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COURT OF APPEALS  
STATE OF WASHINGTON  
DIVISION III

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**STATE OF WASHINGTON,**

Plaintiff/Respondent,

V.

**TIMOTHY BRYANT BLOCHER,**

Defendant/Appellant.

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**BRIEF OF APPELLANT**

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## **ASSIGNMENTS OF ERROR**

1. The State failed to prove, beyond a reasonable doubt, each and every element of the offense of bail jumping as charged in Counts 5 and 6 of the Amended Information. (CP 168)

2. The two (2) counts of bail jumping constitute the same criminal conduct since they occurred at the same time and place, the intent was the same, and the victim was the public at large.

3. The two (2) bail jumping convictions violate the double-jeopardy provisions of the Fifth Amendment to the United States Constitution and Const. art. I, § 9.

4. Timothy Bryant Blocher did not receive effective assistance of counsel as guaranteed by the Sixth Amendment to the United States Constitution and Const. art. I, § 22 insofar as the bail jumping charges are concerned.

5. Count 1 of the Amended Information charging Mr. Blocher with violation of a no-contact order does not constitute a crime.

6. Alternatively, if Count 1 is a crime, it is the same offense as Count 2 and amounts to a violation of the prohibition against double-jeopardy under the Fifth Amendment to the United States Constitution and Const. art. I, § 9.

7. The trial court erred when it required the sentence in this case to run consecutive to Mr. Blocher's convictions under Kittitas County Number 16 1 00102 4. (Appendix "A")

## ISSUES RELATING TO ASSIGNMENTS OF ERROR

1. Did the State establish the knowledge element of bail jumping beyond a reasonable doubt, when it argued an inference that since Mr. Blocher's attorney knew the scheduled date he must know it, even though no notice was provided to him?

2. Do the two (2) bail jumping convictions constitute double-jeopardy violating Mr. Blocher's constitutional rights under the Fifth Amendment to the United States Constitution and Const. art. I, § 9, or, alternatively, do they constitute the same criminal conduct?

3. A. Was Mr. Blocher's defense counsel ineffective as to the manner in which the defenses to the bail jumping charge were raised? And if so, was Mr. Blocher prejudiced by his attorney's actions?

B. Was defense counsel ineffective in not arguing same criminal conduct for the bail jumping convictions?

C. Was defense counsel ineffective in not arguing double-jeopardy on the bail jumping convictions?

4. Does Count 1, involving the creation of a Facebook (FB) group and adding a person's name to it, constitute a violation of a no-contact order?

5. If Count 1 constitutes a crime, then do Counts 1 and 2, which both occurred on August 3, 2016, violate the double-jeopardy provisions of the Fifth Amendment to the United States Constitution and Const. art. I, § 9?

6. Did the trial court err when it applied RCW 9.94A.589(3) to Mr. Blocher's convictions requiring consecutive sentences under the current case and Kittitas County Number 16 1 00102 4?

## STATEMENT OF THE CASE

Jeanne Malinosky and Timothy Bryant Blocher had a prior romantic relationship. The relationship initially started as a friendship when the two of them were working in a band. It ended in November of 2015 when Ms. Malinosky obtained a no-contact order against Mr. Blocher. (RP 280, ll. 2-3; ll. 10-15; RP 281, ll. 10-23)

Mr. Blocher violated the no-contact order on two (2) occasions after its entry. (RP 282, ll. 10-15)

Both Ms. Malinosky and Mr. Blocher were active on Facebook. A group known as “Hope You Guys Are Alright” was originally created by Don Glenn, a friend of theirs, in July of 2014. Mr. Blocher began posting to the group on August 3, 2016. Ms. Malinosky saw Mr. Blocher’s posts. Mr. Glenn left the group on August 4, 2016. (RP 286, ll. 1-14; RP 288, ll. 6-12; RP 314, ll. 16-22; RP 317, l. 24 to RP 318, l. 14; RP 319, ll. 3-7)

Mr. Blocher’s post on August 3, 2016 contained song lyrics which he had originally written for Ms. Malinosky. Mr. Blocher asserted that the lyrics were posted for Mr. Glenn to consider possibly recording them. (RP 288, ll. 16-24; RP 426, l. 14 to RP 427, l. 2; ll. 5-19)

Mr. Blocher posted “Miss Ya” on August 4, 2016. He posted a thumbs up on August 5, 2016. Both posts were to the group “Hope You Guys Are Alright”. (RP 291, ll. 12-25)

Mr. Blocher maintained that the “Miss Ya” post was also to Mr. Glenn. The thumbs up was accidental when he was posting to his cellphone. (RP 431, ll. 8-9; RP 431, l. 22 to RP 432, l. 11)

An Information was filed on August 19, 2016 charging Mr. Blocher with four (4) counts of violation of a no-contact order (domestic violence). (CP 1)

Mr. Blocher was on bench warrant status at the time the Information was filed. He had another pending case in Kittitas County under Cause Number 16 1 00102 4. He was arrested on the bench warrant and his arraignment on the current case was held on October 26, 2016. Bail was set at \$75,000.00. (RP 5, l. 6 to RP 6, l. 16; CP 5)

Mr. Blocher’s trial was delayed for a variety of reasons. The reasons included his being represented by six (6) different attorneys; several hospitalizations; time-for-trial waivers; and the issuance of a subsequent bench warrant. (RP 41, ll. 9-15; RP 45, ll. 11-13; RP 47, ll. 12-18; RP 48, ll. 1-6; RP 94, ll. 8-15; RP 96, ll. 12-17; RP 101, ll. 2-7; RP 122, ll. 7-11; RP 211, ll. 2-4; CP 6; CP 12; CP 13; CP 17; CP 31; CP 33; CP 34; CP 36; CP 40; CP 43; CP 52; CP 55; CP 108; CP 130; CP 142; CP 159; CP 161; CP 163; CP 164)

On December 22, 2017 a bail hearing was conducted to determine whether or not Mr. Blocher should be granted a release on personal recognizance due to his medical condition. Alternatively, he requested a transfer to either the University of Washington Hospital or Harborview. The motion was granted. An order releasing him on his own recognizance was entered. (RP 140, l. 12 to RP 142, l. 4; RP 149, ll. 3-10; RP 156, ll. 3-8; RP 167, l. 1; CP 138)

However, Mr. Blocher continued to be held on Lower Kittitas County District Court cases. A scheduling order was entered on January 2, 2018 setting his trial for February 6,

2018. A status hearing was conducted on February 5, 2018. The trial court scheduled motions to be heard on February 26, 2018. (RP 174, ll. 16-19; RP 183, ll. 3-10; CP 142)

Mr. Blocher sent a letter to the trial court concerning time-for-trial and the fact that he was still being held in custody. It was filed on February 21, 2018 (CP 144)

Mr. Blocher's jury trial in Kittitas County Number 16 1 00102 4 resulted in guilty verdicts on February 28, 2018.

The trial court set Mr. Blocher's sentencing hearing for March 5, 2018 at 1:30 p.m. Mr. Blocher's 16 1 00215 2 case was also to be called that date. (CP 153; Appendix "B")

Sometime between February 28 and March 5 Lower Kittitas County District Court released Mr. Blocher on a furlough to Harborview. The prosecuting attorney's opening argument indicated that Mr. Blocher was released to Harborview on March 2, 2018. Mr. Blocher's attorney advised the Court that Mr. Blocher was at Harborview on the scheduled March 5, 2018 hearing date. The hearings were continued to March 26, 2018. (RP 186, ll. 9-18; RP 189, ll. 7-8; RP 271, ll. 7-15; RP 375, ll. 9-23; Exhibit 111)

Lindsey Buntin, Mr. Blocher's probation officer in the Lower Kittitas County District Court cases, testified that he was in jail at the beginning of March 2018 but was then released to the hospital. He was to contact her within twenty-four (24) hours from the time he was released from the hospital with a required reappearace date on April 5, 2018. Mr. Blocher never reported back to her following release. (RP 373, l. 25 to RP 374, l. 10; RP 374, l. 24 to RP 375, l. 4; RP 376, ll. 10-12)

Mr. Blocher's attorney appeared on March 26, 2018 for the scheduled hearings. He advised the Court that Mr. Blocher was still hospitalized at Harborview. The prosecuting attorney requested a bench warrant. The trial court granted the prosecutor's request and a

bench warrant was issued on March 28, 2018. (RP 193, ll. 15-17; RP 194, ll. 14-15; CP 154)

The bench warrant was quashed on August 23, 2018. Mr. Blocher appeared. His sentencing hearing in Kittitas County Number 16 1 00102 4 was set for August 31, 2018. He remained in custody. A jury trial was set for October 2, 2018 on Cause Number 16 1 00215 2. (RP 197, ll. 17-19; RP 208, ll. 1-3; ll. 12-13; ll. 21-22; CP 157)

An Amended Information was filed on October 5, 2018. Two (2) counts of bail jumping were added based upon Mr. Blocher's non-appearance in Cause Numbers 16 1 00102 4 and 16 1 00215 2 on March 26, 2018. Mr. Blocher was arraigned the same date. (CP 168)

Jan McElroy, a Kittitas County Deputy Clerk testified concerning Clerk's minutes for March 5, 2018 and March 26, 2018 in Mr. Blocher's respective cases. The Clerk's minutes and an order were entered as Exhibits 4, 5 and 14. (RP 377, ll. 14-17; RP 378, ll. 13-22; RP 381, ll. 3-13; RP 382, ll. 8-25; Appendices "C," "D," and "E")

The documentation presented at trial did not indicate if Mr. Blocher was present on March 5, 2018. There was no record that he was advised of the March 26 hearing date. (RP 392, ll. 10-25; RP 395, ll. 3-5)

Mr. Blocher testified at trial. Neither defense counsel nor the prosecuting attorney questioned him concerning his whereabouts on March 5 and March 26, 2018.

During closing argument the prosecuting attorney elected the particular acts constituting the no-contact order violations in Counts 1 through 4. Additionally, the prosecuting attorney argued that the bail jumping counts were based upon the Lower Kittitas County District Court furlough order and non-contact with his probation officer by Mr.

Blocher. (RP 501, ll. 5-7; ll. 17-20; RP 502, ll. 7-8; ll. 15-16; RP 507, l. 20 to RP 509, l. 21)

The jury found Mr. Blocher guilty of Counts 1, 2, 3, 5 and 6. They answered the special interrogatories in the negative. He was found not guilty on Count 4. (RP 531, ll. 3-5; l. 9; ll. 13-19; CP 252; CP 253; CP 254; CP 255; CP 256)

Defense counsel orally moved to arrest judgment on the bail jumping counts. The trial court deferred ruling until the sentencing hearing. (RP 537, ll. 8-18)

Prior to being sentenced the State responded to the motion to arrest judgment on the bail jumping counts. The prosecuting attorney argued that there was a reasonable inference that Mr. Blocher knew about the court dates because his attorney was present at the time when they were scheduled. The trial court agreed. (RP 544, ll. 9-20)

The prosecuting attorney also argued that Mr. Blocher's failure to appear did not have to be on an exact date; but only at some subsequent time. Again the trial court agreed. (RP 551, ll. 2-16)

Defense counsel responded that he would have raised the affirmative defense under RCW 9A.76.170(2) if he had known that such an inference applied. (RP 551, l. 17 to RP 552, l. 4)

The trial court relied on the prosecutor's argument when it ruled that Mr. Blocher had knowledge of the court dates retroactive to February 28 when the order was entered for his appearance on March 5, 2018. (RP 552, ll. 8-24; RP 553, ll. 11-17)

Judgment and Sentence was entered on October 19, 2018. Mr. Blocher was sentenced to forty-one (41) months on each of the no-contact order violations and twelve (12) months each on the respective bail jumping charges. Twelve (12) months of community

custody was imposed on Counts 1 through 3. The sentences were ordered to run concurrently. The trial court also orally directed that the sentence in 16 1 00215 2 run consecutive to the sentence in 16 1 00102 4. It did not put the ruling in the Judgment and Sentence. (RP 571, l. 23 to RP 572, l. 2; CP 261)

Mr. Blocher filed his Notice of Appeal the same date and an order of indigency was entered. (CP 272; CP 274)

### **SUMMARY OF ARGUMENT**

The State's reliance on the sole inference that Mr. Blocher had notice of the March 26, 2018 court date since his attorney knew of it does not establish the knowledge element of bail jumping beyond a reasonable doubt.

The State's claim that Mr. Blocher did not need to know the exact date for his court appearance is without merit and does not support the bail jumping convictions.

Alternatively, the two (2) bail jumping convictions constitute the same criminal conduct as well as violating the constitutional prohibition against double jeopardy

Defense counsel was ineffective in his representation of Mr. Blocher on the bail jumping counts. The failure to raise the affirmative defense of uncontrollable circumstances deprived him of a fair trial as well as his constitutional rights to effective assistance of counsel.

Creating a FB group does not constitute a violation of a no-contact order. The FB group needs to be created before a subsequent post can violate the order.

The no-contact order convictions on Counts 1 and 2 violate the prohibition against double-jeopardy if Count 1 is, in fact, a crime. They are also the same criminal conduct.

The trial court improperly sentenced Mr. Blocher to consecutive terms on his two (2) cases. RCW 9.94A.589(3) is not applicable under the facts and circumstances.

## **ARGUMENT**

### **I. BAIL JUMPING**

#### **A. Sufficiency of the Evidence**

Defense counsel's motion to arrest judgment on Counts 5 and 6 should have been granted. The State failed to prove, beyond a reasonable doubt, the element of knowledge as to each count.

Bail jumping is defined in RCW 9A.76.170(1) as follows:

Any person having been released by court order or admitted to bail **with knowledge** of the requirement of a subsequent personal appearance before any court of this state, or of the requirement to report to a correctional facility for service of sentence, and who fails to appear or who fails to surrender for service of sentence as required is guilty of bail jumping.

(Emphasis supplied.)

The State presented no direct evidence that Mr. Blocher was aware of the March 26 required appearance. He was present on February 28 when an order was entered requiring an appearance on March 5, 2018. However, he was then hospitalized. His attorney advised the Court on March 5 of that hospitalization. The Court continued the hearing to March 26.

The State presented no evidence that Mr. Blocher's attorney informed him of the March 26 date. Indeed, Mr. Blocher was still hospitalized on March 26.

The State relied upon an inference. The inference is not a reasonable inference under the facts and circumstances of Mr. Blocher's case. The inference was that since his attorney knew of the March 26 date he also knew of it. The inference utilized by the State is an impermissible inference. The trial court erred when it agreed with the State.

Mr. Blocher recognizes that the burden of proof is on him to establish that the State failed to prove a necessary element of the offense.

“... [T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any rational trier of fact* could have found the essential elements of the crime *beyond a reasonable doubt*.” *Jackson v. Virginia*, 443 U.S. 307, 99 Sup. Ct. 2781, 61 L. Ed.2d 560 (1979).

*State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980)

Mr. Blocher knew that he had a March 5, 2018 court date for sentencing under Kittitas County Cause Number 16 1 00102 4. The order setting that date also indicated that his case under Kittitas County Number 16 1 00215 2 would be called for an update.

Since Mr. Blocher was hospitalized on March 5, and was still hospitalized on March 26, no bench warrant should have been issued for his arrest.

RCW 9A.76.170(2) states:

It is an affirmative defense to a prosecution under this section that uncontrollable circumstances prevented the person from appearing or surrendering, and that the person did not contribute to the creation of such circumstances in reckless disregard of the requirement to appear or surrender, and that the person appeared or surrendered as soon as such circumstances ceased to exist.

Mr. Blocher's hospitalization was through no fault of his own. There was no opportunity for him to appear between March 5 and March 26, 2018.

Moreover, the State's argument that the charges were based upon his non-compliance with a furlough order out of Lower Kittitas County District Court further undermined the defense argument that the State failed to prove the knowledge element beyond a reasonable doubt. The Lower Kittitas County District Court order did not require Mr. Blocher to appear on either March 5 or March 26. It required his appearance on April 5, 2018.

To convict a defendant of bail jumping, the State must prove beyond a reasonable doubt that the defendant ““(1) was held for, charged with, or convicted of a particular crime; (2) was released by court order or admitted to bail with the requirement of a subsequent personal appearance; and, (3) **knowingly failed to appear as required.**” *State v. Williams*, 162 Wn.2d 177, 183-84, 170 P.3d 30 (2007) (emphasis omitted) (*quoting State v. Pope*, 100 Wn. App. 624, 627, 999 P.2d 51 (2000)).

*State v. Hart*, 195 Wn. App. 449, 456, 381 P.3d 142 (2016) (Emphasis supplied.)

QUERY: What proof did the State present to the jury that Mr. Blocher knew he had to appear in court on March 26, 2018?

ANSWER: None.

The State's further argument that Mr. Blocher did not need to know the specific date that he was required to reappear is totally without merit.

At trial, the State maintained that as long as Cardwell knew that he would have to appear at some time in the future, it did not have to prove that he knew about the December 14, 2005 court hearing date. We disagree. Not only does the record establish that at the time of his release Cardwell's obligation to appear was contingent on the State's filing criminal charges before December 7, 2005, a future event that might not occur, there is no evidence that he had been given notice of the required court date. **In order to meet the knowledge requirement of the statute, the State is required to prove that a defendant has been given notice of the required court dates.** *State v. Fredrick*, 123 Wn. App. 347, 353, 97 P.3d 47 (2004).

*State v. Cardwell*, 155 Wn. App. 41, 47, 226 P.3d 243 (2010) (Emphasis supplied.)

The State's argument to the trial court was that because Mr. Blocher's attorney knew of the March 26 court date, then it can be inferred that he knew of it. Again, the State's argument is without merit. The State relied upon that inference as the only evidence of potential notice to Mr. Blocher of the March 26 date.

“When an inference is only part of the prosecution's proof supporting an element of the crime, due process requires the presumed fact to flow ‘more likely than not’ from proof of the basic fact.” *State v. Hanna*, 123 Wn.2d 704, 710, 871 P.2d 135, *cert. denied*, 513 U.S. 919, 115 S. Ct. 299, 130 L. Ed.2d 212 (1994) (*quoting County Court v. Allen*, 442 U.S. 140, 165, 99 S. Ct. 2213, 60 L. Ed.2d 777 (1979)). Yet, if the inference described in the instruction is the only basis, or an alternate basis, for finding an element of the crime charged, then the standard of proof is “reasonable doubt,” rather than “more likely than not.” *State v. Brunson*, 128 Wn.2d 98, 108-09, 905 P.2d 346 (1995) (*citing State v. Delmarter*, 68 Wn.2d 770, 784, 845 P.2d 1340 (1993)).

*State v. Bryant*, 89 Wn. App. 857, 872, 950 P.2d 1004 (1998)

Under the facts and circumstances of Mr. Blocher's case the State failed to prove, beyond a reasonable doubt, the knowledge element of the offense(s) of bail jumping.

### **B. Double-jeopardy**

The Fifth Amendment to the United States Constitution provides, in part: “No person shall ... be subject for the same offense to be twice put in jeopardy of life or limb ....”

Const. art. I, § 9 states, in part: “No person shall be ... twice put in jeopardy for the same offense.”

If the Court does not agree with Mr. Blocher's sufficiency of the evidence analysis, then he contends that his constitutional rights are violated by the two (2) convictions. If an offense occurred, a single offense occurred. The alleged offense date was March 26, 2018.

Mr. Blocher had a required appearance on March 26, 2018. There was no evidence that he had any notice that he needed to appear that date. Because two (2) cases were scheduled for the same date does not mean that two (2) violations occurred. A single required appearance on multiple cases should not be broken down into multiple offenses.

The Washington Constitution provides that “[n]o person shall be ... twice put in jeopardy for the same offense.” CONST. ART. I, § 9. United States Constitution amendment V “provides the same scope of protection” as the state constitution. *State v. Sutherby*, 165 Wn.2d 870, 878, 204 P.3d 916 (2009) (citing *State v. Gocken*, 127 Wn.2d 95, 107, 896 P.2d 1267 (1995)). The standard of review for double-jeopardy claims is *de novo*. *State v. Freeman*, 153 Wn.2d 765, 770, 108 P.3d 753 (2005).

“The State may bring ... multiple charges arising from the same criminal conduct in a single proceeding” without offending double-jeopardy. *Id.* However, double-jeopardy bars multiple punishments for the same offense. *In re Pers. Restraint of Borrero*, 161 Wn.2d 532, 536, 167 P.3d 1106 (2007). Because the legislature has authority to define offenses, ““a court weighing a double-jeopardy challenge must determine whether, in light of legislative intent, the charged crimes constitute the same offense.”” *State v. Kier*, 164 Wn.2d 798, 803-04, 194 P.3d 212 (2008) (quoting *Freeman*, 153 Wn.2d at 771 (quoting *In re Pers. Restraint of Orange*, 152 Wn.2d 795, 815, 100 P.3d 291 (2004))).

This court recently explained the framework for determining legislative intent in *Kier*:

We first consider express or implicit legislative intent based on the criminal statutes involved. [*State v. Calle*, 125 Wn.2d 769, 776, 888 P.2d 155 (1995).] If the legislative intent is unclear, we may then turn to the “same evidence” *Blockburger* test, which asks

if the crimes are the same in law and in fact. *Calle*, 125 Wn.2d at 777-78; *Blockburger v. United States*, 284 U.S. 299, 304, 52 S. Ct. 180, 76 L. Ed. 306 (1932). Third, if applicable, the merger doctrine may help determine legislative intent, where the degree of one offense is elevated by conduct constituting a separate offense. [*State v.*] *Vladovic*, 94 Wn.2d [413,] 419 [, 662 P.2d 853 (1983)]. We have also recognized that, even if two convictions would appear to merge on an abstract level under this analysis, they may be punished separately if the defendant's particular conduct demonstrates an independent purpose or effect of each. *Freeman*, 153 Wn.2d at 773; *State v. Johnson*, 92 Wn.2d 671, 680, 600 P.2d 1249 (1979).

*Id.* at 804.

*State v. S.S.Y.*, 170 Wn.2d 322, 328-29, 241 P.3d 781 (2010)

Under the facts and circumstances of Mr. Blocher's case the State failed to establish any independent purpose for Mr. Blocher's nonappearance for the two (2) cases that were to be heard on March 26, 2018. The trial court included both cases on the same order when it was entered on March 5, 2018.

The report of proceedings, including the numerous appearances that were required between arraignment and trial, are also indicative of the fact that both cases were being scheduled together on a regular basis.

Washington uses the "same evidence" test to determine whether multiple punishments place a defendant in double-jeopardy. Under this test, double-jeopardy occurs where the offenses are identical both in fact and in law.

*State v. Molina*, 83 Wn. App. 144, 146, 920 P.2d 1228 (1996)

The facts as to Mr. Blocher's nonappearance are identical. The dates that he was required to appear are identical. Even though two (2) cases are involved, their history is such that they were being handled concurrently.

Mr. Blocher was only required to appear on the one (1) date for each of those cases.

The *Molina* case involved two (2) convictions for first degree robbery. The Court noted at 147:

Molina took their employer's property from two employees, but took it only once. Therefore, the State relied on the same fact - the single taking - to prove both crimes.

Mr. Blocher sees no difference between his case and the underlying facts of the *Molina* case.

Mr. Blocher recognizes that the State may make an argument involving the unit of prosecution. It is his position that even under a unit of prosecution analysis double-jeopardy still applies.

Double-jeopardy is violated when a person is convicted multiple times for the same offense. *State v. Adel*, 136 Wn.2d 629, 632, 965 P.2d 1072 (1998). When the convictions are under the same statute, the court must ask what "unit of prosecution" the legislature intended as the punishable act under the specific criminal statute. *Id.* Both constitutions protect a defendant from being convicted more than once under the same statute if the defendant commits only one unit of the crime. *State v. Tvedt*, 153 Wn.2d 705, 710, 107 P.3d 728 (2005) (quoting *State v. Westling*, 145 Wn.2d 607, 610, 40 P.3d 669 (2002)). Thus, while a unit of prosecution inquiry is "one of constitutional magnitude on double-jeopardy grounds, the issue ultimately revolves around a question of statutory interpretation and legislative intent." *Adel*, 136 Wn.2d at 634.

*State v. Barbee*, 187 Wn.2d 375, 382, 386 P.3d 729 (2017)

Mr. Blocher asserts that when there is a required appearance on a single date for multiple cases only a single offense occurs if the individual fails to appear that date. There is a same date and time question. There is also a same intent question in using the unit of prosecution analysis.

If, however, the legislature failed to denote the unit of prosecution or if its intent is unclear, the rule of lenity requires any ambiguity to be resolved against turning a single transaction into multiple offenses. *Tvedt*, 153 Wn.2d at 711.

*State v. Barbee*, *supra* 383

A careful reading of RCW 9A.76.170(1) does not indicate that the Legislature premised the definition on a unit of prosecution.

Finally, as recognized in *State v. Hall*, 168 Wn.2d 726, 731, 230 P.3d 1048 (2010) “a unit of prosecution can be either an act or a course of conduct. *Tvedt*, 153 Wn.2d at 710; *see also Ex parte Snow*, 120 U.S. 274, 286, 7 Sup. Ct. 556, 30 L. Ed. 658 (1887).”

Again, a single act occurred. There was no course of conduct involved with the appearance date of March 26, 2018.

### **C. Same Criminal Conduct**

RCW 9.94A.589(1)(a) provides, in part:

Except as provided in (b), (c), or (d) of this subsection, whenever a person is to be sentenced for two or more current offenses, the sentence range for each current offense shall be determined by using all other current and prior convictions as if they were prior convictions for the purpose of the offender score: **PROVIDED**, That if the court enters a finding that some or all of the current offenses encompass the same criminal conduct then those current offenses shall be counted as one crime. Sentences imposed under this subsection shall be served concurrently. ...

If the Court determines that the bail jumping convictions remain valid; then, and in that event, Mr. Blocher contends that they constitute the same criminal conduct.

RCW 9A.76.170(1) is contained in the “Obstructing Governmental Operation” section of the criminal code. Thus, a violation of this statute is a public offense and the victim is the public.

The alleged bail jumping in Mr. Blocher's case occurred at the same time and place (March 26, 2018 at the Kittitas County Superior Court). Moreover, it cannot be argued that there was any different intent. The nonappearance in two (2) cases scheduled for the same date constitutes simultaneous offenses which fall within the parameters of the same criminal conduct test.

As announced in *State v. Taylor*, 90 Wn. App. 312, 322, 950 P.2d 526 (1998)

... [B]ecause the assault and kidnapping were committed simultaneously, it is not possible to find a new intent to commit a second crime after the completion of the first crime. ... Thus, this record supports only a finding that the offenses were part of the same criminal conduct and Taylor is entitled to have the two offenses counted as one crime. ...

There can be no doubt that the alleged bail jumping offenses were committed simultaneously.

There can be no doubt that they constitute a single act.

In *Vike* [*State v. Vike*, 125 Wn.2d 407, 885 P.2d 824 (1994)] ... [w]e stated "the furtherance test lends itself to sequentially committed crimes. Its application to crimes occurring literally at the same time is limited." *Vike*, 125 Wn.2d at 412. ...

Porter's sequential drug sales occurred as closely in time as they could without being simultaneous. The sales were part of a continuous, uninterrupted sequence of conduct over a very short period of time.

*State v. Porter*, 133 Wn.2d 177, 183, 942 P.2d 974 (1997)

Mr. Blocher's nonappearance on March 26, 2018 is comparable to the drug sales that occurred in the *Porter* case. The same criminal conduct analysis is fulfilled.

## II. INEFFECTIVE ASSISTANCE OF COUNSEL

To demonstrate ineffective assistance of counsel, a defendant must make two showings: (1) defense counsel's representation was deficient, *i.e.*, it fell below an objective standard of reasonableness based on consideration of all of the circumstances; and (2) defense counsel's deficient representation prejudiced the defendant, *i.e.*, there is a reasonable probability that, except for counsel's unprofessional errors, the result of the proceeding would have been different.

*State v. McFarland*, 127 Wn.2d 322, 334-35, 899 P.2d 1251 (1995)

Mr. Blocher contends that defense counsel's performance was deficient in the following respects:

1. Failure to present a defense under the provisions of RCW 9A.76.170(2);
2. Failure to argue double-jeopardy on the two (2) bail jumping counts; and
3. Failure to argue same criminal conduct on the bail jumping convictions at the time of sentencing.

The Sixth Amendment to the United States Constitution provides, in part: "In all criminal prosecutions, the accused shall enjoy the right ... to have the assistance of counsel for his defense."

Const. art. I, § 22 provides, in part: "In criminal prosecutions the accused shall have the right to appear and defend in person, or by counsel ...."

The foregoing constitutional provisions require counsel to be effective in his/her representation of a client.

### A. Available Defenses

Defense counsel recognized that he had available defenses in connection with the bail jumping charges. However, defense counsel only raised one of those defenses. The

question becomes whether or not it was a strategic and/or tactical decision alleviating the resulting prejudice to Mr. Blocher.

Mr. Blocher had two (2) available defenses: (1) lack of knowledge; and (2) uncontrollable circumstances.

Defense counsel decided not to present the affirmative defense of uncontrollable circumstances. It is clear that Mr. Blocher was hospitalized between March 2 and March 26 when his appearances were required. A reasonable attorney would have secured the necessary documentation (medical records) to support the affirmative defense.

The fact is that defense counsel asked no questions of Mr. Blocher concerning his hospitalization during the critical time frame. The prosecuting attorney did not present any evidence as to Mr. Blocher's whereabouts, with the exception of the court minutes containing his attorney's statements.

In order to make the adversarial process meaningful, defense counsel has a duty to investigate **all reasonable lines of defense**. Even if no viable defense theory is available, the Sixth Amendment still requires counsel to "hold the prosecution to its heavy burden of proof beyond a reasonable doubt." [*United States v. Cronin*, 466 U.S. 648, 656 n. 19, 104 S. Ct. 2039, 80 L. Ed.2d 657 (1984)]. ...

...

Generally, choosing a particular defense is a strategic decision "for which there is no correct answer, but only second guesses." [*Hendricks v. Calderon*, 70 F.3d 1032, 1041 (9<sup>th</sup> Cir. 1995)].

*Pers. Restraint of Davis*, 152 Wn.2d 647, 744-45, 101 P.3d 1 (2004)

Mr. Blocher asserts that both defenses should have been presented under the facts and circumstances of his case. It is obvious that his lack of knowledge was one defense. It is also obvious that uncontrollable circumstances existed.

The jury was not given the opportunity to consider an uncontrollable circumstances defense. They knew he had been hospitalized; but had no knowledge that the affirmative defense existed.

Lack of knowledge, combined with uncontrollable circumstances, may well have swayed the jury in its decision. It is not unreasonable to present conflicting defenses. *See: State v. O'Connell*, 137 Wn. App. 81, 94, 152 P.3d 349 (2007).

### **B. Double-jeopardy**

Mr. Blocher incorporates the double-jeopardy argument, *infra.*, in support of his contention that defense counsel was ineffective when he failed to argue double-jeopardy at sentencing.

Defense counsel's failure to argue double-jeopardy at sentencing falls below the objective standard of reasonableness for attorneys in the State of Washington when considering all of the circumstances involved with Mr. Blocher's case.

"Reasonable conduct for an attorney includes carrying out the duty to research the relevant law." *State v. Kylo*, 166 Wn.2d 856, 862, 215 P.3d 177 (2009).

### **C. Same Criminal Conduct**

Mr. Blocher incorporates the same criminal conduct argument, *infra.*, in support of his contention that defense counsel was ineffective when he failed to argue same criminal conduct at sentencing.

“The failure to make a same criminal conduct argument is prejudicial if the defendant shows that with the argument the sentence would have differed.” *State v. Munoz-Rivera*, 190 Wn. App. 870, 887, 361 P.3d 182 (2015), citing *State v. Beasley*, 126 Wn. App. 670, 686, 109 P.3d 849 (2005).

Same criminal conduct involving multiple offenses has the benefit of reducing the offender score at sentencing. A lower offender score generally means a lesser sentence. Lack of a same criminal conduct argument increases the sentence and prejudices the defendant.

### **III. COUNTS 1 AND 2 - NO-CONTACT ORDERS**

#### **A. Facebook**

Count 1 of the Amended Information states, in part:

He, the said, TIMOTHY BRYANT BLOCHER, in the State of Washington, on or about August 3, 2016, violated the provisions of a valid protection order ... by adding Ms. Malinosky to group ....

Count 2 of the Amended Information states, in part:

He, the said, TIMOTHY BRYANT BLOCHER, in the State of Washington, on or about August 3, 2016, violated the provision (s) of a valid protection order ... by posting song lyrics ....

The other two (2) counts of the Amended Information pertain to incidents on August 4 and August 5, 2016.

Initially, it is Mr. Blocher’s position that Count 1 does not charge an offense. Adding a person’s name to a FB group does not indicate that there has been a communication between the two (2) individuals.

RCW 26.50.110(1)(a) states, in part:

Whenever an order is granted under this chapter, Chapter ... 10.99, 26.09, 26.10, \*26.26 ... and the respondent or the person to be restrained knows of the order, a violation of any of the following provisions of the order is a gross misdemeanor, except as provided in subsections (4) and (5) of this section:

- (i) The restraint provisions prohibiting ... contact with a protected party ....

Due to the fact that Mr. Blocher had two (2) prior convictions his current no-contact order charges are felonies. *See:* RCW 26.50.110(5).

The group “Hope You Guys Are Alright” was originally created by Don Glenn in 2014. Mr. Blocher’s post was on August 3, 2016. Mr. Glenn then withdrew from the group. The remaining members of the group were Ms. Malinosky and Mr. Blocher.

Even if Mr. Blocher created a new group, with the same name, on August 3, 2016, the addition of Ms. Malinosky’s name to the group did not result in a violation of the restraint provisions.

Even if it is assumed that a violation occurred the first communication was the posting of the song lyrics also on August 3, 2016.

QUERY: Was there a single contact or two (2) contacts?

ANSWER: There could only be one contact because the posting of the song lyrics to the group constituted the communication for the alleged violation of the no-contact order.

The communication of the song lyrics could not have occurred in the absence of Ms. Malinosky’s inclusion in the group. The critical factor is the posting of the song lyrics; not the existence of the group.

## **B. Double-jeopardy**

Mr. Blocher further contends that his constitutional rights under the Fifth Amendment to the United States Constitution and Const. art. I, § 9 were violated as Counts 1 and 2 amount to double-jeopardy.

The creation of the group and the posting of the song lyrics are so interrelated as to constitute a single offense. Multiple punishments for that offense are prohibited under the foregoing constitutional provisions. *See: ¶ I.B., infra.*

Moreover, in addition to double-jeopardy, Counts 1 and 2 constitute the same criminal conduct since the alleged creation of the group furthered the posting of the song lyrics.

Ms. Malinosky is the alleged victim. An intent to communicate can be presumed. Time and place were sequential. *See: ¶ I.C., infra.*

## **IV. SENTENCING (RCW 9.94A.589(3) ERROR! BOOKMARK NOT DEFINED.)**

The following exchange occurred between the trial court and the prosecuting attorney at the sentencing hearing:

THE COURT: No, that's fine. That's good. We want to do it as right as we possibly can. Thank you. I have one question for Ms. Hammond. You -- when you were presenting your argument a moment ago you made it sound like I can't impose -- that there was a legal impos -- a legal prohibition of me imposing concurrent sentence. Did I mishear that? Were you saying I should not -- not that I cannot?

MS. HAMMOND: I'm -- I am saying that the law presumes that when somebody is sentenced on two different

cause numbers on different dates the presumption is consecutive.

THE COURT: I think that's true.

MS. HAMMOND: And not that you can't order concurrent sentences; but the law presumes that they're consecutive. ...

(RP 558, ll. 2-17)

The prosecuting attorney had previously asked that the sentence in Mr. Blocher's case run consecutive with the sentence imposed on him in Kittitas County Number 16 100102 4. The prosecuting attorney stated:

I also ask that it be pursuant to statute, that the cases be consecutive. Mr. Blocher has been given every opportunity to resolve these cases and not serve consecutive sentences because he has consistently maintained innocence and denies a responsibility for these crimes and I think that that denial puts the Court in an interesting position of what, if anything, is going to keep anyone safe.

(RP 540, ll. 16-23)

In effect, the prosecuting attorney asked the Court to impose the consecutive sentences because Mr. Blocher elected to go to trial on both cases.

Mr. Blocher has an absolute constitutional right to a jury trial. *See*: Sixth Amendment to the United States Constitution; Const. art. I, § 22.

The statute being relied upon by the State is RCW 9.94A.589(3). It provides, in part:

... Subject to subsections (1) and (2) of this section, whenever a person is sentenced for a felony that was committed while the person was not under sentence for conviction of a felony, the sentence shall run concurrently with any felony sentence which has been imposed by any court ... **subsequent to the commission of the crime being sentenced** unless the court pronouncing the current sentence expressly orders that they be served consecutively.

(Emphasis supplied.)

Mr. Blocher's charges under Kittitas County Number 16 1 00102 4 occurred prior to his charges under the present case. However, he was not sentenced on that case until August 31, 2018.

The language of RCW 9.94A.589(3) is both discretionary and mandatory. The mandatory language requires the sentence to run concurrently. The discretionary language contradicts the mandatory and gives the sentencing court discretion to impose a consecutive sentence if the sentencing is for a crime which occurred prior to the current offense(s).

Moreover, subsection (3) is subject to subsections (1) and (2). Subsection (2) has no application under the facts and circumstances of Mr. Blocher's case.

Subsection (1) does have an impact on subsection (3). Subsection (1)(a) provides, in part: "... "Sentences imposed under this subsection shall be served concurrently. ... Consecutive sentences may only be imposed under the exceptional sentence provisions of RCW 9.94A.535. ..."

Again, both mandatory and discretionary language is included in RCW 9.94A.589(1)(a).

The mandatory language requires concurrent sentences. The discretionary language permits a trial court to impose a consecutive sentence under RCW 9.94A.535.

RCW 9.94A.535 provides, in part:

A departure from the standards in RCW 9.94A.589(1) and (2) governing whether sentences are to be served consecutively or concurrently is an exceptional sentence subject to the limitations in this section, and may be appealed by the offender or the state as set forth in RCW 9.94A.585(2) through (6).

RCW 9.94A.535 deals with mitigating circumstances and aggravating circumstances. Aggravating circumstances can be considered by a jury and imposed by the Court. Aggravating circumstances can also be considered and imposed by the Court without a jury determination.

Under the facts and circumstances of Mr. Blocher's case no aggravating circumstance exists under the provisions of RCW 9.94A.535(2) which allows the trial court to consider and impose an exceptional sentence.

There was no stipulation for an exceptional sentence.

The sentencing court did not determine that the presumptive sentence was clearly too lenient.

The free crimes doctrine does not apply.

It does appear that the sentence imposed by the trial court would be subject to review under RCW 9.94A.585(4) which states:

To reverse a sentence which is outside the standard sentence range, the reviewing court must find: (a) either that the reasons supplied by the sentencing court are not supported by the record which was before the judge or that those reasons do not justify a sentence outside the standard sentence range

for that offense; or (b) that the sentence imposed was clearly excessive or clearly too lenient.

The sentencing court did not enter any findings of fact and conclusions of law pertaining to the exceptional sentence imposed. It appears that both the sentencing court and the State relied upon RCW 9.94A.589(3) as the sole authority for what was done.

The sentencing court exceeded its statutory authority. Concurrent sentences should have been imposed.

### **CONCLUSION**

Mr. Blocher's convictions for bail jumping must be reversed and dismissed. The State failed to prove, beyond a reasonable doubt, the element of knowledge. There was no proof that Mr. Blocher knew of the March 26, 2018 court date.

The State's use of an inference as the sole basis for trying to establish knowledge does not survive constitutional scrutiny. Additionally, in the absence of notice the State cannot rely on "on or about" language to supply a missing element.

If the Court does not agree with Mr. Blocher's argument for dismissal, then the bail jumping convictions constitute both the same criminal conduct and/or a violation of the prohibition against double-jeopardy.

Finally, insofar as the bail jumping charges are concerned, defense counsel was ineffective in not presenting an uncontrollable circumstances defense. The convictions should be reversed and dismissed on that basis.

The creation of a FB group, in the absence of a posting to the group, does not constitute violation of a no-contact order. Count 1 does not constitute a crime and the conviction should be reversed and dismissed.

When Mr. Blocher posted song lyrics to the FB group a communication occurred. If Count 1 is not dismissed, then Counts 1 and 2 constitute the same criminal conduct and/or a violation of double-jeopardy. The two (2) counts pertain to simultaneous and/or sequential conduct. Convictions on both counts amount to multiple punishment for the same offense.

RCW 9.94.589(3) does not constitute valid authority for the consecutive sentence imposed by the trial court. The trial court exceeded its statutory authority. Mr. Blocher is entitled to be resentenced.

DATED this 28th day of May, 2019.

Respectfully submitted,

s/ Dennis W. Morgan

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## APPENDIX “A”



\*1 Criminal\*

FILED

18 AUG 31 AM 11:46

KITTITAS COUNTY  
SUPERIOR COURT CLERK

Superior Court of Washington  
County of Kittitas

State of Washington, Plaintiff,

vs.

TIMOTHY BRYANT BLOCHER, Defendant  
DOB: 01/06/1962  
PCN: 955433769  
SID: WA22810761

No. 16-1-00102-4

Felony Judgment and Sentence --  
Prison  
(FJS)

Clerk's Action Required, para 2.1, 4.1, 4.3, 4.8  
5.2, 5.3, 5.5, 5.7 and 5.8

Defendant Used Motor Vehicle

Juvenile Decline  Mandatory  Discretionary

I. Hearing

1.1 The court conducted a sentencing hearing this date; the defendant, the defendant's lawyer, and the (deputy) prosecuting attorney were present.

II. Findings

2.1 Current Offenses: The defendant is guilty of the following offenses, based upon

guilty plea \_\_\_\_\_ (date)  jury-verdict (date) 02/28/2018  bench trial (date) \_\_\_\_\_

Count	Crime	RCW (w/subsection)	Class	Date of Crime
1	Violation of a Protection Order - Domestic Violence	26.50.110(5) and 10.99.020	FC	04/22/2016
2	Bail Jumping	9A.76.170(1) and (3)(c)	FC	06/16/2016

Class: FA (Felony-A), FB (Felony-B), FC (Felony-C)

(If the crime is a drug offense, include the type of drug in the second column.)

Additional current offenses are attached in Appendix 2.1a.

The jury returned a special verdict or the court made a special finding with regard to the following:

GV  For the crime(s) charged in Count 1, domestic violence was pled and proved.

RCW 10.99.020.  RCW 9A.36.041(4)

The defendant used a **firearm** in the commission of the offense in Count \_\_\_\_\_, RCW 9.94A.825, 9.94A.533.

The defendant used a **deadly weapon other than a firearm** in committing the offense in Count \_\_\_\_\_, RCW 9.94A.825, 9.94A.533.

Count \_\_\_\_\_, is aggravated murder in the first degree committed while the defendant was  under 16 years of age  16 or 17 years of age when the offense was committed.

Count \_\_\_\_\_, was committed while the defendant was under 18 years of age and the time of confinement is over 20 years.

Count \_\_\_\_\_, Violation of the Uniform Controlled Substances Act (VUCSA), RCW 69.50.401 and RCW 69.50.435, took place in a school, school bus, within 1000 feet of the perimeter of a school

grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, public transit vehicle, or public transit stop shelter; or in, or within 1000 feet of the perimeter of a civic center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local governing authority as a drug-free zone.

- In count \_\_\_\_\_ the defendant committed a robbery of a pharmacy as defined in RCW 18.64.011(21), RCW 9.94A.\_\_\_\_\_.
- The defendant committed a crime involving the manufacture of methamphetamine, including its salts, isomers, and salts of isomers, **when a juvenile was present in or upon the premises of manufacture** in Count \_\_\_\_\_, RCW 9.94A.605, RCW 69.50.401, RCW 69.50.440.
- Count \_\_\_\_\_ is a **criminal street gang**-related felony offense in which the defendant compensated, threatened, or solicited a **minor** in order to involve that minor in the commission of the offense. RCW 9.94A.833.
- Count \_\_\_\_\_ is the crime of **unlawful possession of a firearm** and the defendant was a **criminal street gang** member or associate when the defendant committed the crime. RCW 9.94A.702, 9.94A.829.
- The defendant committed  **vehicular homicide**  **vehicular assault** proximately caused by driving a vehicle while under the influence of intoxicating liquor or drug or by operating a vehicle in a reckless manner. The offense is, therefore, deemed a violent offense. RCW 9.94A.030.
- GY**  In Count \_\_\_\_\_, the defendant had (number of) \_\_\_\_\_ **passenger(s) under the age of 16** in the vehicle. RCW 9.94A.533.
- Count \_\_\_\_\_ involves **attempting to elude** a police vehicle and during the commission of the crime the defendant endangered one or more persons other than the defendant or the pursuing law enforcement officer. RCW 9.94A.834.
- In Count \_\_\_\_\_ the defendant has been convicted of **assaulting a law enforcement officer** or other employee of a law enforcement agency who was performing his or her official duties at the time of the assault, as provided under RCW 9A.36.031, and the defendant intentionally committed the assault with what appeared to be a firearm. RCW 9.94A.831, 9.94A.533.
- Count \_\_\_\_\_ is a felony in the commission of which the defendant used a **motor vehicle**. RCW 46.20.285.
- The defendant has a **chemical dependency** that has contributed to the offense(s). RCW 9.94A.607.
- Reasonable grounds exist to believe the defendant is a mentally ill person as defined in RCW 71.24.025, and that this condition is likely to have influenced the offense. RCW 9.94B.080
- In Count \_\_\_\_\_, assault in the 1<sup>st</sup> degree (RCW 9A.36.011) or assault of a child in the 1<sup>st</sup> degree (RCW 9A.36.120), the offender used force or means likely to result in death or intended to kill the victim and shall be subject to a mandatory minimum term of 5 years (RCW 9.94A.540).
- Counts \_\_\_\_\_ encompass the same criminal conduct and count as one crime in determining the offender score. RCW 9.94A.589.
- Other current convictions listed under different cause numbers used in calculating the offender score are** (list offense and cause number):

	<i>Crime</i>	<i>Cause Number</i>	<i>Court (county &amp; state)</i>	<i>DV* Yes</i>
1				

\* DV: Domestic Violence was pled and proved.

Additional current convictions listed under different cause numbers used in calculating the offender score are attached in Appendix 2.1b.

**2.2 Criminal History:**

	<b>Crime</b>	<b>Date of Crime</b>	<b>Date of Sentence</b>	<b>Sentencing Court (County &amp; State)</b>	<b>A or J Adult, Juv.</b>	<b>Type of Crime</b>	<b>DV* Yes</b>
1	NCO Violation	11/17/2015	03/30/2016	Lower District Court, Kittitas, WA	A	GM	Y
2	NCO Violation	12/02/2015	03/30/2016	Lower District Court, Kittitas, WA	A	GM	Y
3	Assault 4 <sup>th</sup>	11/02/2015		Lower District Court, Kittitas, WA	A	GM	Y

\* DV: Domestic Violence was pled and proved.

- Additional criminal history is attached in Appendix 2.2.
- The defendant committed a current offense while on community placement/community custody (adds one point to score). RCW 9.94A.525.
- The prior convictions listed as number(s) \_\_\_\_\_, above, or in appendix 2.2, are one offense for purposes of determining the offender score (RCW 9.94A.525)
- The prior convictions listed as number(s) \_\_\_\_\_, above, or in appendix 2.2, are not counted as points but as enhancements pursuant to RCW 46.61.520.

**2.3 Sentencing Data:**

<b>Count No.</b>	<b>Offender Score</b>	<b>Seriousness Level</b>	<b>Standard Range (not including enhancements)</b>	<b>Plus Enhancements*</b>	<b>Total Standard Range (including enhancements)</b>	<b>Maximum Term</b>
1	4	V	22 – 29 months		22 – 29 months	FIVE YEARS
2	3	III	9 – 12 months		9 – 12 months	FIVE YEARS

\* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (RPh) Robbery of a pharmacy, (VH) Veh. Hom, see RCW 46.61.520, (JP) Juvenile present, (CSG) criminal street gang involving minor, (AE) endangerment while attempting to elude, (ALF) assault law enforcement with firearm, RCW 9.94A.533(12), (P16) Passenger(s) under age 16.

- Additional current offense sentencing data is attached in Appendix 2.3.
- For violent offenses, most serious offenses, or armed offenders, recommended **sentencing agreements or plea agreements** are  attached  as follows: \_\_\_\_\_.

**2.4  Exceptional Sentence.** The court finds substantial and compelling reasons that justify an exceptional sentence:

- below the standard range for Count(s) \_\_\_\_\_.
- above the standard range for Count(s) \_\_\_\_\_.
- The defendant and state stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the sentencing reform act.
- Aggravating factors were  stipulated by the defendant,  found by the court after the defendant waived jury trial,  found by jury, by special interrogatory.
- within the standard range for Count(s) \_\_\_\_\_, but served consecutively to Count(s) \_\_\_\_\_.

Findings of fact and conclusions of law are attached in Appendix 2.4.  Jury's special interrogatory is attached. The Prosecuting Attorney  did  did not recommend a similar sentence.

**2.5 Legal Financial Obligations/Restitution.** The court has considered the total amount owing, the defendant's present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. (RCW 10.01.160). The court makes the following specific findings:

- The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753):  
\_\_\_\_\_
- The defendant has the present means to pay costs of incarceration. RCW 9.94A.760.
- (Name of agency) \_\_\_\_\_ 's costs for its emergency response are reasonable. RCW 38.52.430 (effective August 1, 2012).

**2.6**  **Felony Firearm Offender Registration.** The defendant committed a felony firearm offense as defined in RCW 9.41.010.

- The court considered the following factors:
  - the defendant's criminal history.
  - whether the defendant has previously been found not guilty by reason of insanity of any offense in this state or elsewhere.
  - evidence of the defendant's propensity for violence that would likely endanger persons.
  - other: \_\_\_\_\_
- The court decided the defendant  should  should not register as a felony firearm offender.

### III. Judgment

- 3.1 The defendant is **guilty** of the Counts and Charges listed in Paragraph 2.1 and Appendix 2.1.
- 3.2  The court **dismisses** Counts \_\_\_\_\_ in the charging document.

### IV. Sentence and Order

**It is ordered:**

**4.1 Confinement.** The court sentences the defendant to total confinement as follows:

- (a) **Confinement.** RCW 9.94A.589. A term of total confinement in the custody of the Department of Corrections (DOC):

29 months on Count 1  
12 months on Count 2

- The confinement time on Count(s) \_\_\_\_\_ contain(s) a mandatory minimum term of \_\_\_\_\_.
- The confinement time on Count \_\_\_\_\_ includes \_\_\_\_\_ months as enhancement for  firearm  deadly weapon  VUCSA in a protected zone
- manufacture of methamphetamine with juvenile present.

Actual number of months of total confinement ordered is: 29 month

- (b) **Confinement.** RCW 10.95.030 (Aggravated murder and under age 18.) The court orders the following:

Count \_\_\_\_\_ minimum term: \_\_\_\_\_ maximum term: Life  
Count \_\_\_\_\_ minimum term: \_\_\_\_\_ maximum term: Life

All counts shall be served concurrently, except for the portion of those counts for which there is an enhancement as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: \_\_\_\_\_

This sentence shall run consecutively with the sentence in the following cause number(s) (see RCW 9.94A.589(3)): \_\_\_\_\_

Confinement shall commence immediately unless otherwise set forth here: \_\_\_\_\_

- (c) **Credit for Time Served.** The defendant shall receive credit for eligible time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The jail shall compute time served.
- (d)  **Work Ethic Program.** RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic program. The court recommends that the defendant serve the sentence at a work ethic program. Upon completion of work ethic program, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions in Section 4.2. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of confinement.

**4.2 Community Custody.** (To determine which offenses are eligible for or required for community custody see RCW 9.94A.701, RCW 10.95.030(3))

(A) The defendant shall be on community custody for:

Count(s) \_\_\_\_\_ 36 months for Serious Violent Offenses  
 Count(s) \_\_\_\_\_ 18 months for Violent Offenses  
 Count(s) 1 12 months (for crimes against a person, drug offenses, or offenses involving the unlawful possession of a firearm by a street gang member or associate)

Note: combined term of confinement and community custody for any particular offense cannot exceed the statutory maximum. RCW 9.94A.701.

(B) While on community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community restitution (service); (3) notify DOC of any change in defendant's address or employment; (4) not unlawfully possess controlled substances including marijuana or consume controlled substances including marijuana except pursuant to lawfully issued prescriptions while on community custody.; (5) not own, use, or possess firearms or ammunition; (6) pay supervision fees as determined by DOC; (7) perform affirmative acts as required by DOC to confirm compliance with the orders of the court; and (9) abide by any additional conditions imposed by DOC under RCW 9.94A.704 and .706. The defendant's residence location and living arrangements are subject to the prior approval of DOC while on community custody.

The court orders that during the period of supervision the defendant shall:

- Maintain law abiding behavior / obey all laws.
- Not enter into or remain in establishments where alcohol is the main source of revenue. This does not include a restaurant which is attached to but separate from a bar/lounge area.
- Submit to testing of his/her blood, urine, and/or breath as directed by the supervising Community Corrections Officer to monitor compliance with drug and/or alcohol conditions of supervision; the testing shall be at the defendant' own expense.
- not possess or consume alcohol.
- not possess or consume controlled substances, including marijuana, without a valid prescription.
- have no contact with: \_\_\_\_\_
- remain  within  outside of a specified geographical boundary, to wit: \_\_\_\_\_
- not serve in any paid or volunteer capacity where he or she has control or supervision of minors under 13 years of age.
- participate in the following crime-related treatment or counseling services:

- \_\_\_\_\_
- undergo an evaluation for treatment for  domestic violence  chemical dependency  
 mental health  anger management, and fully comply with all recommended treatment.
  - comply with the following crime-related prohibitions: \_\_\_\_\_  
 \_\_\_\_\_
  - Other conditions: \_\_\_\_\_  
 \_\_\_\_\_

Court Ordered Treatment: If any court orders mental health or chemical dependency treatment, the defendant must notify DOC and the defendant must release treatment information to DOC for the duration of incarceration and supervision. RCW 9.94A.562.

(C) If the defendant committed the above crime(s) while under age 18 and is sentenced to more than 20 years of confinement:

- (i) As long as the defendant's conviction is not for aggravated first degree murder or certain sex crimes, and the defendant has not been convicted of any crime committed after he or she turned 18 or committed a disqualifying serious infraction as defined by DOC in the 12 months before the petition is filed, the defendant may petition the Indeterminate Sentence Review Board (Board) for early release after the defendant has served 20 years.
- (ii) If the defendant is released early because the petition was granted or by other action of the Sentence Review Board, the defendant will be subject to community custody under the supervision of the DOC for a period of time determined by the Board, up to the length of the court-imposed term of incarceration. The defendant will be required to comply with any conditions imposed by the Board.
- (iii) If the defendant violates the conditions of community custody, the Board may return the defendant to confinement for up to the remainder of the court-imposed term of incarceration.

**4.3 Legal Financial Obligations:** The defendant shall pay to the clerk of this court:

JASS CODE

3101	\$ 500.00	Victim assessment	RCW 7.68.035
3102		Domestic Violence assessment	RCW 10.99.080
3403	\$ 200.00	Court costs, including:	RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190
		Criminal filing fee \$ 200.00	FRC
		Witness costs \$	WFR
		Sheriff service fees \$	SFR/SFS/SFW/WRF
		Jury demand fee \$	JFR
		Extradition costs \$	EXT
		Other \$	OTH
3225	<del>\$ 600.00</del>	Fees for court appointed attorney	RCW 9.94A.760
3231		Court appointed defense expert and other defense costs	RCW 9.94A.760
3303/3337		Fine RCW 9A.20.021; <input type="checkbox"/> VUCSA chapter 69.50 RCW, <input type="checkbox"/>	RCW 69.50.430
3302/3308/ 3363/3338/ 3365/3307		VUCSA additional fine deferred due to indigency	
		Drug enforcement fund of	RCW 9.94A.760

		DUI fines, fees and assessments	
3212		Crime lab fee <input type="checkbox"/> suspended due to indigency	RCW 43.43.690
	\$100	DNA collection fee	RCW 43.43.7541
3335		Specialized forest products	RCW 76.48.140
	\$100.00	Other fines or costs for: _____	Booking Fee _____
3506		Emergency response costs: _____	RCW 38.52.430
		(\$1000 maximum, \$2,500 max. effective Aug. 1, 2012.)	
3509		1-Year Record Check- <u>Kittitas County Prosecuor's Office</u>	
3801/3802	\$	Restitution to:	
	\$500	<del>\$1,500.00</del> Total	(Information may be withheld and provided confidentially to Clerk of the Court's office.) RCW 9.94A.760

*SR*

- The above total does not include all restitution or other legal financial obligations, which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:
  - shall be set by the prosecutor.
  - is scheduled for \_\_\_\_\_ (date).
- The defendant waives any right to be present at any restitution hearing (sign initials): \_\_\_\_\_
- Restitution** Schedule attached.

Restitution ordered above shall be paid jointly and severally with:

<u>Name of other defendant</u>	<u>Cause Number</u>	<u>(Victim's name)</u>	<u>(Amount-\$)</u>
RJN			
_____			
_____			

- The Department of Corrections (DOC) or clerk of the court shall immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602, RCW 9.94A.760(8).
- All payments shall be made in accordance with the policies of the clerk of the court and on a schedule established by DOC or the clerk of the court, commencing immediately, unless the court specifically sets forth the rate here: Not less than \$100 per month commencing 30 days from this date or release from custody if ordered under this cause number. RCW 9.94A.760.

The defendant shall report to the clerk of the court or as directed by the clerk of the court to provide financial and other information as requested. RCW 9.94A.760(7)(b).

The court orders the defendant to pay costs of incarceration at the rate of \$\_\_\_\_\_ per day, (actual costs not to exceed \$100 per day). (JLR) RCW 9.94A.760. (This provision does not apply to costs of incarceration collected by DOC under RCW 72.09.111 and 72.09.480.)

The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.160.

The financial obligations imposed in this judgment shall not be satisfied from funds protected by 42 U.S.C. § 407(a).

**4.4 DNA Testing.** The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency shall be responsible for

obtaining the sample prior to the defendant's release from confinement. This paragraph does not apply if it is established that the Washington State Patrol crime laboratory already has a sample from the defendant for a qualifying offense. RCW 43.43.754.

**HIV Testing.** The defendant shall submit to HIV testing. RCW 70.24.340.

**4.5 No Contact:**

The defendant shall not have contact with \_\_\_\_\_ (name) including, but not limited to, personal, verbal, telephonic, written or contact through a third party until \_\_\_\_\_ (which does not exceed the maximum statutory sentence).

The defendant is excluded or prohibited from coming within \_\_\_\_\_ (distance) of:  
 \_\_\_\_\_ (name of protected person(s))'s  home/  
residence  work place  school  (other location(s)) \_\_\_\_\_, or  
 other location: \_\_\_\_\_, until \_\_\_\_\_ (which does not exceed the maximum statutory sentence).

A separate Domestic Violence No-Contact Order, Antiharassment No-Contact Order, or Stalking No-Contact Order is filed concurrent with this Judgment and Sentence. Any Pre-Trial No-Contact Order filed is now terminated.

**4.6 Other:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**4.7 Off-Limits Order.** (Known drug trafficker). RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the county jail or Department of Corrections: \_\_\_\_\_

**4.8 Exoneration:** The Court hereby exonerates any bail, bond and/or personal recognizance conditions.

**V. Notices and Signatures**

**5.1 Collateral Attack on Judgment.** If you wish to petition or move for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, you must do so within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.

**5.2 Length of Supervision.** If you committed your offense prior to July 1, 2000, you shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. If you committed your offense on or after July 1, 2000, the court shall retain jurisdiction over you, for the purpose of your compliance with payment of the legal financial obligations, until you have completely satisfied your obligation, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505(5). The clerk of the court has authority to collect unpaid legal financial obligations at any time while you remain under the jurisdiction of the court for purposes of your legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).

**5.3 Notice of Income-Withholding Action.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections (DOC) or the clerk of the court may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.

**5.4 Community Custody Violation.**

(a) If you are subject to a violation hearing and DOC finds that you committed the violation, you may receive a sanction of up to 30 days of confinement. RCW 9.94A.633(1).

(b) If you have not completed your maximum term of total confinement and you are subject to a violation hearing and DOC finds that you committed the violation, DOC may return you to a state correctional facility to serve up to the remaining portion of your sentence. RCW 9.94A.633(2)(a).

**5.5a Firearms.** You may not own, use or possess any firearm, and under federal law any firearm or ammunition, unless your right to do so is restored by the court in which you are convicted or the superior court in Washington State where you live, and by a federal court if required. You must immediately surrender any concealed pistol license. (The clerk of the court shall forward a copy of the defendant's driver's license, identicaid, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.

**5.5b**  **Felony Firearm Offender Registration.** The defendant is required to register as a felony firearm offender. The specific registration requirements are in the "Felony Firearm Offender Registration" attachment.

5.6 Reserved

**5.7**  **Department of Licensing Notice:** The court finds that Count \_\_\_\_\_ is a felony in the commission of which a motor vehicle was used. **Clerk's Action**—The clerk shall forward an Abstract of Court Record (ACR) to the DOL, which must revoke the Defendant's driver's license. RCW 46.20.285. **Findings for DUI, Physical Control, Felony DUI or Physical Control, Vehicular Assault, or Vehicular Homicide (ACR information) (Check all that apply):**

- Within two hours after driving or being in physical control of a vehicle, the defendant had an alcohol concentration of breath or blood (BAC) of \_\_\_\_.
- No BAC test result.
- BAC Refused. The defendant refused to take a test offered pursuant to RCW 46.20.308.
- Drug Related. The defendant was under the influence of or affected by any drug.
- THC level was \_\_\_\_\_ within two hours after driving.
- Passenger under age 16. The defendant committed the offense while a passenger under the age of sixteen was in the vehicle.

Vehicle Info.:  Commercial Veh.  16 Passenger Veh.  Hazmat Veh.

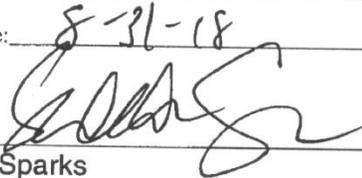
**5.8**  **Department of Licensing Notice – Defendant under age 21 only.**

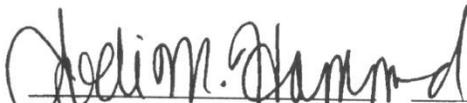
Count \_\_\_\_\_ is (a) a violation of RCW chapter 69.41 [Legend drug], 69.50 [VUCSA], or 69.52 [Imitation drugs], and the defendant was under 21 years of age at the time of the offense **OR** (b) a violation under RCW 9.41.040 [unlawful possession of firearm], and the defendant was under the age of 18 at the time of the offense **OR** (c) a violation under RCW chapter 66.44 [Alcohol], and the defendant was under the age of 18 at the time of the offense, **AND** the court finds that the defendant previously committed an offense while armed with a firearm, an unlawful possession of a firearm offense, or an offense in violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW.

**Clerk's Action** –The clerk shall forward an Abstract of Court Record (ACR) to the DOL, which must revoke the Defendant's driver's license. RCW 46.20.265

**5.9 Other:** \_\_\_\_\_

**Done** in Open Court and in the presence of the defendant this date: 8-31-18

  
\_\_\_\_\_  
Judge Sparks

  
\_\_\_\_\_  
Deputy Prosecuting Attorney  
WSBA No. 43885  
JODI M. HAMMOND

  
\_\_\_\_\_  
Attorney for Defendant  
WSBA No. 32253  
ROBERT MOSER

  
\_\_\_\_\_  
Defendant  
TIMOTHY BRYANT BLOCHER

**Voting Rights Statement:** I acknowledge that I have lost my right to vote because of this felony conviction. If I am registered to vote, my voter registration will be cancelled.

My right to vote is provisionally restored as long as I am not under the authority of DOC (not serving a sentence of confinement in the custody of DOC and not subject to community custody as defined in RCW 9.94A.030). I must re-register before voting. The provisional right to vote may be revoked if I fail to comply with all the terms of my legal financial obligations or an agreement for the payment of legal financial obligations

My right to vote may be permanently restored by one of the following for each felony conviction: a) a certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) a court order issued by the sentencing court restoring the right, RCW 9.92.066; c) a final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) a certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 29A.84.660. Registering to vote before the right is restored is a class C felony, RCW 29A.84.140.

Defendant's signature: Tom B. Bloche

I am a certified or registered interpreter, or the court has found me otherwise qualified to interpret, in the \_\_\_\_\_ language, which the defendant understands. I interpreted this Judgment and Sentence for the defendant into that language.

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

Signed at (city) \_\_\_\_\_, (state) \_\_\_\_\_, on (date) \_\_\_\_\_.

\_\_\_\_\_  
Interpreter

\_\_\_\_\_  
Print Name

## VI. Identification of the Defendant

SID No. \_\_\_\_\_ Date of Birth \_\_\_\_\_  
 (If no SID complete a separate Applicant card  
 (form FD-258) for State Patrol)

FBI No. \_\_\_\_\_ Local ID No. \_\_\_\_\_

PCN No. \_\_\_\_\_ Other \_\_\_\_\_

Alias name, DOB: \_\_\_\_\_

**Race:**

- Asian/Pacific Islander     Black/African-American     Caucasian  
 Native American     Other: \_\_\_\_\_

**Ethnicity:**

- Hispanic     Male  
 Non-Hispanic     Female

**Fingerprints:** I attest that I saw the defendant who appeared in court affix his or her fingerprints and signature on this document.

Clerk of the Court, Deputy Clerk, Jane McElroy Dated: 8/31/18

**The defendant's signature:** Tim B. Blaker

Left four fingers taken simultaneously	Left Thumb	Right Thumb	Right four fingers taken simultaneously
			

## APPENDIX “B”



FILED  
18 FEB 28 PM 3:09  
KITTITAS COUNTY  
SUPERIOR COURT CLERK

SUPERIOR COURT OF WASHINGTON FOR KITTITAS COUNTY

State of Washington, )

16-1-00215-2

vs. )

NO. )

16-1-00102-4 ✓

Timothy B. Blocher, )

ORDER RE: )

Sentencing  
Hearing

THIS MATTER having come on for hearing before the undersigned Judge of the above-entitled court, IT IS HEREBY ORDERED THAT:

The sentencing hearing is set

on 3/5/18 @ 1:30 P.M. in 16-1-00102-4.

16-1-00215-2 shall also be called that date.

DONE IN OPEN COURT this 28 day of Feb, 2018

JUDGE

Approved as to form:

Presented By:

Attorney for

[Signature]  
1A3000

Attorney for

[Signature]  
#32253

00346

## APPENDIX “C”



\*1 Criminal\*

KITTITAS COUNTY SUPERIOR COURT  
DEPARTMENT II  
HONORABLE SCOTT R SPARKS

Date: March 5, 2018  
Clerk: Jan McElroy  
Audio: FTR 201

-----  
16-1-00102-4

STATE OF WASHINGTON  
HAMMOND, JODI MARIE

VS BLOCHER, TIMOTHY BRYANT  
MOSER, ROBERT A

SENTENCING HEARING DEPT 2 @ 1:30

2:23 Court called case  
Timothy Blocher not present, Court made finding  
Robert Moser present for the Defense  
Jodi Hammond present for the State of Washington

Matter reset to 3/26/2018

2:27 Court recessed this matter

00350

158

## APPENDIX “D”



\*1 Criminal\*

FILED

18 MAR -5 PM 3:10

KITTITAS COUNTY  
SUPERIOR COURT CLERK

SUPERIOR COURT OF WASHINGTON FOR KITTITAS COUNTY

STATE OF WASHINGTON,	Plaintiff,
vs.	
<u>TIMOTHY BLOCHER</u>	Defendant.

No. ~~16-1-00102-4~~ ✓; 16-1-00215-2

NOTICE FOR HEARING

Clerk's action required  
Department I / II

NATURE OF PROCEEDINGS: STAYS

TO: The Clerk of the Above Entitled Court

AND TO: \_\_\_\_\_

PLEASE TAKE NOTICE that the above matter will be brought on for hearing to be set on the 20th day of MARCH, 2018, at 1:30 a.m./p.m., and the Clerk is requested to note this cause on the docket for that date.

DATED: 3-5, 2018

\_\_\_\_\_  
Deputy Prosecuting Attorney  
WSBA #

Robert G. ...  
Attorney for Defendant  
WSBA # 32253

\_\_\_\_\_  
Defendant (if present)

00351

## APPENDIX “E”



\*1 Criminal\*

KITTITAS COUNTY SUPERIOR COURT  
DEPARTMENT II  
HONORABLE SCOTT R SPARKS

Date: March 26, 2018  
Clerk: Jan McElroy  
Audio: FTR 201

-----  
16-1-00102-4

STATE OF WASHINGTON  
HAMMOND, JODI MARIE

VS BLOCHER, TIMOTHY BRYANT  
MOSER, ROBERT A

STATUS HEARING DEPT 2 @ 1:30

2:33 Court called case  
Timothy Blocher not present  
Robert Moser present for the Defense  
Jodi Hammond present for the State of Washington

Robert Moser addressed the Court re: Defendant's absence due to being hospitalized  
Jodi Hammond addressed the Court re: Defendant's lack of communication regarding absence and requested a  
Bench Warrant

Court granted request

Court signed:

1. Order for Bench Warrant- No Bail

2:35 Court recessed this matter

00352

160

**NO. 36428-3-III**

**COURT OF APPEALS**

**DIVISION III**

**STATE OF WASHINGTON**

STATE OF WASHINGTON,	)	
	)	KITTITAS COUNTY
Plaintiff,	)	NO. 16 1 00215 2
Respondent,	)	
	)	
v.	)	<b>CERTIFICATE OF SERVICE</b>
	)	
TIMOTHY BRYANT BLOCHER,	)	
	)	
Defendant,	)	
Appellant.	)	
_____	)	

I certify under penalty of perjury under the laws of the State of Washington that on this 28<sup>th</sup> day of May, 2019, I caused a true and correct copy of the *BRIEF OF APPELLANT* to be served on:

COURT OF APPEALS, DIVISION III  
Attn: Renee Townsley, Clerk  
500 N Cedar St  
Spokane, WA 99201

E-FILE

KITTITAS COUNTY PROSECUTOR'S OFFICE

Attn: Gregory Lee Zempel

[greg.zempel@co.kittitas.wa.us](mailto:greg.zempel@co.kittitas.wa.us)

E-FILE

TIMOTHY BRYANT BLOCHER #411786

Monroe Correctional Complex - TRU

PO Box 888

Monroe, WA 98272

U. S. MAIL

s/ Dennis W. Morgan

DENNIS W. MORGAN WSBA #5286

Attorney for Defendant/Appellant.

P.O. Box 1019

Republic, WA 99169

Phone: (509) 775-0777

Fax: (509) 775-0776

[nodblspk@rcabletv.com](mailto:nodblspk@rcabletv.com)

**May 28, 2019 - 8:31 AM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division III  
**Appellate Court Case Number:** 36428-3  
**Appellate Court Case Title:** State of Washington v. Timothy Bryant Blocher  
**Superior Court Case Number:** 16-1-00215-2

**The following documents have been uploaded:**

- 364283\_Briefs\_20190528083049D3192613\_6903.pdf  
This File Contains:  
Briefs - Appellants  
*The Original File Name was Blocher Brief of Appellant.pdf*

**A copy of the uploaded files will be sent to:**

- greg.zempel@co.kittitas.wa.us
- prosecutor@co.kittitas.wa.us

**Comments:**

---

Sender Name: Dennis Morgan - Email: nodblspk@rcabletv.com  
Address:  
PO BOX 1019  
REPUBLIC, WA, 99166-1019  
Phone: 509-775-0777

**Note: The Filing Id is 20190528083049D3192613**