

FILED  
Court of Appeals  
Division III  
State of Washington  
6/24/2020 8:46 AM

NO. 37107-7-III

COURT OF APPEALS, DIVISION III  
STATE OF WASHINGTON

---

PRESTON DAVID HARDESTY, APPELLANT

v.

STATE OF WASHINGTON, RESPONDENT

---

ON APPEAL FROM THE SUPERIOR COURT  
OF GRANT COUNTY

Superior Court Cause No. 18-1-00604-13

The Honorable John Antosz, Judge

---

BRIEF OF RESPONDENT

---

GARTH DANO  
GRANT COUNTY PROSECUTING ATTORNEY

Katharine W. Mathews, WSBA# 20805  
Deputy Prosecuting Attorney  
Attorneys for Respondent

P.O. Box 37  
Ephrata, Washington 98823  
PH: (509) 794-2011

**Table of Contents**

**I. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.....1**

- A. Neither Juror 4 nor Juror 26 expressed unequivocal statements of bias during voir dire. Defense counsel actively engaged in voir dire, moving the court to strike other jurors for bias, and the trial court had a duty to not interfere with defense counsel’s trial strategy. The trial court was in the best position to observe the jurors’ demeanor, body language, and tone of voice. Did the trial court properly exercise its discretion when it impliedly concluded Mr. Hardesty would not be denied a fair trial by an impartial jury when it empaneled jurors 4 and 26? (Assignment of Error No. 1).....1
  
- B. Mr. Hardesty moved in limine to preclude testimony or other evidence that, before this incident, he had stolen other items from his stepfather, Mr. Amoruso, with whom he had a contentious relationship, as well as evidence that both the arresting officer and Mr. Amoruso believed he was guilty of the theft at issue here. When Mr. Amoruso testified he told Ms. Jensen at the salvage yard he needed a battery because that maybe Mr. Hardesty borrowed his other battery and did not put it back, the court sustained Mr. Hardesty’s objection and instructed the jury to disregard the statement. Mr. Hardesty did not move for a mistrial until Ms. Jensen said the records of her transaction with Mr. Hardesty concerned “stolen product.” The court instructed the jury to disregard that statement and offered to give a curative instruction on witness opinions of guilt if Mr. Hardesty wished. Mr. Hardesty did not request the curative instruction. Did the trial court properly exercise its discretion when it refused to declare a mistrial based on violation of Mr. Hardesty’s limine motion? (Assignment of Error No. 2). .....1
  
- C. At sentencing, the trial court imposed a sentence one and one half months higher than mid-range for a score of nine-plus, having considered that many of Mr. Hardesty’s felony convictions would have “washed out” of his offender score had he not been convicted of driving while license suspended in the third degree, and that the value of the stolen property in which

he trafficked was, although more than a few hundred dollars, not “four or five thousand dollars.” Is remand for resentencing necessary? (Assignment of Error No. 3).....1

**II. STATEMENT OF THE CASE.....2**

**III. ARGUMENT.....14**

A. NEITHER JUROR 4 NOR JUROR 26 EXPRESSED UNEQUIVOCAL STATEMENTS OF BIAS DURING VOIR DIRE. DEFENSE COUNSEL ACTIVELY ENGAGED IN VOIR DIRE, MOVING THE COURT TO STRIKE OTHER JURORS FOR BIAS, AND THE TRIAL COURT HAD A DUTY TO NOT INTERFERE WITH DEFENSE COUNSEL’S TRIAL STRATEGY. THE TRIAL COURT WAS IN THE BEST POSITION TO OBSERVE THE JURORS’ Demeanor, BODY LANGUAGE, AND TONE OF VOICE. THE TRIAL COURT PROPERLY EXERCISED ITS DISCRETION WHEN IT IMPLIEDLY CONCLUDED MR. HARDESTY WOULD NOT BE DENIED A FAIR TRIAL BY AN IMPARTIAL JURY WHEN IT EMPANELED JURORS 4 AND 26....14

B. MR. HARDESTY MOVED IN LIMINE TO PRECLUDE TESTIMONY OR OTHER EVIDENCE THAT, BEFORE THIS INCIDENT, HE HAD STOLEN OTHER ITEMS FROM HIS STEPFATHER, MR. AMORUSO, WITH WHOM HE HAD A CONTENTIOUS RELATIONSHIP, AS WELL AS EVIDENCE THAT BOTH THE ARRESTING OFFICER AND MR. AMORUSO BELIEVED HE WAS GUILTY OF THE THEFT AT ISSUE HERE. WHEN MR. AMORUSO TESTIFIED HE TOLD MS. JENSEN AT THE SALVAGE YARD HE NEEDED A BATTERY BECAUSE THAT MAYBE MR. HARDESTY BORROWED HIS OTHER BATTERY AND DID NOT PUT IT BACK, THE COURT SUSTAINED MR. HARDESTY’S OBJECTION AND INSTRUCTED THE JURY TO DISREGARD THE STATEMENT. MR. HARDESTY DID NOT MOVE FOR A MISTRIAL UNTIL MS. JENSEN SAID THE RECORDS OF HER TRANSACTION WITH MR. HARDESTY CONCERNED “STOLEN PRODUCT.” THE COURT INSTRUCTED THE JURY TO DISREGARD THAT STATEMENT AND OFFERED TO GIVE A CURATIVE INSTRUCTION ON WITNESS OPINIONS OF GUILT IF MR. HARDESTY WISHED. MR. HARDESTY DID NOT REQUEST THE CURATIVE INSTRUCTION. THE TRIAL COURT PROPERLY EXERCISED ITS DISCRETION

WHEN IT REFUSED TO DECLARE A MISTRIAL BASED ON VIOLATION OF MR. HARDESTY'S LIMINE MOTION. ....24

C. AT SENTENCING, THE TRIAL COURT IMPOSED A SENTENCE ONE AND ONE HALF MONTHS HIGHER THAN MID-RANGE FOR A SCORE OF NINE-PLUS, HAVING CONSIDERED BOTH THAT MANY OF MR. HARDESTY'S FELONY CONVICTIONS WOULD HAVE "WASHED OUT" OF HIS OFFENDER SCORE HAD HE NOT BEEN CONVICTED OF DRIVING WHILE LICENSE SUSPENDED IN THE THIRD DEGREE, AND THAT THE VALUE OF THE STOLEN PROPERTY IN WHICH HE TRAFFICKED WAS, ALTHOUGH MORE THAN A FEW HUNDRED DOLLARS, NOT "FOUR OR FIVE THOUSAND DOLLARS." REMAND FOR RESENTENCING IS NOT NECESSARY. ....28

IV. CONCLUSION. ....29

## Table of Authorities

### State Cases

<i>State v. Elmore</i> , 155 Wash.2d 758, 123 P.3d 72 (2005).....	14
<i>State v. Emery</i> , 174 Wn.2d 741, 278 P.3d 653 (2012).....	25, 27
<i>State v. Garcia</i> , 177 Wn. App. 769, 783, 313 P.3d 422 (2013).....	25, 27
<i>State v. Gonzalez</i> , 111 Wn. App. 276, 45 P.3d 205 (2002).....	23
<i>State v. Guevara Diaz</i> , 11 Wn. App. 2d 843, 854, 456 P.3d 869 (2020).....	19, 20
<i>State v. Hopson</i> , 113 Wn.2d 273, 778 P.2d 1014 (1989).....	25, 26, 27
<i>State v. Irby</i> , 187 Wn. App. 183, 347 P.3d 1103 (2015).....	17, 22, 24
<i>State v. Latham</i> , 30 Wn. App. 776, 638 P.2d 592 (1981).....	17
<i>State v. Lawler</i> , 194 Wn. App. 275, 374 P.3d 278 (2016).....	14, 15, 17, 18, 21, 23
<i>State v. Lynch</i> , 178 Wn.2d 487, 309 P.3d 482 (2013).....	15
<i>State v. Munzanreder</i> , 199 Wn. App. 162, 398 P.3d 1160 (2017).....	17
<i>State v. Noltie</i> , 116 Wn.2d 831, 801 P.2d 190 (1991) .....	16, 24

<i>State v. Parker</i> , 132 Wn.2d 182, 937 P.2d 575 (1997).....	29
<i>State v. Phillips</i> , 6 Wn. App. 2d 651, 431 P.3d 1056 (2018), <i>review denied</i> , 193 Wash. 2d 1007, 438 P.3d 116 (2019).....	16, 18, 22, 24
<i>State v. Roberts</i> , 142 Wash.2d 471, 14 P.3d 713 (2000).....	14
<i>State v. Rodriguez</i> , 145 Wn.2d 260, 45 P.3d 541 (2002).....	26, 28
<i>State v. Tili</i> , 148 Wn.2d 350, 60 P.3d 1192 (2003).....	28

**Statutes and Rules**

RCW 2.36.110 .....	14, 16
RCW 4.44.170(2).....	15
RCW 4.44.190 .....	15
CrR 6.4(c)(1).....	14, 16
RAP 10.3(b) .....	2

**I. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

- A. Neither Juror 4 nor Juror 26 expressed unequivocal statements of bias during voir dire. Defense counsel actively engaged in voir dire, moving the court to strike other jurors for bias, and the trial court had a duty to not interfere with defense counsel's trial strategy. The trial court was in the best position to observe the jurors' demeanor, body language, and tone of voice. Did the trial court properly exercise its discretion when it impliedly concluded Mr. Hardesty would not be denied a fair trial by an impartial jury when it empaneled jurors 4 and 26? (Assignment of Error No. 1).
- B. Mr. Hardesty moved in limine to preclude testimony or other evidence that, before this incident, he had stolen other items from his stepfather, Mr. Amoruso, with whom he had a contentious relationship, as well as evidence that both the arresting officer and Mr. Amoruso believed he was guilty of the theft at issue here. When Mr. Amoruso testified he told Ms. Jensen at the salvage yard he needed a battery because that maybe Mr. Hardesty borrowed his other battery and did not put it back, the court sustained Mr. Hardesty's objection and instructed the jury to disregard the statement. Mr. Hardesty did not move for a mistrial until Ms. Jensen said the records of her transaction with Mr. Hardesty concerned "stolen product." The court instructed the jury to disregard that statement and offered to give a curative instruction on witness opinions of guilt if Mr. Hardesty wished. Mr. Hardesty did not request the curative instruction. Did the trial court properly exercise its discretion when it refused to declare a mistrial based on violation of Mr. Hardesty's limine motion? (Assignment of Error No.2)
- C. At sentencing, the trial court imposed a sentence one and one half months higher than mid-range, having considered that many of Mr. Hardesty's felony convictions would have "washed out" of his offender score had he not been convicted of driving while license suspended in the third degree and that the value of the stolen property in which he trafficked was, although more than a few hundred dollars, not "four or five thousand dollars." Is remand for resentencing necessary? (Assignment of Error No. 3).

## II. STATEMENT OF THE CASE<sup>1</sup>

The State adopts facts in Mr. Hardesty's Opening Brief, with one exception, identified below. The State then supplements Mr. Hardesty's statement of the case with additional facts relevant to its argument on appeal. RAP 10.3(b).

Mr. Hardesty's misstatement of fact is found on page 8 of his brief, where, after quoting witness Mr. Amoruso's testimony, the ensuing defense objection, and the court's comments, he states: "Defense counsel requested the entire question and answer be stricken, which the trial court did." (2RP 83-85)." Br. of Appellant at 8. The court did not strike the State's question or comment upon it to the jury. 2RP 85. Following discussion with both the State and the defense, the court told the jury: "The objection that was raised by [defense counsel] is sustained. The answer to the question is stricken and is to be disregarded by the jury." 2RP 85.

---

<sup>1</sup> The State follows Mr. Hardesty's citation protocol, citing to the multiple volumes in the record and Clerk's Papers as follows:

1 RP \_\_\_, Tom R. Bartunek, containing pages 343-449;  
2 RP \_\_\_, Tom R. Bartunek, containing pages 1-199;  
3 RP \_\_\_, Tom R. Bartunek, containing pages 200-342; and  
4 RP \_\_\_, Amy Brittingham, containing pages 1-126.  
Clerks Papers are cited CP \_\_\_.

A. JURY SELECTION

The State and the defense were each allowed an initial 20 minutes to question both the entire panel and individual jurors, and an additional 10 minutes each to follow-up. 2RP 52. Before counsel for either side began their questioning, the court asked the panel general questions, including whether anyone knew individual witnesses, one of whom was Grant County Sheriff's Office Sergeant Courtney Conklin. 1RP 376. Juror 4 and three others raised their paddles. 1RP 376. When asked whether she might give more or less weight to the testimony of someone she knew, Juror 4 answered: "Maybe." 1RP 377.

Earlier, the court told the panel the State alleged Mr. Hardesty "stole property from Jerry Amoruso and trafficked this stolen property to a third party." 1RP 348-49. Ten prospective jurors, including Juror 4, raised their paddles when asked whether they had any close friends or family members involved in a similar case or incident. 1RP 377-78. Involvement could have been "either as a witness or a victim or one accused[.]" 1RP 377.

Juror 4 was the first prospective juror individually questioned by the State, concerning whether she would give more or less weight to Officer Conklin's testimony because he was a good family friend. 1RP 386. She answered she would "do [her] duty to not give more favor." 1RP

386. Questioned further, she promised to “connect the dots” and consider only the facts presented in testimony. 1RP 386–87. She also confirmed she did not want to serve as a juror because she would have to miss work, her only source of income. 1RP 388–89. A number of other prospective jurors had the same work-related concerns, including Jurors 5, 13, and 15, who also were seated. 1RP 389–92. Alternate Juror 26 had also preferred not to miss work. 1RP 393–94.

The State asked one potential juror what he would do if he did not agree with the law in the instructions given by the judge. 1RP 403. The juror responded he had already given his word that he would “agree with” the law, and that he could do that. 1RP 403. The State asked: “Because as jurors your job would be to apply the facts to the evidence presented and follow the law as the judge gives it. Are you okay with that?” 1RP 403. The juror answered: “Yes.” 1RP 403. Before its 20 minutes was up, the State had just enough time to ask the same question to another juror if he, too, was okay with that, and that juror responded: “Yes.” 1RP 403.

Defense counsel picked right up, asking any jurors who thought they would have trouble following law they did not agree with to raise their paddles. 1RP 404. One juror responded that “if the law was totally wrong, I’d have to get it clarified by the judge or by whoever thought it was right.” 1RP 404. This juror said he would follow the law only if it was

“morally right.” 1RP 404. Another juror, but not Jurors 4 or 26, agreed. 1RP 404. Defense counsel did not question any other jurors on this issue. 1RP 405-06.

The remainder of Mr. Hardesty’s 20 minutes was primarily consumed by the questions and answers related to whether a defendant had any obligation to present a defense, that is, whether the State’s evidence had to overcome the presumption of innocence regardless of whether the defendant did anything in response. 1RP 410. This led to a lengthy discussion between defense counsel and the panel concerning the State’s burden to prove all elements of a crime, the presumption of innocence, and whether the jury could render a not guilty verdict if the defendant did not put on any defense. 1RP 411–20. Juror 4 was among a number of prospective jurors who said they would assume a defendant was guilty if he or she did not present some sort of defense, and believed there should be sufficient evidence showing the defendant was not guilty. 1RP 412.

The next prospective juror, however, thought that while “not presenting or doing anything casts doubt[,]” the state still had to produce enough evidence to prove guilt” regardless of what the defense did or did not do. 1RP 413. Discussion with individual jurors on this issue continued, some jurors continuing to believe the defendant had to present something,

1RP 414–15, and others recognizing the State’s burden to produce sufficient evidence, 1RP 415–17. During this discussion, defense counsel moved to dismiss Jurors 10 and 12 for cause. 1RP 417.

At this point, the court stepped in to explain the elements of a crime, emphasizing the State was required to prove each element beyond a reasonable doubt, and that “if the [S]tate doesn’t meet the burden, then your requirement is to render a verdict of not guilty. Because they didn’t prove it. Even if the defendant does nothing.” 1RP 417–18. To ensure understanding, the court gave an example of failure to prove a necessary element. 1RP 418. Juror 10 was still not convinced, so the court explained further, giving a hypothetical in which the defense might like and agree with the State’s insufficient evidence and not want to produce anything else. 1RP 419. Juror 10 responded: “Oh, okay. All right. I guess I’m wrong there.” 1RP 420. He confirmed he was no longer sure the State always proved its case beyond a reasonable doubt if the defense did nothing.” 1RP 420. With this answer, Defense counsel’s 20 minutes was up. 1RP 425.

The State picked up where counsel left off, asking Juror 10: “You understand the [S]tate, as myself, it’s our burden to present evidence, right?” 1RP 426. “If we don’t present enough evidence for you to beyond a reasonable doubt believe he committed the acts alleged, would you agree

to find him not guilty? If we don't do enough?" 1RP 426. After confirming Juror 10 was now comfortable with the standard, the State asked the same question to another juror who had thought a defendant had some burden of production. 1RP 426. Both jurors answered they, too, were now comfortable." 1RP 426. To ensure understanding and assent, the State went back to Juror 10: "Are you okay if the State doesn't produce enough evidence to get you to a level of beyond a reasonable doubt?" 1RP 426. Juror 10 said: "Yes" and further assured the State in that event he would find the defendant not guilty. 1RP 426-27. The State immediately asked:

Is everybody okay with that? I just think the way with things being worded it might have been a little confusing. And he doesn't have to present anything, if we don't get to enough, right? That's fair. He doesn't. Even if you'd like to know and hear from him, he doesn't have to testify, he doesn't have to present any evidence. We have to get to that level of beyond a reasonable doubt. Is everybody okay with that concept? *Anybody not okay with that?*"

1RP 427 (emphasis added). Nobody raised their paddle. 1RP 427. Later, after discussing the meaning of "beyond a reasonable doubt," the State reiterated that if the State failed to prove crime beyond a reasonable doubt, "that's why we're here." 1RP 429.

When defense counsel resumed, he again addressed Juror 10 about the presumption of innocence, and Juror 10 answered the defendant “gets the benefit of the doubt, exactly, I agree.” 1RP 435.

At the close of voir dire, neither side moved to strike any juror for cause and the defense withdrew its for-cause motion to strike Jurors 10 and 12. 1RP 441.

B. MR. HARDESTY’S LIMINE MOTION, THE COURT’S ORDER, AND TRIAL TESTIMONY

Defense counsel moved in limine to prohibit the State from presenting testimony “that a witness believed a crime had occurred or that the defendant committed a crime.” (CP 111; 3RP 45-50). At the limine motion hearing, the court asked defense counsel to specifically state his concern. 2RP 46. Counsel replied that body camera footage showed the testifying officer was absolutely certain the appellant had committed the theft and, as he questioned Mr. Hardesty, tried to implicate him in additional thefts. 2RP 46. Counsel was also concerned the officer would bring up the contentious relationship between Mr. Hardesty and his step-father, the complaining witness Mr. Amoruso. 2RP 46. Mr. Amoruso told the officer his step-son had been stealing from him throughout their entire lives together. 2RP 46.

Counsel's primary concern was that Mr. Amoruso would bring up these old, uncharged incidents and attempt to blurt out that Mr. Hardesty stole from him. 2RP 47.<sup>2</sup> Counsel wanted a limine ruling to support an immediate motion for corrective action should Mr. Amoruso testify he believed Mr. Hardesty committed theft of the property with which he was charged. 2RP 47–48.

Upon confirming counsel's concerns, the court ruled: "this witness can't say, I believe the defendant committed *this crime that he's charged with* because - - whatever his reasons are. He can't say that." 2RP 49 (emphasis added). The State then told the court Mr. Amoruso had already been instructed not to bring up prior incidents and defense counsel again confirmed that had been his concern. 2RP 49–50.

After Mr. Hardesty's objection to Mr. Amoruso's testimony concerning what he had told Ms. Jensen about his battery having either sprouted legs or walked off and that Mr. Hardesty may have borrowed it, 2RP 82, the court noted Mr. Amoruso seemed to be answering the State's questions by "giving the history of things" which was where he could run afoul of the limine ruling or give nonresponsive answers. 2RP 83. Out of the jury's presence, the court told Mr. Amoruso: "you need to listen

---

<sup>2</sup> Counsel was not concerned about the officer's testimony, stating the officer knew better than that. 2RP 47.

closely to the questions and just answer them. What you're doing is not unusual, a lot of witnesses do it. But there's an order that you're not to state your opinion about guilt or innocence in this case. Okay?" 2RP 84. The court then told the jury it had stricken Mr. Amoruso's answer to the State's question and instructed the jury to disregard that answer. 2RP 85. The court did not tell the jury it had stricken the State's question, or that the question was to be disregarded. 2RP 85.

Mr. Amoruso testified that, while at the salvage yard, Ms. Jensen told him Mr. Hardesty had been there and asked him to look in a barrel to see whether it contained any of his property. 2RP 85. Upon being shown a photograph of the barrel at trial, Mr. Amoruso identified a number of copper items that were of the type that could be found around his property. 2RP 91–94. Some he could identify definitely as his, and said everything shown in the barrel might have belonged to him. 2RP 95.

After seeing the various copper pieces at the salvage yard, Mr. Amoruso had gone back to his property with law enforcement and located where those pieces had come from. 2RP 97–98. He was able to identify for the jury, using photographs taken by law enforcement, exactly where the items in the barrel had been located on his property, pointing out larger equipment parts from which some of the pieces had been cut. 2RP 99–100, 106–10. Certain items in the salvage yard barrel had been stored 50 to 60

feet from Mr. Hardesty's trailer. 2RP 121. Mr. Amoruso did not know of anyone in the vicinity who would have had similar equipment parts that were not installed on "up and running" equipment. 2RP 123.

Defense counsel waited until the State finished presenting its evidence to move for a mistrial, in part due to Ms. Jensen's testimony regarding "stolen product." 3RP 251. The court reminded counsel his limine motion and argument had been directed toward Mr. Amoruso, based on what counsel had observed Mr. Amoruso say to an officer in a law enforcement body camera video. 3RP 250. The court noted Mr. Amoruso's earlier objectionable testimony had not produced a mistrial motion. 3RP 251.

The court found Ms. Jensen's statement that the sales receipts concerned "stolen product" was not a "strong endorsement" of her belief the property was stolen, and that she had not said she thought Mr. Hardesty was the person who stole it. 3RP 251. The court did not "see a prejudice to the defendant that couldn't be cured by an instruction" and suggested crafting one advising the jury the question of guilt or innocence was theirs alone to decide and they should not consider the opinions of others on that issue. 3RP 251-52. The court invited defense counsel to "bring that up at any time, if you'd like." 3RP 252. Mr. Hardesty did not request a curative instruction. 3RP 252-310.

C. SENTENCING AND OFFENDER SCORE MISCALCULATION

Mr. Hardesty failed to appear for the sentencing hearing initially scheduled by the court and was sentenced September 30, 2019. 4RP 109.

Mr. Hardesty agreed to his criminal history statement handed to the court. 4RP 111. Between 1988 and the date of sentencing, Mr. Hardesty had been convicted fourteen times of felonies involving theft, forgery, possessing stolen property, identity theft, and possessing instruments of financial fraud. CP at 253. The parties agreed his sentencing range, with a score referred to as "9-plus," CP 254, was 63 to 84 months. 4RP 111; CP at 254.

The State concedes a "same criminal conduct" analysis renders Mr. Hardesty's correct score thirteen, not fourteen.

The State urged the court to impose 84 months, high end of the standard range for trafficking in stolen property in the first degree, in consideration of five of Mr. Hardesty's felony convictions "go[ing] completely unscored and ignored[.]" 4RP 111. The State asked that the court run Mr. Hardesty's gross misdemeanor third degree theft conviction concurrently with the felony. 4RP 113.

Mr. Hardesty argued his last felony conviction had been in 2012 and that, but for a conviction for driving while license suspended in the third degree, most of his prior felonies would have washed out. 4RP 115–

16. He asked the court for a mid-range sentence of 73.5 months, but agreed the gross misdemeanor should run concurrently. 4RP 115. The court inquired concerning the value of the copper bars. 4RP 118. The State responded that in charging the third degree theft, it had not valued the bars based on their value had Mr. Hardesty not cut them up, which was fifteen hundred dollars apiece, but instead had used the sum paid to Mr. Hardesty for the bars cut up as scrap, which was under seven hundred fifty dollars. 4RP 118–19.

The trial court asked about the value of the copper bars, and the State responded because the bars had little value after Mr. Hardesty had cut them from their original housings, they were valued as scrap for the theft charge, three hundred fifty dollars. 4RP 117–18. Had the bars been intact, Mr. Amoruso estimated them worth fifteen hundred dollars each. 4RP 118. The court stated it was mindful that the trafficking statute did not place a value range on stolen property, “the general concept of how broad is this statute, how broad of behavior can it define, because that’s gonna be on a judge’s mind.” 4RP 119.

In addition to the scope of value covered by the trafficking statute, the court considered that certain of Mr. Hardesty’s felonies had not washed out due to his third degree driving while license suspended conviction. 4RP 121. Washout had not been prevented by another theft or

similar conviction. 4RP 121. The value of the trafficked property was also a consideration. 4RP 121. The value, although not fifty or one hundred dollars, was “not four or five thousand dollars of theft either. So that’s factored in.” 4RP 121.

The court calculated mid-range at seventy-three and one-half months, then imposed seventy-five months on Count 1. 4RP 122.

### III. ARGUMENT

A. NEITHER JUROR 4 NOR JUROR 26 EXPRESSED UNEQUIVOCAL STATEMENTS OF BIAS DURING VOIR DIRE. DEFENSE COUNSEL ACTIVELY ENGAGED IN VOIR DIRE, MOVING THE COURT TO STRIKE OTHER JURORS FOR BIAS, AND THE TRIAL COURT HAD A DUTY TO NOT INTERFERE WITH DEFENSE COUNSEL’S TRIAL STRATEGY. THE TRIAL COURT WAS IN THE BEST POSITION TO OBSERVE THE JURORS’ Demeanor, body language, and tone of voice. The trial court properly exercised its discretion when it impliedly concluded Mr. Hardesty would not be denied a fair trial by an impartial jury when it empaneled jurors 4 and 26.

Mr. Hardesty urges reversal of his convictions and remand for a new trial, arguing Venire Jurors (Jurors) 4 and 26 were not rehabilitated after demonstrating actual bias. Br. of Appellant at 12–13.

#### 1. *Dismissal of a Juror for Bias: Standard of review*

Abuse of discretion is the applicable standard of review concerning dismissal of a juror under RCW 2.36.110 and CrR 6.4(c)(1). *State v. Lawler*, 194 Wn. App. 275, 282, 374 P.3d 278 (2016) (citing *State v. Elmore*, 155 Wn.2d 758, 768–69, 123 P.3d 72 (2005); *State v. Roberts*,

142 Wn.2d 471, 518–19, 14 P.3d 713 (2000)).

2. *Legal principles relevant on review*

“Actual bias” supports a for-cause juror challenge only when the trial court concludes the challenged juror cannot set aside a pre-formed opinion, and not merely because a juror discloses the existence of such an opinion. RCW 4.44.190. Actual bias exists when the court is satisfied a potential juror’s state of mind concerning the action itself or about either party is such that he or she cannot try the issue impartially and without prejudice to the substantial rights of the challenging party. RCW 4.44.170(2).

Both article I, section 22 of the Washington Constitution and the Sixth Amendment to the United States Constitution guarantee a defendant’s right to trial by an impartial jury. The Sixth Amendment also implicitly guarantees the defendant’s right to control his defense. *State v. Lynch*, 178 Wn.2d 487, 491, 309 P.3d 482 (2013). In light of this right, “a trial court should exercise caution before injecting itself into the jury selection process.” *Lawler*, 194 Wn. App. at 284. Legitimate tactical reasons can support a defense decision not to challenge a juror whose responses suggest some bias. *Id.* at 285. “A trial court that sua sponte excuses a juror runs the risk of disrupting trial counsel’s jury selection strategy.” *Id.*

Despite its duty under both statute<sup>3</sup> and court rule<sup>4</sup> to dismiss biased jurors, a trial court's legitimate exercise of discretion may include reluctance to dismiss a juror sua sponte without a for-cause challenge. *Id.* at 288. "While a trial court may have a duty to sua sponte intercede where actual bias is evident or where the defendant is not represented by counsel, this duty must also be balanced with the defendant's right to be represented by competent counsel." *State v. Phillips*, 6 Wn. App. 2d 651, 667, 431 P.3d 1056 (2018), *review denied*, 193 Wn.2d 1007, 438 P.3d 116 (2019).

"[T]he trial court is in the best position to determine a juror's ability to be fair and impartial." *State v. Noltie*, 116 Wn.2d 831, 839, 801 P.2d 190 (1991). The trial court is afforded broad discretion in determining whether a juror demonstrated actual bias based on "all the circumstances." *Phillips*, 6 Wn. App. 2d at 662 (citation omitted).

Once the jury is empaneled, "the law presumes each juror sworn is impartial and qualified to sit on a particular case, otherwise he would have

---

<sup>3</sup> RCW 2.36.110 provides:

It shall be the duty of a judge to excuse from further jury service any juror, who in the opinion of the judge, has manifested unfitness as a juror by reason of bias, prejudice, indifference, inattention or any physical or mental defect or by reason of conduct or practices incompatible with proper and efficient jury service.

<sup>4</sup> CrR 6.4(1)(c) provides: "If the judge after examination of any juror is of the opinion that grounds for challenge are present, he or she shall excuse that juror from the trial of the case. If the judge does not excuse the juror, any party may challenge the juror for cause."

been challenged for ‘cause.’ ” *State v. Munzanreder*, 199 Wn. App. 162, 176, 398 P.3d 1160 (2017) (citing *State v. Latham*, 30 Wn. App. 776, 781, 638 P.2d 592 (1981)).

2. *Juror 4 gave equivocal answers early in voir dire demonstrating confusion about an abstract legal principle and Juror 26 agreed with Juror 4’s statements. The court and counsel for both parties subsequently explained the law at length. Jurors 4 and 26 were not actually biased and individual rehabilitation was not required.*

A critical factor when considering juror bias under “all the circumstances” is whether the juror’s statements are equivocal, *Lawler*, 194 Wn. App. at 287, as opposed to expressing an unqualified, unequivocal proclamation of bias. *State v. Irby*, 187 Wn. App. 183, 196, 347 P.3d 1103 (2015).

In *Irby*, Division One of this Court illuminated the distinction between equivocal and unequivocal bias statements when it juxtaposed statements from two jurors, one held to be unqualified, the other qualified. 187 Wn. App. at 196.<sup>5</sup> Unqualified bias was expressed by a juror who, when asked whether she could be fair, answered “she ‘would like to say he’s guilty’”. *Id.* Conversely, another juror’s bias statement that she would

---

<sup>5</sup> The court in *State v. Lawler*, however, noted the *Irby* trial court had a greater burden to excuse biased jurors because the defendant waived both the right to be represented and to be present at trial. 194 Wn. App. 275, 286–87, 374 P.3d 278, 283 (2016)

be more likely to believe police officers but would try to decide the case based on the evidence was held to be qualified; it was not an abuse of discretion to seat that juror. *Id.*

In *Phillips*, a juror was held to have expressed equivocal bias when, although he candidly recognized his preconceptions against African American males stemming from an incident in which an African American male assaulted him, he explained he knew his bias was wrong and believed he could be objective and fair. 6 Wn. App. 2d at 659–60. This same juror also expressed that, due to his family’s experience with domestic violence, it was an emotional issue for him and he did not know how he would react if deciding a case with domestic violence issues. *Id.* at 666. Division One of this Court found neither of these disclosures were “unqualified statement[s] expressing actual bias.” *Id.* (alteration in the original).

*Lawler* yields another example of an equivocal statement of bias. There, the juror said, “I don’t see how I could be objective with all that past experience.” 194 Wn. App. at 287. The State asked whether he could set aside his personal experiences and judge the case on its merits if the trial court asked him to do so, and the juror replied, “Honestly, I think that would be a pain in the neck, you know. I don’t think I would be able to do that with all these experiences.” 194 Wn. App. at 283 (citation to the

record omitted). Neither the trial court nor the State made any attempt to rehabilitate this juror, and, as a result, he never stated on the record he could be fair and impartial and judge the case only on its merits. *Id.* Nevertheless, Division Two of this Court did not find these statements to be “unqualified statement[s] expressing actual bias.” *Id.* at 284. The Court found the statements somewhat equivocal, noting:

His answers gave the impression that he was unsure whether he could be objective, not that he had a firm conviction of that fact. His answers seemed to convey a vague, nonspecific discomfort with the case rather than a firm bias. And his statement that it would be a “pain in the neck” to judge the case on its merits, seems to refer to inconvenience rather than bias.

*Id.* at 287 (citation to the record omitted). In part, the trial court did not abuse its discretion when it seated the juror because the court could assess “tone of voice, facial expressions, body language, or other forms of nonverbal communication” that cannot be reflected in a transcript or considered by the reviewing court. *Id.*

The opposite conclusion was reached on different facts in *State v. Guevara Diaz*, 11 Wn. App. 2d 843, 854, 858, 456 P.3d 869 (2020), where the reviewing court did find an unqualified expression of actual bias in a juror’s “no” answer to the question: “Can you be fair to both sides in a case involving allegations of sexual assault or sexual abuse?”. The record did not clearly show anything other than the juror’s unrehabilitated

statement she could not be fair. *Id.* at 877. Nothing in the record established this juror responded to the trial court's request to the entire panel for assurance they could follow the law regardless of what they thought the law was or should be, nor to the series of questions the State asked the panel about their ability to be fair. *Id.* at 857. The Court concluded she exhibited actual bias. *Id.* at 877.

In contrast to the juror in *Guevara Diaz*, Juror 4's statements here were qualified and equivocal, and demonstrated confusion on the legal issue of burden of proof. Asked whether she would expect Mr. Hardesty to put on some sort of defense, she stated:

This is a very trick question. It—for my personal reason, it would have to be based on the facts, and it if was a well enough defense—like backed up on about him being not guilty, then maybe I'd go for that route. But if I don't have enough evidence showing that he's not, then I would probably go for guilty.

1RP 412. Defense counsel immediately asked other jurors if they agreed, and three replied: "It's based on the facts." 1RP 412–13. Counsel continued questioning individual jurors, one of whom said Mr. Hardesty would be "not guilty" if the State failed to present enough evidence, to which counsel responded, "Exactly." 1RP 413.

Juror 4's statement, using the words "maybe" and "probably" establish her answer was not necessarily representative of her complete

thoughts on the issue; her answer exhibited uncertainty. Juror 4 further qualified her statement with “it depends on the facts,” showing she would ultimately look to the facts to determine guilt or innocence. Immediately before Juror 4 was questioned, Juror 38 had expressed similar confusion over defense counsel’s explanation that the State had to prove every element of a crime beyond a reasonable doubt. 1RP 410–11. When Juror 38 told defense counsel he needed time to process the information, defense counsel engaged Juror 4 on the same issue. 1RP 411. Juror 4 stated, “Kind of what he said, it would take a little bit of time to give a full answer . . . .” 1RP 412. The equivocation in both statements shows an initial struggle with the abstract idea that a defendant is not required to put on a defense to be found “not guilty.” Nothing in the record suggests Juror 4 had made any prejudgment of Mr. Hardesty or the facts of the case, one way or another. Juror 26 raised his paddle to show he agreed with Juror’s 4 statements. 1RP 412. Because Juror 4 did not express unequivocal actual bias, Juror 26’s agreement with Juror 4 likewise fails to demonstrate unequivocal actual bias.

Juror-specific rehabilitation is not required for jurors whose bias statements are qualified and equivocal. *Lawler*, 194 Wn. App. at 283.

This Court should also consider Juror 4 had already demonstrated her ability to judge a case based only on the facts presented and the trial

court's instructions when she discussed her personal friendship with one of the testifying officers. 1RP 386–87. When questioned about whether she would give more or less weight to the officer's testimony, she responded she would "do [her] duty to not give more favor" to her friend's testimony, and to "connect the dots" by considering only the facts presented at trial. 1RP 386–87. With this answer, Juror 4 established her ability to put her own opinion aside and focus on the facts of the case and the court's instructions on the law.

3. *Mr. Hardesty's defense counsel actively engaged the panel on questions of bias, demonstrated he was alert to the issue, and the trial court was correct not to impinge on defense counsel's jury selection strategy and Mr. Hardesty's constitutional right to present his defense.*

Another critical factor distinguishing this case from *Irby* is the active engagement of Mr. Hardesty's defense counsel in both educating the jury and in exercising for-cause challenges. Two significant factors distinguish the unrehabilitated juror in *Irby* from Jurors 4 and 26 here. *Phillips*, 6 Wn. App. 2d at 666–67. First, unlike here, the statement by the *Irby* juror who should have been dismissed was a statement of unqualified actual bias, and, second, the defendant in *Irby* was pro se and had waived his presence at trial. *Id.* In contrast, Mr. Hardesty was represented by an attorney who actively engaged in the voir dire process. During the discussion of whether Mr. Hardesty had some obligation to prove his

innocence by putting on a defense, counsel twice moved to dismiss for cause two other jurors, Jurors 10 and 12, 1RP 417, 420, but did not exhibit similar concern over Jurors 4 and 26.

Counsel's withdrawal of his for-cause challenges to Jurors 10 and 12 came at the conclusion of a thorough exploration by the court and both parties of the burden of proof and, specifically, why Mr. Hardesty had no obligation to put on any defense whatsoever. 1RP 417–20, 426–29, 434–36, 441. The trial court had also given a hypothetical situation in which a defendant would be wise not to add any additional facts to the record. 1RP 417–18.

While defense counsel did use all his preemptory challenges, 1RP 441–42, CP at 173–75, his dynamic engagement with prospective jurors and his initial motions to strike established he was alert to the possibility of bias. Absent a for-cause motion, the trial court's sua sponte dismissal of Jurors 4 and 26 would have risked disrupting counsel's jury selection strategy, thus interfering with Mr. Hardesty's constitutional right to put on a defense. *Lawler*, 194 Wn. App. at 285.

This consideration also distinguishes Mr. Hardesty's case from *State v. Gonzalez*, 111 Wn. App. 276, 280, 45 P.3d 205 (2002), in which the trial court was found to have improperly denied defense counsel's motion to strike a juror. Under those facts, the issue of interference with a

constitutional right was not at issue.

4. *Conclusion*

The trial judge here was in the best position to determine the ability of Jurors 4 and 26 to be fair and impartial, and to determine whether, under all the circumstances, Mr. Hardesty would have been denied a fair trial by an impartial jury if they were seated on his jury. *Noltie*, 116 Wn.2d at 839; *Phillips*, 6 Wn. App. 2d at 662 (citing *Irby*, 187 Wash. App. at 193).

This Court should find the trial court did not abuse its discretion when it implicitly concluded seating Jurors 4 and 26 would not deny Mr. Hardesty a fair trial by an impartial jury.

B. MR. HARDESTY MOVED IN LIMINE TO PRECLUDE TESTIMONY OR OTHER EVIDENCE THAT, BEFORE THIS INCIDENT, HE HAD STOLEN OTHER ITEMS FROM HIS STEPFATHER, MR. AMORUSO, WITH WHOM HE HAD A CONTENTIOUS RELATIONSHIP, AS WELL AS EVIDENCE THAT BOTH THE ARRESTING OFFICER AND MR. AMORUSO BELIEVED HE WAS GUILTY OF THE THEFT AT ISSUE HERE. WHEN MR. AMORUSO TESTIFIED HE TOLD MS. JENSEN AT THE SALVAGE YARD HE NEEDED A BATTERY BECAUSE THAT MAYBE MR. HARDESTY BORROWED HIS OTHER BATTERY AND DID NOT PUT IT BACK, THE COURT SUSTAINED MR. HARDESTY'S OBJECTION AND INSTRUCTED THE JURY TO DISREGARD THE STATEMENT. MR. HARDESTY DID NOT MOVE FOR A MISTRIAL UNTIL MS. JENSEN SAID THE RECORDS OF HER TRANSACTION WITH MR. HARDESTY CONCERNED "STOLEN PRODUCT." THE COURT INSTRUCTED THE JURY TO DISREGARD THAT STATEMENT AND OFFERED TO GIVE A CURATIVE INSTRUCTION ON WITNESS OPINIONS OF GUILT IF MR. HARDESTY WISHED. MR. HARDESTY DID NOT REQUEST THE CURATIVE INSTRUCTION. THE TRIAL COURT PROPERLY EXERCISED ITS DISCRETION WHEN IT

REFUSED TO DECLARE A MISTRIAL BASED ON VIOLATION OF MR. HARDESTY'S LIMINE MOTION.

1. *Denial of the Motion for Mistrial: Standard of Review*

This Court reviews the trial court's denial of Mr. Hardesty's motion for mistrial for abuse of discretion, which is found "only when no reasonable judge would have reached the same conclusion." *State v. Emery*, 174 Wn.2d 741, 765, 278 P.3d 653 (2012) (quoting *State v. Hopson*, 113 Wn.2d 273, 284, 778 P.2d 1014 (1989)).

2. *Mr. Hardesty was not denied a fair trial and an order granting mistrial was not warranted when neither Mr. Amoruso nor Ms. Jensen testified they believed Mr. Hardesty guilty of theft of the property he sold to the salvage yard, the trial court immediately struck the comments complained of, and Mr. Hardesty declined the court's proffered curative instruction.*

Whether trial irregularity warrants a mistrial depends on three factors: (1) the irregularity's seriousness; (2) whether it involved cumulative evidence; and (3) whether the jury was properly instructed to disregard the evidence. *Hopson*, 113 Wn.2d at 284. Reviewing courts balance these three factors with great deference to the trial court's assessment of potential prejudice when determining "whether there is a substantial likelihood that the irregularity affected the jury's verdict." *State v. Garcia*, 177 Wn. App. 769, 783, 776–77, 313 P.3d 422 (2013).

A mistrial here would have been proper only if Mr. Hardesty had been so prejudiced by the statements of Mr. Amoruso or Ms. Jensen that nothing short of a new trial could ensure he would be fairly tried. *State v. Rodriguez*, 145 Wn.2d 260, 270, 45 P.3d 541 (2002).

The first two *Hopson* factors support the trial court's conclusion that a mistrial was not warranted. *Hopson*, 113 Wn.2d at 284. First, the irregularities were not serious. Neither Mr. Amoruso's statement nor that of Ms. Jensen indicated the witness thought Mr. Hardesty was the person who stole the metal bars and other parts recovered at the salvage yard. The battery that had "sprouted legs and walked off," or had maybe been borrowed by Mr. Hardesty, was not a recovered stolen item, but merely Mr. Amoruso's reason for going to the salvage yard. 2RP 82. Ms. Jensen said she gave sales receipts of Mr. Hardesty's transactions to law enforcement because they concerned "stolen product," 2RP 179, but did not say she thought Mr. Hardesty was the thief. As the trial court recognized, 3RP 250, neither Ms. Jensen's statement, nor that of Mr. Amoruso, directly violated the trial court's limine order prohibiting Mr. Amoruso, and, by implication, Ms. Jensen, from testifying they believed Mr. Hardesty to be the thief.

Ms. Jensen's statements were also cumulative of a body of unchallenged evidence establishing that the items in the barrel had been

taken from Mr. Amoruso's property. *Hopson*, 113 Wn.2d at 284. Mr. Amoruso had already testified at length about recognizing a number of the items in the barrel as definitely belonging to him. 2RP 95. He was able to determine where those items had come from on his property, 2RP 97–98, and the jury had been shown photographs of those locations taken by law enforcement. 2RP 99–100, 106–10.

That the irregularities were cumulative and lacked sufficient seriousness to warrant a mistrial is confirmed by defense counsel's decision not to request the trial court's proposed curative instruction informing the jury that questions of guilt or innocence were solely theirs to make and they should not consider someone else's opinion. 3RP 252.

The trial court also satisfied the third *Hopson* factor by promptly striking the two offending answers and instructing the jury to disregard the testimony. 2RP 85, 179. Jurors are presumed to follow the court's instructions. *Emery*, 174 Wn.2d at 766.

This Court should conclude, as the trial court did, there was no likelihood these two irregularities affected the jury's verdict. *Garcia*, 177 Wn. App. at 783. The jury was presented evidence the unemployed Mr. Hardesty, 2RP 77, who lived in a recreational vehicle on his step-father's equipment-strewn acreage, 2RP 135–36, had made almost daily trips to the salvage yard to sell odds and ends of scrap metal. 2RP 177. Mr.

Amoruso had told Mr. Hardesty to ask specific permission to use or remove any of Mr. Amoruso's personal property. 2RP 81. Mr. Amoruso had not given Mr. Hardesty permission to take the recovered motor control centers or busing units. 2RP 136–37. Mr. Hardesty did not have permission to take anything except aluminum soda cans from the Amoruso property. 2RP 137–138.

With this overwhelming evidence of Mr. Hardesty's almost daily sale of his step-father's property to the salvage yard, there is no possibility the two offending—and stricken—statements prejudiced him to such an extent nothing short of a new trial could ensure he would be fairly tried. *Rodriguez*, 145 Wn.2d at 270. This Court should find the trial court did not abuse its discretion by denying of Mr. Hardesty's mistrial motion.

C. AT SENTENCING, THE TRIAL COURT IMPOSED A SENTENCE ONE AND ONE HALF MONTHS HIGHER THAN MID-RANGE, HAVING CONSIDERED THAT MANY OF MR. HARDESTY'S FELONY CONVICTIONS WOULD HAVE "WASHED OUT" OF HIS OFFENDER SCORE HAD HE NOT BEEN CONVICTED OF DRIVING WHILE LICENSE SUSPENDED IN THE THIRD DEGREE AND THAT THE VALUE OF THE STOLEN PROPERTY IN WHICH HE TRAFFICKED WAS, ALTHOUGH MORE THAN A FEW HUNDRED DOLLARS, NOT "FOUR OR FIVE THOUSAND DOLLARS." REMAND FOR RESENTENCING IS NOT NECESSARY.

The State concedes a "same criminal conduct" analysis lowers Mr. Hardesty's offender score from 14 to 13.

Remand for resentencing is not required when "the record makes it clear that the trial court would impose the same sentence." *State v. Tili*,

148 Wn.2d 350, 358, 60 P.3d 1192 (2003) (citing *State v. Parker*, 132 Wn.2d 182, 189, 937 P.2d 575 (1997)). When imposing a sentence one and one half months higher than mid-range, the trial judge expressly considered the value of the property Mr. Hardesty stole in the context of the broad range value encompassed by the trafficking statute and, also, that it was only his unfortunate conviction for third degree driving while license suspended that prevented wash out of most of Mr. Hardesty's felony convictions. His standard range is not affected by the reduction in his score from 14 to 13, nor is the dollar value of the trafficked property different.

This Court should decline to remand Mr. Hardesty's case for resentencing.

## **V. CONCLUSION**

This court should find (1) Mr. Hardesty was tried by a fair and impartial jury because Jurors 4 and 26 did not exhibit actual bias, so failure to individually rehabilitate each of them does not warrant a new trial; (2) the trial court properly exercised its discretion when it denied Mr. Hardesty's motion for a mistrial because any violation of the limine order was de minimis, the offending statements were stricken and the jury was immediately instructed to ignore them, and Mr. Hardesty declined to request the court's proffered curative instruction; and (3) remand for resentencing is not required for a one point reduction in a 14 point

offender score when the trial court has already discounted the score and imposed a mid-range sentence.

DATED this 24<sup>th</sup> day of June, 2020.

Respectfully submitted,

GARTH DANO  
Grant County Prosecuting Attorney

s/Katharine W. Mathews  
KATHARINE W. MATHEWS  
WSBA No. 20805  
Deputy Prosecuting Attorney  
Attorneys for Respondent  
Grant County Prosecuting Attorney's  
Office  
P.O. Box 37  
Ephrata, Washington 98823  
PH: (509) 794-2011  
Email: kwmathews@grantcountywa.gov

CERTIFICATE OF SERVICE

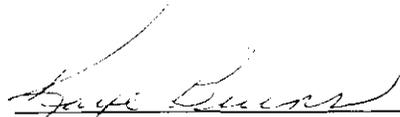
On this day I served a copy of the Brief of Respondent in this matter by e-mail on the following parties, receipt confirmed, pursuant to the parties' agreement:

Laura Michelle Chuang  
[laura@ewalaw.com](mailto:laura@ewalaw.com)

Jill Shumaker Reuter  
[jill@ewalaw.com](mailto:jill@ewalaw.com)

[admin@ewalaw.com](mailto:admin@ewalaw.com)

Dated: June 24, 2020.

  
\_\_\_\_\_  
Kaye Burns

# GRANT COUNTY PROSECUTOR'S OFFICE

June 24, 2020 - 8:46 AM

## Transmittal Information

**Filed with Court:** Court of Appeals Division III  
**Appellate Court Case Number:** 37107-7  
**Appellate Court Case Title:** State of Washington v. Preston David Hardesty  
**Superior Court Case Number:** 18-1-00604-2

### The following documents have been uploaded:

- 371077\_Briefs\_20200624084540D3370288\_6021.pdf  
This File Contains:  
Briefs - Respondents  
*The Original File Name was BRIEF OF RESPONDENT.pdf*

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

- admin@ewalaw.com
- gdano@grantcountywa.gov
- jill@ewalaw.com
- laura@ewalaw.com

### Comments:

---

Sender Name: Kaye Burns - Email: kburns@grantcountywa.gov

**Filing on Behalf of:** Katharine W. Mathews - Email: kwmathews@grantcountywa.gov (Alternate Email: )

Address:  
PO Box 37  
Ephrata, WA, 98823  
Phone: (509) 754-2011 EXT 3905

**Note: The Filing Id is 20200624084540D3370288**