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State of Washington  
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COURT OF APPEALS  
DIVISION III  
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON, RESPONDENT

v.

STEVEN WHITE, APPELLANT

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APPEAL FROM THE SUPERIOR COURT  
OF SPOKANE COUNTY

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**BRIEF OF RESPONDENT**

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## **I. APPELLANT’S ASSIGNMENTS OF ERROR**

1. The trial court erred when it denied Mr. White’s motion to dismiss because the State failed to present sufficient evidence to prove beyond a reasonable doubt that the video rooms at the Spokane County jail are “courtrooms” for the purposes of RCW 9A.36.031(1)(k).

2. The trial court erred when it denied Mr. White’s motion to dismiss because the State failed to present sufficient evidence to prove beyond a reasonable doubt that the assault occurred immediately adjacent to a courtroom.

## **II. ISSUES PRESENTED**

1. Is the jail video courtroom a “courtroom” for purposes of RCW 9A.36.031(1)(k) where, although a judge is present by interactive television feed, the room’s purpose is to hold legal proceedings such as first appearances and arraignments?

2. Does the plain meaning of RCW 9A.36.031(1)(k) prohibit an assault in a waiting area immediately adjacent to any courtroom, when any courtroom is being used for court proceedings?

## **III. STATEMENT OF THE CASE**

The defendant, Steven White, was charged in the Spokane County Superior Court with one count of third-degree assault under

RCW 9A.36.031(1)(k). CP 3. The matter proceeded to trial and the defendant was convicted as charged.

Corrections officer, Sergeant Ian Purcell, was working in the Spokane County Jail on Tuesday, January 9, 2018, as a supervisor of the jail court transportation unit. RP 35. On that date, White was transported from his jail cell to court holding room 1. RP 37. At that time, White was held in the room with multiple other inmates. RP 37. The purpose of this waiting area is to hold inmates before they go to court.<sup>1</sup> RP 38.

Inmate Freddie Thompson was also confined in that holding room. RP 37. Both White and Thompson were awaiting court hearings. RP 38-39. Prior to their respective hearings, White assaulted Thompson in the jail holding cell by punching him repeatedly. RP 101-03. Guards broke up the altercation. RP 102. At trial, the assault was not disputed. RP 117. However, the defendant disagreed that the assault took place in a waiting area or corridor immediately adjacent to a courtroom, as required to elevate the fourth-degree assault to a third-degree assault under RCW 9A.36.031(1)(k). RP 117.

Instead of taking large groups of inmates through the county courthouse campus, directly *into* trial courtrooms, the Spokane County jail

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<sup>1</sup> This room is “rarely” used for any other purpose. RP 38.

has a video feed from one of the trial courtrooms into a remote room near the court holding room in the jail in which White was held at the time of the assault. RP 39. When hearings convene in this court, the judge appears via television, while the parties and other court personnel (clerks, paralegals, and attorneys) are present within the “jail video courtroom.” RP 39. The video courtroom is designed so that inmates may be transported without restraints – and freely walk in and out of the courtroom. RP 39. Jail transport officers take approximately ten people at a time from the court holding cell into the video courtroom for their hearings.

Within the jail courtroom is a row of chairs in which inmates with imminent hearings sit. RP 41. There is a table where the prosecutor and defense attorney sit. RP 41. Facing that table is a large television, accompanied by a camera. RP 41. The parties are, therefore, able to observe and verbally interact with the judge in the courthouse courtroom. RP 41. When an inmate’s case is called, the inmate sits at the table with defense counsel, the hearing or argument is held, and necessary paperwork is completed. RP 41. After the hearing is concluded, the inmate is returned to the jail. RP 41. The jail video courtroom is not used for any purpose other than for court proceedings. RP 42. However, it is not used for jury trials or guilty pleas. RP 66-67.

Purcell described the proximity of the video courtroom to the holding cell. In short, the Superior Court jail courtroom shares a wall with the District/Municipal Court jail courtroom. RP 58, 112. The District/Municipal Court jail courtroom shares its opposite wall with the holding cell. To access the Superior Court jail courtroom, an inmate must walk from the holding cell, down a hallway, around a corner, down another hallway, through a door into the District/Municipal Court jail courtroom, and then make a left turn through a door which opens into the Superior Court jail courtroom. RP 64, 112. The only access to the Superior Court jail courtroom for inmates is through the District/Municipal Court jail courtroom.<sup>2</sup> Ex. P12. Sergeant Purcell drew a diagram for the jury of the layout of these rooms, but it was not admitted at trial. RP 42-46. However, a video recording of the walk from the holding cell to the Superior Court jail courtroom was admitted. Ex. P12.

Required signage was posted at the holding cell, the entrance to the District/Municipal Court jail courtroom, and within the Superior Court jail

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<sup>2</sup> The other access point to the jail video courtroom is a secured access through which attorneys and other court staff arrive and depart. RP 46.

courtroom. Signage was also posted outside the trial judge's courtroom. It read:

**ASSAULT IN THE COURTHOUSE IS A FELONY**

**WARNING:** A person is guilty of assault in the third degree if he or she assaults a person located in a courtroom, jury room, judge's chamber, or any waiting area or adjacent corridor that is being used for judicial purposes. It is also an aggravating circumstance for sentencing purposes that a felony crime against a person occurs in such a location when being used for judicial purposes during court proceedings. RCW 9A.36.031.

Ex. P1, P2, P3, P4, P5, P6, P12.

At the conclusion of the State's case, the defendant moved to dismiss the charge based upon insufficient evidence. RP 116; CP 29-32. Relevant here, the defendant alleged that the video courtroom was not a "courtroom" within the meaning of the statute and he argued that the assault did not occur "immediately adjacent to a courtroom." RP 117. Lastly, he claimed that, at the time of the assault, the video courtroom was not being used for judicial proceedings. RP 118.

The court denied the defendant's motion finding that the State had presented sufficient evidence that could support each of the elements of the crime. RP 127, 133. The court found that "adjacent" means "lying near, close, contiguous, adjoining, or neighboring." RP 128. The court reasoned that, not only did the holding cell adjoin the District/Municipal Court jail

courtroom, it was also “close” to the Superior Court jail courtroom. RP 128. Additionally, the court rejected the proposition that the assault did not occur during “court proceedings” because it occurred two minutes before scheduled courtroom proceedings commenced and after court personnel had already begun to arrive in that courtroom (between ten and fifteen minutes prior to nine o’clock). RP 129. The court defined “court proceedings” as “a particular action or course or manner of action; a series of activities or events or happenings.” RP 129.

Lastly, the court determined that the jail courtroom was a “courtroom” within the meaning of the statute. The court observed that the public could view the proceedings in the jail courtroom from Courtroom 400 (in the courthouse), where the judge, a clerk, and court reporter could be found. RP 131.

The court found that the legislative intent of the statute was:

to protect participants or members of the public during court proceedings because emotions do run high, people become incarcerated, we have victims of crimes that are angry with the accused, we have family law participants that are having their children taken away from them, and huge judgments impose against other people. So there is a need to protect people in these settings...

RP 132.

Ultimately, the jury found the defendant guilty as charged. RP 188.

The defendant had an offender score of “25,” and was preparing to serve a

sentence for an unrelated robbery when he committed this assault; therefore, the court found that imposing a concurrent sentence would result in the defendant having a “free crime.” RP 207-08. As a result, the court imposed a low-end sentence of 51 months, but ran that sentence consecutively to the defendant’s sentence for robbery. The court imposed an additional 9 months of community custody. RP 209. The court waived collection of the defendant’s DNA and attendant fee, and the criminal filing fee due to his indigency. RP 208.

#### IV. ARGUMENT

##### **A. THE JAIL VIDEO COURTROOM IS A “COURTROOM” AND THE HOLDING CELL IS IMMEDIATELY ADJACENT TO A COURTROOM.**

The meaning of a statute is a question of law reviewed by the court de novo. *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 11, 43 P.3d 4 (2002). The court’s purpose in construing statutes is to ascertain and carry out the intent of the legislature. *Id.*; *Dep't of Ecology v. City of Spokane Valley*, 167 Wn. App. 952, 961, 275 P.3d 367 (2012). “The surest indication of legislative intent is the language enacted by the legislature, so if the meaning of a statute is plain on its face, [the court] give[s] effect to that plain meaning.” *State v. Ervin*, 169 Wn.2d 815, 820, 239 P.3d 354 (2010) (internal quotation omitted). In determining a provision’s plain meaning, the court looks to the text of the statutory provision in question,

as well as “the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole.” *Id.*

When a statute is unambiguous, “[t]here is no room for judicial interpretation ... beyond the plain language of the statute.” *State v. D.H.*, 102 Wn. App. 620, 627, 9 P.3d 253 (2000). The court may use a dictionary to discern the plain meaning of an undefined statutory term. *Nissen v. Pierce County*, 183 Wn.2d 863, 881, 357 P.3d 45 (2015). If, after consulting a dictionary, the statute is susceptible to more than one reasonable meaning, the statute is ambiguous and it is appropriate to use other statutory construction aids and examine the legislative history. *Wrigley v. State*, 5 Wn. App. 2d 909, 924-25, 428 P.3d 1279 (2018), *as amended* (Feb. 20, 2019), *review granted sub nom. Wrigley v. Dep't of Soc. & Health Servs.*, 439 P.3d 1065 (2019); *Campbell and Gwinn*, 146 Wn.2d at 11. Yet, the fact that two or more interpretations are *conceivable* does not render a statute ambiguous. *Five Corners Family Farmers v. State*, 173 Wn.2d 296, 305, 268 P.3d 892 (2011).

RCW 9A.36.031 provides, in relevant part:

(1) A person is guilty of assault in the third degree if he or she, under circumstances not amounting to assault in the first or second degree:

(k) Assaults a person located in a courtroom, jury room, judge's chamber, or any waiting area or corridor immediately adjacent to a courtroom, jury room, or judge's chamber. This section shall apply only: (i) During the times when a

courtroom, jury room, or judge's chamber is being used for judicial purposes during court proceedings; and (ii) if signage was posted in compliance with RCW 2.28.200 at the time of the assault.

This means of committing third-degree assault was enacted in 2013. Laws of 2013, ch. 256, § 1. In 2013, the legislature also enacted an aggravating circumstance for felony crimes against persons with identical language. Laws of 2013, ch. 256, § 2.

Many of RCW 9A.36.031's terms are not defined by statute. Therefore, the court uses those terms' dictionary definitions to ascertain the words' plain meaning. "Courtroom" is defined as "a room in which a court of law is held." Merriam-Webster's Collegiate Dictionary 287 (11<sup>th</sup> Ed. 2003). "Immediately" means in direct connection or relation." *Id.* at 621. "Adjacent" means "not distant, nearby." *Id.* at 16. The word "a" is (1) an indefinite article used "before singular nouns when the referent is unspecified;" and (2) means "any."<sup>3</sup> *Id.* at 1.

1. The video courtroom is a "courtroom" under RCW 9A.36.031(1)(k).

A "courtroom" is a "room in which a court of law is held." It is irrelevant that, in this case, the judge appears by interactive television. In the video courtroom, the judge is able to observe the defendant and the

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<sup>3</sup> See also, e.g., *Phelps v. Commonwealth*, 275 Va. 139, 142, 654 S.E.2d 926 (2008) ("The ordinary meaning of the word "a" means "any" or "each").

defendant is able to observe the judge, the judge hears the arguments made by counsel or the defendant, interacts with the parties, and rules upon the issues.

It is also irrelevant that there is no jury box and juries are not convened in the video courtroom.<sup>4</sup> There are undoubtedly other “courtrooms” used for ex parte proceedings which also do not include a jury box and in which a jury has never been and never will be convened. If that fact were relevant, then the courtroom in which the Court of Appeals holds its oral arguments would be excluded from the definition of “courtroom,” as would any auditorium or meeting hall in which our Supreme Court convenes to hear oral arguments outside the Temple of Justice. Certainly, that result was not intended by the legislature.

It is also irrelevant that the only members of the public who are able to freely walk into the video courtroom are legal professionals, court staff, and jail personnel. Neither judge’s chambers nor jury rooms (also protected spaces under RCW 9A.36.031(1)(k)) are generally open to the public. And,

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<sup>4</sup> There is no evidence that this room could not, under any circumstance, be used for a courtroom if the need were to arise. Although the record indicates that non-inmate occupants of this room must undergo a background check through the county, RP 82-83, a background check and other considerations (such as open court considerations) would not necessarily bar the use of this room for a jury trial.

members of the public are free to walk into the “live courtroom” to, presumably hear and see the proceedings from the judge’s perspective.

What is relevant to this inquiry is whether legal hearings<sup>5</sup> are held in the video courtroom. The answer to that inquiry is “yes.” In all hearings held in the jail video courtroom, the defendant appears, with defense counsel and with the prosecutor; hearings held in this room include first appearances, arraignments, and, potentially, other motions. Those are court proceedings during which a judge makes legal rulings. That is the epitome of a “court of law.” The video courtroom is a “courtroom” within the meaning of RCW 9A.36.031(1)(k).

2. The court holding room is immediately adjacent to a courtroom.

As indicated above, “immediately” means in direct connection or relation” and “adjacent” means “not distant, nearby.” Merriam-Webster’s Collegiate Dictionary at 621. Adjacent “may or may not imply contact but always implies absence of anything of the same kind in between, i.e., a house with an adjacent garage.”<sup>6</sup> *Id.* at 16.

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<sup>5</sup> Or, as RCW 9A.36.031(1)(k) provides, the room must be used for “court proceedings.”

<sup>6</sup> “Adjacent” should be compared with synonyms such as “adjoining” or “contiguous” which both mean “being in close proximity”; however, “adjoining” “implies meeting and touching at some point or line” and “contiguous” “definitely implies having contact on all or most of one side.” Merriam-Webster’s Collegiate Dictionary at 16.

Therefore, the term “immediately adjacent” demonstrates that the legislature intended to prohibit assaults that occur in a waiting area that is in the direct vicinity of a courtroom or other protected area. Here, the holding cell shares a common wall with the District/Municipal Court jail courtroom. Although there is not a direct ingress/egress from the holding cell to the video courtroom, the two rooms are immediately adjacent because of their shared wall.

In enacting RCW 9A.36.031(1)(k), the legislature chose to modify the term “courtroom” (“any waiting area or corridor immediately adjacent to ‘a’ courtroom...”) with the indefinite article “a,” rather than the definite article “the.” Because “a” means “any,” the statute’s plain meaning is read:

(k) assaults a person located in a courtroom, jury room, judge’s chamber, or any waiting area or corridor immediately adjacent to [any] courtroom, jury room, or judge’s chamber. This section shall apply only: During the times when [any] courtroom, jury room, or judge’s chamber is being used for judicial purposes during court proceedings.

Thus, it is not necessary that the waiting area be immediately adjacent to a specific courtroom. Rather, it suffices that the assault occurred in a waiting area immediately adjacent to “any” courtroom during the time that “any” courtroom is being used for judicial purposes during court proceedings. Had the legislature intended that an assault covered by this statute must occur in the waiting area or corridor associated with the specific

courtroom in which proceedings are occurring at the time of the assault, it would have used the word “the” to modify “courtroom,” rather than the word “a.”

Consider, for example, two parties to a domestic dispute remain in a courtroom during a recess in the proceedings. The judge has left the bench, and court will resume in a half hour. However, down the hall, another judicial officer remains on the bench hearing other cases. The parties to the domestic dispute exit their courtroom, and, in the hallway, outside of the courtroom that remains in session, an assault occurs. RCW 9A.36.031 should be construed to prohibit this conduct. However, by the defendant’s overly restrictive reading, this conduct would not be a felony assault under RCW 9A.36.031(1)(k). Statutes should not be construed to lead to absurd results. *See State v. Votava*, 149 Wn.2d 178, 187, 66 P.3d 1050 (2003).

Although the legislature did not intend for RCW 9A.36.031(1)(k) to be read so broadly as to cover, for example, the ingress and egress of a courthouse, or other county or city offices where non-judicial business occurs, its intent to protect litigants and the public from assault in connection to their presence in courtrooms for court proceedings is clear. *See*, S.B. 5484 (January 31, 2013) (protecting “any area of a building used in connection with court proceedings,” including common areas of ingress and egress); Engrossed S.B. 5484 (March 13, 2013) (clarifying that where

a building or part of a building is used at certain times for judicial purposes and at other times for other purposes, the section shall only apply during the times when it is used for judicial purposes).

Here, because the holding area shared a wall with the District/Municipal Court jail courtroom, it was immediately adjacent to that room.<sup>7</sup> Under the construction discussed above, it is irrelevant that proceedings were not ongoing within the District/Municipal Court jail courtroom because proceedings were preparing to begin in the Superior Court jail courtroom.<sup>8</sup>

The trial court did not err in determining that the State had presented sufficient evidence to support a conviction under RCW 9A.36.031(1)(k).

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<sup>7</sup> For that matter, despite Sergeant Purcell’s characterization of the two “rooms” as “separate courtroom[s],” RP 45, a trier of fact could reasonably find that the District/Municipal Court and Superior Court jail courtrooms are but one courtroom divided by a concrete wall. There is one ingress from the jail to both the district court “area” and superior court “area.” There is one ingress available to court staff to both the district court “area” and superior court “area.” In order to reach the superior court “area,” one must pass through the district court area. Generally, courtrooms are not inaccessible to litigants except by passing through a “separate courtroom.”

<sup>8</sup> The assault occurred at 8:58 a.m. It is a strained reading of the statute that would prohibit as a felony an assault that occurred at 9:00 a.m. where the same conduct would be a misdemeanor at 8:58 a.m., especially where, as here, there was evidence demonstrating that court staff was already in the courtroom, preparing for the docket to commence. As above, statutes should not be construed to lead to absurd results.

**B. IF THE COURT AGREES THAT THERE WAS INSUFFICIENT EVIDENCE TO SUSTAIN THE CONVICTION FOR THIRD-DEGREE ASSAULT, THE MATTER SHOULD BE REMANDED FOR AN ENTRY OF JUDGMENT ON FOURTH-DEGREE ASSAULT AND RESENTENCING.**

RAP 12.2 provides appellate courts with the authority to “reverse, affirm, or modify the decision being reviewed and take any other action as the merits of the case and the interests of justice may require.” This Court may remand for a resentencing on a lesser included offense where the jury was explicitly instructed on the lesser included offense; based upon the giving of such an instruction, it has been held that the jury necessarily had to have disposed of the elements of the lesser included offense to have reached the verdict on the greater offense. *In re Heidari*, 174 Wn.2d 288, 294, 274 P.3d 366 (2012); *State v. Green*, 94 Wn.2d 216, 234, 616, 616 P.2d 628 (1980).

Here, the jury was instructed on the lesser included offense of fourth-degree assault. CP 50. The defendant did not dispute that he had committed a fourth-degree assault. RP 178 (“You [the jury] have the option of finding [Mr. White] guilty of assault in the fourth degree... We would ask you to convict him of the crime he did, not something that doesn’t apply, because the elements can’t be made beyond a reasonable doubt”). In the event this Court determines that there was insufficient evidence to support the defendant’s conviction for third-degree assault, it is proper for this Court

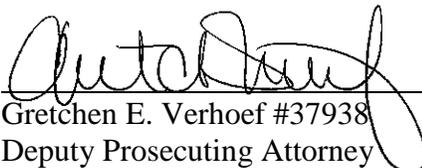
to remand to the trial court for entry of judgment and resentencing for fourth-degree assault.

## V. CONCLUSION

There was sufficient evidence for a rational jury to convict the defendant of third-degree assault. However, if this Court determines that there was insufficient evidence to support the jury's finding that the defendant committed third-degree assault, the matter should be remanded to the Superior Court with an order to resentence the defendant for fourth-degree assault.

Dated this 3 day of June, 2019.

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

STATE OF WASHINGTON,

Respondent,

v.

STEVEN WHITE,

Appellant.

NO. 36559-0-III

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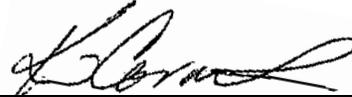
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