

NO. 49106-1

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JAMES OTIS WRIGHT, JR.,

Appellant.

Appeal from Thurston County Superior Court
Honorable Gary R. Tabor
No. 16-1-00211-4

BRIEF OF APPELLANT

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I. INTRODUCTION

Appellant James O. Wright, Jr.'s trial for Indecent Liberties-Forcible Compulsion was improperly scheduled two days after the expiration of his speedy trial right. At trial, the sole witness and victim testified that Wright grabbed her from behind in her pelvic area then "didn't continue to hold." This was insufficient evidence to support a trier of fact's finding that Indecent Liberties-Forcible Compulsion occurred because the Wright did not "overcome resistance" as required by law, nor was the act accompanied by a threat to facilitate it at the time of the touching.

Wright was denied effective assistance of counsel in this proceeding because his counsel did not insist on a speedy trial, performed only nominal cross-examination at trial, and rested his entire defense in closing argument in what was effectively a *Knapstad* motion that should have been brought weeks before.

II. ASSIGNMENTS OF ERROR

A. **The trial court erred when it permitted the holding of trial beyond Wright's speedy trial right.**

ISSUES PRESENTED: Whether the trial court was required to dismiss with prejudice the action against Wright pursuant to CrR 3.3(h) because the trial was continued beyond speedy trial limits based on an improper motion supported by incorrect dates.

B. The trial court erred because insufficient evidence supported the finding that Wright committed the crime of Indecent Liberties-Forcible Compulsion.

ISSUES PRESENTED: Whether Wright's single touching of victim's pelvic area constituted "caus[ing] another person to have sexual contact with him" under the Indecent Liberties statute.

Whether Wright used "physical force which overcomes resistance" under the Forcible Compulsion portion of that statute since the testimony indicated Wright "did not continue to hold."

Whether the threat made by Wright that he was "here to eat your pussy" constituted Forcible Compulsion if it was uttered before the touching occurred and was not reiterated during the touching.

C. Wright was subject to ineffective assistance of counsel and should be afforded appropriate relief.

ISSUES PRESENTED: Whether it was objectively reasonable for defense counsel to permit the scheduling of trial beyond Wright's speedy trial right.

Whether it was objectively reasonable for defense counsel to rest the entirety of the defense on a *Knapstad* motion without disputing the facts, and but for counsel's action, whether the cause against Wright could have been dismissed or a contrary verdict held.

III. STATEMENT OF CASE

Wright was sentenced on June 23, 2016, to Indecent Liberties-Forcible Compulsion (RCW 9A.44.100) after a finding of guilt by jury. The sole witness and victim to the event, Pastor Tammy Stampfli, testified that on the night of February 7, 2016, Wright broke into her church in Olympia

and upon seeing the victim, 'said something like: "I'm here to eat your pussy.'" RP 81. The victim then testified that she turned around to make coffee, whereupon Wright came up behind her and grabbed her crotch. RP 82. The victim's reaction was as follows, (emphasis added):

Q. What was your reaction?

A. I freaked out. I just started flailing and screaming.

Q. What was going through your mind?

A. Just get off, get away, stop.

Q. Did you say anything?

A. All of that. Get off, get away, stop, let go.

Q. What, if anything, did Mr. Wright do or say?

A. What I sort of remember was him saying, like **I didn't do anything.**

Q. Did he pull away?

A. We -- I don't remember him sort of stepping back or anything, but I just was freaking out and flailing so continued that as we worked our way toward the door, **so he wasn't continuing to hold,** he wasn't stepping away. It was just kind of this chaos.

Q. At some point did you turn around and face him?

A. I don't remember facing him. I just remember sort of screaming and pushing at -- I must have been facing him. It was really mirky here because I was really, really upset, but yeah, just like screaming like get out, get out, get out, get out.

Q. Aside from Mr. Wright saying, '**I didn't do anything,**' do you remember him saying anything else?

A. **No.**

See, RP 88

The victim testified she feared for her safety:

Q. Go back just to actually as this was happening, and I should have asked this a little bit more coherently. As Mr. Wright was grabbing you, were you concerned for your safety?

A. Absolutely.

Q. Did you have concerns that you might be hurt or injured?

A. Yes.

See, RP 89-90.

As discussed *infra*, this testimony does not indicate that the Wright “cause[d] another person to have sexual contact with him” or that Wright used “physical force which overcomes resistance” pursuant to the Indecent Liberties statute, since the contact occurred and ceased instantaneously. Wright “wasn’t continuing to hold” and it appears from the testimony that it was only after the touching that she feared for her physical safety. Wright’s acts more likely constituted assault with sexual motivation (RCW 9A.36).

The victim then contacted the police who arrested Wright. Officer Hendrichs testified that he was dispatched to an assault (RP 50), as did Officer Nutter (RP 61).

Wright was arraigned on February 23, 2016, yet trial was not held until May 2, 2016. As explained *infra*, the trial date was inappropriately set two days beyond what was already explicitly established in the record as the expiration of speedy trial. The State moved to continue this invalid trial date yet again, based off of what were immaterial vacation times by one of the witnesses. *See infra*.

No pretrial motions or hearings beyond continuances or omnibus were held. No briefs or memoranda were filed by defense counsel. Throughout the pretrial hearings, Wright was objecting to continuances, see *infra*.

At trial, only three witnesses testified: the sole witness to the event Ms. Stampfli, and the two responding Officers Henrichs and Nutter.

Defense counsel had no cross-examination of responding Officer Duane Henrichs (RP 59), a single question of the victim (RP 95), and a single question of the responding Officer Nutter about whether he was present during the incident. *See*, RP 71. Defense counsel admits at RP 116 that “I didn’t cross-examine much because we don’t dispute the facts.” He goes on to argue:

What is troubling here and what is not agreed upon is the law. Now, you’ve heard that Mr. Wright is charged with indecent liberties by forcible compulsion and you’re given a jury instruction, in fact several, 6, 7 and 8, describing exactly what that crime is. But if you recall the officer's testimony, Officer Henrichs came to an assault clear case. He believed it was an assault he was responding to. Officer Nutter was dispatched to an assault, and perhaps clearly an assault occurred here but that's a different crime than what is being charged. The charge here is indecent liberties by forcible compulsion. And by that they mean in that Instruction No. 7 that Mr. Wright caused Tammy Stampfli to do something, and I would submit he did not. He might have done something and it's a horrible thing he did, but he did not cause her to do something and those are essential elements of the crime of indecent liberties with forcible compulsion.

See, RP 116.

Understanding defense counsel’s closing argument, his single question of the victim earlier then makes more sense:

Ms. Stampfli, I have one brief question and I know it may sound

crazy but it's part of the law and I just want to know, did you on that Sunday have any sexual contact with Mr. Wright?

See, RP 95

Nothing in the record indicates that Wright personally agreed that he "did not dispute the facts" except for defense counsel's representation.

Defense counsel's entire strategy and argument at trial was essentially a *Knapstad* motion that is customarily brought before trial. Nothing in the record indicates that there was an attempt or intention to file a *Knapstad* motion.

As explained *infra*, defense counsel's action prejudiced Wright beyond what was objectively reasonable. Wright was exposed to a trial ending in a sentence that could see him incarcerated for his entire life because it is an indeterminate sentence. Instead of arguing the *Knapstad* motion to the court in a pre-trial hearing so Wright could prepare another strategy should it go to trial, the entirety of his defense was hinged on one subtle legal argument to a jury, at the very end of the proceedings.

IV. ARGUMENT

A. The trial court erred when it permitted the holding of trial beyond Wright's speedy trial right.

1. LAW

CrR 3.3(b) states:

(b) Time for Trial.

(1) Defendant Detained in Jail. A defendant who is detained in jail shall be brought to trial within the longer of...

(i) 60 days after the commencement date specified in this rule, "Commencement date" is the date of arraignment. CrR 3.3(c)(1). A defendant has a right to a speedy trial under the Sixth Amendment

and article I, section 22 of the Washington State Constitution. See *State v. Carson*, 128 Wash.2d 805, 820 & nn. 63–64, 912 P.2d 1016 (1996)

CrR 3.3(f) addresses continuances:

Continuances or other delays may be granted as follows:

[...]

2.) Motion by the Court or a Party. On motion of the court or a party, the court may continue the trial date to a specified date when such continuance is required in the administration of justice and the defendant will not be prejudiced in the presentation of his or her defense. The motion must be made before the time for trial has expired. The court must state on the record or in writing the reasons for the continuance. The bringing of such motion by or on behalf of any party waives that party's objection to the requested delay.

CrR 3.3(g) provides for a specific, rigid procedure which may take place if the time for trial has already passed:

(g) Cure Period. The court may continue the case beyond the limits specified in section (b) on motion of the court or a party made within five days after the time for trial has expired. Such a continuance may be granted only once in the case upon a finding on the record or in writing that the defendant will not be substantially prejudiced in the presentation of his or her defense. The period of delay shall be for no more than 14 days for a defendant detained in jail, or 28 days for a defendant not detained in jail, from the date that the continuance is granted.

The court may direct the parties to remain in attendance or be on-call for trial assignment during the cure period.

Caselaw expands on these rules: “[T]he decision to grant or deny a motion for a continuance rests within the sound discretion of the trial court.” *State v. Downing*, 151 Wn.2d 265, 272, 87 P.3d 1169 (2004). An appellate court “will not disturb the trial court’s decision unless the appellant or petitioner makes ‘a clear showing ... [that the trial court’s] discretion [is] manifestly unreasonable, or exercised on untenable grounds, or for

untenable reasons.’’ *Downing* at 272 (alteration in original) (quoting *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971)).

A court may grant a continuance based on [emphasis added]: “written agreement of the parties, **which must be signed by the defendant**” or “on motion of the court or a party” where a continuance “is required in the administration of justice and the defendant will not be prejudiced in the presentation of his or her defense.” CrR 3.3(f)(1), (2).

2. ANALYSIS

Wright was arraigned on February 23, 2016. Trial was set for April 11, 2016, well within speedy trial limits. CP 8-11. A “Trial Confirmation Order” was entered on April 6th affirming the April 11th date and that the parties were ready. That Order clearly and correctly stated that the “last date for trial” was April 23rd, which is exactly the 60th day from the arraignment date. However, on April 11th, the day trial was supposed to begin, the court entered a hand-written order continuing the trial date to April 25th, despite the last order’s *clear* statement that April 23rd was the last-allowable day. The April 11, 2016 order was **not** signed by Wright as required by CrR 3.3(f)(1)(2). Wright does not concede this point, but even in the most generous calculation of the duration between dates, which would be to exclude the start and end day, April 25th is still 61 days after arraignment. No CrR 3.3 motion to continue, excluded event, or tolling period was mentioned in this handwritten order on April 11th.

It is true that on April 13th, the State moved, over Wright’s objection, to continue the trial date past the already untimely April 25th date. But since

April 25th was already past the expiration date, the motion to continue the trial even later had no effect on the violation of the Wright's right to a speedy trial. Once the State failed to start Wright's trial on or before April 23rd, Wright was entitled to a dismissal. The State's motion clearly stated that the witness's vacation **started** April 25, so the witness *could* have been available the previous week, and before the last-allowable day for trial. Court was not held again until April 27, after Wright's right to a speedy trial had come and gone. No CrR 3.3(g) "cure period" motion was made.

Because the only event which could have allowed an extension beyond speedy trial was an invalid motion supported by an inapplicable excuse, Wright's trial was not brought within the necessary time limits and the trial court was required to dismiss the matter with prejudice pursuant to CrR 3.3(h).

B. The trial court erred because insufficient evidence supported the finding that Wright committed the crime of Indecent Liberties-Forcible Compulsion

1. LAW

a) *Standard of Review*

To determine whether sufficient evidence supports a conviction, an appellate court views the evidence in the light most favorable to the prosecution and determine whether any rational fact finder could have found the elements of the crime beyond a reasonable doubt. *State v. Engel*, 166 Wn.2d 572, 576, 210 P.3d 1007 (2009). "Substantial evidence" is evidence sufficient to persuade a fair-minded person of the truth of the asserted premise. *Id.* An appellate court treats unchallenged findings of

facts and findings of fact supported by substantial evidence as verities on appeal. *Schmidt v. Cornerstone Invs., Inc.*, 115 Wn.2d 148, 169, 795 P.2d 1143 (1990).

In claiming insufficient evidence, the defendant necessarily admits the truth of the State's evidence and all reasonable inferences that can be drawn from it. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992); *State v. Drum*, 168 Wn.2d 23, 35, 225 P.3d 237 (2010). These inferences "must be drawn in favor of the State and interpreted most strongly against the defendant." *Salinas* at 201; accord *State v. Kilburn*, 151 Wn.2d 36, 57–58, 84 P.3d 1215 (2004) (Owens, J., dissenting). An appellate court must defer to the trier of fact for purposes of resolving conflicting testimony and evaluating the persuasiveness of the evidence. *State v. Jackson*, 129 Wn.App. 95, 109, 117 P.3d 1182(2005).

An abuse of discretion occurs where a trial court's decision is manifestly unreasonable or made for untenable reasons. *Id.* A trial court necessarily abuses its discretion when basing its ruling on an error of law. *State v. Quismundo*, 164 Wn.2d 499, 504, 192 P.3d 342 (2008).

(1) Statute.

RCW 9A.44.100 "Indecent liberties" states as follows:

(1) A person is guilty of indecent liberties when he or she knowingly causes another person to have sexual contact with him or her or another:

(a) By forcible compulsion;

“‘Forcible compulsion’ means physical force which overcomes resistance, or a threat, express or implied, that places another person in fear of death or physical injury to herself.” *See*, RCW 9A.44.010(6).

Forcible compulsion means force other than that used to achieve the sexual contact. *State v. Ritola*, 63 Wn.App. 252, 254, 817 P.2d 1390 (1991). In *Ritola*, the State charged a juvenile resident of Toutle River Boys Ranch with one count of indecent liberties by forcible compulsion after he “suddenly grabbed” a female counselor’s breast, “squeezed it, then ‘instantaneously’ removed his hand,” and said, “Nice tits.” The court held this evidence insufficient to prove forcible compulsion; it was “undisputed that Ritola used the force necessary to touch the counselor’s breast, but as noted, that is not enough for forcible compulsion. There is no evidence that the force he used overcame resistance, for he caught the counselor so much by surprise that she had no time to resist.” *Ritola*, at 255.

2. ANALYSIS

Here, even in the light most favorable to the State and assuming the veracity of the evidence, the testimony provided at trial did not support a finding that Indecent Liberties-Forcible Compulsion occurred. The trial court made an error of law in upholding the jury’s finding since the elements of the crime were not shown. The testimony does not indicate that Wright “cause[d] another person to have sexual contact with him” because he did not “cause” the victim to do anything. Just as is in *Ritola*, Wright made the touching and then ceased. The act of Wright likely constituted an assault with sexual motivation pursuant to RCW 9A.36, but not Indecent Liberties.

Even if this argument is not accepted, the testimony does not indicate that any Forcible Compulsion occurred. Neither “physical force which overcomes resistance” or “a threat [...] that places another person in fear of death or physical injury to herself” is substantiated by the testimony. First, there was no testimony that Wright “overcame resistance” because the victim clearly testified to no resistance and that “he wasn’t continuing to hold” after the touching occurred. See *supra*, RP 88. These facts are equivalent to the single touching of a breast in *Ritola* which the court found did not constitute forcible compulsion. Furthermore, Wright threatened that he was “here to eat your pussy”. This threat occurred before the touching, caused no apparent reaction by the victim, and was not used by Wright to further the assault. The earlier threat here then does not constitute forcible compulsion.

Therefore, no rational trier of fact could have found that the crime of Indecent Liberties-Forcible Compulsion occurred and the trial court made an error of law in upholding the conviction.

C. Wright was subject to ineffective assistance of counsel and should be afforded appropriate relief.

1. LAW

a) *Assistance of Counsel*

In *State v. Grier*, 171 Wn.2d 172, 46 P.3d 1260 (2011), the Supreme Court of Washington provided a comprehensive analysis of a defendant’s right to effective assistance of counsel:

The Sixth Amendment to the United States Constitution and article I, section 22 of the Washington Constitution guarantee the right to

effective assistance of counsel. *Strickland*, 466 U.S. at 685–86, 104 S.Ct. 2052; *State v. Thomas*, 109 Wash.2d 222, 229, 743 P.2d 816 (1987). In *Strickland*, the United States Supreme Court set forth the prevailing standard under the Sixth Amendment for reversal of criminal convictions based on ineffective assistance of counsel. 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674. Under *Strickland*, ineffective assistance is a two-pronged inquiry:

“First, the defendant must show that counsel’s performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel’s errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable. Unless a defendant makes both showings, it cannot be said that the conviction ... resulted from a breakdown in the adversary process that renders the result unreliable.’ *Thomas*, 109 Wash.2d at 225–26, 743 P.2d 816 (quoting *Strickland*, 466 U.S. at 687, 104 S.Ct. 2052); see also *State v. Cienfuegos*, 144 Wash.2d 222, 226, 25 P.3d 1011 (2001) (“Washington has adopted the *Strickland* test to determine whether a defendant had constitutionally sufficient representation.”).

Under this standard, performance is deficient if it falls “below an objective standard of reasonableness.” *Strickland*, 466 U.S. at 688, 104 S.Ct. 2052. The threshold for the deficient performance prong is high, given the deference afforded to decisions of defense counsel in the course of representation. To prevail on an ineffective assistance claim, a defendant alleging ineffective assistance must overcome “a strong presumption that counsel’s performance was reasonable.” *State v. Kylo*, 166 Wash.2d 856, 862, 215 P.3d 177 (2009). Accordingly, the defendant bears the burden of establishing deficient performance. *McFarland*, 127 Wash.2d at 335, 899 P.2d 1251.

“When counsel’s conduct can be characterized as legitimate trial strategy or tactics, performance is not deficient.” *Kylo*, 166 Wash.2d at 863, 215 P.3d 177; *State v. Garrett*, 124 Wash.2d 504, 520, 881 P.2d 185 (1994) (“[T]his court will not find ineffective assistance of counsel if ‘the actions of counsel complained of go to the theory of the case or to trial tactics.’” (quoting *State v. Renfro*, 96 Wash.2d 902, 909, 639 P.2d 737 (1982))). Conversely, a criminal defendant can rebut the presumption of reasonable performance by demonstrating that “there is no conceivable legitimate tactic explaining counsel’s performance.” *State v. Reichenbach*, 153 Wash.2d 126, 130, 101 P.3d 80 (2004); *State v. Aho*, 137 Wash.2d 736, 745–46, 975 P.2d 512 (1999). Not all strategies or tactics on the part of defense counsel are immune from attack. “The relevant

question is not whether counsel's choices were strategic, but whether they were reasonable." *Roe v. Flores-Ortega*, 528 U.S. 470, 481, 120 S.Ct. 1029, 145 L.Ed.2d 985 (2000) (finding that the failure to consult with a client about the possibility of appeal is usually unreasonable).

To satisfy the prejudice prong of the Strickland test, the defendant must establish that "there is a reasonable probability that, but for counsel's deficient performance, the outcome of the proceedings would have been different." *Kyllo*, 166 Wash.2d at 862, 215

"A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694, 104 S.Ct. 2052; *Thomas*, 109 Wash.2d at 226, 743 P.2d 816; *Garrett*, 124 Wash.2d at 519, 881 P.2d 185. In assessing prejudice, "a court should presume, absent challenge to the judgment on grounds of evidentiary insufficiency, that the judge or jury acted according to the law" and must "exclude the possibility of arbitrariness, whimsy, caprice, 'nullification' and the like." *Strickland*, 466 U.S. at 694-95, 104 S.Ct. 2052.

Ineffective assistance of counsel is a fact-based determination that is "generally not amenable to per se rules." *Cienfuegos*, 144 Wash.2d at 229, 25 P.3d 1011; *Strickland*, 466 U.S. at 696, 104 S.Ct. 2052 ("Most important, in adjudicating a claim of actual ineffectiveness of counsel, a court should keep in mind that the principles we have stated do not establish mechanical rules. Although those principles should guide the process of decision, the ultimate focus of the inquiry must be on the fundamental fairness of the proceeding whose result is being challenged.").

Finally, "[a] fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." *Strickland*, 466 U.S. at 689, 104 S.Ct. 2052.

An ineffective assistance of counsel claim on appeal does not consider matters outside the trial record. *State v. Crane*, 116 Wn.2d 315, 335, 804 P.2d 10, cert. denied, 501 U.S. 1237, 111 S.Ct. 2867, 115 L.Ed.2d 1033 (1991); *State v. Blight*, 89 Wn.2d 38, 45-46, 569 P.2d 1129 (1977).

(1) Remedy for Ineffective Assistance

The remedy for a lawyer's ineffective assistance is to put the defendant in the position in which he or she would have been had counsel been effective. *State v. Crawford*, 159 Wn.2d 86, 107–08, 147 P.3d 1288 (2006). In *Crawford*, the remedy was vacation of the judgment and remand to the pretrial stage of the proceeding.

b) *Indecent Liberties vs. Assault*

As stated *supra*, RCW 9A.44.100 defines Indecent Liberties:

(1) A person is guilty of indecent liberties when he or she knowingly causes another person to have sexual contact with him or her or another:

By forcible compulsion: [...]

Assault is defined as an unlawful touching of another (*State v. Elmi*, 166 Wn.2d 209, 207 P.3d 439 at 442 (2009)), which is codified into four different criminal degrees in RCW 9A.36, with the option of assigning Sexual Motivation (RCW 9.94A.835).

c) *Knapstad Motions*

A trial court has inherent power to dismiss a criminal charge prior to trial when the uncontroverted facts as alleged by the State, if true, would not prove the charge, and the only issue is an isolated and determinative issue of law. *State v. Knapstad*, 107 Wn.2d 346 at 352, 729 P.2d 48 (1986).

(1) Failure to File *Knapstad* Motion Constituting Ineffective Assistance of Counsel

In *State v. Harris*, 164 Wn.App. 377, 263 P.3d 1276 (2011) at Footnote 6, the Appellate Court addresses the issue of a defense counsel's

failure to file a *Knapstad* motion if the record is clear that defense counsel believed the State did not have evidence to prove the crime:

Although we decline to address the merits of Harris's ineffective assistance of counsel claim, we cannot perceive any legitimate trial strategy in counsel's failure to file a *Knapstad* motion before trial.

...

The record is clear that Harris's counsel was convinced that the State had no evidence sufficient to prove that Harris had engaged in a pattern or practice of abuse of TH.

...

This resulting prejudice was later compounded by defense counsel's failure to request an instruction clarifying that the jury could not consider evidence of TH's prior injuries in determining whether Harris committed first degree assault of a child despite the trial court's statement that it "would be disposed" to giving such an instruction if the defense would propose one. RP at 1444.

2. ANALYSIS

Defense counsel's representation was ineffective because (1) he permitted the expiration of Wright's speedy trial right, and (2) he rested his entire defense on the equivalent of a *Knapstad* motion at the end of trial without disputing any facts.

Defense counsel's entire strategy and argument at trial to "not dispute the facts" (RP 116) was essentially a *Knapstad* motion. *Knapstad* motions are customarily brought before trial, to be heard by the presiding judge. See *Knapstad, Harris* Footnote 6 supra. Nothing in the record indicates that there was an attempt or intention to file a *Knapstad* motion by defense counsel.

Defense counsel's action prejudiced Wright beyond what was objectively reasonable: Wright was exposed to a trial ending in a sentence that could see him incarcerated for his entire life. Wright's conviction requires an indeterminate sentence to life. CP 39-51. Instead of arguing the *Knapstad* motion to the court in a pre-trial hearing so Wright could prepare another strategy should it go to trial, the entirety of his defense was hinged on one subtle legal argument to a jury at the precarious last stage of the proceeding.

But for defense counsel's actions, the matter could have been dismissed for a violation of Wright's constitutional speedy trial right, or for insufficient evidence.

V. CONCLUSION

This matter should be dismissed with prejudice because Mr. Wright's constitutional right to a speedy trial was violated. This court should also find insufficient evidence was presented to support a verdict of guilt as to Indecent Liberties-Forcible Compulsion. Alternatively, this court should find that Wright was afforded ineffective assistance of counsel and remand the matter for a new trial.

Respectfully submitted this 28th day of November, 2016.

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CERTIFICATE OF SERVICE

I hereby certify that on the date below I personally caused the foregoing document to be served via the Court of Appeals e-filing portal:

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DATED this 28th day of November, 2016, South Bend, Washington.

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November 28, 2016 - 6:16 PM

Transmittal Letter

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Case Name: State v. Wright

Court of Appeals Case Number: 49106-1

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: _____

Answer/Reply to Motion: _____

Brief: Appellant's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: _____

Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

Comments:

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