

FILED
Court of Appeals
Division III
State of Washington
6/15/2020 3:52 PM

No. 36634-1-III

THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON,

Respondent,

v.

John Hobbs,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR YAKIMA COUNTY

AMENDED OPENING BRIEF

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A. INTRODUCTION

John Hobbs and Tonta James are in a long term relationship. Both suffer from mental illness and rely on each other for support. Mr. Hobbs had twice been convicted of violating a no-contact order that was entered against their wishes. When Mr. Hobbs was again seen at Ms. James's home, he was arrested for violating the order.

Mr. Hobbs's speedy trial recommenced after he had been in jail for nearly six months when his attorney withdrew. Rather than reset Mr. Hobbs's new trial date within the 60 days allowed by court rule, the court set his trial 115 days from the date of commencement over Mr. Hobbs's personal objection. The court then extended this trial date an additional two weeks in his absence without providing a basis for the continuance as required by court rule. These violations of the speedy trial rules require reversal and dismissal of Mr. Hobbs's conviction.

At sentencing, the court included three out-of-state convictions that were not comparable in his offender score, requiring reversal for resentencing on the correct offender score.

B. ASSIGNMENTS OF ERROR

1. In violation of the speedy trial rules, the trial court failed to set Mr. Hobbs's trial within 60 days from the commencement date, over his objection.

2. The trial court deprived Mr. Hobbs of his speedy trial right by granting a motion to reset his trial an additional two weeks beyond the last available day for trial without providing a basis as required by CrR 3.3(f)(2).

3. The court deprived Mr. Hobbs of his right to speedy trial under the Sixth Amendment and article I, section 22.

4. The prosecution failed to prove the comparability of three of Mr. Hobbs's prior Oregon burglary convictions.

5. The sentencing judge sentenced Mr. Hobbs on an incorrect offender score.

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. When the accused is held in jail pending trial, they shall be brought to trial within 60 days of the commencement date. Mr. Hobbs's commencement date was reset after he had been in jail awaiting trial for nearly six months. Rather than set Mr. Hobbs's new trial date

within the 60 days required by court rule, over Mr. Hobbs's personal objection, the trial court set his trial 115 days from the new commencement date. Did the trial court's failure to adhere to the rules ensuring the accused's right to speedy trial require reversal and dismissal of his conviction?

2. The speedy trial rules allow a court to extend a person's trial date under certain circumstances, including by motion of the court or parties when the continuance is required in the administration of justice. In such cases, the court must state on the record or in writing the reasons for the continuance and find the accused will not be substantially prejudiced in the presentation of their defense. Here, the court extended Mr. Hobbs's trial over two weeks beyond the last allowable day for trial, without providing the basis for this extension on the record. Did the trial court's failure to comply with CrR 3.3(f)(2) again violate Mr. Hobbs's right to speedy trial, requiring reversal and dismissal of Mr. Hobbs's conviction?

3. Did the trial court's continuances violate Mr. Hobbs's constitutional speedy trial right because they lacked an adequate basis, were entered over his personal objection, and prejudiced him because

of his known mental health needs which make pre-trial incarceration all the more oppressive?

4. An out-of-state conviction does not count in a defendant's offender score unless the State proves that it is comparable to a Washington felony. Here, the court added three points to Mr. Hobbs's offender score based on three prior Oregon burglary convictions which are not legally comparable to analogous Washington offenses, and which the State failed to show were factually comparable to a Washington offense. Did the court err by adding three points to Mr. Hobbs's offender score based on non-comparable out-of-state convictions?

D. STATEMENT OF THE CASE

1. Mr. Hobbs is charged with violation of a no-contact order for consensual contact with his girlfriend.

John Hobbs and Tonta James are in a long term relationship. 2/19/19 RP 91. They both have longstanding mental health issues. CP 5; 2/19/19 RP 91. Ms. James received housing, independent living and social skill support through Comprehensive Health Care. RP 130-31.¹ When a Comprehensive Health case manager, Jesse Coffman, came to

¹ VRP references without a date refer to the consecutively paginated trial dates from January 7-January 9, 2019.

check on Ms. James's apartment, she let him come inside. RP 130, 132. Mr. Coffman observed three other people inside the apartment besides Ms. James. RP 132. Mr. Coffman recognized Mr. Hobbs. RP 133. He called 911, believing Mr. Hobbs had a no-contact against Ms. James or that she had one against him. RP 133-34.

Officer Chris Taylor responded to the call. RP 138. Ms. James opened the door for the officer when he knocked, and the officer saw Mr. Hobbs inside Ms. James's apartment. RP 140. The officer determined there was a no-contact order in place, and that Mr. Hobbs had two previous convictions for violating a no-contact order. RP 151. This court order prohibited Mr. Hobbs from contact with Ms. James, but provided that Mr. Hobbs and Ms. James could petition to extinguish the no-contact order after proof they received treatment. RP 146; Ex. 2.

Officer Taylor arrested Mr. Hobbs and booked him into jail in February of 2018. RP 149-50.

2. *After Mr. Hobbs's speedy trial recommences the court sets his trial nearly twice the time allowed by court rule, over his personal objection, after he already spent nearly six months in jail awaiting trial.*

Due to Mr. Hobbs's mental health issues, he had to be placed in a padded cell at the jail. CP 5. He refused food and water and was

placed on suicide watch. CP 5. His attorney observed him lying in a corner of his cell curled up in the fetal position. CP 5. He was unable to engage in conversation, did not move his body, and was non-responsive to questions. CP 5. Mr. Hobbs's preliminary appearance had to be set over several times because he was in a "catatonic state" for days after his arrest. CP 5; 3/1/18 RP 4; 3/2/18 RP 5. His counsel requested a competency evaluation. CP 4-10.

Mr. Hobbs was ultimately found competent. CP 14. Pre-trial litigation lasted from about February to August 2018, or about five and a half months, while Mr. Hobbs sat in jail. CP 92. During this time, his attorney requested some continuances, opposed some, and Mr. Hobbs personally objected to nearly every continuance when he was present. 3/28/18 RP 9; CP 12-13; 4/26/18 RP 4; 5/4/18 RP 4; CP 1; 5/8/18 RP 9-10; CP 20; 5/18/18 RP 12, 18-19; 6/6/18 RP 23-41, 79-80; 6/8/18 RP 5-6; 7/13/18; 8/3/18 RP 21-22; 8/10/18 RP 25-27.

Mr. Hobbs's attorney withdrew in August of 2018, about five months after his arrest, due to a conflict of interest. CP 92; 8/10/18 RP 32-33. Mr. Hobbs was appointed a second attorney who withdrew weeks later due to a conflict of interest, but put on the record Mr.

Hobbs's "ongoing and continuous objection to any -- anything set beyond this point for his speedy trial rights." 8/24/18 RP 24.

Mr. Hobbs was appointed a third attorney who appeared on his behalf on September 7, 2018. CP 94-95; 9/7/18 RP 26. Rather than set Mr. Hobbs's trial within 60 days, counsel requested a trial date 101 days later, on December 17, 2018. 8/24/18 RP 23-24. This was 115 days from August 24, the date of disqualification and his objection to any further continuances. 8/24/18 RP 23-24; 9/7/18 RP 26; CP 96. Mr. Hobbs personally objected to this extended date for trial, but the court found this continuance was "necessary in the interests of justice" and did not prejudice him. RP 9/7/18 RP 27.

3. *The lawyers again continue Mr. Hobbs's trial past the last available day for trial without explanation, in Mr. Hobbs's absence.*

The parties did not reconvene again until the scheduled omnibus hearing on November 28, 2018. 11/28/18 RP 29. The State asked for a continuance at this time, based on a new prosecutor being assigned to the case. *Id.* Mr. Hobbs reiterated his adamant objection to any further continuances: "my client does not wish to agree to any further continuances whatsoever in this case, never has, quite frankly." 11/28/18 RP 29.

The court reviewed the history of the single charge, noting the case was not complicated. 11/28/18 RP 31. There was no additional litigation or motions noted during this scheduled hearing. 11/28/18 RP 28-32. The trial court ultimately denied the State's request for a continuance. 11/28/18 RP 31-32; 12/14/18 RP 5.

The attorneys and a different judge met on December 14, without Mr. Hobbs being brought to court. Without explanation, Mr. Hobbs's attorney asked the court to reset Mr. Hobbs's trial date from December 17 to January 2, 2019. 12/14/18 RP 5-6. The court entered an "order setting case schedule" with that trial date, and set a "triage" hearing for December 28, 2018. CP 98. The court did not provide a basis for resetting his trial date in the written order. CP 98.

At the December 28 hearing, Mr. Hobbs expressed confusion about what happened after the November 28 hearing. 12/28/18 RP 36. He objected to any continuances. 12/28/18 RP 36. Mr. Hobbs refused to sign the order submitted by the parties that again continued his trial one week due to counsel's illness. 12/28/18 RP 35; CP 99.

On January 4, Mr. Hobbs presented the court with his motion to dismiss for the court's violation of his speedy trial rights. CP 104. Mr. Hobbs stated that he was not brought to court on his scheduled trial

date of December 17, and he was unaware of what occurred in his absence. CP 104. Mr. Hobbs moved to dismiss his case with prejudice. CP 104. The trial court ultimately denied Mr. Hobbs's motion to dismiss. 1/7/19 RP 20.

4. Mr. Hobbs waits in jail 314 days for a trial that took a day and a half.

Mr. Hobbs's trial began on January 7, 314 days after he was arrested for this offense. CP 99. The State did not call Ms. James as a witness. Instead the State presented its case through certified court documents, the testimony of Mr. Coffman, the arresting officers, and a fingerprint expert. RP 129; 136-78; 187-91; Ex. 1-16.

Mr. Hobbs's trial lasted about a day and a half. Appendix 1 (minutes from January 7-8, 2019). The jury rendered a verdict finding Mr. Hobbs guilty of violation of a no contact order with a special verdict of domestic violence in about 30 minutes. RP 241; Appendix 2 (minutes from January 9, 2019).

At sentencing, the State alleged that Mr. Hobbs had an offender score of eight. CP 135, 137; 2/19/19 RP 88. Three of these alleged eight points were based on Oregon burglary convictions which Mr. Hobbs refused to stipulate were comparable to Washington offenses. 2/19/19 RP 87-90.

Mr. Hobbs argued the court should depart downward from the standard range sentence of 60 months and release him with credit for time served, because of his mental illness, his consensual relationship with Ms. James, and the fact that the court's no-contact orders were imposed against their will. 2/19/19 RP 91-94. Mr. Hobbs and Ms. James relied on each other because of their mental health issues which also made them unable to adhere to the court's no-contact order. 2/19/19 RP 91-94.

The court agreed with Mr. Hobbs's counsel's concern that the jail functioned as "the largest mental health facility in the county." 2/19/19 RP 92. And the court recognized that Mr. Hobbs had mental health issues, as well as a degree of remorse and insight into his circumstances. 2/19/19 RP 96. The court also recognized that consensual violations of no-contact order violations are often dealt with through a mitigated sentence. 2/19/19 RP 96. However, the court believed Mr. Hobbs's criminal history outweighed the clearly consensual contact that resulted in his instant criminal conviction, and did not merit a downward departure from the standard range. 2/19/19 RP 96-98. The court sentenced Mr. Hobbs to serve the standard range sentence of 60 months in prison. CP 137.

E. ARGUMENT

1. The trial court violated Mr. Hobbs's right to speedy trial.

a. The court has a duty to ensure compliance with the accused's statutory and constitutional right to a speedy trial.

The right to a speedy trial is a fundamental constitutional right guaranteed under both the state and federal constitutions. U.S. Const. amend. VI; Const. art. I, § 22; *State v. Iniguez*, 167 Wn.2d 273, 281-82, 217 P.3d 768 (2009). It is the trial court's responsibility to ensure a timely trial under Criminal Rule (CrR) 3.3. *State v. Carney*, 129 Wn. App. 742, 743, 119 P.3d 922 (2005). Speedy trial rules must be strictly construed: "unless a strict rule is applied, the right to a speedy trial as well as the integrity of the judicial process, cannot be effectively preserved." *State v. McNeil*, 20 Wn. App. 527, 534, 582 P.2d 524 (1978) (citing *State v. Striker*, 87 Wn.2d 870, 877, 557 P.2d 847 (1976)).

This Court reviews an alleged violation of the speedy trial rule de novo. *State v. Kenyon*, 167 Wn.2d 130, 135, 216 P.3d 1024 (2009). A trial court's denial of a motion to dismiss for speedy trial or a decision to grant or deny a continuance under CrR 3.3 is reviewed for abuse of discretion. *Id.*; *State v. Chavez-Romero*, 170 Wn. App. 568, 577, 285 P.3d 195 (2012). A trial court abuses its discretion when its

decision is based on untenable grounds or reasons. *State v. Saunders*, 153 Wn. App. 209, 216, 220 P.3d 1238 (2009).

b. The trial court violated the speedy trial rule by refusing to set Mr. Hobbs's trial within 60 days of his new commencement date and for failing to comply with CrR 3.3 when the court again continued his trial.

The trial court violated the rules protecting Mr. Hobbs's speedy trial rights, first in setting Mr. Hobbs's trial date 115 days, rather than 60 days after his commencement date was reset, and second, when the court entered an order continuing this trial date an additional 16 days in violation of CrR 3.3(f)(2).

When the accused is held in jail pending trial, as was the case for Mr. Hobbs, he "shall be brought to trial" within 60 days after the commencement date. CrR 3.3(b)(1)(i). The initial commencement date for speedy trial is the date of arraignment. CrR 3.3(c)(1). The accused's commencement date can be reset for various reasons under the rule, including, as occurred in Mr. Hobbs's case, "disqualification of counsel," which resets the commencement from the date of the disqualification. CrR 3.3(c)(2)(i)-(vii); CP 94.

Under CrR 3.3(d)(2), when the court determines the trial date should be reset for any reason, including but not limited to the applicability of a new commencement date pursuant to subsection

(c)(2) or a period of exclusion pursuant to section (e), the court shall set a new date for trial which is within the time limits prescribed.

A party who objects to the date set upon the ground that it is not within the time limits prescribed by the rule must, within 10 days after the notice is given, move the court to set trial within the limit. CrR 3.3(d)(3). A defendant's objection must be specific enough to alert the trial court to the type of error involved. *State v. Frankenfield*, 112 Wn. App. 472, 475, 49 P.3d 921 (2002).

Where there is not an objection to trial being set outside CrR 3.3(b)(1)(i)'s 60 day limit, that trial date is treated as the "last allowable day for trial," subject to section (g)'s cure period. CrR 3.3(d)(4).

CrR 3.3(e) excludes the time allowed for trial based, in relevant part, on valid continuances (delay granted by the court pursuant to section (f)) and "unavoidable or unforeseen circumstances." CrR 3.3(e)(3) and (8). If the excluded period is based on a continuance, CrR 3.3(f) applies, which allows the court to continue speedy trial under limited circumstances, including by motion of a party when required for the administration of justice. CrR 3.3(f). The court must state on the record or in writing the reasons for the continuance. *Id.*

Once the 60-day time for trial expires without a stated lawful basis for further continuances, the rule requires dismissal and the trial court loses authority to try the case. *Saunders*, 153 Wn. App. at 220 (citing CrR 3.3(b), (f)(2), (g), (h)).

i. The trial court erred in setting Mr. Hobbs's trial date within the time allowed by court rule over his personal objection.

The trial court abused its discretion in failing to set Mr. Hobbs's trial date within 60 days of his commencement date, instead setting it almost double the length of time allowed by court rule based on his counsel's generic claim he needed time to prepare for trial.

In *Saunders*, the court granted defense counsel and the State's request for continuance over the defendant's objection, or relied on uninformed standby defense attorneys or assigned prosecutors to present contested orders. *Saunders*, 153 Wn. App. at 220-21. When standby counsel requested continuances, they admitted they knew nothing substantive about the status of the case. *Id.* The *Saunders* court determined that "[a]bsent convincing and valid reasons" for the continuances granted over the defendant's objection, the trial court's orders granting the three continuances were an abuse of discretion, as

were the court's subsequent continuances. *Saunders*, 153 Wn. App. at 221.

In *State v. Campbell*, a triple murder death penalty case, the court did not err in granting defense counsel's motion to continue the case a few additional months over the defendant's objection, resulting in a trial within six months of arraignment, where the court found an additional continuance was needed "because of the complexity and length of this case." 103 Wn.2d 1, 6-16, 691 P.2d 929 (1984).

Here, the court failed to provide a "convincing and valid" reason for setting Mr. Hobbs's trial nearly double the time allowed under CrR 3.3(b)(1)(i). *Saunders*, 153 Wn. App. at 221. Mr. Hobbs's new commencement date began when his second attorney was disqualified, on August 24, 2018. CrR 3.3(c)(2)(vii); 8/24/18 RP 24; CP 94.

Withdrawing counsel put on the record that due to counsel's disqualification, Mr. Hobbs's speedy trial recommenced that day and noted Mr. Hobbs's personal and ongoing objection to "anything set beyond this point for his speedy trial rights." 8/24/18 RP 24.

By September 7, 2018, Mr. Hobbs was appointed and appeared with a new attorney, Mr. Bruns. 9/7/18 RP 26. Mr. Bruns asked for a continuance because he was newly assigned to the case. 9/7/18 RP 26.

He asked that trial be set “on the normal calendar for available dates,” requesting November 28, for the “omnibus” and December 17 for the trial. RP 9/7/18 RP 26. This trial date was 115 days from Mr. Hobbs’s commencement date on August 24, and was 101 days from the date of the request.

Mr. Hobbs asserted his speedy trial rights were violated and he moved to dismiss. RP 9/7/18 RP 27. The court denied Mr. Hobbs’s motion, finding “this needs to be continued.” 9/7/18 RP 27. The court ruled, when new counsel is appointed, “he’s got to be prepared” to provide the defendant a “fair trial.” 9/7/18 RP 27; CP 96. The court found this request for 101 days to prepare for trial over Mr. Hobbs’s objection was “necessary in the interests of justice” and did not prejudice Mr. Hobbs. 9/7/18 RP 27.

Mr. Hobbs’s oral motion adequately conveyed to the court he wished to have a trial within the rules governing speedy trial, but the court refused to set his date within 60 days as required by CrR 3.3(b)(1)(i) and (c)(2)(vii). *See Chavez-Romero*, 170 Wn. App. at 582 (citing *State v. George*, 160 Wn.2d 727, 732, 158 P.3d 1169 (2007) (accepting motion to dismiss as an objection that addressed the merits

of Mr. George’s speedy trial claim, even though Mr. George incorrectly assumed in the motion that his time for trial had expired)).

Unlike the *Campbell* court, which specifically noted a continuance was necessary due to the “complexity and length” of the case, 103 Wn.2d at 15, here the court made no findings specific to the case that would have necessitated nearly doubling the time for trial permitted by court rule. Nor could complexity of the case provide a valid basis for setting a trial nearly double the time allowed by court rule over Mr. Hobbs’s personal objection, where Mr. Hobbs was charged with a single count of violation of a no-contact order, which the court later noted, “doesn’t sound very complicated.” 11/28/18 RP 31. As the parties recognized at the scheduled omnibus on November 28, there was no need for any additional discovery or new omnibus order—they relied on the one that had been filed during the previous five months Mr. Hobbs was incarcerated, prior to Mr. Bruns’s appearance in September 2018. 11/28/18 RP 30.

The trial court abused its discretion in nearly doubling the time allowed for trial without providing “convincing and valid” reasons for this continuance in violation of the 60-day rule over Mr. Hobbs’s

objection. *Saunders*, 153 Wn. App. at 221; CrR 3.3(b)(1)(i) and (c)(2)(vii) and (d)(2),(3).

ii. The court's second extension of Mr. Hobbs's trial date beyond the last allowable day for trial without providing a valid basis in the record violated the rules of speedy trial.

Besides setting Mr. Hobbs's trial nearly twice the length of time allowed by court rule under CrR 3.3(b)(1)(i), the trial court also violated Mr. Hobbs's speedy trial right by not following the requirements of CrR 3.3(e) and (f) in extending Mr. Hobbs's trial date an additional 16 days beyond the last allowable day for trial.

In *Kenyon*, the trial court continued a trial for "unavoidable circumstance" where the trial judge was in a criminal trial and the second judge of the two-judge county was on vacation. 167 Wn.2d at 134 (citing CrR 3.3(e)(8)). The Supreme Court found that the "trial court should have documented the availability of pro tempore judges and unoccupied courtrooms" because, under CrR 3.3(f)(2), the court is "required to 'state on the record or in writing the reasons for the continuance' when made in a motion by the court or by a party." *Kenyon*, 167 Wn.2d at 139.

Here the trial court failed to make the required record when it entered the December 14 order extending Mr. Hobbs's trial date in his

absence, beyond the last allowable day for trial on December 17. CP

98. 12/14/18 RP 5.

On December 14, the parties met without Mr. Hobbs being brought to court. Mr. Hobbs's attorney informed the court:

MR. BRUNS: There was a previous motion for a continuance that Judge McCarthy turned down. So, what we need to do is reset it for trial and it was supposed to be on the docket this morning for triage; but it wasn't. So, within the thirty-day period we're trying to reset it and we're looking at Wednesday, January 2nd for trial date. And we'll do the 28th for triage date.

THE COURT: okay.

MR. BRUNS: But we need to get it on the record and get it in the court's file.

[. . .]

THE COURT: Alright. I've signed that. That sets it for those dates and times.

12/14/18 RP 5-6.

Defense counsel provided no basis for the requested continuance, other than paradoxically stating trial should be "reset" because the State's motion to continue was denied.² The trial court failed to find the continuance was required "in the administration of justice" and failed to state on the record or in writing the reasons for the

² Nor could this be a "written agreement" under CrR 3.3(f)(1), because Mr. Hobbs was not present and did not sign the order.

continuance as required by the speedy trial rule. CP 98; *Kenyon*, 167 Wn.2d at 139; *c.f. State v. Hatt*, 11 Wn. App.2d 113, 148, 452 P.3d 577 (2019) (The court had “no doubt” that defense counsel “could not possibly be prepared adequately” to go to trial in less than two months on a charge that carried a possible sentence of up to 50 years. The court stated on the record that it was balancing the defendant’s “right to a speedy trial with his right to adequate representation.”).

Though CrR 3.3(f)(2) states that “the bringing of such motion by or on behalf of any party waives that party’s objection to the requested delay,” Mr. Hobbs’s attorney provided no basis for this requested continuance beyond the last allowable day for trial on December 17; thus it cannot be seen as an adequate motion on his behalf. *C.f. Campbell*, 103 Wn.2d at 6, 15 (within 60 days of arraignment on triple aggravated murder charge, defense counsel, over defendant’s objection, moved for continuance based on vast discovery to be completed and to afford defendant a fair trial).

Here, Mr. Hobbs’s attorney’s request to continue trial over his client’s objection, without providing any basis for why it is required “in the administration of justice” under CrR 3.3(f)(2), cannot be deemed a waiver of Mr. Hobbs’s unequivocal opposition to speedy trial because

it is not an adequate motion to enable the court's required findings under the rule. CrR 3.3(f)(2).

The trial court violated the speedy trial rules by extending Mr. Hobbs's trial date beyond the last allowable date for trial without stating the basis for the extension or making the required record. CP 98.

iii. Reversal for dismissal of Mr. Hobbs's conviction is required under CrR 3.3.

The required remedy for violating CrR 3.3 is reversal for dismissal with prejudice. CrR 3.3(h); *State v. Smith*, 104 Wn. App. 244, 253, 15 P.3d 711 (2001). The defendant need not show prejudice; failure to strictly comply with the speedy trial rules is grounds for dismissal. *State v. Raschka*, 124 Wn. App. 103, 112, 100 P.3d 339 (2004).

At the triage hearing on December 28, Mr. Hobbs was finally brought to court. Mr. Hobbs was unaware of why his trial did not take place on the scheduled date: "I'm not sure what happened with my omnibus. I wasn't prepared for an appearance today. And I object to any continuances." 12/28/18 RP 36. He filed a written motion to dismiss for violation of his speedy trial rights at the next opportunity, on January 4, 2019. CP 104. The court denied his motion, finding, "it

appears to me that the speedy trial rule has been followed.” 1/7/19 RP
20.

This was error. Because the court abused its discretion in setting Mr. Hobbs’s trial nearly twice what is allowed by court rule, and the court’s resetting of Mr. Hobbs’s trial without stating the basis for the extension failed to comply with CrR 3.3(f)(2), he is entitled to reversal and remand for dismissal of his charge for violation of a no-contact order. CrR 3.3(h).

c. Reversal is also required because these delays violated Mr. Hobbs’s constitutional right to speedy trial.

The court rules and constitutional right to speedy trial are related, but the constitutional right is “both narrower and broader” than a court’s speedy trial rule. *United States v. Gearhart*, 576 F.3d 459, 462 (7th Cir. 2009). It is narrower because unlike violation of a court rule, “it protects only against delays that result in prejudice; but it is broader because the Constitution protects against prejudicial delay regardless of whether a defendant can show a violation” of a court rule. *Id.* Courts review de novo whether a defendant’s constitutional right to a speedy trial has been violated. *State v. Ross*, 8 Wn. App.2d 928, 941, 441 P.3d 1254 (2019).

The prosecutor and the court bear the “primary burden” of ensuring a case is brought to trial. *Id.* (citing *Barker v. Wingo*, 407 U.S. 514, 529, 92 S. Ct. 2182, 33 L. Ed. 2d 101 (1972)). There is no “fixed point” in which a speedy trial violation occurs—this inquiry turns on the context of the case. *Iniguez*, 167 Wn.2d at 282 (citing *Barker*, 407 U.S. at 521). The delay of close to one year—here 314 days—is presumptively prejudicial. *Iniguez*, 167 Wn.2d at 290 (courts presume prejudice for trial delays of between eight months and one year). This prejudice is further established under the four non-exclusive factors provided in *Barker*: (1) the length of the delay; (2) the reason for the delay; (3) the defendant’s assertion of his speedy trial right; and (4) the prejudice to the accused in waiting for trial for an extended period of time. *Iniguez*, 167 Wn.2d at 283-84 (citing *Barker*, 407 U.S. at 531-32).

Mr. Hobbs personally objected throughout the nearly one year he awaited trial, even if, during the first six months of his case, the continuances were for case-related reasons. His counsel requested a competency evaluation on March 2 of 2018, soon after he was arrested. CP 14. After he was found competent, Mr. Hobbs personally objected to his arraignment on speedy trial grounds. 3/28/18 RP 9; CP 11. His

speedy trial expiration was set May 29, 2018, with trial scheduled for May 7, 2018. CP 13, 15; 3/28/19 RP 11.

The court then reset the trial date either over Mr. Hobbs's personal objection or in his absence on the following dates:

May 4, 2018 (trial reset for May 14, 2018) CP 16; 5/4/18 RP 4 (Mr. Hobbs in custody, counsel requests continuance to refer Mr. Hobbs to drug court);

May 8, 2018 (trial reset for May 21, 2018) CP 17; 5/8/18 RP 10, 13 (Mr. Hobbs's attorney requests a continuance; Mr. Hobbs states "if we need an extension that badly I would be willing to get one in lieu of working with any lawyer. But, if I have to, I'm going to request a change of attorney;" the court denied his request for change of attorney);

May 18, 2018 (trial reset for June 11, 2018 over defense counsel and Mr. Hobbs's objection) CP 20; 5/18/18 RP 12, 18-19;

June 6, 2018 (defense counsel moves to dismiss for speedy trial and *Brady* violation) RP 6/6/18 RP 23-24; CP 65.

June 8, 2018 (defense counsel and prosecutor request trial continuance over Mr. Hobbs's personal objection) 6/8/18 RP 5-6;

July 13, 2018 (trial reset for August 6, 2018) CP 90; 7/13/18 RP 16-18 (counsel requests to continue trial; Mr. Hobbs personally objects).

August 3, 2018 (trial reset to August 13, 2018) 8/3/18 RP 21-22 (parties request trial date of August 13, within speedy trial; Mr. Hobbs not present).

Then, on August 10, Mr. Hobbs's attorney moved for a continuance of his trial date an additional month, to September 7, 2018, over Mr. Hobbs's objection. 8/10/18 RP 25. His counsel also identified a conflict of interest and the court allowed her to withdraw. 8/10/18 RP 25-26; 32-33; CP 92. Mr. Hobbs was appointed a second attorney who withdrew weeks later due to a conflict of interest, but informed the court that Mr. Hobbs objected to any further continuances. 8/24/18 RP 23-24; CP 94. His third attorney requested his case be set for trial 115 days from the date of disqualification, over Mr. Hobbs's objection. 9/7/18 RP 26-27. Between September and November there were no court hearings in Mr. Hobbs's case. CP 94-96.

On November 28, when the State requested another continuance beyond the December 17 trial date, Mr. Hobbs strenuously objected, and the trial court ultimately denied the State's request. 11/28/18 RP 29; 12/14/18 RP 5. But the lawyers met on December 14 in Mr. Hobbs's absence, and reset his trial date without providing a basis for the court, other than that another court had denied the State's request for a continuance. 12/14/18 RP 5. Mr. Hobbs personally objected at the first available opportunity. 12/28/18 RP 36.

The length of the delay, along with the second and third *Barker* factors, Mr. Hobbs's personal objection and the lack of a valid basis to continue, all weigh heavily in favor of a speedy trial violation. *Iniguez*, 167 Wn.2d at 283-84.

The final *Barker* factor, prejudice to the accused, is established by the fact that Mr. Hobbs waited in jail the entire time. *See Barker*, 407 U.S. at 533 (jailed defendant cannot assist in his defense the same as an out-of-custody defendant). The fact that Mr. Hobbs suffered from mental illness compounds the prejudice of his incarceration, as the needs of the mentally ill go unmet in jails and prisons, and subject them to greater punishment and suffering. *See, e.g.*, Jamie Fellner, *A Corrections Quandary: Mental Illness and Prison Rules*, 41 Harv. C.R.-C.L.L. Rev. 391, 394 (2006) ("seriously ill prisoners confront a paucity of qualified staff to evaluate their illness, develop and implement treatment plans, and monitor their condition"). Their unmet needs in prison often result in segregation, *id.* at 395, as occurred in Mr. Hobbs's case, where he had to be confined to a padded cell on suicide watch when brought to jail. CP 5.

Balancing the factors of the lack of an articulated need to continue Mr. Hobbs's case nearly four months after his

recommencement date, when his case was not complex, there was no pre-trial litigation between September 2018 and his trial in January of 2019, and the detriment of holding Mr. Hobbs in jail despite his known mental illness, establish he was prejudiced by this violation. This Court should reverse for violation of Mr. Hobbs's constitutional right to a speedy trial. *Barker*, 407 U.S. at 522.

2. The trial court erroneously included three out-of-state Oregon burglary convictions that are not comparable to Washington offenses which resulted in Mr. Hobbs being sentenced on an incorrect offender score.

The trial court included in Mr. Hobbs's offender score calculation, three prior Oregon convictions for burglary, which the State failed to prove are comparable to Washington offenses.

At sentencing, prior out-of-state convictions are classified according to their Washington equivalents, if any. RCW 9.94A.525(3). The State bears the burden of proving the comparability of out-of-state convictions. *State v. Ford*, 137 Wn.2d 472, 480, 973 P.2d 452 (1999). An out-of-state conviction may not be used to increase an offender score unless the state proves that it is comparable to a Washington felony. *Id.*

Washington has a two-part test for comparing foreign convictions. *State v. Olsen*, 180 Wn.2d 468, 472, 325 P.3d 187 (2014).

Under the first, legal prong, a court compares the elements of the out-of-state conviction to the relevant Washington crime. *Id.* at 472-73. If the foreign conviction is narrower because it contains all the most serious elements of the Washington statute, the out-of-state conviction counts toward the offender score as if it were a Washington offense. *Id.* at 473. However, if the foreign statute is broader than the Washington statute, the court moves on to the “factual prong—determining whether the defendant’s conduct would have violated the comparable Washington statute.” *Id.* at 473.

Washington courts recognized this factual analysis “could prove problematic” after *Apprendi v. New Jersey*, which requires that any “fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.” *Olsen*, 180 Wn.2d at 473 (citing *Apprendi v. New Jersey*, 530 U.S. 466, 120 S. Ct. 2348, 147 L.Ed.2d 435 (2000)); *see also Descamps v. United States*, 570 U.S. 254, 269, 133 S. Ct. 2276, 186 L.Ed.2d 438 (2013) (it would “(at least) raise serious Sixth Amendment concerns” to attempt to discern the underlying facts that were not found by a court or jury). To avoid “conflict with *Apprendi*,” Washington courts narrow the factual prong to consider only facts that

were “admitted, stipulated to, or proved beyond a reasonable doubt.” *Olsen*, 180 Wn.2d at 473-74 (citing *In re Personal Restraint of Lavery*, 154 Wn.2d 249, 258, 111 P.3d 837 (2005)). This includes only facts that were “clearly charged and then clearly proved beyond a reasonable doubt to a jury or admitted by the defendant.” *Olsen*, 180 Wn.2d at 476.

An illegal or erroneous sentence may be challenged for the first time on review. *Ford*, 137 Wn.2d at 477. A court reviews a trial court’s calculation of the defendant’s offender score de novo. *Olsen*, 180 Wn.2d at 472.

a. Oregon’s first and second degree burglary statutes are not legally comparable to Washington’s burglary statutes.

Oregon’s first and second degree burglary statutes are not legally comparable to Washington burglary statutes.

Oregon’s burglary in the first degree statute criminalizes unlawful entry into a “building” that is a “dwelling” in the first part of the statute. ORS 164.225.³ The second, disjunctive portion of the statute separately criminalizes unlawful entry into a “building” under

³ The Oregon burglary statutes have not changed since the date of Mr. Hobbs’s convictions in 1997 and 2002. See former ORS 165.225, .215, and .205 (https://archives.oregonlegislature.gov/ORS_Archives/1997-Chapter-164.html).

certain circumstances, including when the person is armed with burglar tools, causes physical injury to another, or uses or threatens to use a dangerous weapon. ORS 164.225; *State v. Fuller*, 73 Or. App. 306, 309, 698 P.2d 502 (1985) (being armed with a burglar's tool while in a building one has burglarized is burglary in the first degree).

The State conceded that Oregon's burglary in the first degree statute was not comparable to Washington's first degree burglary statute because it penalized a far broader a range of conduct than Washington's first degree burglary statute. CP 132. The State claimed that Mr. Hobbs's conviction under Oregon's burglary in the first degree statute was comparable to Washington's second degree or residential burglary statutes. CP 132. However, the Oregon first degree burglary statute criminalizes a much broader range of conduct than any of Washington's burglary statutes.

ORS 164.225(1) criminalizes unlawful entry when the "building is a dwelling." A "building" can include a "booth, vehicle, boat, aircraft or other structure adapted for overnight accommodation." ORS 164.205(1). Oregon defines a dwelling as "a building which regularly or intermittently is occupied by a person lodging therein at night, whether or not a person is actually present." ORS 164.205(2). Thus

Oregon's expansive definition of a "building" becomes a dwelling based on whether the building is occupied at night, which could apply to any of the various modes of transportation and structures Oregon includes in its broad definition of a "building," which would include, for example, a vehicle or aircraft. ORS 164.205(1).

This is not legally comparable to Washington's residential burglary and second degree burglary statutes, which specifically exclude vehicles, unlike what would be permitted under Oregon's first degree burglary statute. RCW 9A.52.020; RCW 9A.52.030; ORS 164.215; ORS 164.205(1) and (2).

Oregon's burglary statutes are also broader than Washington's where Oregon burglary statutes require only that the person enter a building with "with intent to commit *a crime* therein." ORS 164.205(1). Every Washington burglary statute requires the person to unlawfully enter a vehicle or dwelling with intent to commit a crime *against a person or property*. RCW 9A.52.030; RCW 9A.52.025; RCW 9A.52.020. Thus, in Oregon, a person can be guilty of burglary regardless of whether the intended crime was against a person or property. This could include drug possession crimes, unlawful possession of a firearm or burglar tools, or various other criminalized

activity that is not against a person or property. *See, e.g.*, RCW 2.48.180 (unlawful practice of law); RCW 9.41.040 (unlawful possession of a firearm); RCW 9A.52.060 (making or possession burglar's tools); RCW 9.94A.411 (providing table listing crimes against persons and property); RCW 9.66.010 (public nuisance is a crime against the order and economy of the state).

Because Oregon's first and second degree burglary statutes are broader than any Washington burglary statute, the State was required to prove Mr. Hobbs's conduct violated a comparable Washington statute as evidenced by the undisputed facts in the record for both of his Oregon convictions for burglary in the first and second degree. *State v. Thomas*, 135 Wn. App. 474, 480, 144 P.3d 1178 (2006) (citing *State v. Morley*, 134 Wn.2d 588, 606, 952 P.2d 167 (1998)); *Lavery*, 154 Wn.2d at 255.

b. The State failed to establish factual comparability for Mr. Hobbs's three Oregon burglary convictions.

The facts proffered by the State were insufficient to establish factual comparability for Mr. Hobbs's 2002 conviction for burglary in the first degree where Mr. Hobbs's guilty plea did not admit to facts establishing the conduct he pleaded to was comparable to any Washington burglary statute. Exhibit (Ex.) F. The State also failed to

establish his 1997 burglary in the first and second degree convictions by jury verdict were factually comparable to any Washington burglary statute where “dwelling” as specified in his burglary in the first degree conviction is not comparable to Washington’s definition of a “dwelling,” and there was no evidence of intent to commit a crime against a person. Similarly, the jury verdict for the 1997 burglary in the second degree conviction failed to establish factual comparability to any Washington offense. Ex. H; F.

i. Mr. Hobbs’s 2002 guilty plea to burglary in the first degree.

Facts alleged in a charging document are not equivalent to facts found by a jury or admitted by the defendant necessary to establish factual comparability. *Olsen*, 180 Wn.2d at 473-74; *Descamps*, 570 U.S. at 293. The problem with relying on a guilty plea to an out-of-state conviction for an offense with elements broader than what is required for conviction in Washington is that when the defendant pleads guilty, they have no incentive to prove they are guilty of more narrow conduct. *Thomas*, 135 Wn. App. at 485 (citing *Lavery*, 154 Wn.2d at 258).

In *Thomas*, the element required for conviction under Washington’s burglary statute, but missing from the California statute at issue—unlawful entry—was alleged in the charging documents for

the foreign conviction. However, the record did not establish the defendant “adopted that allegation in pleading guilty as charged.” *Thomas*, 135 Wn. App. at 487. *Thomas* found, in the absence of a plea colloquy, jury instructions or other court records showing unlawful entry was proved beyond a reasonable doubt, his burglary conviction was not factually comparable. *Id.* Because he entered a guilty plea, he had no incentive to admit or mount a defense to an allegation that did not affect the determination of guilt. *Id.* at 487 (citing *Lavery*, 154 Wn.2d at 258).

The State provided the following to support factual comparability for Mr. Hobbs’s 2002 offense:

- The Indictment alleging Mr. Hobbs “did unlawfully and knowingly enter and/or remain in a dwelling located at 240 NW 9th Street #4, Corvallis, with the intent to commit the crime of theft.” Ex. F (Indictment);
- The Information provided by the State similarly alleging he “did unlawfully and knowingly enter and/or remain in a dwelling located at 240 NW 9th Street #4, Corvallis, with the intent to commit the crime(s) of theft, assault, and/or menacing therein.” Ex. F (Information);

- Mr. Hobbs’s 2002 guilty plea which stated: “I wish to plead GUILTY to the charge(s) of Burglary 1 (Count 1) and Attempted Assault 2 (Count 2) alleged to have been committed on or about 1/18/02.” Ex. F (Petition to Enter Plea of Guilt). It also notes it is an “Alford Plea.” Ex. F.
- Judgment based on the conviction for Burglary in the first degree. Ex. F (Judgment).

The guilty plea does not admit any facts. Ex. F. Nor does the guilty plea adopt the allegations in the Information or Indictment. *Id.* It simply admits to a burglary in the first degree—an offense that is not legally comparable to any Washington burglary statute. The trial court erred in including this 2002 conviction in Mr. Hobbs’s offender score. CP 137; *See Lavery*, 154 Wn.2d at 258.

ii. 1997 jury verdict for burglary in the first degree.

The State failed to establish factual comparability for Mr. Hobbs’s 1997 Oregon burglary in the first degree conviction because the proffered jury verdict does not establish his conviction for burglary of a “dwelling” would constitute a crime under Washington’s burglary statute, and the verdict failed to establish Mr. Hobbs was convicted of entering with intent to commit a crime against a person or property

therein as required by Washington burglary statutes. The State provided the following documents related to this offense:

- The Indictment alleging Mr. Hobbs “did unlawfully and knowingly enter the Guterrez residence, a dwelling located at 242 NW 10th Street, Corvallis, with the intent to commit the crime(s) of theft therein.” Ex. H (Indictment).
- The Information alleging Mr. Hobbs “did unlawfully and knowingly enter and remain in Guterrez residence, a dwelling located at 242 NW 10th Street, Corvallis, with the intent to commit the crime(s) of theft therein.” Ex. H (Information).
- The Judgment entered in this cause number finding he is convicted of “Burglary I-occupied dwelling.” Ex. H (Judgment).
- The trial order stating he was charged with Burglary in the First Degree—occupied dwelling.” Ex. H (trial order).

- The verdict forms stating the jury found Mr. Hobbs “guilty of burglary in the first degree” and “the state proved the dwelling was occupied.” Ex. H (Verdicts).

Conviction for burglary of an “occupied dwelling” under Oregon’s burglary statutes is not sufficient to establish this would constitute a crime under Washington’s burglary statutes.

In Oregon, a “dwelling” is defined as “a building which regularly or intermittently is occupied by a person lodging therein at night, whether or not a person is actually present.” ORS 164.205(2). Because Oregon so broadly defines a “building,” a “dwelling could include a “booth,” “vehicle” or “airplane,” so long as they were “regularly or intermittently . . . occupied by a person lodging therein at night.” ORS 164.205(1) and (2). Though the Information alleged the “dwelling” was a “residence” the State did not present evidence of the nature of the “dwelling” the jury convicted Mr. Hobbs of burgling. The jury verdict also failed to establish he intended to commit a crime against a person or property as required for conviction under Washington’s burglary statutes.

Mr. Hobbs’s conviction includes a range of potential conduct not criminalized under Washington burglary statutes, which

specifically excludes “vehicles” and requires evidence of an intent to commit a crime against a person or property for burglary. RCW 9A.52.020; RCW 9A.52.025; RCW 9A.52.030.

iii. 1997 jury verdict for burglary in the second degree.

The State conceded it was required to establish factual comparability for this conviction for it to be included in Mr. Hobbs’s offender score. CP 133. The State provided the following to establish factual comparability for this conviction:

- The State’s information and indictment alleging that Mr. Hobbs “did unlawfully and knowingly enter and remain in a building located at 230 NW 10th Street, with intent to commit the crime(s) of theft therein.” Ex. H (Circuit Court Indictment and District Court Information).
- The jury verdict stating that Mr. Hobbs was found guilty as to this count. *Id.* (Verdict).
- The State’s claim in its Sentencing Memorandum that “[A]n address search of the 230 NW 10th Street corresponds with a physical address in Corvallis, Oregon.”

CP 133. From this, the State asserted that the record established that Mr. Hobbs entered a building, not a vehicle, which the State claimed

made this offense factually comparable to burglary in the second degree in Washington. CP 133.

Federal courts have rejected the claim that linking ORS 164.205(1)'s broad statutory term "building" to a street address listed in the indictment necessarily makes the statutory term more narrow or precise: "accompanying the statutory term 'building' with a 'street address' cannot 'narrow the meaning of the term to mean less than what the statute defines it to mean.'" *United States v. Snyder*, 5 F. Supp. 3d 1258, 1263-64 (D. Or. 2014) (citing *United States v. Snyder*, 643 F.3d 694, 700 (9th Cir. 2011) (Tashima, J., concurring)). The *Snyder* court emphasized, "the indictment could just as well have alleged that the defendant entered a trailer located at 1341 Rogue River Highway. Any term can be accompanied by a street address. For all we know from the indictment, 1341 Rogue River Highway could be the address of a five or ten acre lot full of trucks, trailers, RVs, booths, and sheds, as well as the site of a generic building." *Id.* at 1264.

The same is true here. Citation to an "address search" is insufficient because it does not establish the location is not, for example, referring to a "vehicle" at this property, which is specifically excluded by Washington's burglary in the second degree statute. RCW

9A.52.030; ORS 164.205(1). This “address search” certainly does not establish that the Oregon “building” which the jury found him guilty of entering is factually comparable to any Washington burglary statute. And, as is true for each of the Oregon burglary convictions, the State did not present evidence that “the crime” Mr. Hobbs intended to commit was against a person or property as is required for conviction under Washington’s burglary statutes. ORS 164.215, .225; RCW 9A.52.020, .025, .030.

c. Mr. Hobbs’s sentence must be reversed and remanded for the court to sentence him based on the correct offender score.

A sentence based upon an incorrect offender score is “fundamentally defective.” *In re Goodwin*, 146 Wn.2d 861, 876, 50 P.3d 618 (2002). The State bears the burden of establishing by a preponderance of the evidence that prior conviction adds a point to an offender score. *Ford*, 137 Wn.2d at 480. The court sentenced Mr. Hobbs based on an offender score of eight. CP 137. This offender score included one point each for the three prior Oregon burglary offenses which are not comparable to Washington offenses. CP 137. This means Mr. Hobbs was sentenced pursuant to a higher offender score than what is permitted by the Sentencing Reform Act—a fundamental defect

requiring reversal and remand for resentencing based on the correct offender score. *Goodwin*, 146 Wn.2d at 878-79.

F. CONCLUSION

The trial court's violation of Mr. Hobbs's speedy trial right requires reversal and remand for dismissal of his conviction of violation of a no-contact order. In the alternative, the court improperly included three Oregon burglary convictions, which resulted in Mr. Hobbs being sentenced based on the incorrect offender score, requiring reversal and remand for resentencing.

DATED this 15th day of June 2020.

Respectfully submitted,

s/ Kate Benward
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APPENDIX

SUPERIOR COURT OF THE STATE OF WASHINGTON FOR YAKIMA COUNTY

JURY TRIAL

Date: 1/7/19	Action: Felony Violation of a Protection Order- DV	No. 18-1-00454-39
Plaintiff: State of Washington		Defendant: John Hobbs
Attorney: Gary Hersey		Attorney: Scott Bruns
Judge: Michael McCarthy	Clerk: Holly Sutliff	Reporter: Joan Anderson
Department # 2		Bailiff: Dennis Pedemonte

VERDICT RETURNED: **January 9, 2019**

WITNESSES

PLAINTIFF		DEFENDANT
1. Jesse Coffman	1/8/19	1.
2. Officer Chris Taylor	1/8/19	2.
3. Officer Jeff Ely	1/8/19	3.

January 7, 2019

Pre-Trial/Trial

Marked:	SI 1-17
Admitted:	

Court convened at 9:40 a.m., all parties being present and ready to proceed. Honorable Michael McCarthy, presiding, Holly Sutliff clerked and recorded on Joan Anderson. Parties present are: Gary Hersey present for the State of Washington. Defendant John Hobbs and counsel Scott Bruns present. Court and Counsel held discussions regarding Defense and State's Motions in Limine. Defendant's personal motion to dismiss was denied. Additional discussions were held regarding Motions in Limine, length of trial, witness list, jury selection and Court recessed at 10:15 am.

Court reconvened at 2:35 pm. Amended information was filed, defendant waived read, plead not guilty. Court and Counsel held discussions regarding Juror #12. Prospective Jurors were assembled, and the Clerk administered the Voir Dire oath at 2:44 pm. Jurors #1,4, 9, 18, 54, 62, 69, and 72 were excused for hardship. Court Voir Dire was continued. Biographical sketch was heard at 3:25 pm. Court preliminarily instructed the prospective jurors and they were excused to Courtroom #4 to return 1/8/19 at 8:45 am at 4:00 pm and Court adjourned.

January 8, 2019

Trial

Marked:	
Admitted:	SE 1 – 15, SE 17

Court convened at 9:40 a.m., all parties being present and ready to proceed. Honorable Michael McCarthy, presiding, Holly Sutliff clerked and recorded on Joan Anderson. Parties present are: Gary Hersey present for the State of Washington. Defendant John Hobbs and counsel Scott Bruns present. Court and Counsel held discussions regarding Juror #17. Prospective Jurors were assembled at 9:44 am and State's Voir Dire was heard. Defense Voir Dire was heard at 10:09 am. Peremptory Challenges began at 10:25 am. A 13 – Member Jury was empaneled. Not reached and peremptory challenged jurors were thanked and excused at 10:40 am. Clerk administered the Jury oath at 10:41 am. Court preliminarily instructed the Jury. Jury was excused at 10:45 am. Court and Counsel held discussions regarding scheduling. Court recessed at 10:46 am.

Court reconvened at 11:03 am and the Jury was reassembled. Court instructed on the duties of the Jury. State's Opening statement was heard at 11:11 am. Defense chose to waive opening statement. Sworn testimony from Jesse Coffman for the State at 11:18 am. Witness excused at 11:23 am. Court preliminarily instructed the Jury and they were excused to the Jury room at 11:26 am and Court recessed.

Court reconvened at 1:07 pm and the Jury was reassembled. Sworn testimony from Office Chris Taylor was heard for the State. Court preliminarily instructed the jury and they were excused to the Jury room at 1:35 pm. Court and Counsel held discussions regarding SI 5. Jury was reassembled at 1:44 pm and continued testimony was heard from Officer Taylor. Court preliminary instructed the Jury and they were excused to the Jury room at 1:57 pm. An offer of proof hearing was held regarding a no contact order with the victim being the respondent. Jury was reassembled at 2:05 pm and continued testimony from Officer Taylor was heard. Witness excused at 2:09 pm. Sworn testimony from Officer Jeff Ely was heard for the State. Witness excused at 2:15 pm and the Jury was preliminary instructed to the Jury room. Court recessed at 2:16 pm.

Court reconvened at 2:34 pm and the Jury was reassembled. Sworn testimony from Kristen Drury was heard for the State at 2:38 pm. Witness excused at 3:11 pm and the State rested. Court preliminarily instructed the Jury and they were excused to the Jury room. Defense motioned to dismiss. State objected. Court denied the Defense motion. Court advised the Defendant rights to testify. Defendant chose not to testify. Court and Counsel finalized Jury instructions. Court recessed at 3:23 pm.

Court reconvened at 3:39 pm and the Jury was reassembled. Defense rested, and the Court instructed the Jury on the Law. State's closing argument was heard at 3:55 pm. Defense closing argument was heard at 4:08 pm. State's rebuttal closing argument was heard at 4:14 pm. Court excused the Jury to the Jury room. Court instructed the alternate Juror on the duties of the alternate juror and they were excused to the Jury room at 4:22 pm and Court adjourned.

January 9, 2019

Trial

Deliberations Began at 8:55 am.

Verdict Reached at 9:27 am

Court convened at 9:53 a.m., all parties being present and ready to proceed. Honorable Michael McCarthy, presiding, Holly Sutliff clerked and recorded on Joan Anderson. Parties present are: Gary Hersey present for the State of Washington. Defendant John Hobbs and counsel Scott Bruns present. The Jury was assembled, and the presiding Juror presented the verdict to the Court.

The Court read the Verdicts:

- **Verdict Form 1 – Violation of a Court Order – Guilty**
- **Question – Were John Hobbs and Tonta James members of the same family or household? – Yes**

The Court polled the Jury 12/0. The verdict was unanimous. Court thanked the Jury for their services and excused them at 10:00 am. Court and Counsel held discussion regarding sentencing. Court signed order set sentencing date for 1/18/19 at 9:00 am and revoking bail. Court adjourned at 10:03 am.

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE**

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	
v.)	NO. 36634-1-III
)	
JOHN HOBBS,)	
)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 15TH DAY OF JUNE, 2020, I CAUSED THE ORIGINAL **AMENDED OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION THREE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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SIGNED IN SEATTLE, WASHINGTON THIS 15TH DAY OF JUNE, 2020.



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