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

STATE OF WASHINGTON,

Respondent,

v.

JAMES R. VINES,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF
CLALLAM COUNTY, STATE OF WASHINGTON
Superior Court No. 16-1-00481-3

BRIEF OF RESPONDENT

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I. COUNTERSTATEMENT OF THE ISSUES

1. Whether the court abused its discretion by not ordering a competency evaluation and thereby violated the appellant's due process rights?
2. Whether appellants' trial counsel was ineffective due to an alleged failure to move for a competency evaluation?
3. Whether the conviction for attempting to elude a pursuing police vehicle was supported by sufficient evidence.

II. STATEMENT OF THE CASE

On October 26, 2016, the State filed an information charging Vines with Attempting to Elude a Pursuing Police Vehicle. CP 159.

December 23, 2016, Pre-trial Hearing (RP 20–29)

Mr. Oakley was initially appointed defense counsel for Vines on the instant cause, Clallam County Superior Court cause 16-1-00481-3. CP 142. Additionally, Mr. Oakley was appointed counsel on a post-conviction matter involving Vines under cause 14-1-[00]501-5 in which the State filed a petition to revoke a DOSA sentence. RP 20, 36. Vines had informed counsel that he wanted to move to withdraw his plea of guilty in that prior case, 14-1-00501-5. RP 20. Mr. Oakley stated that, based upon Vines' "basis for seeking to withdraw his plea, there's gonna have to be a whole lot of mental health evaluations, extensively and intensively." RP 21. Additionally, concerning the instant cause, Mr. Oakley moved to withdraw on that case as well after

filing a motion to suppress evidence in the instant case (16-1-000481-3):

If the pending motion to suppress the evidence is successful then that will not, I don't believe that would need to be pursued in the 2016 case, because that would be dispositive. However, if the motion to suppress does not succeed then we're gonna have to go through similar extensive and intensive mental health evaluations and in the interest of continuity of representation the court might want to replace me with conflict counsel in the 2016 case

RP 21.

The State objected to the motion to withdraw on the instant case because Mr. Oakley had no conflict in the instant case and he had just filed a CrR 3.6 motion to suppress and the State was of the opinion that it should be litigated first before a motion to withdraw was considered. RP 22, 23.

The parties and court agreed that there would be no motion to withdraw or appoint new defense counsel on the instant case (16-1-00481-3) until after the CrR 3.6 motion to suppress was ruled upon by the court because it made sense to have Mr. Oakley, the attorney that filed the motion, argue it rather than a newly appointed attorney (RP 20, 23):

THE COURT: It seems like you've done the work now, you might as well just see what happens.
MR. OAKLEY: Yes.

RP 23.

As for the older case (14-1-00501-5), the court was about to appoint the next conflict counsel in line when Vines noted on the record that he has paid attention in his pod in the jail and the word was that this particular

conflict attorney's health issues resulted in numerous continuances for other defendants. RP 24–25. Accordingly, Vines requested that the court appoint a different attorney. RP 25. Then the court appointed Ms. Unger instead. RP 25. It was agreed that the trial would be reset after the court ruled upon the motion to suppress. RP 27-28.

January 24, 2017, CrR 3.6 hearing (RP 40–57)

Mr. Oakley proceeded with litigating a CrR 3.6 suppression hearing on behalf of Vines. RP 21, 41. During argument for the CrR 3.6 hearing, Vines interjected stating that he wasn't driving anywhere and that he was just sitting still in his vehicle and did not turn it around. RP 43. After the hearing Vines again stated, "I was just sitting still. I seen a flashlight in my rearview mirror and I put it in reverse and was gonna back down the driveway, so what." RP 54. Vines told the court that he would not mess up the trial after the court warned Vines about speaking out in court. RP 53.

After the court denied the motion to suppress (RP 51), Mr. Oakley renewed his motion to withdraw as counsel "for purposes of continuity of representation since these cases" as both cases were now going to require a lot of mental health evaluations. RP 52. The court did not quite remember the prior discussion of this issue but vaguely remembered putting that issue on hold until after the determination of the suppression motion. RP 52–53. The court asked Vines if that sounded correct. RP 53.

Vines replied: “THE DEFENDANT: You said; well, it seems like you’ve done all the work already, you might as well at least follow through with this motion.” RP 53.

Vines also interjected: “THE DEFENDANT: Your Honor, I didn’t even roll one foot when I seen that flashlight ahead of me.” RP 53. The court admonished Vines in order to stop Vines from damaging his case. RP 53. Vines stated: “THE DEFENDANT: I’m not gonna mess up nothing at my trial, cuz I’m gonna tell the truth and the truth will set you free.” RP 53.

Then Vines claimed again: “THE DEFENDANT: I was just sitting still. I seen a flashlight in my rearview mirror and I put it in reverse and was gonna back down the driveway, so what.” RP 54. Vines apologized for interrupting after the court informed Vines that he should stop talking. RP 54.

Then the court appointed Ms. Unger to represent Vines on the instant case after Vines affirmed to the court that he was getting along with Ms. Unger. RP 54. The State then requested that the matter be set over to a date that Ms. Unger would be available to set a trial date and expressed concern that there was still no trial date. RP 55–56.

Vines pointed out that this was the State’s fault in part:

THE DEFENDANT: Well, actually, it was your vacation I think for two weeks, a scheduled vacation that they postponed it one time.

RP 56; *see also* RP 60.

The case was set over to February 3, 2017 to set a trial date. RP 56–57.

March 17, 2017, Pretrial Hearing (RP 73–84)

Defense counsel, Ms. Unger, asked the prosecutor to provide dash cam video of the incident. RP 76. Vines interjected and offered that he believed there should be dash cam videos as there were three police vehicles present. RP 76. Vines stated that he wanted the dash cam videos because it would show the conditions of the driveway on which he was accused of eluding the police. RP 76. Then Vines stated that the matter was going to trial and there would be no plea of guilty for the case:

THE DEFENDANT: This is going to go to trial. There's no way I'm going to plea guilty to this.

MS. UNGER: Well, I'm not asking you to and like I said, I'm prepared to go to trial on the 27th.

THE DEFENDANT: Thank you.

RP 77.

Ms. Unger also informed the court that Vines wanted a mental health evaluation claiming Vines didn't believe he was competent to go to trial. RP 82. Vines interjected again stating:

THE DEFENDANT: Oh, no, I believe I'm competent to go to trial, but I believe there's issues that come into sentencing, when it comes to sentencing that I...

RP 82.

Vines pointed out that he had written several letters to the court

because he believed them to be relevant. RP 83–84. In particular, Vines wrote a lengthy letter to the court explaining his history as a victim of a stabbing in 1994 and the effect that it has had on his mental health. CP 147, RP 421. In these letters, Vines asked the court to give him another chance to complete his DOSA sentence. CP 155.

March 27, 2017, CrR 3.5 Hearing and Motions in Limine (RP 85–117)

The court held a CrR 3.5 hearing to determine the admissibility of Vines statements. RP 87. After the CrR 3.5 hearing and during Motions in Limine, Vines stated that he would be good after the court warned him that he could not just take the stand and say whatever he wanted to. RP 103–04.

During the motion in limine, the state expressed concern that at trial, Vines would take the stand and use the opportunity to tell the jury about his mental health issues as a way to gain sympathy although the issue would not be relevant to a defense. RP 100. Ms. Unger made it clear that the defense at trial was to be a general denial and that there was no diminished capacity defense. RP 100. The State continued and stated that it was concerned Vines would stray away from the events at issue and speak out uncontrollably. RP 101. Eventually, Vines stated, “I’ll be good.” RP 104.

March 28, 2017, Trail (RP 118–415)

Jury Trail Testimony

Clallam County Sheriff’s Deputy Federline was on duty in the area of

266 Deer Park Road on October 21, 2016 in Port Angeles, Clallam County, when he made contact with Vines. RP 243–44. Federline was initially looking for a suspect in an unrelated assault complaint. RP 245. After Federline was told that the suspect left in a vehicle, he spotted a vehicle enter the 300 foot shared driveway for 266 Deer Park Road and incorrectly expected that it might be his suspect. RP 245–46.

Federline identified himself to the driver of the vehicle and yelled, “Stop, Police,” and the vehicle tires spun out and the vehicle accelerated down the approximately 300 foot hillside driveway. RP 246, 268. Federline ran down the hill after the vehicle and announced over the radio identifying the vehicle as a Toyota Camry. RP 247.

After the Camry got to the bottom of the hill, the vehicle did a three point turn and began to drive back up the driveway. RP 249. At that point, Federline made eye contact with the driver and recognized James Vines. RP 249. Federline was aware Vines had an outstanding warrant and intended to place Vines under arrest. RP 249. Federline yelled “stop, police,” but Vines continued to drive up the hill back to Deer Park Road. RP 250. Federline had to move quickly out of the way to avoid getting hit by Vines’ vehicle as Vines continued back up the driveway. RP 250.

As Vines accelerated up the hill toward Deer Park Road, Federline watched Sgt. John Hollis in his marked patrol vehicle with red and blue

emergency lights on enter the driveway and come down the roadway from Deer Park Road towards the Camry. RP 251. Federline watched the two vehicles mirror each other's movements as they approached each other. RP 251-52. It appeared to Federline that Vines was attempting to drive his vehicle around Sgt. Hollis's patrol vehicle. RP 252.

The two vehicles approached each other until they both stopped bumper to bumper almost colliding about halfway up the hill. RP 252. Then Federline watched as Vines placed his vehicle in reverse and slammed the accelerator. RP 252. Federline had followed behind and had to dive out of the way to avoid being hit by Vines' Camry a second time. RP 252. Vines went backwards down the road and got the vehicle stuck on the side on an embankment. RP 253. Federline estimated that Vines' vehicle traveled backwards about 55 feet before getting stuck. RP 258, 269.

After Vines got stuck, Federline could hear the accelerator running and the wheels turning. RP 269. Sgt. Hollis got out of his patrol vehicle and ordered Federline to break out the passenger side window after Federline tried to open the door. RP 269. Federline broke the window out with his flashlight and Vines then placed his hands out and screamed, "Okay, okay!" RP 269. Federline then opened the door and removed Vines from the vehicle and placed him in restraints. RP 270. Federline put Vines' vehicle in park read Vines his *Miranda* rights and then asked Vines why he ran. RP 270.

Vines replied, "I was scared." RP 270.

Federline testified that Sgt. Hollis was wearing his department issued uniform and was driving his department issued marked patrol vehicle which says Sheriff's Office on the side of the vehicle, with overhead red and blue overhead emergency lights on. RP 274. Federline described Sgt. Hollis' new department issued Ford SUV patrol vehicle like a Christmas tree with flashers and lights all over them. RP 299, 300.

Sgt. John Hollis, Clallam County Sheriffs' Office, testified that he was on duty October 21, 2016 in the area of the 200 block of Deer Park Road. RP 304-05. Hollis was wearing his uniform and was driving a marked Ford Explorer Cross-Over which he described as "quite an Explorer." RP 305. The vehicle was marked with Sheriff's office stickers and a light bar and was equipped with overhead lights, spot lights, and flood lights. RP 305. Hollis responded to the assault complaint with Federline and heard Federline over the radio in his vehicle report that somebody was leaving the area. RP 306.

While in the area, Federline told Hollis that a vehicle was leaving and it needed to be stopped to identify who was leaving. RP 307. Hollis could hear Federline yell, "Stop, police!" Hollis rounded the corner at the top of the hill on Deer Park Road off the driveway and could see a smaller car coming up the hill. RP 307. Hollis turned his overhead lights on and drove down the hill toward the vehicle and as the vehicle went left, Hollis mirrored the action

of the vehicle he was approaching to stay in front of the vehicle. RP 307–09.

The two vehicles were inches away from each other when they came to a stop at which point Vines' vehicle reversed and went back down the hill before getting stuck. RP 309–10. Hollis followed Vines and stopped his vehicle bumper to bumper with Vines' vehicle to box him in. RP 310, 323. Hollis testified that as Vines was coming up the hill, Hollis was trying to stop Vines. RP 311. Hollis kept positioning his vehicle to prevent Vines vehicle from getting around his patrol vehicle. RP 320.

After defense counsel, Ms. Unger, examined a defense witness, Mr. Hann, Ms. Unger asked the court to advise Vines of his right to testify or not. RP 346. The court advised Vines of his right to testify or not and then Ms. Unger spoke with Vines and then the defense rested without further testimony. RP 347–48.

The jury returned a verdict of guilty. CP 78.

April 20, 2017, Post-conviction hearing (RP 416–433)

Vines' attorney, Ms. Unger, did not believe that Vines' competency was at issue either before trial or after. RP 417. Ms. Unger did not believe that a mental health evaluation would be relevant as to mitigating information for sentencing purposes. RP 417–18, 427–28. Nevertheless, Vines requested a mental health evaluation for the purpose of mitigation at sentencing. RP 418, 422, 425, 428. Vines' referred to other inmates that received post-

conviction evaluations at the State's expense prior to sentencing. RP 419, 426.

Ms. Unger expressed her concern about Vines dissatisfaction with her representation and pointed out the work she did to prepare for Vines' trial. RP 422–423. Ms. Unger also pointed out that an evaluation could be detrimental to Vines' position. RP 423. The court pointed out that it had read Vines' letter and believed that a lie detector test would be irrelevant. RP 420, 424. Vines alluded to his severe mental health issues stemming from an even in which he was stabbed 57 times in 1994. RP 421; CP 147. The court pointed out that it had multiple mental health evaluations and that they were on the record. RP 421. The court declined to order another mental health evaluation but allowed that it could be readdressed. RP 425, 432.

As the parties were setting a sentencing date, the court expressed that it wasn't sure what was happening around April 27. RP 430–31. Vines interrupted to point out that the judge had a judicial conference coming up. RP 431.

Finally, after the court pointed out that there would be a new motion for a mental health evaluation at the next hearing, Vines stated that his last one was seven years ago. RP 433. The court corrected Vines and pointed out that 2014 was not seven years ago. RP 433.

//

April 27, 2017, Sentencing hearing (RP 434–474)

The parties reconvened for sentencing but addressed another motion for a mental health evaluation first. RP 435–436. Ms. Unger pointed out that Vines wanted an evaluation because he believed it would have some bearing on the sentencing. RP 437. The court denied the motion and pointed out that, although it appreciated that Vines had mental health issues (RP 438), Vines had an evaluation and was found to be competent as recently as September 2014 and that the court found no legal basis for another mental health evaluation. RP 438.

Upon sentencing, the State recommended the high end of the 22–29 month sentence range. On behalf of Vines, Ms. Unger pointed out that she did not believe there was a mental health basis to ask for a sentence below the guideline range and did not believe it would be ethical to argue such. RP 443. However, Ms. Unger recommended the low end of the sentence range. RP 443.

Vines, given the opportunity to speak on his own behalf upon sentencing, explained that he wrote numerous letters to the court because he was outraged, claiming that the officers version of events was not the truth. RP 445, 447. Vines consistently contested the veracity of the officers. RP 43, 45, 53, 54, 446–447, 454, 455. Vines then told the court he was planning to appeal the conviction and raise the issue of ineffective assistance of counsel.

RP 451.

The court pointed out that it appeared Vines had thought things out very carefully in a calculating way. RP 451. The court referred to the scheduling hearing when Vines pointed out that the judge would be going to a judicial conference. RP 452. Vines alluded to his mental health issues again and the court expressed sympathy about Vines unfortunate past. RP 454. Vines then stated that he didn't think he should be sentenced to 29 months.

Ultimately, the court imposed 26 months and mandatory legal financial obligations. RP 458. Vines responded that he has a disability and "any fines whatsoever, I'm unable to pay." RP 459. The court continued to discuss with Vines the terms of the judgement and sentence as well as the appeal process at length in which Vines affirmed information that he understood and asked questions where he did not. RP 459-73.

III. ARGUMENT

A. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION BY NOT ORDERING A COMPETENCY EVALUATION BECAUSE THERE WAS NO FACTUAL BASIS TO ESTABLISH REASON TO DOUBT COMPETENCY.

"No incompetent person shall be tried, convicted, or sentenced for the commission of an offense so long as such incapacity continues." RCW 10.77.050.

“The determination of whether a competency examination should (or should not) be ordered rests generally within the discretion of the trial court.” *State v. Heddrick*, 166 Wn.2d 898, 903, 215 P.3d 201 (2009) (citing *State v. Thomas*, 75 Wn.2d 516, 517–18, 452 P.2d 256 (1969)).

The trial court’s determination of whether to order a competency evaluation is reviewed for abuse of discretion. *In re Fleming*, 142 Wn.2d 853, 863, 16 P.3d 610 (2001); *see also State v. Sisouvanh*, 175 Wn.2d 607, 622, 290 P.3d 942 (2012).

“Under an abuse of discretion standard, the reviewing court will find error only when the trial court’s decision (1) adopts a view that no reasonable person would take and is thus ‘manifestly unreasonable,’ (2) rests on facts unsupported in the record and is thus based on ‘untenable grounds,’ or (3) was reached by applying the wrong legal standard and is thus made ‘for untenable reasons.’” *State v. Sisouvanh*, 175 Wn.2d 607, 623, 290 P.3d 942 (2012) (quoting *State v. Rohrich*, 149 Wn.2d 647, 654, 71 P.3d 638 (2003)).

“The two-part test for legal competency for a criminal defendant in Washington is as follows: (1) whether the defendant understands the nature of the charges; and (2) whether he is capable of assisting in his defense.” *In re Fleming*, 142 Wn.2d 853, 862, 16 P.3d 610 (2001) (citing *State v. Hahn*, 106 Wn.2d 885, 894, 726 P.2d 25 (1986); *State v. Ortiz*, 104 Wn.2d 479, 482, 706 P.2d 1069 (1985)).

“The factors a trial judge may consider in determining 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.’” *Id.* (citing *State v. Dodd*, 70 Wn.2d 513, 514, 424 P.2d 302 (1967)).

“And while not determinative, defense counsel's opinion as to the defendant's competence is a factor that carries considerable weight with the court.” *State v. Harris*, 122 Wn. App. 498, 505, 94 P.3d 379 (2004) (citing *State v. Swain*, 93 Wn. App. 1, 10, 968 P.2d 412 (1998)).

- 1. The court did not abuse its discretion by not ordering a competency evaluation prior to or during trial because there was no factual basis establishing that Vines' competency was in doubt.**

Here, there was no abuse of discretion by the trial court because the record demonstrates that Vines had the ability to understand the nature of the charges and to assist in his defense and the court did not have any information or evaluations showing reason to doubt Vines' competency.

Additionally, the court had no information *from counsel* giving reason to doubt Vines' competency. Vines' attorney, Ms. Unger, did not believe that Vines' competency was at issue either before trial or after. RP 417.

Further, although Vines often interrupted pre-trial proceedings, his interruptions did not necessarily mean Vines was incompetent or even

irrational. Vines himself, did not ask for a competency evaluation as the record shows that Vines was more interested in a mental health defense or an evaluation to present mitigating information. RP 82, *see also* RP 417–19, 428.

MS. UNGER: Your Honor, my client would like to have a mental health evaluation. He doesn't believe he's maybe competent to go to trial.

THE DEFENDANT: Oh, no, I believe I'm competent to go to trial, but I believe there's issues that come into sentencing, when it comes to sentencing that I..

RP 82.

Vines wanted to proceed to trial, he did not want to delay the trial to determine if he was competent. RP 53, 77. Thus, there was no motion for a competency evaluation.

Furthermore, the possible need for extensive mental health evaluations (RP 21, 52) referred to by Vines' first attorney, Mr. Oakley, did not relate to Vines' competency to proceed to trial. Rather, this comment was directed at a possible motion to withdraw a plea of guilty on a prior case or a possible mental health defense or mitigation rather than competency. This is clear because Mr. Oakley proceeded with litigating a CrR 3.6 suppression hearing. RP 21. Mr. Oakley would have moved for a competency evaluation if he had doubt as to Vines' competency in which case if the court agreed, all proceedings would have been stayed.

Moreover, the record shows that Vines understood the nature of the charges against him and that he had the ability to assist in his defense.

Nature of charges

Vines was charged with Attempting to Elude a Pursuing Police Vehicle. CP 159. The record shows that Vines understood the nature of the charges and Vines simply contested the veracity of the officers. RP 43, 45, 53, 54, 446–447, 454, 455. During argument for the CrR 3.6 hearing, Vines stated that he wasn't driving anywhere and that he was just sitting still in his vehicle and did not turn it around. RP 43. After the hearing Vines again stated, "I was just sitting still. I seen a flashlight in my rearview mirror and I put it in reverse and was gonna back down the driveway, so what." RP 54.

This shows that Vines understood the nature of the charge and that it was his failure to stop for the police that was at issue.

Mental ability to follow the proceedings and ability to assist in his defense

Vines demonstrated that he was following the proceedings with excellent recall ability, that he understood his rights and the issues leading up to trial, and that he was able to relate his version of events to assist his attorney in his defense.

For example, on Dec. 23, 2016, the trial had to be continued after defense filed a CrR 3.6 motion to suppress and the prosecutor had a prescheduled vacation. RP 20, 27. About a month later, on Jan. 24, 2017,

when the prosecutor was making a record regarding the State's repeated and unsuccessful efforts to get a trial date set, Mr. Vines offered that one of the reasons there was still no trial date was because the prosecutor's two week vacation had the effect of postponing the trial. RP 40, 56.

Additionally, on Dec. 23, 2016, the parties agreed that there would be no motion to withdraw or appoint new defense counsel until after the CrR 3.6 motion to suppress was ruled upon by the court because it made sense to have Mr. Oakley, the attorney that filed the motion, argue it rather than a newly appointed attorney. RP 20, 23. The court stated to defense counsel, Mr. Oakley, "It seems like you've done the work now, you might as well just see what happens." RP 23.

About a month later on Jan. 24, 2017, after ruling on the CrR 3.6 motion to suppress, the court, trying to remember the basis for its decision regarding the delay of Mr. Oakley's motion to withdraw as counsel and appointment of new counsel on Dec. 23, inquired of Vines. RP 40, 52-53. Vines stated, "You said; well, it seems like you've done all the work already, you might as well at least follow through with this motion." RP 53. This demonstrates that Vines had the mental ability to understand and recall the proceedings with accuracy.

Vines also repeatedly demonstrated awareness of his rights. For instance, when the court was considering the appointment of a conflict

attorney for another case Vines was held on, Vines noted on the record that he has paid attention in his pod in the jail and the word was that this particular conflict attorney's health issues resulted in numerous continuances for other defendants. RP 24–25. Accordingly, Vines requested that the court appoint a different attorney. RP 25.

Additionally, at a pre-trial hearing on March 17, 2017, Vines demonstrated that he was aware that he could enter a plea of guilty or go to trial when he stated his intent was to have a trial:

THE DEFENDANT: This is going to go to trial. There's no way I'm going to plea guilty to this.

MS. UNGER: Well, I'm not asking you to and like I said, I'm prepared to go to trial on the 27th.

THE DEFENDANT: Thank you.

RP 77.

Further, Vines' comments on the record, although unsolicited, do not appear to be irrational. Rather, his comments seem to be motivated by a desire to present what he believed to be mitigating information and a desire to have a possible mental health defense explored. *See* RP 25. Presumably, for that purpose, Mr. Vines wrote a lengthy letter explaining his history as a victim of a stabbing in 1994 and the effect that it has had on his mental health. CP 147, RP 421. In these letters, Vines asked the court to give him another chance to complete his DOSA sentence. CP 155.

Vines' voluminous letters and unsolicited comments in court

regarding the facts of his case show that Mr. Vines did have the ability to relate his version of the facts of the case to his attorney as Vines consistently denied, with great detail, that he eluded the police. RP 43, 45, 53, 54, 446–447, 454, 455. Vines even explained that he wrote numerous letters to the court because he was outraged that the officers had a different version of what happened than his own. RP 447. This shows Vines had the ability to assist in his own defense. *See City of Seattle v. Gordon*, 39 Wn. App. 437, 442, 693 P.2d 741 (1985) (pointing out that the court will consider a defendant’s “ability to relate the facts to his attorney in order to help prepare the defense.”).

Vines appeared to be acting rationally in his efforts to defend himself.

During Trial

Finally, during the trial on March 28, 2017, Vines *did not* verbally interrupt proceedings as he did during pre-trial proceedings. In fact, Vines himself told the court on Jan. 24, 2017 that he would not mess up the trial after the court warned Vines about speaking out in court. RP 53. Then again on March 24, 2017 after the CrR 3.5 hearing and during Motions in Limine, Vines stated that he would be good after the court warned him that he could not just take the stand and say whatever he wanted to. RP 103–04. At trial, after the trial court advised Vines of his right to testify and after conferring with his attorney, Vines opted not to testify. RP 347–48. Vines opted not to

testify despite his earlier assertions that he was going to take the stand and tell the truth. RP 53.

Considering the trial court's experience with Mr. Vines was that he continually interrupting the court or counsel in pre-trial proceedings (RP 101), Vines' actions during trial shows that Vines was capable of controlling himself in his own interests and that he was willing to temper himself to assist his attorney at trial.

Court and Counsel's Experience with Mr. Vines

Finally, the court was aware of Mr. Vines' past mental health evaluations, the last occurring in 2014 in which Vines was found to be competent. RP 417, 421, 433, 438. The mental health evaluations were in the court file and part of the record. RP 421. Vines' trial counsel Ms. Unger was also aware of prior mental health evaluations. RP 417. Mr. Vines' repeated references to his earlier mental health evaluations and traumatic experience from a long time ago were taken into account by the court. RP 424, 433, 438.

The court and Ms. Unger both pointed out that the mental health evaluations would not be relevant as a mitigating factor and Ms. Unger pointed out that it might actually be damaging. RP 418, 423, 424. Ms. Unger also did not believe competency was at issue. RP 417. Moreover, Vines' continual requests for an evaluation were for the purpose of trial strategy and mitigation, not to determine competency. RP 422, 428. This is shown by

Vines' reference to other inmates that received post-conviction evaluations at the State's expense prior to sentencing. RP 419, 426.

The trial court also believed that Vines was acting in a very calculating way and was very knowledgeable about his situation and matters of court scheduling. RP 451, 452. The court pointed out that Vines was aware that the judge was going to a judicial conference before the judge gave a reason for having to move a motion for a mental health evaluation and sentencing to a different date. RP 416, 452, 430, 431.

The record thoroughly demonstrates that Vines had the ability to understand the nature of the charges and to assist in his defense. Therefore, as in *Fleming*, the trial court did not abuse its discretion by not ordering a competency evaluation. *See In re Fleming*, 142 Wn.2d 853, 863, 16 P.3d 610 (2001) (finding no abuse of discretion by not ordering a competency evaluation where there was no irrational behavior, no reports or information regarding competency, and no information from defense counsel).

Vines argues that the voluminous letters to the court reflected possible psychosis, obsessive and delusional thinking, paranoia, and other potential mental defects that would prevent the defendant from understanding the proceedings or assist his attorney in his own defense. Br. of Appellant at 17. Vines also argues that Vines' letters to the trial court, increasingly prolific after trial, in which Vines reargues and disputes the facts presented at trial is a

basis to doubt competency. Br. Appellant at 18.

Vines argument fails because the possibility of the existence of mental health issues by itself does not by itself lead to a conclusion that the court had reason to believe Vines' competency was in doubt and that the court abused its discretion by not ordering a competency evaluation.

“Washington cases have taken the position that a trial court does not abuse its discretion if competency issues are raised.” *In re Fleming*, 142 Wn.2d 853, 864, 16 P.3d 610 (2001) (citing *State v. Lord*, 117 Wn.2d 829, 822 P.2d 177 (1991) (statements by defendant concerning his conversations with the devil and conflicts with his counsel do not create a doubt of defendant's competency)).

Additionally, Vines' argument fails because it leads to a conclusion that a competency evaluation is required anytime a defendant claims he or she is innocent and presents an alternative account of the events.

Moreover, a prior finding of not guilty by reason of insanity does not indicate that Vines was incompetent during the trial. *See* Appellant's Br. at 2 (Issue 1). The legal standard for competency is whether a defendant has the ability to understand the proceedings and assist in his own defense. *In re Fleming*, 142 Wn.2d 853, 862. The defense of insanity is entirely different analysis:

To establish the defense of insanity, it must be shown that:

(1) At the time of the commission of the offense, as a result of mental disease or defect, the mind of the actor was affected to such an extent that:

(a) He or she was unable to perceive the nature and quality of the act with which he or she is charged; or

(b) He or she was unable to tell right from wrong with reference to the particular act charged.

RCW 9A.12.010.

Thus, one can be competent and still have an insanity defense. In fact, one *must* be competent to assert the insanity defense. Additionally, insanity has more to do with the defendant's mental state at the time of the alleged crime rather than at the time of trial or sentencing where competency is relevant.

For all the foregoing reasons, this Court should find that the trial court did not abuse its discretion by not ordering a competency evaluation.

2. There was no factual basis to establish reason to doubt Vines competency after he was convicted and before or during sentencing.

Vines argues that even if there was no reason to doubt his competency before or during trial, his increased letter writing was an undeniable signal that his competency to proceed to trial was questionable such that a competency evaluation should have been ordered. Appellant's Br. at 18.

Vines pointed out that the purpose of the letter writing was to present information to the court that he believed to be relevant as mitigating information. RP 83–84, 421, 445, 447; CP 147, 155. Vines wrote four letters

to the court between the time he was convicted on March 29, 2017 (CP 78) and when he was sentenced on April 27, 2017 (CP 42). CP 56, 61, 65, 69. These letters simply show that Vines did not agree with the verdict, he declared he was innocent, declared that everyone who testified lied, he disputed the facts of the case, wanted to take a lie detector test, he was disappointed with his representation, and he believed he had mental health issues. These concerns do not establish that Vines did not understand the nature of the charges.

Vines letters were aimed at gaining sympathy from the court and to get a stay of his sentencing. The court was of the opinion that Vines was very calculating and Vines himself informed the court that he would be exercising his right to appeal and would be asserting Ineffective Assistance of Counsel. RP 451, 452. Nevertheless, the court declined to accept the State's recommendation of a 29 month sentence. Thus he was able to assist in his defense by doing his very best to convince the court to doubt the verdict and not impose the maximum sentence recommended by the State.

Finally, Vines lengthy discussion of sentencing terms, legal financial obligations, and appeal rights demonstrates that Vines understood the proceedings and was able to speak rationally on his own behalf.

Therefore, this Court should find that the trial court did not abuse its discretion by not ordering a competency evaluation.

B. THE INEFFECTIVE ASSISTANCE CLAIM FAILS BECAUSE THERE WAS NO BASIS IN THE RECORD SHOWING THAT VINES' COMPETENCY WAS AT ISSUE PRIOR TO, DURING, OR AFTER THE TRIAL AND VINES FAILS TO ESTABLISH PREJUDICE.

Vines argues that trial counsel's performance was deficient because defense counsel, Ms. Unger, failed to request a competency evaluation despite Vines' disruptive behavior.

A defendant claiming ineffective assistance of counsel must show that counsel's performance was objectively deficient and resulted in prejudice. *State v. McFarland*, 127 Wash.2d 322, 334–35, 899 P.2d 1251 (1995). . . .

The failure to show either deficient performance or prejudice defeats a defendant's claim. *McFarland*, 127 Wash.2d at 334–35, 899 P.2d 1251.

State v. Emery, 174 Wn.2d 741, 754–55, 278 P.3d 653 (2012).

“We review ineffective assistance of counsel claims de novo.” *State v. Clark*, 187 Wn.2d 641, 649, 389 P.3d 462 (2017).

The record shows that Ms. Unger investigated the case, interviewed witnesses including the tow truck driver, as suggested by Vines (CP 66), and went to the scene and took photos. RP 422. Ms. Unger's diligence in preparing for trial makes it more likely that she would have moved for a competency evaluation if she had reason to believe Vines' competency was in doubt. However, Ms. Unger did not raise doubt as to competency and Ms. Unger was not of the opinion that Vines' mental health would be of any

assistance as a mitigating factor for sentencing. RP 427–28, 443.

Additionally, although Mr. Oakley believed there may be a basis for mental health evaluations, the fact he proceeded with the CrR 3.6 hearing rather than request a competency evaluation shows that he did not have reason to doubt competency while he was representing Vines.

Two differing attorneys and the court, all familiar with Vines' mental health issues did not find reason to doubt competency. Therefore, Vines fails to establish deficient performance by defense counsel for not requesting a competency evaluation.

Moreover, Vines cannot show prejudice because he cannot establish that the trial court would have granted an evaluation for competency had Ms. Unger requested one. Furthermore, even if a competency evaluation was ordered, it cannot be established that an evaluator would have found Vines to be incompetent. Thus, Vines cannot establish that he was convicted or sentenced while incompetent in violation of his statutory and due process rights.

Therefore, Vines claim of ineffective assistance of counsel fails and this Court should affirm the conviction.

C. THERE WAS SUFFICIENT EVIDENCE THAT SGT. HOLLIS WAS PURSUING VINES AND A REASONABLE INFERENCE MAY BE MADE THAT SGT. HOLLIS' PATROL VEHICLE WAS FULLY EQUIPPED.

“Sufficiency of the evidence is a question of law that we review de novo.” *State v. Rich*, 184 Wn.2d 897, 903, 365 P.3d 746 (2016).

“The test for determining the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found guilt beyond a reasonable doubt.” *State v. Kintz*, 169 Wn.2d 537, 551, 238 P.3d 470 (2010) (citing *State v. Engel*, 166 Wn.2d 572, 576, 210 P.3d 1007 (2009)). “When the sufficiency of the evidence is challenged in a criminal case, all reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant.” *Kintz*, at 551 (quoting *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992)).

“A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom.” *Id.* “‘Circumstantial evidence and direct evidence are equally reliable’ in determining the sufficiency of the evidence.” *Kintz*, at 551 (quoting *State v. Thomas*, 150 Wn.2d 821, 874, 83 P.3d 970 (2004)). “In determining whether the necessary quantum of proof exists, the reviewing court need not be convinced of the defendant's guilt beyond a reasonable doubt, but only that substantial

evidence supports the State's case.” *State v. Dejarlais*, 88 Wn. App. 297, 305, 944 P.2d 1110 (1997), *aff’d*, 136 Wn.2d 939, 969 P.2d 90 (1998).

Additionally, this Court “defer[s] to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence.” *State v. J.P.*, 130 Wn. App. 887, 891–92, 125 P.3d 215 (2005).

1. There was sufficient evidence to find that Sgt. Hollis was pursuing Vines’ Camry.

Vines argues that there was insufficient evidence to prove that Sgt. Hollis was pursuing Vines as Vines, driving his Toyota Camry, was attempting to elude Sgt. Hollis. This claim lacks merit.

Deputy Federline testified that after he yelled at Vines to stop, Vines tried to accelerate up the long driveway to get to Deer Park Road. Federline had to move out of the way to avoid being hit. Clearly Vines was trying to escape.

Then Sgt. Hollis appeared at the top of the driveway at Deer Park Road in his fully marked Patrol SUV with his emergency lights on. Vines still went up the 300 foot hill towards Hollis driving in what appeared to be an evasive manner which caused Hollis to maneuver or mirror Vines in order to prevent Vines from escaping.

The two vehicles stopped bumper to bumper just short of colliding about halfway up the hill. Still, Vines did not stop his vehicle. He

immediately put the Camry in reverse and accelerated back down the hill about 55 feet and Federline had to move out of Vines' path again to avoid being struck. Vines then got stuck on an embankment, and still, Vines did not stop. Rather, Vines tried to accelerate out of the embankment. Hollis had to box Vines in with his patrol vehicle and Federline had to break the Camry's passenger side window out to get Vines to finally stop at which point Vines yelled, "Okay, Okay!"

Nevertheless, Vines argues there was no evidence that Hollis was pursuing Vines. This argument fails because Hollis testified that as Vines was coming up the hill, Hollis was trying to stop Vines. RP 311. Hollis kept positioning his vehicle to prevent Vines vehicle from getting around his patrol vehicle. RP 320. Then after Vines shifted in reverse and accelerated downhill, Hollis continued to pursue Vines and follow him down the hill until Vines vehicle got stuck. RP 309–10, 322.

Vines argues that Sgt. Hollis was not pursuing Vines because he and Vines were traveling towards each other. In support of his argument, Vines cites to *State v. Brown*, 132 Wn.2d 529, 611, 940 P.2d 546 (1997) for the proposition that courts employ the common understanding of a term rather than a technical definition when a term is not defined by statute. Then Vines cites the definition of pursue from WEBSTER'S THIRD NEW INT'L DICTIONARY 1848 (2002): "to follow [] determinedly in order to overtake, capture, kill, or

defeat.”

A common sense meaning does not require that one may only pursue another if both parties are traveling in the same direction and the party in pursuit is *behind* the other. The definition does not include the phrase, “to follow *from behind*.” Further, Vines interpretation also ignores the common understanding of the word. Vines’ interpretation means a wolves’ pursuit of a rabbit ends every time the rabbit suddenly changes direction and the wolve may not be directly behind the rabbit, although momentarily.

Vines’ interpretation also means that a soccer player cannot be in in pursuit of a ball when the ball is traveling toward the player. Or that a goal keeper, attempting to get possession of a ball is not pursuing the ball if it is traveling toward the goal keeper. Under a common sense use of the definition, both the wolf and soccer player are pursuing their target although not necessarily following the object of pursuit from directly behind. Vines’ analysis also ignores other common definitions of “pursue.” For instance: Chase. MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 1011 (11th ed. 2009).

Here, the record is clear that once Hollis began his pursuit, he did not stop until Vines gave up trying to escape. It is also clear that Vines did not stop his vehicle on his own accord and he was trying to escape by accelerating out of the embankment. Further, it is unclear whether Vines

would have been successful escaping out of the embankment but for the fact that Sgt. Hollis boxed Vines in with his patrol vehicle.

Finally, a jury could reasonably infer that Hollis was in pursuit of Vines from the moment he started coming down the hill and mirrored Vines movements to prevent Vines from escaping. A jury could reasonably infer that this pursuit continued until Vines gave up.

Therefore, in the light most favorable to the State, there was sufficient evidence that Sgt. Hollis was pursuing Vines. This Court should affirm the conviction.

2. There was sufficient evidence to infer that Sgt. Hollis' marked patrol vehicle was fully equipped including a siren.

Vines argues that there was insufficient evidence to support the conviction because there was no evidence Sgt. Hollis' vehicle was equipped with a siren. Vines' argument ignores the strong circumstantial evidence that Sgt. Hollis's new patrol vehicle was a fully equipped patrol vehicle with standard equipment including a siren.

Sgt. Hollis testified that he was driving a marked Ford Explorer Cross-Over which he described as "quite an Explorer." RP 305. The vehicle was marked with Sheriff's office stickers and a light bar and was equipped with overhead lights, spot lights, and flood lights, and radio. RP 305, 306. Federline also testified that Sgt. Hollis appeared on the scene in his marked

patrol vehicle which says Sheriff's Office on the side of the vehicle, with overhead red and blue emergency lights on. RP 274. Federline described Sgt. Hollis' new department issued Ford SUV patrol vehicle as a new patrol vehicle and the new patrol vehicles are like a Christmas tree with flashers and lights all over them. RP 299, 300.

It is clear from the testimony that Sgt. Hollis' new patrol vehicle was fully, marked, equipped, and state of the art. One could reasonably infer that Sgt. Hollis' patrol vehicle is also equipped with a siren as well. There was no evidence to the contrary. After all, police vehicles are required by statute to be equipped with sirens: "Every authorized emergency vehicle shall, in addition to any other equipment and distinctive marking required by this chapter, be equipped with at least one lamp capable of displaying a red light visible from at least five hundred feet in normal sunlight and a siren capable of giving an audible signal." RCW 46.37.190(1); *see also* RCW 46.04.040 (defining "authorized emergency vehicle" to include Sheriff's Office vehicles).

Furthermore, Ms. Unger pointed out that there was no testimony regarding the presence of the siren. RP 382. Nevertheless, the jury was persuaded by the evidence regarding the vehicle that Sgt. Hollis' patrol vehicle was fully equipped department issued law enforcement vehicle which would include a siren. *See State v. J.P.*, 130 Wn. App. 887, 891–92, 125 P.3d 215 (2005) (this Court "defer[s] to the trier of fact on . . . persuasiveness of

the evidence.”).

Because all reasonable inferences “must be drawn in favor of the State and interpreted most strongly against the defendant” and because “‘circumstantial evidence and direct evidence are equally reliable’ in determining the sufficiency of the evidence,” this Court should find that the conviction was supported by sufficient evidence. *Kintz*, at 551 (quoting *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992)).¹

Therefore, this Court should affirm the conviction.

IV. CONCLUSION

There was no factual basis in the record which would necessarily create a doubt as to competency. Furthermore, the trial court was not presented with any information, evaluations, motions for a competency evaluation, or the opinion of counsel which would create doubt as to competency. Therefore, the trial court did not abuse its discretion by not ordering a competency evaluation sua sponte.

Similarly, there was no information on the record showing that Ms. Unger should have requested a competency evaluation. Mr. Oakley also did not move for a competency evaluation although he might have believed that mental health evaluations might be needed for other purposes. As argued

¹ As a side note, dismissal of the charges would be unwarranted because the jury was instructed on a lesser included offense. See *State v. Argueta*, 107 Wn. App. 532, 539, 27 P.3d 242 (2001); CP 94–96.

above, the court also did not believe that a competency evaluation was warranted. All parties were aware that Mr. Vines may have had mental health issues as Vines claimed but none of them had reason to believe Vines' competency was in doubt. Vines himself believed himself to be competent although he requested mental health evaluations for other purposes. Finally, the record shows that Vines understood the nature of the charges and had the ability to assist in his defense.

Therefore, Vines fails to establish that Ms. Unger's performance was deficient by failing to move for a competency evaluation and his ineffective assistance of counsel claim fails.

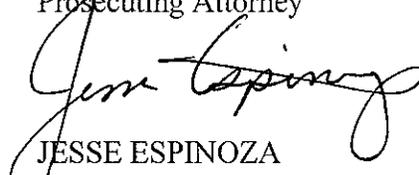
Furthermore, there was sufficient evidence that Sgt. Hollis was pursuing Vines under the common understanding of the word "pursuing." There was also sufficient evidence for the jury to reasonably infer that Sgt. Hollis' new patrol vehicle was fully equipped and included a siren. Because the Court weights the evidence and all reasonable inferences in the light most favorable to the State and defers to the fact finder on the persuasiveness of the evidence, this Court should find that the conviction was supported by sufficient evidence.

For the foregoing reasons, the Court should affirm the conviction.

Respectfully submitted this 26th day of January, 2018.

Respectfully submitted,

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CERTIFICATE OF DELIVERY

Jesse Espinoza, under penalty of perjury under the laws of the State of Washington, does hereby swear or affirm that a copy of this document was forwarded electronically or mailed to Peter B. Tiller on January 26, 2018.

MARK B. NICHOLS, Prosecutor


Jesse Espinoza

CLALLAM COUNTY DEPUTY PROSECUTING ATTORN

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