

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

STATE OF WASHINGTON
Plaintiff,

vs.

,
Defendant.

Case No.:

ORDER ON PRELIMINARY
HEARING

These two matters came before the Court on January 20, 2022 for arraignment following the defendant's arrest. Although the defendant has been in custody for several days and the matters have been on the Court's 1:00 video calendar for hearing more than once, the defendant was not brought before the Court by the Snohomish County Jail for hearing by Zoom or any other means.

The defense alleged at the hearing that this defendant and other defendants last week are being placed in quarantine or isolation upon arrest by the Snohomish County Jail due to issues related to the Covid 19 pandemic. The defense further alleged that the Snohomish County Jail has refused to allow the defendant and defense counsel to have any communication by any means since arrest which as been several days now. This includes allowing no in person, no telephonic, no text, no zoom, no skype, no email and no other form of communication with counsel. Defense counsel indicated he could not

prepare for hearing and could not provide information to the Court about the defendant's situation because he could not communicate with the defendant.

The defense further alleged that although the Prosecutor and/or Court have placed the case on the 1:00 video calendar on more than one occasion, the Snohomish County Jail refuses to provide any means for the defendant to be brought before the Court for a first preliminary or first bail hearing. The Prosecutor agreed that at least as to one case there has never been a bail hearing because that case was not previously filed in district court. The matter was on the calendar and the defendant was not present by zoom or otherwise. This Court, hereby,

FINDS AND CONCLUDES that if it has occurred, it is a violation of the United States Constitution and State Court Rules to hold a defendant in custody and allow no means of contacting their defense attorney and refuse to provide a means for the defendant to have a bail hearing for numerous days. This defendant has already been charged with felony crimes in both these cases so his constitutional right to counsel has attached and his right to counsel pursuant to the Washington State Court Rules has also attached. A defendant must be brought before the Court on the next court day following arrest (CrR 3.2.1(d)), and a defendant cannot be held in jail unless a judicial officer at a preliminary hearing makes a determination that the standards in CrR 3.2 (b) or (d) have been proven. Also, in *Gerstein v. Pugh*, 420 U.S. 103 (1975), the United States Supreme Court held all defendants must be brought before the court for a probable cause hearing within 24 hours of arrest.

CrR 3.2 provides, "when a person is taken into custody that person shall be immediately advised of their right to an attorney." CrR 3.1(c)(1). The rule provides further that "at the earliest opportunity a person in custody who desires a lawyer shall be provided access to a telephone, the telephone number

of the public defender...and any other means necessary to place the person in communication with an attorney.” CrR 3.1(c)(2).

There is no claim that the defendant is too ill to appear in court by zoom and it is unknown if this defendant is sick without symptoms, sick with symptoms, or not sick at all, but potentially exposed to Covid 19. No explanation was supplied by the jail at the hearing and defense counsel indicated he is unable to communicate with the defendant to obtain this information.

Neither the emergency orders of the Washington Supreme Court or the Snohomish County Superior Court permits these violations of the court rules and Constitution. I further,

FIND that delaying the first preliminary appearance for many days and not allowing contact with counsel is not necessary for health or safety reasons because if the jail does not want to move the defendant out of his cell for health and safety reasons related to the pandemic, they can make the defendant available to defense counsel and the court from his isolation cell or other convenient location by electronic means, including a simple mobile phone (for counsel), a tablet, smartphone, or computer using zoom or skype or similar applications, or via email or text (as to ~~contact with counsel.~~ ^{Court hearing} _{contact with counsel}.) The jail must be providing food on dishes, laundry and removing garbage from a defendant's cell. It would not significantly increase health risks to give the defendant a mobile phone, tablet or laptop computer to use for the reasonable periods necessary to communicate with counsel and for a short court hearing. It is thus, hereby,


ORDERED that the Snohomish County Jail shall provide a means for the defendant to electronically appear for a bail hearing at 1:00pm on January 21, 2022. If the jail determines it is not safe to move the defendant to the

regular video jail courtroom, it may supply the electronic means elsewhere, including in the defendant's isolation cell via a Zoom or some similar alternate electronic connection. This Court leaves it to the discretion of the jail to determine the safest means to accomplish this Court order. It is further,

ORDERED that between the time this same order was made in handwritten form at the 1:00 calendar on January 20, 2022, and the new set court date on January 21, 2022, the jail shall provide a means so that defense counsel and the defendant can communicate electronically, and thereafter, if the defendant remains in jail, the Snohomish County Jail shall provide a means by which the defendant and defense counsel can communicate as required by law.

This order puts into typewritten form and provides additional explanation as to the oral and handwritten orders on January 20th and orders the same thing that this Court entered at the 1:00 PM calendar on January 20, 2022, which was faxed to the jail at that time. The Snohomish County Prosecutor's Office was also directed at that time to supply a copy of that order to the prosecutors representing the Snohomish County Jail, to wit, to the Civil Division of the Snohomish County Prosecutor's Office.

DATED this 21st day of January, 2022.



Anita L. Farris, Superior Court Judge