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Court of Appeals
Division III
State of Washington
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NO. 35043-6-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON

Respondent,

v.

EDUARDO PEREZ,

Appellant.

BRIEF OF RESPONDENT

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I. ASSIGNMENTS OF ERROR

A. ISSUES PRESENTED BY ASSIGNMENTS OF ERROR.

Appellant raised two assignments of error:

1. The state failed to prove the crime of attempted residential burglary beyond a reasonable doubt.
2. The abused its discretion when it failed to consider Perez's known mental health issue when determining the imposition of legal financial obligations. (LFO)

B. ANSWERS TO ASSIGNMENTS OF ERROR.

The State's response is as follows:

1. The State proved beyond a reasonable doubt that Perez committed attempted residential burglary.
2. Perez did not raise this issue in the trial court therefore pursuant to RAP 2.5 and State v. Blazina, 182 Wn.2d 827, 833, 344 P.3d 680 (2015), this court need not and should not consider the issue for the first time in this appeal. In the alternative the trial court properly imposed limited mandatory legal financial obligations.

II. STATEMENT OF THE CASE

On September 30, 2015, seventy-nine-year-old Mrs. Ethel Porter was in her rural home in Outlook, Washington where she had lived for 53 years, visiting with her eighty-one-year-old sister, Mary Lou Ribail. There was no other person in the home at that time. RP 56 They "...were just laughing and talking and visiting and trying on some shirts and stuff..." When they heard a loud bang which at first they thought might have been a gunshot. RP 56, 89. The sisters soon determined that the

noise was someone kicking the front door of this rural home. The kicks were hard enough that Mrs. Porter was concerned the door might be forced open. RP 56, 90.

The two women were scared by the kicks and the male who was “hollering and cussing”, “ranting and raving and swearing” after the door was kicked. RP 57, 90. The two women “...were afraid, and so (they) were just kind of trying to hide in the house.” They were very fearful that Perez would break into the house. They attempted to take shelter in the bathroom but Perez had already broken out the window in that room. RP 57-8.

Both Mrs. Porter and Mrs. Ribail heard the defendant yell “I know you’re in there” and Mrs. Ribail heard him yell “I can see you” and “I can hear you.” RP 57, 89-90. Mrs. Ribail testified that this was “scary” and that after she heard these statements that “I was afraid then.” She was concerned that the door might fly open and the kick to the door shook the house. RP 91.

The women called 911 and reported that they believed there had been shots fired at the home. RP 60, 100.

Mrs. Porter had known Perez from past contacts. During this assault on her home she looked out through the shades that were covering the windows that were being broken. She observed a person whom she

identified as the defendant Eduardo Perez. RP 58-9. She saw that he was wearing a red shirt. She was also able to testify that she recognized Perez's voice. RP 60.

Soon after the kicks to the front door these two elderly women began to hear and see the windows in the home being broken out. They actually observed rocks come through the windows. By the time this rampage was over Perez had broken out almost every window in the home. There were rocks found inside the home and Officer Aguilar testified that he found a garden ornament physically inside the home that had been thrown or smashed through one of the windows. RP 57-60, 92, 98, 188. When asked about the noise of the rocks coming through the windows Mrs. Ribail's response was "Loud enough to scare you." RP 99

Mrs. Porter, Mrs. Ribail, Deputy Aguilar and Chantile Hutchinson all testified that they observed that there were two footprints on the front door of the Porter residence. RP 67,69, 165,187, 191-2.

When officers arrived at the Porter residence they observed the defendant pacing back and forth on the porch at his mother's home which is adjacent to the Porter property. Perez was wearing a red shirt. RP 142, 150, 192. Officer Orth testified that Perez appeared "agitated, and he was just kind of all over the place." When asked by Officer Orth "...what's going on." Perez stated "it's the neighbor, it's the neighbor." RP 146.

Perez then began to walk towards the Porter residence. Officers told him to stop but Perez continued to walk across the field towards the victim's home. Perez continued to fail to comply with the orders of the officers and so the officers took hold of his arms to stop him. Perez resisted and fought with the officers who then arrested him. RP 147.

Dep. Aguilar testified without objection that "...the victims told me that he tried entering the residence by kicking the door first. Then they heard the loud sounds of something breaking. They thought maybe they were being shot into the home, shots were being fired. That's what their assumption was." RP 189. He also testified that he observed the lawn ornament that was used to smash out the final window that was smashed. He observed the ornament inside the home sitting on the window sill. RP 188.

The granddaughter of Mrs. Porter, Chantile Hutchinson testified that there had been three "game cameras" which were placed around the Porter property prior to the commission of this crime. RP 155-73, 175-81. Numerous pictures were taken by the cameras and Ms. Hutchinson testified that she could positively identify the defendant, Eduardo Perez as the person in some of those pictures. RP 172. The pictures admitted as evidence depict and captured what occurred on the date of this criminal act.

The defendant Eduardo Perez, chose to exercise his right to remain silent and did not testify. RP 121-22.

At sentencing the court addressed Perez's future ability to pay LFO's. Perez indicated on the record that he had been working part-time. He also informed the court of the fact that "he is considered to be totally disabled, physically disabled." RP 311. The court inquired about the nature of the disability and trial counsel stated again "It's physical" followed by Perez himself stating "[p]hysical." RP 311. According to the unsupported statement Perez has been granted total disability. PR 312.

After the discussion regarding defendant's disability the trial court waived all discretionary LFO's including court appointed (attorney) fee, jury fee, costs for incarceration and medical costs. The remaining LFO's are the crime penalty assessment, criminal filing fee and the DNA fee, these are all mandatory fees. RP 312, CP 51. The court also imposed restitution which was not disputed in the trial court or challenged in this appeal. RP 312. (Appellants brief at 15).

III. ARGUMENT

Response to allegation one - The State proved beyond a reasonable doubt that Perez committed Attempted Residential Burglary.

This crime was charged out under RCW's RCW 9A 52 025(1) and 9A 28.020, these are the residential burglary and attempt statutes. CP 24

The criminal attempt statute, RCW 9A.28.020(1), states: A person is guilty of an attempt to commit a crime if, with intent to commit a specific crime, he or she does any act which is a substantial step toward the commission of that crime.

The jury was instructed regarding the law pertaining to burglary and attempt in instructions, 5, 6 and 7. CP 35-37. The trial court set out the attempted burglary as follows:

A person commits the crime of attempted Residential Burglary when, with intent to commit that crime, he does any act that is a substantial step toward the commission of that crime.

A substantial step is conduct that strongly indicates a criminal purpose and that is more than mere preparation.

A person acts with intent or intentionally when acting with the objective or purpose to accomplish a result that constitutes a crime. CP 36. RP 239.

Appellate courts review sufficiency of the evidence challenges to see if there was evidence from which the trier of fact could find each element of the offense proved beyond a reasonable doubt. State v. Green, 94 Wn.2d 216, 221-222, 616 P.2d 628 (1980) (citing Jackson v. Virginia, 443 U.S. 307,319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979)).

Issues of witness credibility are to be determined by the trier of fact and cannot be reconsidered by an appellate court. State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). A reviewing court will consider the evidence in a light most favorable to the prosecution. Id. It also must

defer to the finder of fact in resolving conflicting evidence and credibility determinations. Camarillo, 115 Wn.2d at 71. A challenge to the sufficiency of the evidence requires that the defendant address the evidence and all reasonable inferences drawn in favor of the State, with circumstantial evidence and direct evidence considered equally reliable. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992); State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). The elements of a crime can be established by both direct and circumstantial evidence. State v. Brooks, 45 Wn. App. 824, 826, 727 P.2d 988 (1986). One is no less valuable than the other. There is sufficient evidence to support the conviction if a rational trier of fact could find each element of the crime proven beyond a reasonable doubt.

A person commits the crime of burglary when he enters a building with the intent to commit a crime therein. RCW 9A.52.030(1). A person "attempts" an offense when, with the intent to commit a specific crime, he takes a substantial step toward committing the crime. RCW 9A.28.020(1).

In order to constitute a "substantial step," the conduct must strongly corroborate the actor's criminal purpose. State v. Townsend, 147 Wn.2d 666, 57 P.3d 255 (2002); State v. Aumick, 126 Wn.2d 422, 894 P.2d 1325 (1995). A 'substantial step' is conduct strongly corroborative of the actor's criminal purpose." In re Pers. Restraint of Borrero, 161

Wn.2d 532, 539, 167 P.3d 1106 (2007) (quoting State v. Townsend, 147 Wn.2d 666, 679, 57 P.3d 255 (2002)), cert. denied ___ U.S. ___, 128 S.Ct. 1098, 169 L.Ed.2d 832 (2008).

State v. Wilson, 158 Wn.App. 305, 242 P.3d 19 (2010) "' Mere preparation to commit a crime is not a substantial step." Townsend, 147 Wn.2d at 679, 57 P.3d 255. In order for conduct to comprise a substantial step, it must be strongly corroborative of the defendant's criminal purpose. State v. Workman, 90 Wn.2d 443, 452, 584 P.2d 382 (1978). However, any act done in furtherance of the crime constitutes an attempt if it clearly shows the design of the defendant to commit the crime. State v. Nicholson, 77 Wn.2d 415, 420, 463 P.2d 633 (1969). Whether conduct constitutes a substantial step is a question of fact. Billups, 62 Wn.App. 122, 126, 813 P.2d 149 (1991).

In the general context of attempt cases, a substantial step requires more than mere preparation, State v. Townsend, 147 Wn.2d at 679, and more than a mere request for another to commit a crime, State v. Billups, 62 Wn.App. 122, 813 P.2d 149 (1991).

State v. Bencivenga, 137 Wn.2d 703, 709, 974 P.2d 832 (1999) addresses an attempted burglary. The Supreme Court stated:

In Jackson we explained that for the fact finder to draw inferences from proven circumstances, the inferences must be rationally related to the proven fact. "

'The jury is permitted to infer from one fact the existence of another essential to guilt, if reason and experience support the inference,' " Id. at 875, 774 P.2d 1211 (quoting Tot v. United States, 319 U.S. 463, 467, 63 S.Ct. 1241, 1244, 87 L.Ed. 1519 (1943)), adding:

A presumption is only permissible when no more than one conclusion can be drawn from any set of circumstances. An inference should not arise where there exist other reasonable conclusions that would follow from the circumstances. (Id at 707-08)

There is no other conclusion that any reasonable jury could infer from the facts presented other than Perez was trying to get into this rural home to “commit a crime against a person or property therein.”

The trial court read and referenced this case throughout the trial.

Bencivenga states:

Nothing forbids a jury, or a judge, from logically inferring intent from proven facts, so long as it is satisfied the state has proved that intent beyond a reasonable doubt. An essential function of the fact finder is to discount theories which it determines unreasonable because the finder of fact is the sole and exclusive judge of the evidence, the weight to be given thereto, and the credibility of witnesses. That the crime here charged is attempted burglary does not change the analysis. Intent to attempt a crime also may be inferred from all the facts and circumstances. What constitutes a substantial step is also a factual question. The role of the appellate court is to determine whether or not any rational trier of fact, viewing the evidence in the light most favorable to the prosecution, could have found, beyond a reasonable doubt, all the essential elements of the crime.

The evidence that the State presented was overwhelming. This

was not a situation where the defendant walked up to a building and made some feeble attempt to enter and when interrupted ran away. This was an ongoing concerted effort by Perez to enter a home, a home where he knew there were two people. He clearly knew he was being observed and taunted his victims as he kicked the door again and again. He the systematically broke out all but one window in this home, including the room these two elderly women fled to.

Perez told these two terrified elderly woman as they attempted to hide inside their own home, I know you are in there, I can see you, I can hear you. This was a horror movie coming to life for these two elderly sisters who moments before were trying on shirts and laughing. This is the very definition of attempted burglary and was in all probability factually a completed burglary.

The trial court stated the following after a motion to set aside the verdict:

THE COURT: Well, I looked at State vs. Bencivenga, which the citation is 137 Wn.2d 703. In that case the defendant was found -- had attempted to open a door. This was a commercial property, I believe, not a residence.

The issue was whether or not, since he hadn't gotten in, whether or not there -- the issue of intent to commit a crime therein wasn't supported by any evidence. Basically the Supreme Court, almost contrary to the Jackson case, I think, but the Supreme Court seemed to say it's just always up to the trier of fact to decide whether or not there's an

inference.

In that case, it was 3:00 in the morning. So, it was dark. The defendant was wearing dark clothing during a snow storm. I assume the court felt that there was an inference that he was up to no good because it was 3:00 in the morning and he was apparently trying to break into a commercial property. Somebody could fairly infer that he was planning on stealing something or whatever when he was inside.

I don't know where the line is. If in broad daylight on a public street with people around a person walked up, kicked a door and turned around and walked away, would that be enough to support a verdict of attempted burglary? I don't know. I mean, maybe there's a line somewhere between that and the Bencivenga case where the court would finally say, well, no, there really isn't enough here to support an inference. I don't know.

Arguably in this case, the present case, it was broad daylight. I don't know how much of a difference that makes. In light of the Bencivenga case, which seems to say that it's up to the trier of fact and apparently from the circumstances the trier of fact can determine whether or not there's any inference, I don't think I have any choice but to not deny the motion.

I think this case is factually different. Whether that would make any difference to the Supreme Court, I have no idea. RP 299-300.

The State produced evidence which when considered by the jury was more than sufficient to prove beyond a reasonable doubt that Perez's actions were an attempt to burglarize the Porter residence. The trial court correctly denied the motion by Perez in the trial court. This court should affirm that ruling and allow the jury's decision conviction to stand

2. Response to allegation two – alleged mental health issue and imposition of mandatory legal financial obligations.

Appellant misrepresents the record regarding this issue. He states that the court abused its discretion when it failed to consider Perez’s “known” mental health issues...Mr. Perez appeared before the sentencing court with a significant mental health history...despite the clear mental health history, Mr. Perez’s mental illness was not discussed...” (Appellant’s brief 14-15.) (Emphasis added). Perez cites to 2RP 2-11 and CP 52 as supportive of these statements. The record at 2RP 2-11 literally does not address anything regarding the reason for the request for a competency evaluation, it is purely a discussion between the parties and the court as to which institution Perez should be sent to. CP 5-6 is a boilerplate order that was presented to the court so that an evaluation could be done, it too does not address a single thing about any alleged “mental health” issue or issues let alone that these issues are “significant.” (See Appendix A for 2RP 2-11 and Appendix B for CP 5-6)

Further, Perez fails to inform this court of the actions in the trial court set out at 2RP 12-13:

MR. BRUNS: Good morning, Your Honor. No. 3 on criminal motions, Eduardo Perez, 15-1-01523-6. We’re on for competency status. We received the competency report from Eastern State Hospital late last week. They have found him competent to proceed with matters, so we are handing forward an order setting the schedule on the case

for omnibus on 2/24, trial on 3/7. We will present the formal competency order this afternoon.

...
MR. KNITTLE: ... You may recall from this morning, Your Honor, State of Washington versus Eduardo Perez, Cause 15-1-01523-6. This morning we advised you that pursuant to an order from Eastern State Hospital dated, I think, May [sic] 12, '16— 7

THE COURT: Uh-huh.

MR. KNITTLE: —in which the psychologist opined that he was, in fact, competent to stand trial, that we—we entered, as scheduled, an order with the trial date and an omnibus date, and—but I didn't yet have the order for the Court to sign that actually finds him competent. I have that order prepared. Mr. Bruns has reviewed and signed it, and present it now to the Court for signature.

THE COURT: Mr. Bruns, it appears you signed off on this?

MR. BRUNS: Yeah, that's correct, Your Honor, we approve as to form and content. (This order may be found at CP 7 and Appendix C.)

2RP 12-13

Clearly Mr. Bruns, trial counsel for Appellant would not have allowed this trial to continue if the report/evaluation had indicated that Perez had “significant” mental health issues. Just as Eastern Washington State Hospital would not have reported to the trial court that Perez was competent to stand trial if he in fact had these alleged “significant” mental health issues. This allegation has been manufactured from whole cloth.

In general, mandatory LFOs must be imposed regardless of the defendant's ability to pay. State v. Lundy, 176 Wn.App. 96, 102-03, 308 P.3d 755 (2013). Perez cites State v. Tedder, 194 Wn.App. 753, 378 P.3d 246 (2016) as dispositive of this allegation.

There is no disagreement by the State that if this case was factually similar to Tedder there might be a basis for remand. "RCW 9.94A.777(1) requires that a trial court determine whether a defendant who suffers from a mental health condition has the ability to pay any LFOs, mandatory or discretionary." Id at 756. RCW9.94A.777(1) states that "[b]efore imposing any legal financial obligations upon a defendant who suffers from a mental health condition, other than restitution or the victim penalty assessment under RCW 7.68.035, a judge must first determine that the defendant. . . has the means to pay such additional sums."

But that is clearly not the case with Perez. There is literally nothing in the record before the trial court that would indicate that Mr. Perez has anything but the physical disability that was addressed by the trial court prior to the imposition of the LFO's which were imposed. The generic information contained in the clerk's papers does not inform anyone of what the alleged mental health issues are or were. There is no copy of any report from the Eastern State to support this allegation.

Tedder is distinguishable, the first portion of the facts from Tedder alone are sufficient to make the distinction clear:

Tedder has an extensive history of mental illness, including diagnoses for schizoaffective disorder, antisocial personality disorder, and bipolar I disorder, and more than two dozen past hospitalizations for mental health treatment

On one or two prior occasions, Tedder appeared in mental health court.

...

At sentencing, Tedder's counsel disclosed to the trial court that he had represented Tedder a number of times in the past when Tedder had "breaks," and that after Tedder's admission into mental health court, Tedder became homeless when living with his father did not work out and was then hospitalized at Western State Hospital. 3 Verbatim Report of Proceedings at 500-01. The trial court recognized Tedder's difficulties when he was not medicated and acknowledged that Tedder had appeared before the mental health court. (Tedder at 754-55)

Perez waived the issue on appeal when he failed to object to the imposition of LFO's by the trial court. "Unpreserved LFO errors do not command review as a matter of right." State v. Blazina, 182 Wn.2d 827, 833, 344 P.3d 680 (2015). Under RAP 2.5(a), this court can and should exercise its discretion and deny Perez's request that this court consider this issue for the first time on appeal. Id at 834.

IV. CONCLUSION

For the reasons set forth above this court should deny this appeal.

Respectfully submitted this th day of October 2017,

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APPENDIX A

1 November 12, 2015, 10:38 a.m.

2 MR. BRUNS: Next, Your Honor, Eduardo Perez.

3 THE COURT: It's No. 30?

4 MR. BRUNS: Yes. And it's-

5 THE COURT: 15-1-01523-6. Mr. Knittle and Mr. Bruns.

6 MR. BRUNS: That's correct, Your Honor. Your Honor, I'm
7 going to submit to the Court an order for a 15-day
8 evaluation.

9 THE COURT: Okay.

10 MR. BRUNS: I'll wait for Mr. Knittle to get here.

11 UNIDENTIFIED: I can stand in for Mr. Knittle.

12 MR. BRUNS: No, he needed to stand in, I'm sorry, on this
13 one. It's odd in the sense that I'm going to request the
14 15-day evaluation at Western State Hospital, not Eastern
15 State Hospital.

16 THE COURT: Have we run that by anybody?

17 MR. BRUNS: I was at a CLE last Friday, and what I was
18 informed is that because the backlog is so severe at
19 Eastern State Hospital, that Western State Hospital is
20 looking at taking over at least Yakima County and maybe
21 some of the others along the Cascade front range.

22 THE COURT: But, is that going to get done
23 administratively within that particular entity rather than
24 us jamming them, because I don't know how comfortable I'd
25 be saying "Western State Hospital" unless I've got some

1 authority from them.

2 MR. BRUNS: Well, that's just it, Your Honor. I don't
3 know that you don't have any authority—

4 THE COURT: Hmm.

5 MR. BRUNS: —to do that. And their timeframe on
6 scheduling these kinds of evaluations is much shorter than
7 Eastern's.

8 THE COURT: Well, my understanding is they were bringing
9 resources over here.

10 MR. BRUNS: They were. That's one of the things they're
11 doing. They're looking to—when I was asking about the
12 problems, I asked the question at the CLE about this,
13 because they were talking about Eastern Washington, which,
14 of course they all focus on Spokane. I said, well, I'm from
15 Yakima. What—what's happening down there? And they told me
16 they're looking at taking over Yakima altogether for
17 sending our people over to Western State Hospital, which
18 makes sense since geographically we are closer to them, and
19 it takes less time to transport to Western.

20 THE COURT: I guess that we're looking at and we are
21 going to be use—what's got me—so, Mr. Knittle, here's my—I—
22 I really can't even call it an issue. But, if I sign an
23 order that this gentleman goes to Western State Hospital,
24 I—do I have the authority—I think I do. I would feel a lot
25 more comfortable if the agencies were involved before

1 signing that particular document or have some input from
2 them. But, I—you know, and I guess that's where I'm looking
3 at the State to have made some phone calls, verifying
4 whether this is, in fact, acceptable or not.

5 MR. KNITTLE: I—

6 MR. BRUNS: Well, Your Honor, if it doesn't work, what I
7 would suggest is we go ahead and do it and try it. And I
8 will fax all the material over to Western State Hospital.
9 And if they put up a fuss—

10 THE COURT: Well—

11 MR. BRUNS: —I'll bring it back before you.

12 THE COURT: Yeah. And I'm not sure I want to set that
13 precedent, Mr. Bruns, without some of the information from
14 the Hospital. So, that—I guess that's where I'm at. I—I'm
15 not willing to do that without, I guess, at least giving
16 them the courtesy of, you know, what their position is on
17 it, pro or con or—or anything, because I don't know any of
18 us that have been sending anybody to Western State from
19 here. And I—I'm not sure without additional information,
20 unless the State has that, that I'm willing to jump out on
21 that limb without additional information.

22 MR. BRUNS: Well—

23 MR. KNITTLE: Your—Your Honor, I learned about this from
24 Mr. Bruns about an hour ago. And I told him, I would object
25 for precisely the reasons the Court is articulating now,

1 because we don't know what Western's response will be. We
2 don't even know if the Yakima County Jail will take-

3 THE COURT: Right.

4 MR. KNITTLE: -him to Steilacoom.

5 THE COURT: It-it's got a lot of moving parts, I guess,
6 because it does impact our transport officers.

7 MR. BRUNS: I'm informed the Jail doesn't care where
8 they're taken, Your Honor.

9 THE COURT: Okay.

10 MR. BRUNS: I could-my position on this is that under the
11 *Trueblood* decision, the courts are the authority on where
12 these people go because the courts are governing how much
13 time is being taken. We know from the statistics that
14 Western is getting these done much more rapidly than
15 Eastern is. And it is-makes geographical sense to send them
16 over to Steilacoom instead of up to Medical Lake 'cause
17 it's a shorter drive. So, that means we're going to have
18 less man hours from Yakima County, DOC personnel wasted to
19 transport, and there's no reason that I can see that you
20 don't have the authority.

21 THE COURT: I-

22 MR. BRUNS: And I'd rather defer to your authority than
23 some administrator from DSHS saying, you can't do this.

24 THE COURT: Well, I would rather talk to an AAG who
25 represents the-the hospitals. I'm not willing to sign the

1 order today to Western State Hospital. I'm not saying that
2 if I have some additional information that I won't be
3 willing. The best I can do today is sign paperwork in the
4 normal course that does indicate Eastern State Hospital
5 with 14 days' status, allow Counsel to do some digging on
6 this because I would like some more information, and—and,
7 in fact, maybe even having an Assistant Attorney General on
8 the phone on these matters as to what's being discussed,
9 because if this is being represented in CLEs, then
10 obviously we need to have some—the courts need to have some
11 additional information because I—do not misunderstand my
12 position. I want this done as quickly and as expediently—

13 MR. BRUNS: I understand, Your Honor.

14 THE COURT: —as possible. That—that's not my problem with
15 it today. If Western State is it and, you know, we can put
16 all the mechanisms in place that that's going to happen, I—
17 I'm great with that. But, I guess right now I just don't
18 feel that I have enough information to be comfortable
19 making that decision today.

20 MR. BRUNS: I was going to set the competency status out
21 to Tuesday, January 12th. That's normally what we do. Do
22 you want it sooner?

23 THE COURT: That would be my question to you. I mean, I
24 would be happy to set it in two weeks if you want to bring
25 some additional information, because then if—I mean, and

1 Mr. Knittle can bring some additional information.

2 MR. BRUNS: I will—I'll look into it, Your Honor.

3 THE COURT: Okay.

4 MR. BRUNS: And I'll informally report back to you on
5 what I learn.

6 THE COURT: Okay. Because I would be happy to sign an
7 amended order if, you know, everybody's saying, yeah,
8 that'd be great if you guys can do that.

9 MR. BRUNS: Okay.

10 MR. KNITTLE: I hadn't planned on researching the issue.
11 I believe that he should be sent to Eastern. If Counsel
12 comes up with some things, I'll be happy to jump in if he—
13 and I think it need be. But, I believe the burden is on
14 Counsel if he wants him to go to Western.

15 THE COURT: You know, and Mr. Knittle, I'm going to say,
16 Eastern State has not been meeting any of these obligations
17 in 14 days as required. You know, there's a federal lawsuit
18 going on. So, I would hope the State would want to become
19 as informed on this as possible for those reasons because
20 we're not meeting the standards over here.

21 MR. KNITTLE: Is there—

22 THE COURT: And it is a problem, so.

23 MR. KNITTLE: Is—is Western meeting the standards?

24 MR. BRUNS: Yes, they're much closer.

25 THE COURT: I think they're closer. I—I don't disagree

1 with the information that's been provided. It's just now if
2 we're going to—I know that Western was sending resources
3 over here to help Eastern. Again, I—I will indicate on
4 anybody who's doing criminal cases right now, I would think
5 it would behoove them to understand really what the inner
6 workings are on this to go forward, because I don't know
7 what the outcome—you know, we've had some rulings from
8 different judges, and I can't—I can't speak to what
9 Judge Bartheld did. I know Judge McCarthy said, well, it's
10 a civil issue, and so if—if the defendant sues and wins,
11 that's not my problem; I'm still making decisions based
12 upon normal bail considerations. I don't know what
13 Judge Bartheld did.

14 Again, I think parties need to become very informed in
15 this area because this is huge right now, quite frankly.
16 So, for today I'm going to sign the order for the 15-day
17 evaluation indicating Eastern State Hospital. I will set a
18 status hearing on Tuesday, January 12th, at nine a.m. to
19 revisit—and—and would be happy to revisit it with
20 additional information from the hospitals to do amended
21 orders if that becomes prudent and necessary. This is
22 obviously with Mr. Perez's agreement. It is setting this
23 out beyond the 14 days. A lot of counsel aren't being so
24 accommodating, and that's where the issues are being—the
25 records are being made, but I think we'll be very probing

1 in the future. I'm trying to be careful with my wording.

2 Thank you.

3 [Session ends at 10:46 a.m.]

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APPENDIX B

1 examination; (b) a diagnosis of the mental condition, if any, of the defendant; (c) if the defendant
2 suffers from a mental disease or defect, an opinion as to his competency; (d) an opinion as to the
3 defendant's sanity at the time of the acts alleged herein; (e) an opinion as to whether or not the
4 defendant has the capacity to act intentionally and/or with knowledge; (f) an opinion as to whether or
5 not the defendant is a substantial danger to other persons, or presents a substantial likelihood of
6 committing felonious acts, jeopardizing public safety or security, unless kept under further control by
7 the court or other persons or institutions; (g) all previous health care providers for defendant shall
8 provide to the above hospital and/or staff any and all records, reports and history as may be
9 requested.
10

11 IT IS FURTHER ORDERED that speedy trial requirements under CrR 3.3 shall be,
12 and the same are hereby suspended and all proceedings herein are hereby stayed until further order
13 of the court.
14

15 IT IS FURTHER ORDERED that defendant shall be transported to said hospital by the
16 Yakima County Sheriff and kept in said hospital for the duration of his treatment as per this order and
17 released only back into the custody of the Yakima County Sheriff who shall return defendant to
18 Yakima County upon completion of the examination.
19

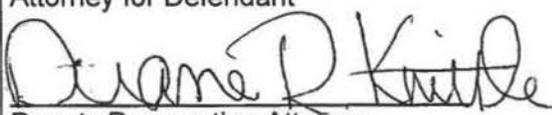
20 Done in open court this 12th day of November, 2015

21 
22 JUDGE

Hon. RUTH E. REUKAUF

23 Presented by:

24 
25 Scott A. Bruns, WSBA# 15060
26 Attorney for Defendant

27 
28 Deputy Prosecuting Attorney
29 Washington State Bar # 10538

30 ORDER FOR 15 DAY EVALUATION - 2

31 Scott A. Bruns
Attorney at Law
6 S. 2nd Street, Suite 901
Yakima, Washington 98901
(509) 698-3000

APPENDIX C

FILED
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'16 FEB 16 P5:13

SUPERIOR COURT
YAKIMA CO. WA
SUPERIOR COURT OF WASHINGTON FOR YAKIMA COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

EDUARDO PEREZ
DOB: 2/18/1965

Defendant.

NO. 15-1-01523-6

ORDER OF COMPETENCY
AND SETTING TRIAL DATE

THIS MATTER having come on before the above-entitled Court for hearing under the provisions of RCW 10.77 to determine the competency of the defendant; the undersigned Deputy Prosecuting attorney appearing for the State, the defendant appearing personally and with his attorney Scott A. Bruns; an Order for Competency Evaluation having been entered on November 15, 2015, the Court having reviewed the records and files herein including the report of Eastern State Hospital dated February 12, 2016; now therefore

THE COURT FINDS that the defendant has the capacity to understand the nature of the proceedings against him and is able to assist in his defense and therefore is competent to stand trial.

The defendant's speedy trial period shall recommence as of the date of this order and a new trial date shall be set for 3-7-16 with a Triage Hearing on 3-4-16.

DATED: February 16, 2016.

Richard H. Bartheld
JUDGE

RICHARD H. BARTHELD

Approved for entry, copy received JUDGE

Presented by:

Duane R. Knittle
DUANE R. KNITTLE
Deputy Prosecuting Attorney
Washington State Bar No. 16538

Scott A. Bruns
SCOTT A. BRUNS
Defense Attorney
Washington State Bar No. 15060

DECLARATION OF SERVICE

I, David B. Trefry state that on November 6, 2017 emailed a copy, by agreement of the parties, of the Respondent's Brief, to: Ms. Jan Trasen at wapofficemail@washapp.org

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 6th day of NovemberNovember, 2017 at Spokane, Washington.

By: s/David B. Trefry
DAVID B. TREFRY WSBA# 16050
Senior Deputy Prosecuting Attorney
Yakima County
P.O. Box 4846 Spokane, WA 99220
Telephone: 1-509-534-3505
E-mail: David.Trefry@co.yakima.wa.us

YAKIMA COUNTY PROSECUTORS OFFICE

November 06, 2017 - 4:18 PM

Transmittal Information

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Appellate Court Case Title: State of Washington v. Eduardo Perez
Superior Court Case Number: 15-1-01523-6

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