

LAW ENFORCEMENT DIGEST

January 2022



COVERING CASES PUBLISHED IN JANUARY 2022

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Cases in the Law Enforcement Digest are briefly summarized, with emphasis placed on how the rulings may affect Washington law enforcement officers or influence future investigations and charges. Each month's Law Enforcement Digest covers court rulings issued by some or all of the following courts:

- **Washington Courts of Appeals.** The Washington Court of Appeals is the intermediate level appellate court for the state of Washington. The court is divided into three divisions. Division I is based in Seattle, Division II is based in Tacoma, and Division III is based in Spokane.
- **Washington State Supreme Court.** The Washington Supreme Court is the highest court in the judiciary of the U.S. state of Washington. The court is composed of a chief justice and eight justices. Members of the court are elected to six-year terms.
- **Federal Ninth Circuit Court of Appeals.** Headquartered in San Francisco, California, the United States Court of Appeals for the Ninth Circuit (in case citations, 9th Cir.) is a federal court of appeals that has appellate jurisdiction over the district courts in the western states, including Washington, Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada and Oregon.
- **United States Supreme Court:** The Supreme Court of the United States is the highest court in the federal judiciary of the United States of America.

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WASHINGTON LEGAL UPDATES

The following training publications are authored by Washington State legal experts and available for additional caselaw review:

- [Legal Update for WA Law Enforcement](#) authored by retired Assistant Attorney General, John Wasberg
- **Caselaw Update** - WA Association of Prosecuting Attorneys [[2018-2021](#)] | [[2022](#)]

QUESTIONS?

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- Questions about this training? Linda J. Hiemer, JD | Program Administration Manager
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i The materials contained in this course are for training purposes. All officers should consult their department legal advisor for guidance and policy as it relates to their particular agency.

In re Pers. Restraint of Dodge

No. 98078-1

SUPREME COURT OF WASHINGTON

January 13, 2022

Facts Summary

TOPIC: EARLY RELEASE FOR CRIMES COMMITTED AS JUVENILES

When Dodge was seventeen years old, he burglarized a home and raped and murdered a twelve-year-old girl at the home. Upon conviction, Dodge pled guilty to first degree felony murder, second degree rape, and both residential and first-degree burglary. Dodge was sentenced to fifty years in prison.

Twenty years later, the legislature passed a new law, [RCW 9.94A.730](#), which gave people who received lengthy sentences for crimes committed as juveniles a chance for earlier release, after serving at least twenty years of their sentence. Thus, pursuant to the RCW, Dodge petitioned for early release.

Then, Dodge underwent a DOC psychological evaluation, as statutorily required prior to an early release hearing. The examining doctor conducted three risk assessment tests. Under two of the tests, she determined that Dodge posed a high and moderately high risk of re-offense respectively. However, under the third test, the SAPROF test, the doctor found that Dodge scored well in factors that may reduce his risk of re-offense. After balancing the tests, the doctor concluded that Dodge was at moderate risk to reoffend, and she made recommendations for Dodge's release.

Later, at the Indeterminate Sentence Review Board (ISRB) hearing, the ISRB found that Dodge was more likely than not to commit a new crime if released and listed factors for its finding. However, the ISRB did not provide any explanation as to how the listed factors affected its decision. Furthermore, the ISRB did not address Dodge's high SAPROF score, nor did it address the doctor's release recommendations. Additionally, ISRB did not mention the

mandatory presumption of release under the RCW. Dodge appealed. On review, the Supreme Court reversed the Appellate Court's decision and remanded to the ISRB for a new early release hearing.

Training Takeaway

Dodge filed a personal restraint petition (PRP) challenging ISRB's decision. First, Dodge argued that the ISRB abused its discretion by finding him not releasable because it failed to apply the statutory presumption of release and it failed to consider conditions of release that could reduce his risk to an acceptable level.

RCW 9.94A.730 allows qualifying persons sentenced to lengthy terms as juveniles to petition the ISRB for early release after serving at least twenty years. Prior to the early release hearing, the petitioner must undergo a DOC examination that predicts the dangerousness and probability that the person will engage in future criminal behavior if released on conditions set by the board.

Although the RCW requires the ISRB to give public safety the highest priority when making decisions regarding early release, it also contains a presumption of release for qualifying persons and requires the ISRB to determine, by looking at the evidence, that no condition of release could sufficiently mitigate the petitioner's risk. Thus, to give effect to this presumption of release, the ISRB must give meaningful weight to evidence of the petitioner's rehabilitation that has occurred since the youth was originally sentenced. Additionally, the RCW requires the ISRB to meaningfully consider appropriate release conditions that could lower the petitioner's risk of re-offense to an acceptable level.

The Court held that the ISRB abused its discretion by both failing to apply the statutory presumption of release because ISRB's decision did not mention the presumption of release and by failing to address any recommended conditions of release made by Dodge's evaluating doctor.

Second, Dodge argued that the ISRB abused its discretion by finding him not releasable because it relied primarily on historical facts rather than on evidence of rehabilitation. The Court disagreed with Dodge's argument that it was improper for the ISRB to consider

historical facts about his crimes at all because such information might be relevant to the ISRB's statutorily required consideration of public safety. However, the Court reasoned that here the ISRB's decision was improper because it focused primarily on historical facts relevant to public safety yet failed to discuss any potential conditions of release or mention significant findings of rehabilitation, such as Dodge's high score on the SAPROF test.

Therefore, the Court found that because there was no evidence that the ISRB meaningfully applied the statutory presumption of release or considered the potential release conditions recommended by the evaluating doctor, the ISRB abused its discretion and it remanded for a new hearing.

[EXTERNAL LINK: View the Court Document](#)



In re Det. of J.M

No. 54144-1-II

Washington Court of Appeals

January 4, 2022

Facts Summary

TOPIC: INVOLUNTARY COMMITMENT ORDER AND THE RIGHT TO REMAIN SILENT

J.M. was caught attempting to steal items from a store. Later, he admitted that he intended to pawn the items and use the money to purchase a handgun. Further, he admitted that he wanted the handgun to kill his ex-girlfriend's boyfriend. Thus, J.M. was charged with the following felonies: theft with intent to resell and harassment with the threat to kill.

The trial court found that J.M. was incompetent for trial, and efforts to restore his competency were unsuccessful. Therefore, pursuant to [RCW 10.77.086\(4\)](#), the trial court dismissed all charges and ordered that J.M. be evaluated for civil commitment.

After evaluation, the State petitioned the court for an order to involuntarily commit J.M. for 180 days on two grounds. First, that due to a behavioral health disorder, J.M. was gravely disabled. Second, that J.M. committed felony acts and that due to his mental disorder, he presented a substantial likelihood of repeating similar acts.

At the involuntary commitment hearing, the State presented the following evidence: Melvin, a store manager, caught J.M. stealing items worth approximately \$400 and escorted J.M. to an office; at the office, J.M. stated that he planned to pawn the items to buy a gun so that he could shoot his ex-girlfriend's boyfriend.

Next, Officer Wilson arrived on the scene and read J.M. his [Miranda](#) rights, and J.M. understood and waived his rights. Then, J.M. again admitted to the theft and that he intended to pawn the items to buy a gun so that he could kill his ex-girlfriend's boyfriend. Later, Detective Brooks read J.M. his Miranda rights, and, with J.M.'s permission, conducted a

recorded interview. Again, J.M. admitted to the theft and that he intended to pawn the items to buy a gun to kill his ex-girlfriend's boyfriend.

At trial, J.M. filed a motion to suppress both the recorded interview and Detective Brooks' testimony regarding statements made by J.M. J.M. claimed that based on his competency evaluation, he did not understand his Fifth Amendment rights, including the right to remain silent, and that even with education he would not be able to understand his rights. The court allowed Brooks to testify and allowed a portion of the recorded interview to be played.

Additionally, Hornbeck, who was friends with J.M.'s sister and his ex-girlfriend, testified that J.M. messaged her. In the text, he asked her to contact his ex-girlfriend. When she refused, J.M. threatened that he would fatally shoot or murder anyone who stood in the way of him and his ex-girlfriend. She further testified that due to this threat, she did not want to leave her house because she was unsure of whether J.M. knew where she lived. J.M. objected to the admission of Hornbeck's testimony, arguing that according to the best evidence rule, she could not testify to the description of the message because no written document had been admitted. In response, the State claimed that it was only asking Hornbeck to communicate the threat made by J.M., and the court allowed the testimony.

The court concluded that J.M. was very disabled and that due to his behavioral health disorder, he was in danger of serious physical harm. Also, the court found that J.M.'s behavioral health examination revealed that he had "delusional thought, disorganization, mood liability, self-harm, limited and poor insight, and currently needs the supervised setting of a hospital." Furthermore, the court found that J.M. was not ready to leave the hospital and based on J.M.'s indication that he was trying to get money to get a gun and Hornbeck's testimony, J.M. made a threat and Hornbeck was in fear for her life. On appeal, the order to involuntarily commit J.M. for 180 days was affirmed and references of the felony harassment were remanded.

Training Takeaway

First, J.M. argued that former RCW 71.05.360(8)(d), the Statutory Right to Remain Silent, applies to statements he made to law enforcement. Thus, he argued that the court's admission of those statements violated his statutory right to remain silent. However, the

former RCW applied to the right to remain silent at the probable cause hearing, it did not apply to out of court statements made to law enforcement.

Second, J.M. argued that his due process rights were violated when the court admitted statements he made to Wilson and Brooks because his competency evaluation showed that he did not understand his Fifth Amendment right against self-incrimination. However, the Fifth Amendment privilege against self-incrimination only applies to criminal proceedings, and an involuntary commitment hearing is not criminal in nature. Therefore, the Court held that the privilege did not apply and J.M.'s due process rights were not violated.

[EXTERNAL LINK: View the Court Document](#)

State v. Braun

No. 37635-4-III

Washington Court of Appeals

January 20, 2022

Facts Summary

TOPIC: HUMAN TRAFFICKING

For four-years Braun, a man in his early fifties, and Jane, a twenty-year-old girl, were in a relationship which included Jane performing commercial sex acts at the request of and for the financial gain and sexual enchantment of Braun. Braun provided Jane with food, housing, alcohol, and drugs, and in return, Jane furnished Braun and others with sex.

Braun convinced Jane to have sex with others, sometimes for money and sometimes for his own enjoyment. He threatened to cheat on her and withhold drugs if she didn't prostitute herself and promised to love her till death if she did sell her body. Also, Braun told Jane that she was his girlfriend and then hid their relationship from others. Additionally, he told her that if she sexually performed as he desired then he would marry and have children with her. Braun also deceptively used Jane's e-mail to procure johns and he told her that no one else valued her and then isolated her.

While sober, Jane told Braun that she could not engage in sex for money. However, Braun would provide Jane with alcohol and drugs and under the influence, Jane relented to engage in sex with others. On one occasion, Braun forcibly penetrated Jane's anus without her consent.

Jane insisted that she never wished to prostitute herself. However, she did not believe that she had a choice to participate in the sexual encounters because even if she said no, her no was not going to be respected. The case detailed the extensive nature of the threats of harm and actual harm subjected upon Jane by Braun, including non-consensual bondage and anal intercourse, and those whom Braun required Jane to engage with sexually.

Braun was convicted of human trafficking and promoting prostitution of Jane. On appeal, the Court affirmed Braun's conviction for human trafficking and promoting prostitution.

Training Takeaway

The Court provided a quote from a federal case to address the impact that trafficking has on victims as follows:

[S]ex traffickers select victims who demonstrate vulnerabilities including homelessness, substance abuse, mental health issues, and histories of physical, emotional or sexual abuse. A typical trafficker recruits victims by telling them that he loves them, promising them a better life, providing them with shelter and drugs, and lying to them about the nature of the job. [T]raffickers control their victims through physical violence, sexual violence, psychological violence and grooming. Traffickers . . . groom victims with promises and compliments, but escalate to physical abuse, sexual assault and death threats. . . . They also use psychological violence such as tearing a victim down, telling them they are worthless, socially isolating them, and controlling them financially and by taking advantage of a victim's drug dependency. [V]ictims often stay with their traffickers – or leave and then return – because they believe they have nowhere to go; that there is no one else out there for them, and no other options for them; they feel ashamed and guilty and stigmatized, thinking that they will not be accepted elsewhere. They are also afraid that if they leave, the trafficker will find them and harm them even more egregiously.

Washington's Trafficking statute, [RCW 9A.40.100](#), declares, in relevant part:

(1) A person is guilty of trafficking in the first degree when: (a) Such person: (i) Recruits, harbors, transports, transfers, provides, obtains, buys, purchases, or receives by any means another person knowing, or in reckless disregard of the fact, (A) **that force, fraud, or coercion** as defined in RCW 9A.36.070 will be **used to cause the person to engage in:**
(III) **A sexually explicit act; or (IV) A commercial sex act, or . . .**

On appeal, Braun challenged the terms “force, fraud, or coercion,” used in the Trafficking statute as unconstitutionally vague and, therefore, void. The Court of Appeals rejected these arguments. First, Braun argued that the court misinterpreted “force”. Braun said it only included physical force. The Court disagreed ruling that fraud and coercion could demonstrate the requisite force even though the statute refers to fraud, coercion, OR force.

Under the Trafficking statute, a person is guilty when force, fraud, or coercion is used to cause someone to engage in commercial sex. The trial court found that Braun engaged in all

three. The Court reviewed whether the evidence supported a conviction for fraud or coercion to determine a finding of force and avoided defining force because force, coercion, and fraud all equate to usurping one's willpower in the context of sexual trafficking. Regardless of whether "force" required only "physical force," the Court noted that the trial court entered multiple findings of Braun's physical force on Jane in the context of sexual trafficking including bondage and nonconsensual anal intercourse.

Additionally, the court found that there was sufficient evidence supporting Braun's conviction for human trafficking based on his use of coercion. The Court relied upon RCW 9A.36.070 to define coercion.

That statute provides: "(1) a person is guilty of coercion if by use of a threat [they] compel or induce [another] to engage in conduct which that person has a legal right to abstain from, or to abstain from conduct that the person has a legal right to engage in."

[RCW 9A.04.110](#) defines threat as "communicating, directly or indirectly the intent: to cause future bodily injury to the person threatened; or to damage the property of the person; or to subject the threatened person to physical confinement." The Court reasoned that Braun coerced Jane because he manipulated and controlled her. It considered the following facts relevant:

- Braun supplied Jane with alcohol and drugs to procure and market her sexual services;
- Jane became addicted to the drugs; then,
- Braun withheld the drugs from her until she performed.

Similarly, Braun argued vagueness because the trafficking statute failed to define fraud. The Court in prior cases declined to define "fraud" because of the word's common understanding. It observed that federal cases examining human trafficking by fraud require "material misrepresentations" used to compel the victim. A false statement is material if it has a natural tendency to influence or can influence the intended target.

The Court held that Braun defrauded Jane because he manipulated, made false promises to, and lied to her. It considered the following facts relevant:

- he told her she was his girlfriend and then hid their relationship from others;

- he promised to love her if she had sex with others for money;
- he told her if she sexually performed as he desired then he would marry and have children with her;
- he deceptively used her e-mail to procure johns; he told her that no one else valued her and then, isolated her.

Further, Braun argued that the State failed to prove causation – specifically, that any force, fraud, or coercion caused Jane to engage in commercial sex. The Court held that Braun’s argument of lack of causation failed because he demanded Jane to engage in commercial sex and when she did not, he neglected, threatened, and hurt her, and withheld food and drugs from her. Thus, the Court found that, under the totality of the circumstances, force, fraud, and coercion caused Jane to obey Braun, including her participation in commercial sex, and that she had no choice.

Finally, Braun argued that to determine his guilt the Court must dissect sexual acts performed by Jane and then identify an act of force, fraud, or coercion that caused that discrete act. However, the Court reasoned that the Trafficking statute does not require proof that any sexual act actually occurred, instead the offender is guilty when he “recruits, entices, harbors, transports... advertises, maintains... or solicits a person knowingly or recklessly, that that force, fraud, or coercion will be used to cause the person to engage in commercial sex.” Thus, the Court reasoned that Braun’s guilt was affirmed because he recruited, enticed, harbored, transported, advertised, and maintained Jane while knowing that he and others would impose force, coercion, and fraud on her for sexual favors.

[EXTERNAL LINK: View the Court Document](#)