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NO. 36632-4-III

COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON, Respondent,

v.

SIEGFRIED JOHN SCHEELER, Appellant.

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BRIEF OF RESPONDENT

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## **I. ASSIGNMENTS OF ERROR**

### **ISSUES PRESENTED BY THE ASSIGNMENTS OF ERROR**

- A. Did the trial court act within its discretion in denying the motion to continue sentencing where it was already an hour past the scheduled start time of 9 a.m. and Scheeler could provide no reason why his ex-girlfriend and others did not appear at his sentencing and no one called to say they were running late?
- B. Should the first degree assault count be vacated based on the double jeopardy clause?
- C. Should the costs of community custody and collections, as well as non-restitution interest, be struck from Scheeler's judgement and sentence?

## **II. STATEMENT OF THE CASE**

The appellant, Siegfried John Scheeler, was convicted of first degree assault, fourth degree assault, and attempted second degree murder. CP 63. He was sentenced to 200 months in prison. CP 65. The conviction was based on the following facts elicited at trial:

On September 18, 2016, Peggy Thomas and her husband started out having a good morning, which included Mrs. Thomas making brunch and the two having Bloody Mary drinks. RP 177-8. Mrs. Thomas went to the grocery store while Scheeler was out in his shop. RP 178-9. When Mrs. Thomas got back, she put groceries away and went out to the shop to ask Scheeler what he wanted for dinner. RP 179.

When she got there, Scheeler was excited because he had found an old ex-girlfriend of his named Shanna Zutter and they had spoken on the phone for more than two hours. RP 179, 182. Scheeler and Ms. Zutter had an affair in 1998 that broke up a prior marriage of his. RP 182. Scheeler told his wife that he was going to see Ms. Zutter in Bellevue to help go after the “tweakers” who robbed their home in Issaquah. RP 180. Ms. Zutter told him that she knew who it was and that it was her friend’s son. RP 181-2. Scheeler told his wife that he was going to go murder him. RP 182. Scheeler was under the influence at the time, as he had watery eyes and an attitude. RP 181.

Mrs. Thomas told him he was not going to Bellevue and Scheeler got angry. RP 181-2. He told her that this was his chance to get revenge and that she was stupid. RP 182. She walked away and he followed her into the house, through the kitchen, and into the living room. RP 182. Scheeler was very angry and started yelling at her, berating her, and calling her stupid. RP 182. Mrs. Thomas told her husband that she was jealous of Ms. Zutter. RP 182. This made him angrier and he started punching her in the head. RP 183.

Mrs. Thomas told him, “you’re not going to hit me again. I’m not going to have it. You’re not going to hurt me again.” RP 183. He got angrier and she tried to escape to the kitchen. RP 183. He grabbed her

and was still yelling at her. RP 183. As they went through the kitchen doorway, she grabbed a stainless skillet and hit him in the back of the head. RP 184. At this point, he grabbed her and threw her. RP 185. He shoved her against big metal rolling toolbox and up into the wall. RP 185. Then he beat her and punched her while she tried to get away. RP 186. He ultimately knocked her to the ground. RP 187. She was folded in half and could not breathe. RP 187. She kept pleading, “I can’t breathe. Siegfried, stop. I can’t breathe. I can’t breathe.” RP 187. But he kept pushing harder and harder until she eventually lost consciousness. RP 187-8.

When she came to, Mrs. Thomas heard Scheeler loading a shotgun in the bedroom. RP 188. She got up and started running for the kitchen door that led to the patio. RP 189. He caught her and they shattered the glass in the storm door. RP 189-90. He pinned his wife to the ground. RP 189. Mrs. Thomas was on her back. RP 191. Mrs. Thomas testified, “He was screaming at me that he was going to fucking kill me. You fucking cunt. You’re dead. I will kill you.” 191. He used the barrel of the shotgun to turn her head and kept screaming at her that he was going to kill her. RP 191. She begged and pleaded with him to stop and started shoving the shotgun away from her head. RP 191.

At that point, Scheeler fired the first round, which went through the metal on the lower half of the storm door. RP 192. It missed his wife because she forced the gun away from her head. RP 192. He continued to try to put the gun to the side of her head. RP 192. The barrel was resting up against her head with her hands still around it when he fired the second round. RP 192. That round hit the doorframe. RP 192. He continued to scream and rage at her. RP 193. She let go of the gun and kind of threw it when he fired the third round. RP 193. That shot blew out the metal panel on the storm door. RP 193.

Scheeler then got up and left, still enraged. RP 193. He told her to get up and get in the shower and she complied. RP 194. When she got done, he started yelling at her again, saying that he needed to go to Bellevue. RP 196. In order to get him out of the house, Mrs. Thomas told him to go. RP 195. He kept talking about Ms. Zutter and Loretta, another ex-girlfriend. RP 197. At this point, she agreed with everything he was saying and told him to go meet with Ms. Zutter. RP 197. She then got his permission to start mopping and he went to take a shower. RP 198. When he got out of the shower, he had his wife dress him because he wanted to look hot when he went to see Ms. Zutter. RP 198. He left and Mrs. Thomas called 911 for help. RP 198.

Scheeler was ultimately convicted of all counts except attempted first degree murder. The guilty verdicts came in on January 18, 2019. RP 461. Sentencing was set for February 1, 2019. RP 476, CP 83.<sup>1</sup> The sentencing date was then moved to February 8, CP 84, and continued again to February 11, RP 474.

On February 11, 2019, Scheeler moved to continue the sentencing date because his divorce case was set for trial on March 26 and 27. RP 476. The defense asked to continue the sentencing so that Scheeler could attend the divorce trial and resolve the property issues in his divorce case. RP 476.

As for witnesses that had not appeared, Scheeler's attorney stated:

There are a number of witnesses that Mr. Scheeler wanted to appear today. The only think I can think of is the weather has kept them from being here or some belief about the court being closed. I do know that I had spoke—Ms. Zutter had four people that she wanted to speak to the court both to Mr. Scheeler's background and history in the community as well as to his employment and a number of other things that Mr. Scheeler strongly felt would be helpful to the court to understand. **I'm not sure why they are not here.**

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<sup>1</sup> The State filed a Supplemental Designation of Clerk's Papers on February 7, 2020. The State predicts that the next two CP numbers will be 83 and 84.

RP 476 (emphasis added). He also stated:

I had spoken to Ms. Zutter. I think you'll remember she attended the proceedings. She was to have a number of people here this morning for sentencing. I explained to her that I would be asking for a continuance. I did not indicate to her that she should not appear. She advised me that she was going to be here today. **I have no explanation for her failure to be here.**

RP 477 (emphasis added).

Scheeler's attorney then asked the court for a March sentencing date:

I spent quite a bit of time with Mr. Scheeler going over his issues. He has a number of issues that he'd like to address the court on at sentencing as well. It would be my preference that we reset the date, however, to sometime either after the 10th or March or after the 27th of March.

RP 477. Scheeler's attorney did indicate that his client was prepared, stating, "Again, Mr. Scheeler does have a number of comments he would like to make. I believe he's prepared." RP 478. The State asked to proceed with sentencing. RP 477. The trial court agreed to sign an order postponing Scheeler's transport to DOC until after the dissolution trial.

RP 478.

As for Ms. Zutter and others that did not show up, the trial judge responded:

Well, I don't know why those people aren't here. The schedule clearly says that this case was going to be heard at 9:00 and here and it's 10:00. There's no indication that anybody has appeared or inquired.

RP 479. The defense attorney then explained why he was an hour late and that the speed limit on Snoqualmie Pass was down to 35 miles per hour.

RP 479. The court responded as follows:

Well, if somebody called, if we had some indication that they're running late or anything like that, but we don't have anything. We'll go ahead and proceed with sentencing today.

RP 479.

Both sides proceeded to sentencing. The sentencing range was 0 to 364 days on count 2, fourth degree assault, and 92.25-165 months on count 4, attempted second degree murder. CP 63-4. The State asked for the top of the range, 165 months, for a total term of 225 months with the firearm enhancement. RP 481. The defense attorney, along with Scheeler, gave a lengthy explanation of the circumstances surrounding the crime and asked that the court consider those in determining the sentence.

RP 484-515.

Ultimately, the trial judge did not follow the prosecutor's top of the range recommendation. On count 2, the court sentenced Scheeler to 364 days with none suspended and on count 4, the court sentenced Scheeler to 140 months with a 60-month firearm enhancement. CP 64-5. The sentences were run concurrently for a total term of 200 months. CP 65  
Scheeler now timely appeals.

### III. ARGUMENT

- A. The trial court acted within its discretion in denying the motion to continue sentencing where it was already an hour past the scheduled start time of 9 a.m. and Scheeler could provide no reason why his ex-girlfriend and others did not appear at his sentencing and no one called to say they were running late.**

A "trial court has broad discretion to determine whether there is good cause to postpone sentencing." *State v. Roberts*, 77 Wn. App. 678, 894 P.2d 1340 (1995). Even when it is argued that a refusal to grant a continuance deprives a defendant of the right to due process and right to representation, the reviewing court will affirm unless the record affirmatively demonstrates an abuse of discretion. *State v. Sutherland*, 3 Wn. App. 20, 21, 472 P.2d 584 (1970). A court abuses its discretion when its decision is manifestly unreasonable or exercised on untenable grounds or for untenable reasons. *State v. Brown*, 132 Wn.2d 529, 572, 940 P.2d 546 (1997). The appellate court considers the totality of the

circumstances and the reasons presented to the trial court at the time the decision was made. *State v. Hartley*, 51 Wn. App. 442, 445, 754 P.2d 131 (1988).

Here, Scheeler's due process rights were not violated by the sentencing in this case. Scheeler fails to make any showing that the trial court abused its discretion in denying his motion to continue sentencing. First of all, Scheeler's attorney made it clear that he had no idea where the ex-girlfriend was, stating, "She advised me that she was going to be here today. I have no explanation for her failure to be here." RP 477. As for the individuals Scheeler wanted to have at sentencing, his attorney represented to the court, "I'm not sure why they are not here." RP 477. Second, the record was clear that no one had called in or inquired about the sentencing. RP 479. Third, the sentencing hearing was already running an hour late. RP 479. Finally, Scheeler's attorney represented that he had spent quite a bit of time with Scheeler going over his issues and that he believed his client was prepared. RP 478. Based on this record, the trial court did not abuse its discretion.

Scheeler cites to caselaw involving a "violent and unexpected storm." Appellant's Br. at 16. Scheeler argues on appeal that "a snowstorm had caused considerable travel delays for individuals who planned to participate in the sentencing hearing..." Appellant's Br. 1. He

further argues that “Counsel believed the snowstorm had impacted these witnesses’ ability to attend.” Appellant’s Br. 7. Scheeler further claims that witnesses were likely experiencing travel delays, or assumed the court would be closed, given the “unusual inclement weather.” Appellant’s Br. 16. He points to the trial attorney’s hour-long delay due to a “snowstorm.” *Id.* He argues that the trial court should have granted the continuance to “allow the weather to abate.” Appellant’s Br. 18.

Although Scheeler argues that a “snowstorm” warranted a good cause for a continuance, the word “snow” was never mentioned during the sentencing hearing. There was nothing in the record about a “violent and unexpected storm.” The only record made as to the weather was that the speed on the pass was 35 miles per hour and Scheeler’s attorney made it from Kirkland to Yakima with an hour delay. RP 349. More importantly, there was absolutely no record that the weather was the reason individuals did not attend Scheeler’s sentencing. Scheeler’s attorney made it clear that he had “no explanation” for the ex-girlfriend’s failure to appear and as for the others, he said, “I’m not sure why they are not here.” RP 476-77. His mention of the weather was him merely speculating as to why they were not there. *See* RP 476. Furthermore, despite court starting an hour late, not one of the five individuals called to say they were running late or could not make it. RP 479. And Scheeler addressed the court for quite

some time that day. RP 489-515. During the entire sentencing hearing, no witnesses showed up to address the court on his behalf. RP 476-21.

In support of his argument that the trial court violated his due process, Scheeler points to three cases, *State v. Edwards*, 68 Wn.2d 246, 412 P.2d 747 (1966), *State v. Hartwig*, 36 Wn.2d 598, 219 P.2d 564 (1950), and *State v. Alltus*, 10 Wn. App. 2d 193, 447 P.3d 572 (2019). All three cases are distinguishable from Scheeler's case. In *Alltus*, the defendant, who was only 16 at the time of the crime, was convicted of premeditated murder and related crimes. 10 Wn. App. 2d at 194. Sentencing was set the following day. *Id.* She moved to bifurcate sentencing, order a presentence report, and give her attorneys time to present evidence of mitigating circumstances relate to her youth. *Id.* at 194-5. The trial judge denied the defendant's request for two additional days, observing that a PSI would add nothing significant. *Id.* at 199. This Court found that the trial court's denial of a continuance was an abuse of discretion, stating:

The matters identified were the type of matters our Supreme Court requires sentencing courts to consider when a juvenile is involved, and matters the defense could not reasonably be expected to compile itself in less than a day. Under these circumstances, we hold that it was an abuse of discretion for the trial court to deny Ms. Alltus's request that the court bifurcate

her sentencing hearing and order a presentence report.

*Id.* at 202. The Court of Appeals remanded the case for a presentence report and a new sentencing hearing. *Id.*

Nothing in the *Alltus* case is remotely like the facts here, where Scheeler's ex-girlfriend and four others simply never showed up to his sentencing hearing and at no time called in to say they were running late or needed to continue the sentencing.

In *Hartwig*, a defendant sought a continuance of the trial date, not a sentencing hearing. 36 Wn. 2d at 599. The case was called for trial on November 9 at 1:30 p.m. *Id.* The defendant asked for a continuance because his attorney had to appear in the Court of Appeals at the same time. *Id.* The trial court denied the motion, appointed a new attorney to represent the defendant, and recessed until 2:15 p.m. *Id.* The new attorney asked for a continuance to prepare, the State objected, and the trial court denied the motion to continue. *Id.* The defendant was awarded a new trial because "it was the duty of appointed counsel to make a full and complete investigation of both the facts and the law in order to advise his client and prepare adequately and efficiently to present any defenses he might have to the charges against him." *Id.* at 601.

Here, Scheeler's attorney was present. He did not need additional time to prepare. In fact, he was prepared and informed the court that he had spent quite a bit of time going over Scheeler's issues. RP 477. He also indicated that Scheeler was prepared. RP 478. As such, nothing in this case is analogous to the facts in *Hartwig*.

In *Edwards*, the defendant served three witnesses with subpoenas for trial and they unexpectedly did not appear. 68 Wn.2d at 251. He asked for a short recess, about 45 minutes, in the middle of trial, and asked that the court exercise its powers to compel immediate attendance of the witnesses. *Id.* The additional time was needed for enforcement of the subpoenas. *Id.* at 257. The trial court denied the motion. *Id.* The State Supreme court limited its discussion to only one assignment of error, that involving the right to compulsory process. *Id.* at 249-50. The Court ordered a new trial, stating:

But where, as here, the defendant took specific steps to assure the attendance of witnesses -- and then made timely application to enforce their attendance -- it was an abuse of discretion for the court to refuse a recess in the defendant's testimony of about 45 minutes to enable the defendant to compel attendance. The fact that defendant had served a civil subpoena on each of the witnesses once, and on one of them twice, supports the bona fides of his request for the short recess and compulsory process.

*Id.* at 258. Here, there is no record that Scheeler served anyone with a subpoena for his sentencing hearing. Furthermore, his motion to continue was not based on the need to enforce subpoenas, and in no way involved Scheeler's right to compulsory process. As such, the *Edwards* case is completely distinguishable on its facts.

Scheeler also points to CrR 7.1, but this rule is irrelevant as it pertains to presentence reports. Appellant's Br. 17. CrR 7.1(a), allows the court to order a risk assessment or presentence investigation (PSI) and report to be prepared by the Department of Corrections. That was not done in this case. CrR 7.1(b) goes through the information that must be contained in the report. It states, "The report of the presentence investigation shall contain..." and lists various types of information that must be included in the report. CrR 7.1(b). Subsection 7.1(c) then allows a process to present new evidence, requiring that at least three days before the sentencing hearing, the party with new evidence must notify opposing counsel and the court of any part of the report to be controverted by new evidence. Absolutely nothing in CrR 7.1 pertains to Scheeler's case because the court did not order a PSI in this case.

In sum, Scheeler has provided no caselaw that supports his position that the trial court abused its discretion in denying his motion for

a continuance of his sentencing date. His claim that a snowstorm preventing witnesses from attending is mere speculation and the cases he cites are completely distinguishable from the case at hand.

Further, a trial court's decision to grant a continuance will "be disturbed only upon a showing that the accused has been prejudiced and/or that the result of the trial would likely have been different had the continuance not been denied." *State v. Deskins*, 180 Wash. 2d 68, 82, 322 P.3d 780, 786-87 (2014) (citing *State v. Eller*, 84 Wn.2d 90, 95, 524 P.2d 242 (1974)). Here, Scheeler has made no such showing that his sentence would have been any different if he had been given a continuance. In fact, the defense did not ask for a specific sentence and the court gave a lesser sentence than what the State recommended. The State asked for top of the range and the court gave a mid-range sentence. RP 481, CP 64-5. As such, the trial court did not error by denying Scheeler's motion to continue sentencing. Scheeler's due process rights were not violated by the sentencing in this case.

**B. The first degree assault count should be vacated based on the double jeopardy clause.**

The State concedes that count 1, first degree assault, should be vacated per *State v. Gohl*, 109 Wash. App. 817, 824, 37 P.3d 293, 296 (2001), because the first degree assault count and attempted second degree

murder were based on the same facts and the harm was also the same for both offenses. The presence of both convictions, therefore, violates double jeopardy.

**C. The costs of community custody and collections, as well as non-restitution interest, should be struck from Scheeler's judgement and sentence.**

The State concedes that based on caselaw and Scheeler's indigency status, the costs of community custody and collections, as well as non-restitution interest, should be vacated.

**IV. CONCLUSION**

For all the above reasons, the State asks that Appellant's convictions be affirmed.

Respectfully submitted this 7th day of February, 2020,

s/Tamara A. Hanlon  
TAMARA A. HANLON WSBA 28345  
Deputy Prosecuting Attorney

DECLARATION OF SERVICE

I, Tamara A. Hanlon, state that on Feb. 7, 2020, via the portal, I emailed a copy of BRIEF OF RESPONDENT to E. Rania Rampersad. I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 7th day of February, 2020 at Yakima, Washington.

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