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SUPREME COURT NO. 97639-2

NO. 77463-8-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

v.

MATTHEW CHRISTENSON,

Petitioner.

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR KING COUNTY

The Honorable Patrick Oishi; Bill Bowman; and Chad Allred, Judges

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PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER/COURT OF APPEALS DECISION

Petitioner Matthew Christenson, appellant below, asks this Court to grant review of the Court of Appeals' unpublished decision in State v. Christenson, WL 3783416 (No. 77463-8-I, filed August 12, 2019).<sup>1</sup>

B. ISSUES PRESENTED FOR REVIEW

1. Both Christenson and counsel repeatedly voiced complaints about their inability to work together. The trial court also recognized the "dynamic" between Christenson and counsel had created a breakdown in their communication. Christenson's repeated motions for appointment of new trial counsel were denied, however. Should review be granted under RAP 13.4(b)(3) and (b)(4) where the Court of Appeals opinion concluding there was no error is not supported by the record?

2. Christenson needed a short recess to complete the process of hiring private counsel for trial. The trial court denied Christenson's request for a continuance. Should review be granted under RAP 13.4(b)(1), (b)(3) and (b)(4) where the Court of Appeals opinion concluding that there was no error is not supported by the record and conflicts with this Court's prior precedent?

3. Christenson's mental health deteriorated as trial wore on. The trial court however, denied a requested continuance so Christenson

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<sup>1</sup> A copy of the opinion is attached as an appendix.

could undergo a competency evaluation. Should review be granted under RAP 13.4(b)(1), (b)(3) and (b)(4) where the Court of Appeals conclusion that there was no error is not supported by the record and conflicts with this Court's prior precedent?

C. STATEMENT OF THE CASE<sup>2</sup>

1. Issues with Counsel.

Nicholas Marchi was appointed as Christenson's attorney in 2015, after prior counsel withdrew due to a conflict under RPC 1.7. CP 67, 262-63; 1RP<sup>3</sup> 23, 59. In January 2017, Christenson brought a motion to have new counsel appointed. CP 68-70; 1RP 8. The court denied Christenson's request explaining, "there is no factual basis in the filing that I see." 1RP 9.

Christenson renewed his motion to discharge Marchi in April. Christenson expressed concerns that Marchi had not reviewed discovery with him and was ignoring possible exculpatory evidence. CP 71-74. Marchi acknowledged that a conflict existed with Christenson and asked to withdraw pursuant to RPC 1.16. 1RP 16. Marchi also filed a sealed declaration detailing possible RPC issues. 1RP 18-19.

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<sup>2</sup> Christenson presented a more detailed statement of facts in his Brief of Appellant (BOA), at pages 2-23, which he incorporates herein by reference.

<sup>3</sup> The index to the citations to the record is found in the BOA at 3, n.3.

After reviewing Marchi's declaration, the court denied Christenson's motion, explaining that Marchi had diligently worked on the case. 1RP 23-25; CP 75. While the court recognized that Christenson and Marchi disagreed on fundamental trial strategies, it reasoned that appointment of new counsel would not result in a different outcome. 1RP 24-26.

In May, Christenson requested to go pro se. 1RP 31-35. Both Christenson and Marchi acknowledged that they had differences of opinion on trial strategy. 1RP 37, 43. After some hesitation, the court granted Christenson's request. 1RP 35, 42-54, 63-67, 72; CP 76-78. Over his objection, Marchi was appointed as standby counsel and the case was continued for nearly one month. 1RP 67-72.

On June 15, Marchi filed a motion to withdraw as standby counsel. 1RP 154, 157; CP 270-72. Christenson agreed, explaining that he did not want Marchi's assistance. 1RP 160. The court granted Marchi's motion to withdraw, explaining, "I don't see that his [Marchi] services are assisting Mr. Christenson right now. That's not a comment on Mr. Marchi. It's just a comment on the dynamic at this point." 1RP 210; CP 273.

Later that day, Christenson asked to withdraw his prior waiver of counsel so that he could hire counsel. 1RP 196-200, 205-06. Christenson explained that he was in the process of retaining attorney Carlos Gonzales.

1RP 199-200. Christenson made clear that he did not want Marchi reappointed to represent him. As Christenson explained,

I have too many conflicts of interest with Mr. Marchi. Conflict of interest has been expressed in open court numerous times. He's tried to withdraw from my case as counsel, as my standby counsel. For him to proceed -- for me to proceed with him is not a possibility. It's definitely a conflict of interest. I don't know how else to explain it.

1RP 200, 208.

Marchi also objected to being reappointed. 1RP 202-04. The State did not object to having Marchi reappointed but did object to delaying trial so that Christenson could retain private counsel. 1RP 200-02. The State argued Marchi was the only attorney prepared for the trial scheduled to begin on June 26. 1RP 200-02.

The court explained that if Christenson intended to hire counsel "that attorney needs to come -- as a threshold matter -- into court and say 'I'm here. I'm ready to go. I want to be appointed.' Then we can hear what that attorney has to say that point. To date that hasn't happened." 1RP 207. The court denied Christenson's request for appointment of a new attorney. 1RP 209.

Over the next week, Christenson made multiple requests to have counsel other than Marchi reappointed to represent him. 1RP 267, 269, 272, 299-03, 307, 313-14, 324-25. The court refused to reappoint anyone



other than Marchi. 1RP 306-09, 314. Christenson eventually acquiesced, explaining "If that's the only attorney that's available that's the only choice I have, sir." 1RP 314, 324-25. Marchi noted he had no standing to object to being reappointed, but explained, "I can foresee a potential motion to discharge coming down the line." 1RP 324-35. Marchi was reappointed to represent Christenson. 1RP 334.

On June 26, before jury selection began, Christenson informed the court that he had hired Gonzales. Christenson explained that Gonzales was on vacation and requested a continuance so that Gonzales could appear. 2RP 4, 13. Marchi had no contact with Gonzales but asked that the trial be continued so that he could appear. 2RP 13.

The State objected to any continuance, maintaining that it was an attempt by Christenson to delay the trial. 2RP 13-14. The State questioned whether Gonzalez was prepared to take over representing Christenson. 2RP 14. After reviewing State v. Hampton,<sup>4</sup> the court denied Christenson's request to have Gonzales represent him. 2RP 15, 26-30.

Trial continued until July 17, when Marchi brought a motion to withdraw based on a breakdown in communication with Christenson. 2RP 413-14. Christenson had also filed a bar complaint against Marchi. 2RP 411-13. Christenson confirmed that he did not want Marchi representing

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<sup>4</sup> State v. Hampton, 184 Wn.2d 656, 361 P.3d 734 (2015), cert. denied, \_\_\_ U.S. \_\_\_, 136 S. Ct. 1718, 194 L. Ed. 2d 816 (2016).

him, explaining they had different strategies. 2RP 413, 424-25. Christenson denied that Marchi had ever gone over discovery with him. 2RP 437, 441. Christenson explained that he needed a psychologist and computer and cell phone forensic expert witnesses. 2RP 435-36. Christenson also noted that he had emails relevant to his defense and that other evidence was missing. 2RP 426, 428, 443.

The State objected to Marchi withdrawing, contending that it was an attempt to delay trial. 2RP 414-15, 418-19. The State maintained that a bar complaint did not warrant withdraw or demonstrate an actual conflict of interest between Marchi and Christenson. 2RP 415.

The court denied Marchi's motion to withdraw, explaining "I don't believe the motion to withdraw or terminate Mr. Marchi is appropriate." 2RP 417-18. The court also denied Christenson's motion for new counsel. 2RP 475-82.

2. Competency Concerns.

Christenson expressed concerns to Marchi about his mental health on June 23. 2RP 5, 16. Christenson reiterated his concerns the following Monday before jury selection began. As Marchi explained, Christenson felt he did not understand the proceedings, was confused and unable to focus, had concerns that he was not "facing reality", was seeing things and hearing voices, and believed that something was "off", all of which affected his

ability to assist in his defense. 2RP 4-5, 15, 20. Christenson requested a mental health competency evaluation. 2RP 5, 16, 21.

Marchi acknowledged that he would have brought any prior concerns about Christenson's competency to the court's attention. 2RP 16. As Marchi noted however, if Christenson could not understand the nature of the proceedings then a competency evaluation was warranted. 2RP 16. Marchi further explained:

[I] am not getting through to Mr. Christenson about how we are proceeding. I'm trying to make it clear that his Court has already made rulings on the motions to continue. I've already made clear to him that we are proceeding forward. And we're not getting past that issue.

2RP 22.

The State objected, believing the request was a "delay tactic". 2RP 16. The prosecutor explained that Christenson was cogent and appeared to understand the proceedings when he represented himself. 2RP 16-18, 22-23. The State maintained there was no reason to doubt Christenson's competency and the court was not required to order a hearing. 2RP 22.

The court denied the requested competency evaluation, noting that its own interactions with Christenson raised no concerns about his competency or ability to interact with defense counsel. 2RP 17, 24-26.

Christenson again raised competency concerns during trial. Marchi explained on August 7, that Christenson was suffering from "severe mental

issues" which had prompted him to voluntarily obtain a psychological evaluation from the jail. That evaluation recommended Christenson obtain treatment. 3RP 3.

Marchi noted that Christenson was "exhibiting signs of confusion," and explained that his own interactions with Christenson confirmed this:

I will note that I spent two and a half hours or more yesterday morning, and it was difficult for him to follow what I was trying to go through with him on his preparation for testimony. Again, this morning, when I discussed these matters with him, he again had a hard time following or tracking my conversations, and indicated to me that he was not processing.

2RP 1938-40; 3RP 3-4. Marchi submitted a handwritten letter from Christenson which detailed his "mental problems" and noted that he could not testify on his own behalf in his current mental state. CP 274-83.

Christenson wrote in the letter:

I was clear to psych [*sic*] that I know the State is the ones putting sounds and tricking my mind into seeing things. I know they are there in my cell and in the dayroom and hallways. But I know who is putting them there. I am asking for a court to stop the State from doing this."

CP 280. Marchi noted the letter exhibited signs of paranoia. 3RP 4.

Marchi requested an approximately one-week continuance so Christenson could obtain mental health treatment. 3RP 4-5; 2RP 1940.

The State again opposed any delay, arguing that it was "just a continuing and blatant attempt by the defendant to delay and manipulate this

case." 3RP 5-6. The court denied the request, explaining that its decision was based on case law, personal observations of Christenson during trial, and Christenson's letter submitted to the court. 3RP 6.

Christenson renewed his request for a one-week recess for mental health treatment the following day. 2RP 1938-40. The State acknowledged, that the submitted jail medical record,

[c]onsists of a 30-minute interview with the defendant -- or mental status exam of the defendant on August 4th, where the defendant seems to complain about the same things that he's complained about all along, and then exhibits some quite severe behavior that Mr. Feldman decided was indicative of, I believe, severe depression and encroaching psychotic process.

2RP 1940-41. The State nonetheless continued to oppose any delay, arguing that Christenson had not exhibited any of the detailed behavior in court. 2RP 1941-42. The State argued the law did not require a competency hearing "just because a defendant says he's incompetent[.]" 2RP 1942. The State maintained there was no basis to believe that Christenson's assertions were true or that he was incapable of assisting in his defense. 2RP 1942.

Christenson denied that he was willfully trying to delay trial. Christenson noted that his ability to sit through multiple days of trial was not a "reflection of my ability to put thoughts together." 2RP 1942-43.

The court denied Christenson's request for a recess to obtain mental health treatment. 2RP 1948-49. The court noted that it had reviewed the case

law, the jail medical reports, defense counsel's statements, and its own personal observations of Christenson. 2RP 1943-49. As the court explained, Christenson's appearance had been orderly, his demeanor and conduct calm and respectful, and his thinking and arguments cogent. 2RP 1945-47. The court recognized that Christenson's August 7 letter "does express, at the bottom of page 6, what I might say is some suspicion about the State somehow putting sounds in his cell or tricking his mind or somehow tampering with his cell. I suppose once could character that, to use a lay term, as paranoia or some kind of delusion." 2RP 1947. The court nonetheless reasoned that it was "a very small piece[.]" and did not "necessarily mean that [Christenson] is incompetent." 2RP 1947.

Turning to the jail medical report, the court noted the information described Christenson as suffering from depression, feelings of hopelessness, and having feelings of excess guilt. The court further explained that "nothing in this report, though, suggests to me that Mr. Christenson doesn't have the ability to consult with his lawyer, understand the proceedings, etc.[.]" 2RP 1946. The court concluded that Christenson had the present ability to consult with Marchi "with a reasonable degree of rational understanding and a rational and factual understanding of the proceedings against him." 2RP 1948.

3. Court of Appeals Opinion.

Christenson appealed, arguing that he was entitled to appointment of new defense counsel, that he was improperly denied a continuance to obtain retained counsel of his choice, and that the trial court failed to comply with its constitutional and statutory duty to ensure Christenson was competent to stand trial. BOA at 23-44, Reply Brief of Appellant (RBOA) at 1-9. The Court of Appeals rejected each of Christenson's arguments, concluding that the trial court had not abused its discretion in denying any of Christenson's requests. Op. at 10-17. Christenson now asks this Court to accept review and reverse the Court of Appeals.

D. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

1. REVIEW OF WHETHER CHRISTENSON WAS IMPROPERLY DENIED NEW COUNSEL INCLUDING A CONTINUANCE TO ALLOW RETAINED COUNSEL OF CHOICE TO TAKE OVER THE CASE IS APPROPRIATE UNDER RAP 13.4(b)(1), (b)(3) and (b)(4).

a. Denial of Christenson's repeated motions for new appointed defense counsel.

Criminal defendants are guaranteed a constitutional right to counsel by the federal, and state constitutions. U.S. Const. amend. 6; Wash. Const. art. 1, sec. 22.<sup>5</sup> This right applies at every stage of the case.

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<sup>5</sup> The Sixth Amendment to the United States Constitution provides that "[i]n all criminal prosecutions, the accused shall enjoy the right to . . . have the assistance of counsel for his defense." And article I, section 22 of the Washington Constitution provides that "[i]n

State v. Bandura, 85 Wn. App. 87, 97, 931 P.2d 174, rev. denied, 132 Wn.2d 1004, 939 P.2d 215 (1997).

While an indigent defendant does not have a right to demand any particular appointed advocate, incompetence under Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984), a conflict of interest, or a complete breakdown in communication of the relationship between counsel and the defendant, will warrant substitution of appointed counsel. In re Personal Restraint of Stenson, 132 Wn.2d 668, 732, 940 P.2d 1239 (1997).

An indigent defendant can be entitled to substitute counsel, if existing appointed counsel and the defendant are so completely unable to work together, beyond mere dislike of the defendant for counsel, such that counsel fails to pursue the accused's basic defense during the litigation. Stenson, 132 Wn.2d at 732.

Here, Christenson repeatedly voiced his complaints about Marchi and their mutual inability to maintain a working relationship, requesting appointment of new counsel on four separate occasions. Marchi likewise acknowledged that conflicts and breakdowns in communication prevented him from representing Christenson. 2RP 414. Even the court recognized that the "dynamic" between Christenson and Marchi had led to a

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criminal prosecutions the accused shall have the right to appear and defend in person, or by counsel."



breakdown in their communication. 1RP 210; CP 273. Yet, the court repeatedly denied the motions to appoint Christenson new counsel. Christenson's right to counsel was violated because it was made clear to the court on numerous occasions that there had been a complete breakdown in the attorney-client relationship.

A complete breakdown in the working relationship with counsel, such that new counsel is required, is more than a mere general loss of confidence in counsel. State v. Schaller, 143 Wn. App. 258, 268, 177 P.3d 1139 (2007), rev. denied, 164 Wn.2d 1015 (2008). But a substitution of counsel is justified when this relationship – as was plainly evident in Christenson's case - is plagued by a complete breakdown such that that the attorney cannot communicate with or provide his client with basic representation with cooperation between them. See generally, Stenson, 142 Wn.2d 724–31; State v. Cross, 156 Wn.2d 580, 607, 132 P.3d 80, cert. denied, 549 U.S. 1022 (2006).

This case presents the complete breakdown that made substitution of appointed counsel warranted and an abuse of discretion if denied. See Stenson, 132 Wn.2d at 734. Because the Court of Appeals conclusion that the trial court's repeated refusal not to appoint new counsel was not an abuse of discretion, is not supported by the record, and involves

significant questions of law and public importance, review is appropriate under RAP 13.4(b)(3) and (b)(4). Op. at 10-14.

b. Christenson was denied his Sixth Amendment right to counsel of choice for trial.

Christenson was also repeatedly denied his choice of Carlos Gonzales as counsel. The Sixth Amendment right to counsel of choice guarantee extends to the hiring of any “qualified attorney whom the defendant can afford to hire, or who is willing to represent the defendant even though [s]he is without funds.” United States v. Gonzalez-Lopez, 548 U.S. 140, 144, 126 S. Ct. 2557, 165 L. Ed. 2d 409 (2006).

In assessing whether the Sixth Amendment requires a continuance to accommodate the choice of counsel, this Court has held that courts should consider 11 factors. State v. Hampton, 184 Wn.2d 656, 669-70, 361 P.3d 734 (2015), cert. denied, \_\_\_ U.S. \_\_\_, 136 S. Ct. 1718, 194 L. Ed. 2d 816 (2016). The Court of Appeals conclusion that the trial court did not err by denying Christenson’s request for a continuance to allow Gonzales to appear and represent him is not supported by the record and conflicts with the framework set forth by this Court in Hampton.

(1) The court concluded Christenson's request was not sufficiently timely to permit adjustment of the trial calendar. 2RP 26. But Christenson first made the request 10-days before jury selection had even

started. His second request was made the morning before jury selection began. While the court cited prior discussions of the trial calendar between the parties, there is nothing in the record indicating that the court could not have adjusted its calendar to accommodate a relatively short delay. See United States v. Brown, 785 F.3d 1337, 1349-1350 (9<sup>th</sup> Cir. 2015) (court abused its discretion, in part, because record did not demonstrate the demands of the calendar required denial of the defendant's motion to substitute counsel);

(2) Christenson's first request on June 15 to have Gonzales take over the case did not include a contemporaneous request for a continuance. The court nonetheless concluded that "presumably he [Gonzales] would need some time." 2RP 26. When Christenson noted on June 26 that that he had hired Gonzales, he requested a short continuance in order for Gonzales to return from vacation. 2RP 4, 13;

(3)-(4) Speedy trial was not a consideration. There had been several prior agreed continuances. As the court properly recognized, these two factors were "neutral in the analysis here." 2RP 27;

(5) A continuance would not have seriously inconvenienced the witnesses. As jury selection had not yet even occurred, and trial testimony would not begin until July 17, presumably no witnesses had yet traveled to King County for the trial;

(6) The first request to have Gonzales take over the case appears to have been made promptly once Christenson received confirmation that Gonzales was interested. See 1RP 199-200, 205-06. The second request was promptly made once Gonzales had actually been hired. 1RP 4, 13. All that remained was a short continuance so Gonzales could return from vacation;

(7) As the court recognized, there was no indication Christenson's negligence resulted in the need for a continuance. The court however, appeared to fault Christenson for not retaining counsel sooner. 2RP 28. But there are many reasons that may delay the hiring of private counsel, including insufficient funding. See State v. Hampton, 182 Wn. App. 805, 826-27, 332 P.3d 1020 (2014) (recognizing "It is unsurprising that a defendant who is without sufficient funds to hire a private attorney when he is arraigned could, over a period of several months, acquire such funds[.]"), overruled on other grounds by, 184 Wn.2d 656, 361 P.3d 734 (2015);

(8) Christenson had legitimate cause for dissatisfaction with appointed counsel. Christenson and Marchi explained that they had differing trial strategies. Christenson asserted that several thousand images were missing from a cell phone. 2RP 428. It was only at Christenson's urging that the phone was searched again and found to contain additional

images and email messages. 2RP 455, 464, 1450-51, 1771-73, 1094-09. It was also made clear to the court that there had been a complete breakdown in the attorney-client relationship between Marchi and Christenson;

(9) There was no basis, much less a rational one, to conclude that Christenson was seeking to change counsel “primarily for the purpose of delay.” Christenson was going to remain in custody pending trial and possibly for many years thereafter. Christenson’s goal in requesting a continuance was to be represented by his attorney of choice;

(10) Marchi was partially prepared for trial. As Marchi acknowledged, [S]ince I’ve not been on the case -- only as stand by counsel -- there hasn’t been a lot of -- there has been preparation but not to the extent that I would definitely do for a murder trial." 1RP 326. Marchi still had several witnesses who still needed to be interviewed. 1RP 325-26. Marchi noted that he had other trials currently scheduled and if reappointed "there are some certain days I am not available." 1RP 326-27;

(11) Denial of the brief continuance prejudiced Christenson because he was deprived his attorney of choice and forced to proceed with an attorney that he did not agree with on trial strategy, which may have prevented him from presenting all evidence beneficial to his case.

The Court of Appeals conclusion that the court did not err in denying Christenson a continuance to hire counsel conflicts with Hampton

and is not supported by the record based on the totality of the circumstances discussed above. Review is appropriate under RAP 13.4(b)(1), (b)(3) and (b)(4). Op. at 14-15.

2. REVIEW OF WHETHER THE COURT FAILED TO COMPLY WITH ITS CONSTITUTIONAL AND STATUTORY DUTY TO APPOINT AN EXPERT TO EVALUATE CHRISTENSON'S MENTAL HEALTH IS APPROPRIATE UNDER RAP 13.4(b)(1), (b)(3) and (b)(4).

A person accused of a crime has a fundamental right to be competent to stand trial. State v. Heddrick, 166 Wn.2d 898, 904, 215 P.3d 201 (2009). “The failure to observe procedures adequate to protect this right is a denial of due process.” State v. O’Neal, 23 Wn. App. 899, 901, 600 P.2d 570 (1979), rev. denied, 93 Wn.2d 1002 (1979). Moreover, RCW 10.77.060(1)(a) provides:

Whenever a defendant has pleaded not guilty by reason of insanity, or there is reason to doubt his or her competency, the court on its own motion or on the motion of any party shall either appoint or request the secretary to designate a qualified expert or professional person, who shall be approved by the prosecuting attorney, to evaluate and report upon the mental condition of the defendant.

This statutory language is clear: once there is reason to doubt the competency of the accused, the court *must* appoint an expert to evaluate his mental condition. State v. Sisouvanh, 175 Wn.2d 607, 620-21, 290 P.3d 942 (2012); State v. DeClue, 157 Wn. App. 787, 792, 239 P.3d 377 (2010)

(recognizing a formal competency hearing is required under RCW 10.77.060 whenever a legitimate question of competency arises).

“[C]ompetence to stand trial does not consist merely of passively observing the proceedings. Rather, it requires the mental acuity to see, hear and digest the evidence, and the ability to communicate with counsel in helping prepare an effective defense.” Odle v. Woodford, 238 F.3d 1084, 1089 (9th Cir. 2001), cert. denied, 534 U.S. 888, 122 S. Ct. 201, 151 L. Ed. 2d 142 (2001). A person is legally incompetent if he lacks the capacity to understand the nature of the proceedings against him, to consult with counsel, or to assist in his own defense. RCW 10.77.010(15); State v. Ortiz-Abrego, 187 Wn.2d 394, 403, 387 P.3d 638 (2017). While there are no fixed signs of incompetency, factors to be considered include “the defendant’s appearance, demeanor, conduct, personal and family history, past behavior, medical and psychiatric reports and the statements of counsel.” Id. at 404.

The record demonstrates significant issues with Christenson's mental health, which should have caused the court great concern. Despite these obvious concerns, expressed by Christenson, Marchi, and the jail, the court repeatedly declined to order a mental health evaluation. Due process and RCW 10.77.060(1)(a) demand a mental health evaluation *whenever* there is reason to doubt the defendant’s competency.

The court assumed that Christenson was competent because his appearance had been orderly, his demeanor and conduct calm and respectful, and his thinking and arguments cogent. 2RP 1945-47. The Court of Appeals relied heavily on this finding. Op. at 17. But the court's assumptions were based on its interactions with Christenson "over the course of over two months[.]" 2RP 1945. "Mental illness can vary in degree over time." State v. McCarthy, 6 Wn. App. 2d 94, 135, 429 P.3d 1086 (2018), overruled on other grounds, \_\_\_ Wn.2d \_\_\_, 446 P.3d 167 (2019). The assumption that because Christenson was competent weeks or months earlier, meant that he remained competent, ignores the fact that "A defendant's mental state may deteriorate under the pressures of incarceration or trial." Id. Christenson all but acknowledged that this was precisely what was happening to him. 2RP 1942-44.

Instead of complying with due process and the mandatory procedures of RCW 10.77.060(1)(a), the court declined to act on Christenson's competency concerns. Review is appropriate under RAP 13.4(b)(1), (b)(3) and (b)(4).



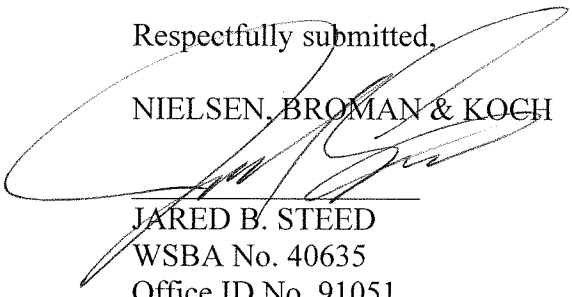
E. CONCLUSION

Because Christenson satisfies the criteria under RAP 13.4(b)(1), (b)(3) and (b)(4), this Court should grant review and reverse the Court of Appeals.

DATED this 11<sup>th</sup> day of September, 2019.

Respectfully submitted,

NIELSEN, BROMAN & KOCH



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Attorneys for Appellant

## APPENDIX

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE

THE STATE OF WASHINGTON

Respondent,

v.

MATTHEW L. CHRISTENSON,

Appellant.

No. 77463-8-1

UNPUBLISHED OPINION

FILED: August 12, 2019

SCHINDLER, J. — Matthew L. Christenson seeks reversal of the jury convictions for domestic violence homicide by abuse, domestic violence second degree felony murder, two counts of domestic violence second degree assault, second degree assault, unlawful imprisonment, and felony harassment. Christenson claims the court erred in denying his motion to substitute appointed counsel and his request to continue trial to allow him to retain private counsel. Christenson also challenges denial of his request to appoint an expert to evaluate his mental competency. Because the court did not abuse its discretion by denying the requests, we affirm.

FACTS

On January 2, 2015, the State charged Matthew L. Christenson with domestic violence assault in the second degree and domestic violence unlawful imprisonment of

14-year-old J.C. between January 1 and May 10, 2014. The court appointed SCRAP<sup>1</sup> public defenders to represent Christenson.<sup>2</sup>

On March 26, 2015, the State filed an amended information to add charges against Christenson of domestic violence homicide by abuse of O.S. on or about April 12, 2014; domestic violence murder in the second degree of O.S. on or about April 12, 2014; domestic violence assault in the second degree of O.S. between January 1 and April 12, 2014; and felony harassment of J.C. between January 1 and May 10, 2014. The State alleged several aggravating factors, including deliberate cruelty, the victims were particularly vulnerable or incapable of resistance, Christenson used his position of trust to commit the crimes, and an ongoing pattern of abuse.

Christenson did "not trust" the SCRAP attorneys. Christenson told them he wanted a new attorney. On July 14, 2015, Christenson filed a pro se motion to discharge the SCRAP attorneys and obtain new appointed counsel. Christenson asserted the attorneys did not properly investigate his case or file motions that they discussed and manipulated him into authorizing multiple trial continuances. At the July 14 hearing, Christenson told the court, "I don't trust [the attorney]. I'm not going to take my time to talk to him about my case that has my freedom at stake." The court denied Christenson's motion. However, on July 23, SCRAP withdrew as appointed counsel because of a conflict under Rule of Professional Conduct (RPC) 1.7.<sup>3</sup>

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<sup>1</sup> Society of Counsel Representing Accused Persons.

<sup>2</sup> One SCRAP attorney was already representing Christenson on an unrelated charge.

<sup>3</sup> SCRAP represented a witness the State would be calling to testify against Christenson. RPC 1.7(a) states a lawyer "shall not represent a client if the representation involves a concurrent conflict of interest."

On July 29, the court appointed attorney Nicholas Marchi to represent Christenson. Marchi spent the next 18 months interviewing dozens of witnesses, diligently pursuing discovery, and preparing Christenson's case for trial.

On January 9, 2017, Christenson filed a pro se "Motion To Retain New Trial Lawyer" asking the court to appoint new counsel. The court found Christenson's factual basis inadequate and declined to consider the motion. Marchi continued interviewing witnesses and preparing Christenson's case for trial.

Approximately a month before the scheduled trial date, on April 24, Christenson filed another pro se motion to discharge Marchi and appoint new counsel. Christenson asserted Marchi had not discussed discovery with him, failed to investigate witnesses and pursue exculpatory electronic evidence, and failed to file motions they discussed. Christenson asserted he could not work with Marchi "at building my defense."

At the April 26 hearing on Christenson's motion, Marchi cited a conflict under the RPC and moved to withdraw. The State opposed the motion. The State noted Marchi had diligently prepared "a complex murder case that has more than 2500 pages of discovery" and completed dozens of witness interviews with only a few interviews remaining before the May 25 trial date. The court agreed to consider the ethical concerns Marchi cited in camera.

At the hearing on May 1, the court found there was a "fundamental disagreement" between Christenson and Marchi regarding "trial strategy and trial tactics and what witnesses should be interviewed." But the court denied Christenson's motion to discharge Marchi for the following reasons:

This case has had one lawyer discharged already. The case has been around for quite some time. Mr. Marchi has done a significant

amount of work in this case. It would require a significant amount of time and a significant amount of work for another lawyer, which wouldn't be necessarily dispositive for me in terms of changing lawyers if I thought it was going to make a difference in the long term to appoint another lawyer.

In this case, given Mr. Christenson's disagreements with [the SCRAP attorneys] — and given the types of issues that Mr. Christenson has with Mr. Marchi — I am not convinced that if I were to appoint another lawyer that it would end up any differently down the road when that lawyer disagrees with the trial tactics and trial strategies that Mr. Christenson might have in this case.

On May 3, Christenson told Marchi that he wanted to proceed pro se. At a hearing on his motion on May 9, Christenson said he wanted to "proceed pro se so I can go over the case the way I feel like I should need to. I understand the case as I've been proceeding with it." The court provided Christenson with a written waiver of counsel to review<sup>4</sup> and reset the hearing to complete the colloquy.

On May 15, the court engaged in a colloquy with Christenson on his request to proceed pro se. The court determined Christenson made the decision to proceed pro se knowingly, intelligently, and voluntarily. Christenson informed the court that he would need a continuance of the May 25 trial date of "at least sixty days to review the case" and prepare. On May 18, the court granted Christenson's motion to proceed pro se. The State requested the court appoint Marchi as standby counsel. Christenson did not object. The court appointed Marchi as standby counsel and continued the trial date to June 12, 2017. Over Christenson's objection, the court ruled Ty Jenkins would continue as the defense investigator.

On May 30, citing strategic disagreements and a lack of trust, Christenson asked the court to remove Jenkins and assign another investigator. Christenson said, "I refuse

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<sup>4</sup> The waiver of counsel included the maximum penalty for each offense the State charged as well as the rights Christenson would forego without the assistance of counsel.

to work with [Jenkins]" and have "a different strategy to this case." The court denied the request.

On June 6, the State filed a second amended information to add another count of domestic violence assault in the second degree of O.S. between January 1 and April 12, 2014 and the aggravating factors of deliberate cruelty, an ongoing pattern of abuse, O.C. is a vulnerable victim, and Christenson used his position of trust to commit the crime.

At a hearing on June 6, when asked to provide the nature of his defense to the State, Christenson was unable to articulate a defense. Christenson requested another continuance of 60 days to prepare his defense. The court denied Christenson's request, noting Christenson was experiencing "the difficulty in general of preparing for trial" that was "not a basis to continue the trial date."

On the first day of trial on June 15, Marchi moved to withdraw as standby counsel. The State opposed the motion. Marchi argued Christenson does not have a right to standby counsel, Christenson was complying with court rules, and counsel had other cases going to trial. Marchi noted Christenson "seems to have a working knowledge of what he needs to do," his pro se motions "seem to comply with the court rules," and Jenkins was available to "assist with serving subpoenas and preparing to get the subpoenas served, getting witnesses to the courtroom, [and] interviewing witnesses on behalf of the defendant."

Christenson did not object to Marchi withdrawing as standby counsel. The court granted Marchi's motion to withdraw as standby counsel.

Christenson moved to withdraw his motion to proceed pro se. Christenson stated he was “in the middle of working on retaining” private attorney Carlos Gonzalez to review the State’s final plea offer. According to Christenson, Gonzalez did not appear in court because he had another matter in Snohomish County. The court ruled:

If there is an attorney you want to retain, that attorney needs to come — as a threshold matter — into court and say, “I’m here. I’m ready to go. I want to be appointed.” Then we can hear what that attorney has to say at that point. To date, that hasn’t happened.

Christenson explained that he wanted counsel for trial because “[t]here is no way that I can go forward not knowing what I’m doing” but rejected reappointing Marchi as counsel. The court denied Christenson’s motion to appoint any attorney other than Marchi. Afterward, the court began hearing motions in limine.

On June 19, Christenson renewed his request for appointment of counsel, but not Marchi. After describing a detailed history of Christenson’s dissatisfaction with prior appointed counsel as well as his election to proceed pro se, the court denied the motion “to appoint another attorney.” Later that day, Christenson changed his mind and agreed to accept Marchi as counsel rather than continue pro se.

At the next hearing on June 21, Marchi told the court that his team could “get onboard” if reappointed but that Christenson needed to understand Marchi would decide “legal strategy.” The court reappointed Marchi as counsel. The court told Christenson:

I won’t go on at length but I will say this is not a decision about whether Mr. Marchi and Mr. Christenson enjoy each other. It is to provide a competent and adequate legal defense. He is your attorney now. He will make strategic decisions. I think he understands concerns that you have. He has been trying these types of cases for many many years. I am confident you will be in a much better position to provide a vigorous defense with his representation.



On the first day of jury selection on June 26, Marchi told the court that Christenson informed him that he retained Gonzalez as trial counsel but said Gonzalez was away on vacation. Gonzalez had not filed a notice of appearance or otherwise communicated with the court or the attorneys in the case. After considering the 11 factors set forth in State v. Hampton, 184 Wn.2d 656, 361 P.3d 734 (2015), the court denied Christenson's request to appoint Gonzalez as private counsel. The court noted that "we don't have Mr. Gonzalez here seeking to be appointed."

Marchi also told the court that Christenson told him "he may not be competent to proceed going forward" and requested a competency evaluation. Christenson told Marchi he had difficulty "understanding the nature of" the trial proceedings, was "confused," and had a "hard time" accepting "the reality of his current situation." The court asked whether Marchi and the prosecutor had concerns about Christenson's competency.

THE COURT: Is it accurate for me to assume that if prior to that time, in your professional judgment, you had concerns about his competency, you would have brought that to the attention of the Court?

MR. MARCHI: Yes, Your Honor.

THE COURT: Let me hear from the State.

[PROSECUTOR]: I believe that would be correct, coming from Mr. Marchi as well. I do think this is a delay tactic. I would note that Mr. Marchi never raised the issue of competency, that I'm aware of, while this case was pending. This Court itself has engaged in numerous colloquies with the defendant, as Judge Bowman and Judge Berns have the last few weeks. It's quite clear the defendant understood the nature of the proceedings, asked pertinent questions, recited to case law.

I would note that in the briefing that the defendant had provided while he was pro se, it was certainly cogent. The arguments, while maybe the State didn't agree in their validity, they certainly made sense and demonstrated that he did understand the nature of the proceedings. I don't think there's any basis for this Court to delay this trial for any competency evaluation.

The court stated that it also “did not have any concerns about Mr. Christenson’s competence” based on its observations of him during the proceedings.

Following a short recess, Marchi told the court that Christenson reported “seeing things, hearing voices,” and an inability to “focus on his defense” or assist counsel. Christenson cited 18 U.S.C. § 4241, “Determination of Mental Competency To Stand Trial To Undergo Postrelease Proceedings,” in support of his request for a competency evaluation. The court denied the request and found Christenson “very competent.”

[B]ased on not only my own multiple interactions with Mr. Christenson in court during the time that he was representing himself pro se, which again involved his oral presentations and arguments to me, it also involved numerous written submissions to me, so I’m familiar with those.

I’m also familiar with hearings that he had before Judges Berns and Bowman on May 9 and May 15 and May 18. . . . I listened to those hearings two to three times each, as well as reading a transcript of those hearings.

Based on all this contact that I’ve had with Mr. Christenson, I have zero concern about his competence to stand trial. I have considered the factors listed in [In re Pers. Restraint of Fleming, 142 Wn.2d 853, 16 P.3d 610 (2001),] which include, not an exhaustive list, but included the defendant’s appearance, demeanor, conduct, personal history to the extent I know it, past behavior to the extent I know it, and the medical and psychiatric reports to the extent I know it. . . .

Taking everything together into account, Mr. Christenson has presented himself to be very competent. I also note . . . I spent a good deal of time interacting with pro se litigants . . . . And again, Mr. Christenson is at the very high end of that spectrum. And I have no doubt, based on what I’ve seen, that he is competent to stand trial and interact with his attorney, should he choose to do that.

Following voir dire, the court impanelled the jury on June 29. The court recessed the trial until July 17.

Before opening statements on July 17, Marchi moved to withdraw because Christenson filed a bar complaint against him. Christenson filed a “Motion for New Trial Lawyer Due to Ineffective Assistance of Counsel/Conflict of Interest” and requested the

court appoint new counsel. After thoroughly inquiring into the nature of the conflict during an hour-long ex parte hearing, the court denied Marchi's motion to withdraw and the motion to appoint a new attorney.

The State called a number of witnesses to testify during the 12-day jury trial. Christenson filed multiple pro se motions and pleadings throughout the trial, including an 11-page "Supplemental Brief to Motion To Sever Counts" filed August 2 and an 8-page "Letter for the Record" filed August 7. The Letter for the Record sets forth the "number of problems I had with Mr. Marchi" and requests "help" with "mental problems."

On the final day of the State's case-in-chief on August 7, Marchi told the court that Christenson received "a psych evaluation from the Jail and that he was having severe mental issues in dealing with this case." Christenson told Marchi that the jail "Psych Unit" was "recommending some sort of treatment." Marchi moved to recess the trial until Christenson "can follow up with mental health treatment at the Jail and get medication." The court denied the request.

[T]here is no reason to delay our proceedings today. I'm basing that on the sum of my experience with Mr. Christenson and my close observation of him over the last several weeks during trial — he has been following along in court, he's taking notes, he has been consulting with Counsel — and in his continued, cogent, and articulate communications to the Court.

On August 8, defense called a witness to testify. Marchi told the court Christenson "is requesting a recess and/or continuance" to obtain psychological treatment and decide whether to testify. While the court concluded Christenson might benefit from "seeking psychological help," it found Christenson competent. After describing Christenson's competency in detail, including the "ability to consult with his attorney" and "a rational and factual understanding of the proceedings against him," the

court ruled his “competence for trial is [not] in question in the least and a recess would be inappropriate.” Christenson did not testify.

The jury convicted Christenson as charged. By special verdict, the jury found Christenson guilty of the aggravating factors of deliberate cruelty, the victims were particularly vulnerable or incapable of resistance, Christenson used his position of trust to commit the crimes, and an ongoing pattern of abuse.

## ANALYSIS

### Requests To Appoint Counsel

Christenson challenges the decision to deny his motions to appoint new counsel, claiming there was a “complete breakdown” in the attorney-client relationship with Marchi.

“Whether an indigent defendant’s dissatisfaction with his court-appointed counsel is meritorious and justifies the appointment of new counsel is a matter within the discretion of the trial court.” State v. Stenson, 132 Wn.2d 668, 733, 940 P.2d 1239 (1997). A court abuses its discretion when its decision adopts a view that no reasonable person would take or is based on untenable grounds or untenable reasons. State v. Sisouvanh, 175 Wn.2d 607, 623, 290 P.3d 942 (2012).

The “essential aim” of the Sixth Amendment to the United States Constitution “is to guarantee an effective advocate for each criminal defendant rather than to ensure that a defendant will inexorably be represented by the lawyer whom he prefers.” Wheat v. United States, 486 U.S. 153, 159, 108 S. Ct. 1692, 100 L. Ed. 2d 140 (1988). However, “[i]f the relationship between lawyer and client completely collapses,” refusal to substitute counsel violates the defendant’s constitutional right to effective assistance of counsel. In re Pers. Restraint of Stenson, 142 Wn.2d 710, 722, 16 P.3d 1 (2001).

A defendant “who is dissatisfied with appointed counsel must show good cause to warrant substitution of counsel, such as a conflict of interest, an irreconcilable conflict, or a complete breakdown in communication between the attorney and the defendant.” Stenson, 132 Wn.2d at 734. A general loss of confidence or trust in defense counsel by itself is not sufficient cause to substitute new counsel. Stenson, 132 Wn.2d at 734. The defendant and attorney must be “so at odds as to prevent presentation of an adequate defense.” Stenson, 132 Wn.2d at 734.

A disagreement over defense theories and trial strategy does not by itself constitute an irreconcilable conflict entitling the defendant to substitute counsel because decisions on those matters are properly entrusted to defense counsel, not the defendant.

State v. Thompson, 169 Wn. App. 436, 459, 290 P.3d 996 (2012).

In determining whether the court abused its discretion in concluding there was not an irreconcilable conflict, we consider (1) the extent of the conflict, (2) the adequacy of the court’s inquiry, and (3) the timeliness of the motion. Stenson, 142 Wn.2d at 723-24. Christenson contends the court erred by denying his numerous requests to discharge his attorney and obtain new counsel. Christenson does not challenge the adequacy of the court’s inquiry on any of the rulings. We address each request in turn.

#### First Request

Christenson moved to discharge Marchi on January 9, 2017 but did not provide a factual basis. Because the motion was inadequate, the court did not abuse its discretion by not considering Christenson’s request.

#### Second Request

On April 24, 2017, Christenson requested appointment of new counsel. The record does not indicate a breakdown in communication or irreconcilable conflict

affecting the adequacy of his representation. Christenson disagreed with Marchi concerning trial strategy and tactics. However, defense counsel has wide latitude to control trial strategy and tactics. Stenson, 142 Wn.2d at 733-34. Christenson did not present any evidence to establish he was unable to communicate with Marchi to such a degree "as to prevent presentation of [an] adequate defense." Stenson, 132 Wn.2d at 734.

Additionally, Christenson made his second request a month before the scheduled May 25 trial date. Because Marchi had spent many months preparing for trial, it would have taken a new attorney a significant amount of time and effort in an already long-delayed and complicated trial to review more than 2,500 pages of discovery and interview dozens of State witnesses in order to prepare for trial. Notwithstanding the amount of significant delay that appointment of new counsel would bring, the record suggests Christenson would likely disagree on trial strategy or tactics and seek to discharge new counsel. The court did not abuse its discretion in denying the April 2017 motion.

#### Third Request

On the first day of trial on June 15, 2017, Christenson withdrew his motion to proceed pro se and requested appointment of new counsel. The court did not abuse its discretion by denying Christenson's request and giving him the option of reappointing Marchi. After a defendant's valid waiver of counsel, "the trial court is not obligated to appoint, or reappoint, counsel on the demand of the defendant." State v. DeWeese, 117 Wn.2d 369, 379, 816 P.2d 1 (1991) ("[A]fter a valid denial of a defendant's request

for appointment of substitute counsel, the trial court may require the defendant to choose between remaining with current counsel or proceeding pro se.”).

#### Fourth Request

The court also did not abuse its discretion by denying Christenson’s motion for new counsel prior to opening statements on July 17. The court conducted an extensive inquiry and allowed Christenson and Marchi to state their concerns fully.

In denying the request, the court found (1) Christenson’s expectations of timely communications with Marchi did not “adequately recognize the demands of a very busy and good trial attorney, and the competing demands and time of a trial attorney moving several cases forward to trial”; (2) Christenson failed to show any material prejudice concerning Marchi’s preparation; (3) Marchi adequately communicated the State’s plea offers to Christenson; (4) Christenson’s complaints about Marchi were primarily disputes “about strategy and tactics”; (5) Christenson created the bar grievance issue himself; (6) if required, the court and bar association could draft an appropriate protective order that would prevent privileged information from being used in the proceedings; (7) Marchi provided “competent, zealous, timely, patient representation”; (8) Christenson “would have similar disagreements about strategy in trial” if the court “were to appoint yet a third trial attorney”; (9) “substitution at this point would clearly have an adverse impact on the proceeding”; (10) Christenson’s case “has been pending for a long time”; and (11) although Christenson and Marchi do not enjoy working with each other, “an adequate defense is being pursued and will be presented to the jury.”

While the record reflects disagreement and frustration between Christenson and his counsel, the record does not demonstrate a complete breakdown in communication

or an irreconcilable conflict that affected the adequacy of representation. The court did not abuse its discretion in denying Christenson's motions for new counsel.

Request for Continuance To Retain Private Counsel

Christenson argues the court violated his Sixth Amendment right to counsel of choice.

"As part of the Sixth Amendment right to the assistance of counsel, defendants with private attorneys generally have the right to the counsel of their choice." Hampton, 184 Wn.2d at 662. But this right is not absolute. Hampton, 184 Wn.2d at 663. A trial court has "wide latitude in balancing the right to counsel of choice against the needs of fairness and against the demands of its calendar." United States v. Gonzalez-Lopez, 548 U.S. 140, 152, 126 S. Ct. 2557, 165 L. Ed. 2d 409 (2006).<sup>5</sup> We review the trial court's balancing decision for abuse of discretion. Hampton, 184 Wn.2d at 663.

Where, as here, appointing new counsel requires a continuance to prepare for trial, we review the "trial court's denial of a continuance to determine whether it was 'so arbitrary as to violate due process.'" Hampton, 184 Wn.2d at 663 (quoting Ungar v. Sarafite, 376 U.S. 575, 589, 84 S. Ct. 841, 11 L. Ed. 2d 921 (1964)). In Hampton, the Washington Supreme Court listed 11 nonexclusive factors trial courts may consider when balancing a defendant's right to his choice of counsel, including:

- (1) whether the request came at a point sufficiently in advance of trial to permit the trial court to readily adjust its calendar;
- (2) the length of the continuance requested;
- (3) whether the continuance would carry the trial date beyond the period specified in the state speedy trial act;
- (4) whether the court had granted previous continuances at the defendant's request;
- (5) whether the continuance would seriously inconvenience the witnesses;

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<sup>5</sup> Citation omitted.



(6) whether the continuance request was made promptly after the defendant first became aware of the grounds advanced for discharging his or her counsel;

(7) whether the defendant's own negligence placed him or her in a situation where he or she needed a continuance to obtain new counsel;

(8) whether the defendant had some legitimate cause for dissatisfaction with counsel, even though it fell short of likely incompetent representation;

(9) whether there was a 'rational basis' for believing that the defendant was seeking to change counsel 'primarily for the purpose of delay';

(10) whether the current counsel was prepared to go to trial; [and]

(11) whether denial of the motion was likely to result in identifiable prejudice to the defendant's case of a material or substantial nature.

Hampton, 184 Wn.2d at 669-70 (quoting 3 WAYNE R. LAFAYE ET AL., CRIMINAL PROCEDURE § 11.4(c) at 718-20 (3d ed. 2007)).

Because the record establishes Gonzalez never appeared in court; never filed a notice of appearance on Christenson's behalf; and never contacted appointed counsel, the prosecutor, or the court, the court did not abuse its discretion by denying the request for a continuance.

Nonetheless, the court considered all 11 of the Hampton factors in determining whether to grant Christenson's request for a continuance to retain private counsel. The court found the request did not come at a point sufficiently in advance of trial to permit the court to adjust its calendar and a continuance would seriously inconvenience over two dozen witnesses, including some "vulnerable" witnesses. On balance, the court concluded the factors weighed in favor of denying the request. Based on the record, we conclude the court did not abuse its discretion.

#### Request for Competency Evaluation

Christenson next challenges the court's denial of his request for a mental health competency evaluation.

The due process clause of the Fourteenth Amendment to the United States Constitution “prohibits the conviction of a person who is not competent to stand trial.” Fleming, 142 Wn.2d at 861. “No incompetent person may be tried, convicted, or sentenced for the commission of an offense so long as such incapacity continues.” RCW 10.77.050. RCW 10.77.060(1)(a) states:

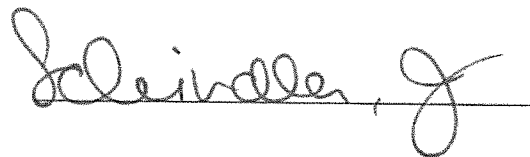
Whenever a defendant has pleaded not guilty by reason of insanity, or there is reason to doubt his or her competency, the court on its own motion or on the motion of any party shall either appoint or request the secretary [of the Department of Social and Health Services] to designate a qualified expert or professional person, who shall be approved by the prosecuting attorney, to evaluate and report upon the mental condition of the defendant.

The determination of whether a competency evaluation should be ordered is reviewed for abuse of discretion. State v. Heddrick, 166 Wn.2d 898, 903, 215 P.3d 201 (2009). The factors courts may consider to determine “whether or not to order a formal inquiry into the competence of an accused include the ‘defendant’s appearance, demeanor, conduct, personal and family history, past behavior, medical and psychiatric reports and the statements of counsel.’ ” Fleming, 142 Wn.2d at 863 (quoting State v. Dodd, 70 Wn.2d 513, 514, 424 P.2d 302 (1967)).

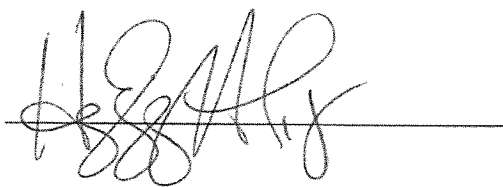
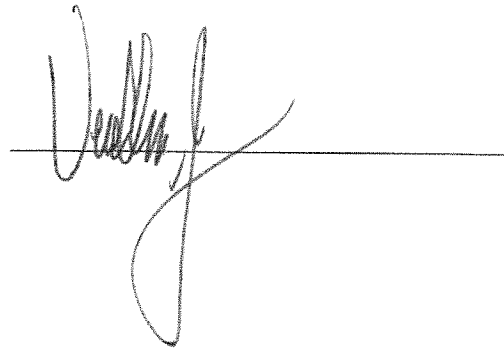
“A defendant is competent if he has the capacity to understand the nature of the proceedings against him and to assist in his own defense.” State v. Lord, 117 Wn.2d 829, 900, 822 P.2d 177 (1991), abrogated on other grounds by State v. Schierman, 192 Wn.2d 577, 438 P.3d 1063 (2018). “The competency standard for pleading guilty or waiving right to counsel is the same as the competency standard for standing trial.” Fleming, 142 Wn.2d at 862.

Here, the court based its decision on interactions with Christenson over the course of more than two months of trial proceedings. The court found Christenson had the “present ability to consult with his attorney with a reasonable degree of rational understanding and a rational and factual understanding of the proceedings against him.” The court notes Christenson “has been well groomed,” his appearance “orderly,” his “demeanor and conduct have been calm and respectful,” “his thinking and arguments have been cogent,” and “[h]e’s been able to track and understand . . . a line of thinking or argument.” The record also shows the court granted Christenson’s motion to waive counsel and proceed pro se for more than a month. Christenson prepared numerous pro se motions that contained reasoned arguments and case citations. The record supports the conclusion that the court did not abuse its discretion in denying the request for a competency evaluation.

We affirm the convictions.

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WE CONCUR:

Handwritten signature of H. J. H. in cursive script above a horizontal line.Handwritten signature of J. J. J. in cursive script above a horizontal line.

**NIELSEN, BROMAN & KOCH P.L.L.C.**

**September 11, 2019 - 10:51 AM**

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