant’s offender score. *Id.* Thus, even if Mr. Gonzalez were “maxed out” with an offender score of 9, his standard sentence range, proscribed by the legislature, would be 411-548 months, plus the five-year firearm enhancement. Mr. Gonzalez is currently 35 years old, and likely has an offender score less than 9.¹ No aggravators are alleged. Even if Mr. Gonzalez were given the maximum sentence in that

¹ Defense counsel has not yet received an Appendix B with which to verify Mr. Gonzalez’s offender score. However, in June of 2021 Mr. Gonzalez was scored at a 5 when resentenced on his Attempted Robbery Case.

scenario, his sentence would be for 50 years, or release from prison at age 85. Again, Mr. Gonzalez's actual standard sentence range is likely less than this. This does not constitute a sentence of life in prison and should therefore not be considered an applicable offense for pretrial detention without bail under Article 1, section 20.

2. THIS COURT SHOULD DECLINE TO FOLLOW DIVISION II'S RECENT RULING IN *STATE V. SARGENT*, WHICH IS CURRENTLY PENDING ON A PETITION FOR REVIEW IN OUR STATE SUPREME COURT.

In November of 2021, Division II of the Washington Court of Appeals held that the language of Article 1, section 20 permitted denial of bail for "all Class A offenses" because the statutory maximum for all Class A offenses is life in prison. *State v. Sargent*, 499 P.3d 241 (2021).

The *Sargent* case is currently being considered for review by the Washington State Supreme Court. See Attachment B: Sargent Petition for Review, dated 1/6/2022. Neither Division I nor the State Supreme Court have addressed this "novel" issue. *Sargent*, 499 P.3d at 244.

Division II's ruling is based on an erroneous interpretation of the constitutional language. Rather than limit the constitutional provision to its plain terms, Division II's opinion concluded that "possibility of life in prison" is a "term of art" that actually intends to refer to "the statutory maximum sentence" for Class A felonies. *Sargent* 499 P.3d at 248. However, "possibility of life in prison" is not a term of art, as it is not regularly used in any statutory or constitutional provisions and seems to have appeared for the first time in this constitutional amendment. Simply put, if the amendment intended to apply to "all Class A felonies," it would simply say so, or at least utilize the more common terminology of "statutory maximum." Certainly both "statutory maximum" and "Class A felony" are terms of art, but neither of those terms appears anywhere in the constitutional provision.

For the reasons outlined above, and because this “novel” issue remains undecided by both Division I and our State Supreme Court, this Court should decline to follow Division II’s ruling on this issue.

3. THE STATE HAS NOT SHOWN BY CLEAR AND CONVINCING EVIDENCE THAT DETENTION WITHOUT BAIL IS REQUIRED UNDER RCW 10.21.040.

RCW 10.21.040 provides:

If, after a hearing on offenses prescribed in Article I, section 20 of the state Constitution, the judicial officer finds, by clear and convincing evidence, that a person shows a propensity for violence that creates a substantial likelihood of danger to the community or any persons, and finds that no condition or combination of conditions will reasonably assure the safety of any other person and the community, such judicial officer must order the detention of the person before trial. The detainee is entitled to expedited review of the detention order by the court of appeals under the writ provided in RCW 7.36.160.

RCW 10.21.040.

“Clear and convincing evidence exists when the evidence shows the ultimate fact at issue to be highly probable.” *State v. K.A.B.*, 14 Wash. App. 2d 677, 696, 475 P.3d 216 (2020); *see also Colorado v. New Mexico*, 467 U.S. 310, 316, 104 S. Ct. 2433, 81 L. Ed. 2d 247 (1984).

The State has not presented such evidence here. In support of its request for detention without bail, the State cites to (1) the unproven allegations underlying the charged offense, (2) Mr. Gonzalez’s prior convictions, including his most recent conviction for Attempted Robbery First Degree, and (2) pending unproven allegations of Rape Third Degree in Pierce County.

Regarding the unproven, pending allegations here and in Pierce County, this Court should give those allegations limited weight. Before trial, every person accused of a crime is cloaked with the presumption of innocence. *See, State ex rel Wallen v. Judge Noe, Towne, Johnson*, 78 Wn.2d 484, 487 (1970); *Coffin v. United States*, 156 U.S. 432, 435 (1895). As a result, it is a fundamental principle that the state may not simply keep someone in custody pretrial based solely on an

unproven accusation. *Hudson v. Parker*, 156 U.S. 277, 285 (1895); *State v. Barton*, 181 Wn.2d 148 (2014). Indeed, pretrial release and liberty is supposed to be "the norm," not an exceptional or unusual situation. *United States v. Salerno*, 481 U.S. 739, 742 (1987); *see, Barton* 181 Wn.2d at 152. In contrast, "detention prior to trial or without trial" is supposed to be "the carefully limited exception." *Salerno*, 481 U.S. at 742.

Further, the State here has presented no relevant evidence apart from the unproven offenses to support a finding that Mr. Gonzalez has such propensity for violence. In *Sargent*, Division II held that clear and convincing evidence existed when the charged allegations involved a prolonged, sustained attack by the defendant against the victim family member, in which the defendant used multiple weapons in rapid succession in a clear attempt to murder the victim. The State produced evidence that the defendant had previously made written threats of harm against the victim. The State also submitted multiple statements from other family members describing their fear of the defendant and recounting other, past attempts by him to kill additional family members.

In contrast, here the State has presented no evidence of an ongoing propensity for violence by Mr. Gonzalez. The State alleges that Mr. Gonzalez and the victim were strangers, and that this was a random event between the two men. Unlike in *Sargent*, the State has not proffered statements from anyone familiar with Mr. Gonzalez who may have spoken to some sort of ongoing history of threats or violence.

The State cites to Mr. Gonzalez's most recent conviction for Attempted Robbery in the First Degree, but that case involved no threats of violence, no actual violence, and no weapons. In that case, Mr. Gonzalez merely handed a note to a bank teller asking for \$5,000 and then left the bank before anything else occurred. This Court should not consider that conviction to provide clear and convincing evidence of a propensity for violence that overrides the presumption of release on bail.

The State cites Mr. Gonzalez's other criminal conviction history as evidence of his propensity for violence, but provides no details of the facts or circumstances underlying any of those convictions. Further, only two of those prior convictions would even be considered a violent offense (two counts of Assault Third Degree, a Class C felony, both committed over ten years ago). His other conviction history (Bail Jumping, Attempt to Elude, and Tampering with a Witness) provide no evidence to support a finding of his propensity for violence necessary to deny him bail.

CONCLUSION

This Court should deny the State's request to hold Mr. Gonzalez without bail.

Signed this 2nd day of February, 2022,

/s/ Whitney H. Sichel
Whitney Sichel, WSBA# 44474
Attorney for Leonel Gonzalez

/s/ Victoria Latus
Victoria Latus, WSBA# 53975
Attorney for Leonel Gonzalez

ATTACHMENT A

15 SEP 28 PM 2:38

KING COUNTY
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CASE NUMBER: 15-1-04388-5 SEA

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

THE STATE OF WASHINGTON,)	
)	
)	No. 15-1-04388-5 SEA
v.)	
)	INFORMATION
LEONEL GONZALEZ,)	
)	
Defendant.)	
)	

I, Daniel T. Satterberg, Prosecuting Attorney for King County in the name and by the authority of the State of Washington, do accuse LEONEL GONZALEZ of the following crime[s]: **Attempted Robbery In The First Degree**, committed as follows:

Count 1 Attempted Robbery In The First Degree

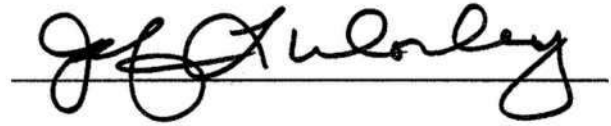
That the defendant LEONEL GONZALEZ in King County, Washington, on or about September 18, 2015, did unlawfully and with intent to commit theft attempt to take personal property of another, to-wit: cash, from the person and in the presence of Brian Garbe, against his will, by the use or threatened use of immediate force, violence and fear of injury to such person or his property and to the person or property of another, and that he did commit the attempted robbery within and against a financial institution defined in RCW 7.88.010 or RCW 35.38.060, to-wit: Bank of America; attempt as used in the above charge means that the defendant committed an act which was a substantial step towards the commission of the above described crime with the intent to commit that crime;

Contrary to RCW 9A.28.020 and 9A.56.200(1)(b) and 9A.56.190, and against the peace and dignity of the State of Washington.

DANIEL T. SATTERBERG
Prosecuting Attorney

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By:



Jennifer L. Worley, WSBA #32800
Senior Deputy Prosecuting Attorney

DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original of the document to which this declaration is affixed/attached, was filed in the **Washington State Supreme Court** under **Case No. 100038-3**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

respondent Jennifer Petersen, DPA
[jennifer.petersen@kingcounty.gov]
[PAOAppellateUnitMail@kingcounty.gov]
King County Prosecutor's Office-Appellate Unit

appellant

Attorney for other party



MARIA ANA ARRANZA RILEY, Paralegal
Washington Appellate Project

Date: March 17, 2022

WASHINGTON APPELLATE PROJECT

March 17, 2022 - 4:34 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 100,718-3
Appellate Court Case Title: State of Washington v. Leonel Gonzalez

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