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COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT
v.

DALLIN FORT, APPELLANT

APPEAL FROM THE SUPERIOR COURT
OF SPOKANE COUNTY

BRIEF OF RESPONDENT

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I. SUMMARY OF THE CASE

Mr. Fort's overarching assignment of error is to the trial court declaring a mistrial and discharging the jury, which he contends violated both state and federal constitutional rights to be free from double jeopardy. *See* U.S. CONST. amend. V; CONST. art. I, § 9. This claim flounders because the defendant *moved* the trial court in writing for an order declaring a mistrial, and, even had the defendant not so moved, the trial court did not abuse its discretion when it relied on the jury's question informing the court that it was "hung" and could not agree as a jury, and the verbal representations of the presiding juror that, even if given more time, they would not be able to reach an agreement.

II. ISSUES PRESENTED

1. May the defendant allege error in the trial court's order declaring a mistrial where the defendant *moved* the trial court in writing for an order declaring a mistrial?
2. Did the trial court abuse its discretion in declaring a mistrial where, after deliberating on the case, the jury notified the trial court that it was "hung," and that there was no reasonable possibility that given more time to deliberate they would be able to reach a unanimous verdict?

3. Did the trial court exceed its sentencing discretion by ordering a chemical dependency evaluation and alcohol testing?

III. STATEMENT OF THE CASE

1. Procedural History.

As this Court stated: “This case has a long and knotty procedural history that is complicated by appellate decisions in parallel cases.” *State v. Fort*, 190 Wn. App. 202, 212, 360 P.3d 820 (2015). An appendix to that opinion provides a detailed summary of case events. 190 Wn. App. at 248-49; CP 47-49. Mr. Fort’s convictions were reversed and his case was remanded to the trial court for a new trial. *Fort*, 190 Wn. App. 202 (granting personal restraint petition and remanding for new trial).

After remand, a new trial was conducted during early October 2016. Report of Proceedings 4-244 (RP).¹ After the close of evidence and a period of deliberation, the jury indicated, in writing, that it was unable to reach a verdict. CP 86.² The trial court brought the jury back into court and

¹ The Report of Proceedings pages 0-470 contains the verbatim report of proceedings for both the new trial ordered on the grant of Mr. Fort’s personal restraint petition, that resulted in a hung jury on October 7, 2016, and the subsequent retrial beginning May 22, 2017, that concluded in guilty verdicts on May 25, 2017, with sentencing held on June 9, 2017.

² This was the fourth jury inquiry received from the jury during deliberations. The first inquiry was “when did [A.W.] see or know about the report/interview in 2005 of what she said.” CP 83. The second jury inquiry asked, “why has the trial had a large gap from 2005-2016? taken so long.

conducted a careful colloquy with the presiding juror. RP 239-40. After the trial court conducted this colloquy, both Mr. Fort, through his attorney Christian Phelps, and the State moved the trial court in writing for “an order declaring a mistrial.” CP 66; RP 239-44. The trial court granted their written motion, declared a mistrial, and set a new trial date. CP 66; RP 243.

The new trial began May 22, 2017. Mr. Fort was convicted of the two counts of rape of a child in the first degree as charged in the information. CP 101-02. Mr. Fort was given a low-end standard range sentence of 120 months-life. CP 114.

2. Factual Summary.

Mr. Fort does not challenge the sufficiency of the evidence; therefore, the following summary of facts is brief.

In the summer of 2003, 29-year-old Mr. Fort helped care for his nine-year-old niece, A.W.³ RP 272, 315. In February 2005, A.W. told her mother Mr. Fort sexually abused her. RP 316-17. A.W. testified Mr. Fort would often wake her up in the morning, around 3:00 or 4:00 a.m., and after taking her to his bedroom he would insert his different sized clear toys in

What happened to the prosecution.” CP 84. The third inquiry asked “can we break for the day. Some are emotionally done.” CP 85.

³ The abbreviation A.W. was used the first two original appeals and will be used herein.

her crotch. RP 280-81. She testified that he would also put his mouth on her crotch. RP 282.

IV. ARGUMENT

A. THE DEFENDANT MAY NOT ALLEGE ERROR IN THE TRIAL COURT’S ORDER DECLARING A MISTRIAL WHERE THE DEFENDANT *MOVED* THE TRIAL COURT IN WRITING FOR AN ORDER DECLARING A MISTRIAL.

The defendant and the State jointly moved the trial court in writing for an order declaring a mistrial because the jury was unable to reach a verdict. The trial court properly granted their motion. *See* CrR 6.10 (“The jury may be discharged by the court on consent of both parties or when it appears that there is no reasonable probability of their reaching agreement”). A defendant’s motion for a mistrial constitutes a deliberate election on his part to forgo his valued right to have his guilt or innocence determined before the first trier of fact. *Oregon v. Kennedy*, 456 U.S. 667, 676, 102 S.Ct. 2083, 72 L.Ed.2d 416 (1982). Therefore, Mr. Fort elected to forgo his jeopardy claim when he made his motion for a mistrial.

Yet, Mr. Fort now prays for this Court to find fault with the trial court for granting his request. This prayer is vexing. Indeed, it would be Kafkaesque for this Court to allow parties to advance positions on appeal that are diametrically opposite to the positions taken by those parties in the trial court. Not only does *Oregon v. Kennedy, supra*, prohibit this result, our

invited error jurisprudence also prevents this outcome. The invited error doctrine is a “‘strict rule’ to be applied in every situation where the defendant’s actions at least in part cause[d] the error.” *State v. Summers*, 107 Wn. App. 373, 381-82, *review granted, cause remanded*, 145 Wn.2d 1015, 37 P.3d 289 (2002), and *opinion modified on reconsideration*, 28 P.3d 780, 43 P.3d 526 (2001) (quoting *State v. Studd*, 137 Wn.2d 533, 547, 973 P.2d 1049 (1999)). No error may be predicated upon the trial court’s decision to grant exactly what the defendant requested.

B. EVEN ASSUMING FOR THE SAKE OF ARGUMENT THERE WAS NO MOTION FOR A MISTRIAL, THERE WAS NO MANIFEST ERROR IN THE TRIAL COURT’S DECISION ORDERING THE MISTRIAL WHERE THE DEFENDANT WAIVED REVIEW BY FAILING TO OBJECT TO THE COURT’S RULING.

RAP 2.5 should prevent review of any double jeopardy claim in this case. There is no *manifest error* readily apparent where, as here, the defendant remains silent after his input is invited on whether or not to inquire further of the presiding juror, and, furthermore, where defendant fails to object to the declaration of mistrial:⁴ there are abundant tactical reasons for the defendant accepting a mistrial in this particular case.

⁴ Again, ignoring that the defendant requested a mistrial by written order.

The following colloquy was had with the foreperson and with counsel:

THE COURT: Go ahead and be seated. You've been called back into the courtroom to find out whether you have a reasonable probability of reaching a verdict. First a word of caution. Because you're in the process of deliberating, it's essential that you give no indication about how the deliberations are going. You must not make any remarks here in the courtroom that may adversely affect the rights of either party or may in any way disclose your opinions of the case or the opinions of the other members of the jury. I'm going to ask the presiding juror if there's a reasonable probability of the jury reaching a verdict within a reasonable amount of time, and if they could answer with a yes or no. Who's the presiding juror?

JUROR NO. 12: Me.

THE COURT: Number 12, I'm going to use your number because it's easier. Do you believe if the Court gave you more time, there's a reasonable probability of reaching a unanimous verdict?

JUROR NO. 12: No.

THE COURT: Okay. You can be seated. Thanks. Counsel, did you wish to ask any further questions at this time?

MR. PHELPS: No.

MR. LOVE: No.

THE COURT: Okay. I'm going to have Heather escort you into the jury room for further instructions, and she'll give you further instructions. Celia is gone. So Heather's going to take you and we're going to take a short break. We're in recess.

THE CLERK: Please rise.

RP 239-40.

Defendant’s counsel neither asked to inquire further of the presiding juror, nor did he voice an objection to the declaration of a mistrial. His silence combined with his failure to object should constitute a waiver of any claim regarding the trial court’s declaration of a mistrial.

The United States Constitution provides that no person shall “be subject for the same offense to be twice put in jeopardy of life or limb.” U.S. CONST. amend. V. Our state constitution prohibits persons from being “twice put in jeopardy for the same offense.” CONST. art. I, § 9. “We interpret our state’s double jeopardy provision identically to the federal provision.” *State v. Glasmann*, 183 Wn.2d 117, 121, 349 P.3d 829 (2015).

Because the double jeopardy clause of article I, section 9, and the Fifth Amendment are virtually identical “in thought, substance and purpose,”⁵ and because article I, section 9, “has been construed to provide protection *identical* to that provided under the federal constitution,” *State v. Larkin*, 70 Wn. App. 349, 352-53, 853 P.2d 451 (1993), it should follow that the standard of review of this type of double jeopardy claim should be the same in federal and state appellate analysis.

⁵ *State v. Schoel*, 54 Wn.2d 388, 391, 341 P.2d 481 (1959).

As this Court has noted, the “manifest error” requirement set forth in RAP 2.5(a)(3) has not been consistently articulated.⁶ Under the corresponding rule governing review of federal claims, the Supreme Court has more clearly enunciated the appellate analysis of a trial claim in the absence of an objection:

We explained in *United States v. Olano*, 507 U.S. 725, 113 S.Ct. 1770, 123 L.Ed.2d 508 (1993), that Rule 52(b) review – so-called “plain-error review” – involves four steps, or prongs. First, there must be an error or defect – some sort of “[d]eviation from a legal rule” – that has not been intentionally relinquished or abandoned, i.e., affirmatively waived, by the appellant. *Id.*, at 732-733, 113 S.Ct. 1770. Second, the legal error must be clear or obvious, rather than subject to reasonable dispute. *See id.*, at 734, 113 S.Ct. 1770. Third, the error must have affected the appellant’s substantial rights, which in the ordinary case

⁶ See *State v. Stoddard*, 192 Wn. App. 222, 228, 366 P.3d 474 (2016):

Washington courts and even decisions internally have announced differing formulations for “manifest error.” First, a manifest error is one “truly of constitutional magnitude.” *State v. Scott*, 110 Wn.2d at 688, 757 P.2d 492. Second, perhaps perverting the term “manifest,” some decisions emphasize prejudice, not obviousness. The defendant must identify a constitutional error and show how, in the context of the trial, the alleged error actually affected the defendant’s rights. It is this showing of actual prejudice that makes the error “manifest,” allowing appellate review. *State v. O’Hara*, 167 Wn.2d 91, 99, 217 P.3d 756 (2009); *Scott*, 110 Wn.2d at 688, 757 P.2d 492; *Lynn*, 67 Wn. App. at 346, 835 P.2d 251. A third and important formulation for purposes of this appeal is the facts necessary to adjudicate the claimed error must be in the record on appeal. *State v. McFarland*, 127 Wn.2d 322, 333, 899 P.2d 1251 (1995); *State v. Riley*, 121 Wn.2d 22, 31, 846 P.2d 1365 (1993).

means he must demonstrate that it “affected the outcome of the district court proceedings.” *Ibid.* Fourth and finally, if the above three prongs are satisfied, the court of appeals has the discretion to remedy the error – discretion which ought to be exercised only if the error “seriously affect[s] the fairness, integrity or public reputation of judicial proceedings.” *Id.*, at 736, 113 S.Ct. 1770 (quoting *United States v. Atkinson*, 297 U.S. 157, 160, 56 S.Ct. 391, 80 L.Ed. 555 (1936)). Meeting all four prongs is difficult, “as it should be.” *United States v. Dominguez Benitez*, 542 U.S. 74, 83, n. 9, 124 S.Ct. 2333, 159 L.Ed.2d 157 (2004).

Puckett v. United States, 556 U.S. 129, 135, 129 S.Ct. 1423, 173 L.Ed.2d 266 (2009). This explanation seems clearer, yet not inconsistent with RAP 2.5(a)(3), especially where both require the error to be manifest, i.e. clear or obvious, rather than subject to reasonable dispute. In this regard, many federal cases seem to require the defendant to object to the declaration of a mistrial to preserve the issue for appeal.⁷ Mr. Fort had

⁷ While a trial generally should not be aborted unless the defendant consents, there are circumstances when a defendant may be said to have impliedly consented to the mistrial. Several circuits hold that a defendant will impliedly consent to a mistrial if he has an opportunity to object but fails to do so. *See, United States v. Ham*, 58 F.3d 78, 83 (4th Cir. 1995); *United States v. DiPietro*, 936 F.2d 6, 9-10 (1st Cir. 1991); *United States v. Nichols*, 977 F.2d 972, 974 (5th Cir. 1992); *Camden v. Circuit Court*, 892 F.2d 610, 615 (7th Cir. 1989); *United States v. Puleo*, 817 F.2d 702, 705 (11th Cir. 1987). Other circuits have refused to infer consent absent some positive showing of acquiescence by the defendant. *See, Weston v. Kernan*, 50 F.3d 633, 637 (9th Cir. 1995); *Glover v. McMackin*, 950 F.2d 1236, 1240 (6th Cir. 1991). After noting that split, the Third Circuit in *Love v. Morton*, 112 F.3d 131, 138 (3d Cir. 1997), held that it would “not infer consent from defense counsel’s silence unless there was some opportunity to object.” *See also, United States v. Buljubasic*, 808 F.2d 1260, 1265-66 (7th Cir. 1987) (“If a judge should say ‘I think a

the opportunity to object, yet did not.⁸ All parties were present when the trial court was informed by the presiding juror that there was no reasonable probability of the jury returning a verdict if they were given more time to deliberate further.

Additionally, where the defendant remains silent as to the trial court's decision to declare a mistrial because of a hung jury, there often are significant strategic reasons for doing so. Here, such reasons are readily apparent. There was a great deal of time (14 years) transpiring between the criminal conduct and the trial; the jury had unanswerable questions as to the reason for the delay.⁹ Often the State will not try the case again because of the inherent problems, or as directly observable here, will offer the

mistrial would be a good idea, but think this over and let me know if you disagree,' the defendant's silence would be assent"). "[A] defendant's failure to object to a mistrial implies consent thereto only if the sum of the surrounding circumstances positively indicates this silence was tantamount to consent." Simple silence may be a positive indication of consent to a mistrial in some circumstances. *United States v. Gantley*, 172 F.3d 422, 427 (6th Cir. 1999).

⁸ RP 240.

THE COURT: Okay. You can be seated. Thanks. Counsel, did you wish to ask any further questions at this time?

MR. PHELPS: No.

⁹ See CP 83-85, the jury inquired "when did [A.W.] see or know about the report/interview in 2005 of what she said," then later asked "why has the trial had a large gap from 2005-2016? taken so long," and finally signified these concerns were problematic when they asked "can we break for the day. Some are emotionally done."

defendant something of great benefit.¹⁰ Because the defendant's decision to not object to a mistrial is often beneficial to the defendant, the presence of obvious tactical advantages to the defendant should be considered in evaluating whether his failure to object was a tacit waiver of the issue. RAP 2.5 should prohibit review under the circumstances of this case.

C. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION WHERE THE JURY AND THE PRESIDING JUROR INFORMED THE COURT THAT THE JURY WAS UNABLE TO AGREE IF GIVEN MORE TIME TO DELIBERATE.

When a court declares a mistrial due to jury deadlock, the decision should be accorded great deference by the reviewing court. *State v. Jones*, 97 Wn.2d 159, 163, 641 P.2d 708 (1982). In this case, the trial court did not initiate dialogue about the progress of the jury's deliberation; it acted only after the jury notified the court it was deadlocked. The jury was in its second day of deliberation. CP 83-86. Following the language in WPIC 4.70 almost verbatim, the trial court asked the presiding juror if given more time, there was a reasonable possibility that the jury would reach a unanimous verdict, to which the juror answered, unqualifiedly, "No." RP at 239-40.¹¹

¹⁰ Here, the defendant was offered a second-degree child molestation with no additional incarceration even though he had been convicted in 2006 by a jury of two counts of first degree rape of a child. RP 246.

¹¹ The jury deliberated approximately 11 hours (from 11:02 a.m. until 4:00 p.m. on October 6, 2016; resuming the next morning, working until 3:19 p.m., at which time the trial court made the inquiry as to whether there was a reasonable probability of reaching a unanimous verdict). Courtroom

As here, when a jury acknowledges through its presiding juror, and on its own accord, that it is hopelessly deadlocked, there is a factual basis sufficient to constitute the “extraordinary and striking” circumstance necessary to justify discharge. *Jones*, 97 Wn.2d 159; *State v. Fish*, 99 Wn. App. 86, 91-92, 992 P.2d 505 (1999). This has long been considered “the classic basis for a proper mistrial.” *Arizona v. Washington*, 434 U.S. 497, 509, 98 S.Ct. 824, 54 L.Ed.2d 717 (1978). In *Arizona v. Washington*, the Court also noted that the term “manifest necessity,” while often quoted, “cannot be interpreted literally”¹² as Mr. Fort suggests in his briefing, arguing that the trial court’s use of the term “good cause” does not constitute “manifest necessity.” Br. of Appellant at 8. Indeed, after outlining the areas where a higher degree of examination is required, such as where the *prosecutor* requests a mistrial to buttress the weaknesses in his evidence, or in other areas involving governmental bad-faith conduct, the Court notes that cases such as the present case warrant the *lowest* level of review, as they lie at the other end of the extreme.¹³

minutes, filed October 10, 2016 (a supplemental designation of clerk’s papers is being filed contemporaneously with this brief and estimated to be CP 130-32), *and see* CP 83-86.

¹² *Arizona v. Washington*, 434 U.S. at 506.

¹³ *See Arizona v. Washington*, 434 U.S. at 509 (“at the other extreme is the mistrial premised upon the trial judge’s belief that the jury is unable to reach a verdict, long considered the classic basis for a proper mistrial”).

The trial court was in the best position to determine whether the jury was unable to reach a verdict, and properly relied on the presiding juror's representation that the jury was deadlocked. There was no abuse of discretion in the trial court's decision to declare a mistrial.¹⁴

D. DID THE TRIAL COURT EXCEED ITS SENTENCING AUTHORITY BY ORDERING A CHEMICAL DEPENDENCY EVALUATION AND ALCOHOL TESTING?

Mr. Fort alleges the trial court exceeded its authority by ordering conditions of community custody that were neither crime related nor otherwise otherized by statute. He complains that the facts of the case did not establish that Mr. Fort's alcohol use contributed to his child rape convictions. However, he did not object to these conditions at sentencing. He now alleges that the trial court's order requiring an alcohol evaluation and treatment (if necessary), as well as the trial court's order prohibiting him from going to places where alcohol is the chief commodity for sale, and the ordered alcohol compliance monitoring exceeded the trial court's statutory authority.

The issue actually presented in Mr. Fort's claim is not whether the trial court *could* impose the conditions, but that the imposition of these conditions was *not appropriate* under the facts of this case. Compare

¹⁴ Again, pretending the defendant did not ask for a mistrial.

State v. Coombes, 191 Wn. App. 241, 254, 361 P.3d 270 (2015) (alleged error involving a trial court’s discretion, such as the one raised here, is susceptible to waiver, citing *In re Pers. Restraint of Shale*, 160 Wn.2d 489, 494, 158 P.3d 588 (2007); and *In re Pers. Restraint of Goodwin*, 146 Wn.2d 861, 873-74, 50 P.3d 618 (2002)). Because the issue is whether the trial court abused its discretion under the facts of the case, the failure to object at sentencing in the trial court makes these claims subject to waiver under RAP 2.5(a)(3) because any error is not manifest. Indeed, the trial court only imposed these alcohol conditions after reviewing the original 2006 pre-sentence investigation (PSI),¹⁵ as well as Mr. Fort’s previous alcohol evaluations.¹⁶ The trial court noted in the margin of condition 20 requiring a substance abuse evaluation that DOC was to “see previous eval + follow up.” CP 107. What is contained in the PSI and the other evaluations used by the court seems a mystery as these items have not been included or designated by the defendant in his appeal, contraindicating a

¹⁵ Mr. Fort specifically agreed to the trial court’s consideration of this PSI. RP 446.

¹⁶ The Court:

I did add the language on Number 20 obtain a written substance abuse evaluation. I wrote to see the previous evaluations and follow up on that. It says here that you can't possess or consume any alcohol or go to places where alcohol is the chief commodity for sale; meaning, like bars.

RP 467.

finding of manifest error. *See Stoddard*, 192 Wn. App. 222, 228 (“A third and important formulation for purposes of this appeal is the facts necessary to adjudicate the claimed error must be in the record on appeal. *State v. McFarland*, 127 Wn.2d 322, 333, 899 P.2d 1251 (1995); *State v. Riley*, 121 Wn.2d 22, 31, 846 P.2d 1365 (1993)”). This Court should exercise its discretion to not review the issue on appeal.

Mr. Fort was convicted of crimes occurring in 2003. If the community custody conditions are reviewed, the sentencing provisions of former RCW 9.94A.712(6)(a) (2003)¹⁷ authorize the imposition of the ordered “not consume alcohol” condition. *See* RCW 9.94A.700(5)(d) (2003). It would seem logical that testing is valid as a necessary and effective monitoring tool to ensure Fort complies with the “not consume” condition of his community custody. Moreover, former RCW 9.94A.713(1) (2003) grants authority to the Sentencing Review Board (Board) and DOC to impose additional “rehabilitative” conditions of community custody and

¹⁷ Mr. Fort is subject to community custody, and the court is authorized to impose conditions of community custody. Former RCW 9.94A.712(6)(a) (2003); Former RCW 9.94A.700(4), (5) (2003). The conditions of community custody may include treatment and counseling, services, the prohibition against alcohol consumption, and “crime-related prohibitions.” Former RCW 9.94A.700(5)(c), (d), (e) (2003). A “crime-related prohibition” is defined as “an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted.” Former RCW 9.94A.030(13) (2003).

there is no requirement that these additional rehabilitative conditions must be crime-related. If imposed, the rehabilitative conditions must be based upon a “risk to community safety.” Former RCW 9.94A.713(1) (2003). There was no error in the trial court’s Community Custody/Placement conditions. Here, unlike in *State v. Jones*, 118 Wn. App. 199, 76 P.3d 258 (2003), a substance abuse evaluation is contingent upon an assessment by the sexual deviancy treatment provider or the CCO that such an evaluation is appropriate as a rehabilitative condition. The trial court had the authority to impose these conditions and the lack of objection at the trial court level, coupled with the inadequate record on review, would militate against review of these community placement conditions.

E. UNLESS THE DEFENDANT’S FINANCIAL CIRCUMSTANCES HAVE IMPROVED SINCE THE TRIAL COURT’S ORDER OF INDIGENCY WAS ENTERED, RAP 14.2 PROVIDES THAT THE PRESUMPTION OF INDIGENCY REMAINS IN EFFECT THROUGHOUT HIS APPEAL.

Effective January 31, 2017, RAP 14.2 reads:

A commissioner or clerk of the appellate court will award costs to the party that substantially prevails on review, unless the appellate court directs otherwise in its decision terminating review, or unless the commissioner or clerk determines an adult offender does not have the current or likely future ability to pay such costs. *When the trial court has entered an order that an offender is indigent for purposes of appeal, that finding of indigency remains in effect, pursuant to RAP 15.2(f) unless the commissioner or clerk determines by a preponderance of the evidence that the offender’s financial circumstances have significantly*

improved since the last determination of indigency. The commissioner or clerk may consider any evidence offered to determine the individual's current or future ability to pay. If there is no substantially prevailing party on review, the commissioner or clerk will not award costs to any party. An award of costs will specify the party who must pay the award. In a criminal case involving an indigent juvenile or adult offender, an award of costs will apportion the money owed between the county and the State. A party who is a nominal party only will not be awarded costs and will not be required to pay costs. A "nominal party" is one who is named but has no real interest in the controversy.

(Emphasis added.)

The trial court determined the defendant to be indigent for purposes of his appeal on June 15, 2017, based on a declaration provided by the defendant. CP 124-27. The State is unaware of any change in the defendant's circumstances. Should the defendant's appeal be unsuccessful, the Court should only impose appellate costs in conformity with RAP 14.2 as amended.

V. CONCLUSION

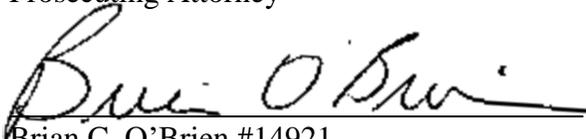
The defendant's double jeopardy claim fails because the defendant *moved* the trial court in writing for an order declaring a mistrial, and, even had the defendant not so moved, the trial court did not abuse its discretion when it relied on the verbal representations of the presiding juror and the jury's note informing the court that it was "hung" and could not agree as a jury, even if given more time.

The community custody conditions are not properly subject to review where the imposition of these conditions involves the discretion of the trial court, and where there was no objection made in the lower court to the imposition of these conditions, and the information relied upon by the trial was not made part of the record on appeal.

The judgment and sentence should be affirmed.

Dated this 9 day of April, 2018.

LAWRENCE H. HASKELL
Prosecuting Attorney

A handwritten signature in black ink, appearing to read "Brian O'Brien", written over a horizontal line.

Brian C. O'Brien #14921
Deputy Prosecuting Attorney
Attorney for Respondent

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

STATE OF WASHINGTON,

Respondent,

v.

DALLIN FORT,

Appellant.

NO. 35412-1-III

CERTIFICATE OF MAILING

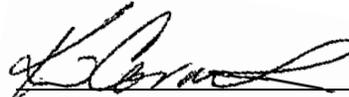
I certify under penalty of perjury under the laws of the State of Washington, that on April 9, 2018, I e-mailed a copy of the Brief of Respondent in this matter, pursuant to the parties' agreement, to:

Skylar Brett
skylarbrett@gmail.com,

Lise Ellner
liseellnerlaw@comcast.net

4/9/2018
(Date)

Spokane, WA
(Place)


(Signature)

SPOKANE COUNTY PROSECUTOR

April 09, 2018 - 9:36 AM

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Appellate Court Case Title: State of Washington v. Dallin David Fort
Superior Court Case Number: 05-1-00950-1

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