

70464-8

70464-8

NO. 70464-8-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

TRAVIS BLALOCK,

Appellant.

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STATE OF WASHINGTON
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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE JUDGE DOUGLASS NORTH

BRIEF OF RESPONDENT

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A. ISSUES PRESENTED

1. When the trial had previously been continued ten times and Blalock was unable to articulate a specific need for additional preparation time, did the trial court properly exercise its discretion to deny Blalock's day-of-trial continuance motion? Has Blalock failed to establish that the denial violated his right to due process and his right to self-representation?

2. In light of his clear and deliberate refusal to stay in the courtroom and attend the trial, was Blalock's presence at the start of the trial excused for good cause?

3. When Blalock failed to make an offer of proof and articulate a non-hearsay basis for the admission of his wife's testimony about out-of-court statements, has he failed to preserve the argument that the evidence was improperly excluded? Even if the evidence should have been admitted, was any error harmless when the testimony was cumulative of other undisputed evidence, and when there is no reasonable probability that the error materially affected the outcome of the trial?

4. Should the judgment and sentence be amended to correct a scrivener's error in the offense date?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

On January 28, 2011, Appellant Blalock was charged in King County Superior Court with Felony Failure to Register as a Sex Offender. CP 1-2. He was arraigned on February 8, 2011. CP 7. Trial was originally scheduled for October 24, 2011. CP 8; 5RP 20.¹ The State later amended the information to expand the charging period. CP 9. After Blalock's attorney suffered health problems, substitute counsel was appointed in October of 2012. CP 171; 2RP 5; 5RP 3-4. Blalock became dissatisfied with substitute counsel, and unsuccessfully moved to discharge her in January of 2013. 3RP 3-7; 5RP 5.

On March 12, 2013, over two years after the charges were filed, and approximately one month before trial began, Blalock moved to represent himself. 5RP 4. Following a thorough inquiry, the Honorable Judge Rogers found that Blalock knowingly and voluntarily waived counsel. CP 10-11; 5RP 9-14.

¹ The Verbatim Report of Proceedings consists of 15 volumes, referenced herein as: 1RP (10/16/12), 2RP (10/18/12), 3RP (01/15/13), 4RP (03/04/13), 5RP (03/12/13), 6RP (03/13/13), 7RP (04/08/13—J. North), 8RP (04/08/13—J. Rogers), 9RP (04/09/13), 10RP (04/10/13), 11RP (04/11/13), 12RP (04/12/13), 13RP (05/02/13), 14RP (05/03/13), and 15RP (05/08/13).

Four weeks later, on the scheduled trial date of April 8, 2013, Blalock asked the court for another continuance, which Judges North and Rogers both denied. 7RP 9; 8RP 3-13. Blalock became very angry and indicated his belief that the court “could not make” him proceed to trial.² 7RP 36-37; 8RP 13.

The next morning, April 9, 2013, Blalock refused to be transported to court. 9RP 3, 7. The court signed an order compelling Blalock’s presence. CP 12; 9RP 7. After Blalock appeared, Judge North told him that they were ready to proceed with pretrial motions and jury selection. 9RP 9. When it became clear that the trial was going to proceed, Blalock became argumentative, accused Judge North of bias, and stated that both the judge and the deputy prosecutor were “going to have problems.” 9RP 9-17.

Blalock demanded to be returned to his cell. 9RP 16. The court repeatedly told Blalock that they were ready to go forward and, if he chose not to participate, the trial would proceed without him. 9RP 9, 15, 16-17, 19, 20. Finally, when Judge North told Blalock again, “we’re going to go ahead with the issues in the

² A more detailed recitation of the facts surrounding Blalock’s motion for a continuance is contained below, in the argument section of the State’s brief.

case,” Blalock responded, “You’re going to go ahead and get me the fuck up out of here, man. I’m gone.” 9RP 20. He left the courtroom and returned to his cell. Id. During the remainder of the day, the court addressed several preliminary issues and conducted jury selection, and the jury heard the opening statement of the prosecutor and the testimony of two witnesses. 9RP 22-171. The next day, Blalock chose to return to court and he participated in the remainder of his trial. 10RP; 11RP.

The jury found Blalock guilty as charged of Felony Failure to Register as a Sex Offender. CP 32; 12RP 3. Following the trial, Blalock made motions for both a new trial and to dismiss the charges. CP 35-47, 50-53. The court denied the motions. CP 48-49. At sentencing, Blalock argued that two of his prior convictions should not count separately toward his offender score. 14RP 17-18. When the court disagreed, Blalock became angry and launched into a profane, derogatory, and threatening tirade against the court and the prosecutor. 14RP 19. The court sentenced Blalock within the standard range. CP 54-64; 15RP 6.

2. SUBSTANTIVE FACTS

In 2004, Blalock was convicted of Rape of a Child in the Third Degree.³ 10RP 17-18. As a result, he was required to register as a sex offender for a minimum of ten years. 10RP 19. Blalock registered his address (or as homeless) a total of twelve times over the years following his 2004 conviction. 10RP 34-35, 42-43. However, he was convicted of Attempted Failure to Register in 2007, and Felony Failure to Register in 2009. 10RP 29-32.

On July 6, 2010, Blalock began living at the Seals Motel in Seattle. 10RP 46. He registered his Seals Motel address with the King County Sheriff's Office on July 7, 2010. 10RP 12, 36; 11RP 55-56, 79-80. Also in July of 2010, Blalock married Jennifer Blalock.⁴ 11RP 31. Blalock's community corrections officer ("CCO") told Jennifer that if she allowed Blalock to be around her children while he was on probation, the CCO would contact Child Protective Services. 11RP 28. Therefore, although Jennifer lived

³ In the instant case, Blalock refused to stipulate to the fact of this qualifying conviction. 7RP 16-17. Although he implies on pg. 10 of his Opening Brief that this was a spur-of-the-moment decision made during discussion regarding his continuance request, in reality, he had informed the State of his refusal to stipulate over a year earlier. CP 162.

⁴ The State refers to Jennifer Blalock in this brief by her first name solely to avoid confusion with Appellant Blalock. No disrespect is intended.

in Everett, she stayed several nights a week with Blalock at the Seals Motel. 11RP 29, 33, 35.

Between July 28, 2010, and October 23, 2010, King County Sheriff's Office Detective Johnson unsuccessfully attempted to contact Blalock at the Seals Motel eleven times. 10RP 10; 11RP 22, 24. Finally, on December 19, 2010, Detective Knudsen visited the Seals Motel and learned that Blalock had moved out. 10RP 15-16; 11RP 21-22. Motel records confirmed that Blalock had moved out on November 23, 2010. 10RP 48.

After leaving the Seals Motel in November of 2010, Blalock moved in with Jennifer in Everett. 11RP 32-34. He did not register his address with the Snohomish County Sheriff's Office, nor did he inform the King County Sheriff's Office that he had moved out of King County. 10RP 11-12, 92, 95. A notification to both counties was required to be made within three days of Blalock's move from the Seals Motel to Everett. 9RP 146-47, 159-60; 10RP 89-90.

On December 2, 2010, Blalock was released from community custody. 11RP 74. At that time, he met with CCO Shawna Dickerson and received a document informing him that, although he was not on supervision anymore, he was still required

to abide by all conditions of his judgment and sentence.

10RP 41-44, 58-59; 11RP 50-51, 74-75.

Because Detective Knudsen had been unable to locate Blalock in King County, he drafted a certification for determination of probable cause and forwarded the case to the King County Prosecutor's Office in early January 2011. CP 4-5; 10RP 35.

On January 30, 2011, Snohomish County Sheriff's Deputies Fortney and Brittingham went to Jennifer's home in Everett to arrest Blalock on these charges. 10RP 70-71, 80; 11RP 33. Deputy Brittingham observed Blalock through the living room window. 10RP 74, 81-82, 84-85. As the officers knocked on the door, they saw Blalock get up and leave the living room. 10RP 84-85. No one answered the door for several minutes. 10RP 85. Finally, Jennifer answered the door and spoke to the deputies about why they were there. 11RP 36. She told Blalock that the police were there to arrest him for failing to register as a sex offender. 11RP 36-37. After approximately 45 minutes, Jennifer finally allowed the deputies into the residence to look for Blalock. 10RP 74-75, 83; 11RP 36.

The residence was a duplex, with two double-story units situated side-by-side. 10RP 72-73. The sheriff's deputies could

not locate Blalock either upstairs or downstairs. 10RP 75. As a result, Deputy Fortney climbed into the attic, where he observed damage to the sheetrock on the wall that divided the two units. 10RP 75-76. He removed the sheetrock, looked into the attic of the other unit, and saw footprints in the insulation. 10RP 77. Blalock was arrested in the adjoining unit.⁵ 10RP 78, 82.

After his arrest on January 30, 2011, Blalock registered with the Snohomish County Sheriff's Department on February 2, 2011. 10RP 93. Prior to that, the last time he had registered as a sex offender was in King County, at the Seals Motel, on July 7, 2010. 10RP 11-12.

C. ARGUMENT

1. THE DENIAL OF BLALOCK'S DAY-OF-TRIAL MOTION TO CONTINUE WAS NOT REVERSIBLE ERROR.

Blalock argues that the trial court abused its discretion when it denied his motion for a continuance, made on the day of trial. He claims that the denial violated his right to self-representation and his due process right to meaningful access to the courts. He

⁵ Blalock was discovered hiding in the bedroom of his neighbor's young child. CP 190. The prosecutor did not elicit this fact in front of the jury. 9RP 38-39.

contends that reversal is required regardless of any showing of prejudice. His arguments should all be rejected.

a. Relevant Legal Authority.

The decision to grant or deny a motion for a continuance “rests within the sound discretion of the trial court, even when it is argued that a refusal to grant a continuance deprives a defendant of the right to due process and right to representation.”

State v. Nguyen, ___ Wn. App. ___, 319 P.3d 53 (Div. I, Dec. 13, 2013). A trial court abuses its discretion only when its decision is manifestly unreasonable or exercised on untenable grounds or for untenable reasons. State v. Woods, 143 Wn.2d 561, 579, 23 P.3d 1046 (2001).

When deciding whether to grant or deny a continuance, the trial court considers many factors, including whether prior continuances have been granted, due diligence, redundancy, due process, materiality, the need for orderly procedure, and the possible impact on the result of the trial. State v. Downing, 151 Wn.2d 265, 273, 87 P.2d 1169 (2004) (citing State v. Eller, 84 Wn.2d 90, 95, 524 P.2d 242 (1974)); In re V.R.R., 134 Wn. App. 573, 581, 141 P.3d 85 (2006).

A denial of a continuance may work to deprive a defendant of due process. Constitutional issues are raised where it can be said that denial of a continuance deprived the defendant of a fair trial. However, there is no mechanical test for determining whether the failure to grant a continuance has deprived a defendant of due process; each case must be considered on its particular facts. Downing, 151 Wn.2d at 274-75; State v. Kelly, 32 Wn. App. 112, 114, 645 P.2d 1146, rev. denied, 97 Wn.2d 1037 (1982). The totality of circumstances must be examined, “particularly the reasons presented to the trial judge at the time the request is denied.” Kelly, 32 Wn. App. at 114-15.

Further, the trial court’s denial of a motion to continue will be “disturbed only upon a showing that the accused has been prejudiced and/or that the result of the trial would likely have been different had the continuance not been denied.” State v. Deskins, No. 88140-5, slip op. at 14 (Wn.2d Mar. 27, 2014) (quoting Eller, 84 Wn.2d at 95)); see also State v. Anderson, 23 Wn. App. 445, 449, 597 P.2d 417 (1979) (rejecting a due process claim because defendant failed to show how denial of a continuance prejudiced his case).

A pro se defendant has a right of reasonable access to resources that will enable him to prepare a defense. State v. Silva, 107 Wn. App. 605, 622-23, 27 P.3d 663 (2001). However, what measures are necessary or appropriate is left to the sound discretion of the trial court, who considers:

all the circumstances, including, but not limited to, the nature of the charge, the complexity of the issues involved, the need for investigative services, the orderly administration of justice, the fair allocation of judicial resources (i.e., an accused is not entitled to greater resources than he would otherwise receive if he were represented by appointed counsel), legitimate safety and security concerns, and the conduct of the accused.

Silva, 107 Wn. App. at 622-23 (internal citations omitted).

b. Relevant Facts.

Prior to Blalock waiving his right to counsel, the trial had been continued ten times and the case had been pending for over two years. CP 8, 121-24, 167-70, 174-75; 3RP 10; 4RP 5; 5RP. On March 12, 2013, prior to authorizing Blalock to waive counsel, Judge Rogers warned him that due to the length of time the case had already been pending, the trial date of April 8 would likely not be continued again. 5RP 6-7. Nonetheless, immediately after the court granted his request to waive counsel, Blalock asked for

another continuance of the trial date “since I’m now going pro se.” 5RP 15-17. The only reason Blalock offered to support the continuance request was his need to look over his prior attorney’s case files and discovery. 5RP 17. The court denied Blalock’s motion, but agreed that he could re-raise the issue if he could articulate a specific need for a continuance. 5RP 17-19, 21.

Blalock also asked Judge Rogers to transport him back to the Snohomish County Jail while he awaited trial in King County. 5RP 16-17. Blalock informed the court that he was not in custody on the King County matter, but rather incarcerated only on a Snohomish County case, and had simply been transported to the King County Jail for his motion. Id. The prosecutor and the court both expressed concern that Blalock would not be able to adequately prepare for trial if he was transported back to Snohomish County. Id. However, because Blalock was adamant about the transfer to Snohomish County, the court agreed to Blalock’s request. 5RP 17, 20-21.

The next day, on March 13, 2013, the State asked the court to revisit the issue and to vacate the order transporting Blalock back to the Snohomish County Jail, again citing concerns with Blalock’s ability to prepare for trial if incarcerated there. 6RP 3-4.

Judge Ronald Kessler denied the State's motion, but specifically warned Blalock that his transfer to Snohomish County would make it more difficult for him to represent himself, and reiterated that the trial date would not be continued due to his voluntary choice to transfer to the Snohomish County Jail. 6RP 7-9.

On the morning of April 8, 2013, the trial day, the parties first appeared in the presiding courtroom where Blalock complained that he had been denied access to his discovery and that he had not yet had the opportunity to interview witnesses. CP 178-79. The parties were sent to Judge North for trial.⁶ Id.

When they appeared before Judge North, Blalock again asked for a continuance. 7RP 3-5. He claimed that he had not had access to his discovery or case files because the Snohomish County Jail had not recognized his pro se status, that he had not hired an investigator, and that there were three potential witnesses he still needed to interview. 7RP 4-5.

In response, the State informed the court that Blalock had been personally provided with all of the discovery and his attorney's case files in court on March 13, 2013. 7RP 6. The prosecutor had even contacted the Snohomish County Jail "to be sure that they

⁶ Blalock did not transcribe this hearing for this appeal.

would allow Mr. Blalock to be transported with his discovery . . . I was assured that . . . they would allow him in with the discovery.” 7RP 6-7. See also 7RP 10 (Blalock conceded that he had been transported with all of his legal materials). The State also noted that Blalock’s former counsel had hired two private investigators, both of whom conducted interviews on Blalock’s behalf. 7RP 7. At the time that Blalock waived counsel, Blalock’s former attorney informed the prosecutor that she had completed the necessary defense interviews. Id. Blalock’s former counsel had also signed an omnibus order in January of 2013 indicating that she had received all of the discovery in the case. CP 172.

Blalock nonetheless stated his belief that interviews were not completed. He told the court that he still needed to interview three potential witnesses, “Kevin and his wife,” and also Blalock’s own wife. 7RP 9, 12, 26. The court told Blalock that if his prior counsel and investigator had not actually completed the interviews, he would “consider that,” but stated that he would need some proof of that fact, and pointed out that Blalock had access to the work that the investigators had already done. 7RP 26.

The State clarified that “Kevin and his wife” were Kevin and Jessica Bryant, both of whom had been interviewed by Blalock’s

former counsel, who had provided recordings of the interviews to the State a week prior to Blalock waiving his right to counsel. 7RP 28-29. The prosecutor told the court that he did not intend to call the Bryants as witnesses because their testimony would be “redundant.” 7RP 28-29. Blalock admitted that he had heard the Bryants’ recorded interviews, but maintained that the interviews “involved another case.”⁷ 7RP 29.

Also in support of his motion to continue, Blalock complained to Judge North of problems encountered with accessing his discovery and case files while in the Snohomish County Jail. 7RP 5. On March 18, 2013, Blalock had “kited” a request to be recognized as pro se and indicated that he wished all of his legal materials in the King County case to be picked up from the Snohomish County Jail by Alexis Davis, a friend of his wife. CP 111; 7RP 23. In the kite, Blalock provided the prosecutor’s name and the general phone number for the King County Prosecutor’s Office. CP 111; 7RP 18. However, Blalock’s appointed counsel did not formally file her notice of withdrawal until

⁷ The “other case” that Blalock referred to was the Snohomish County criminal trespass case that stemmed from his arrest on these charges in his neighbor’s duplex on January 30, 2011. The Bryants were the neighbors who lived in the duplex next to Blalock; Blalock was arrested in the Bryants’ son’s bed after going through the sheetrock in the attic. CP 190; 7RP 29-31.

April 5, 2013. CP 109. Thus, when the Snohomish County Jail contacted the King County Prosecutor's Office's general number, they were informed that Blalock was still represented by appointed counsel, as she had not yet filed her notice of withdrawal. CP 33.

Judge North noted the mistake and asked Blalock if he had made another request to "get the records." 7RP 19. Blalock stated that he had, and that he thought it was the "25th" that he had done so, but said he had not received anything back.⁸ 7RP 20. Judge North reminded Blalock that he had been warned that his transport to another jail might make it difficult to access his materials. 7RP 20. The court asked Blalock, "[S]o do you have the materials now?" 7RP 21. Blalock responded, "No, I have none. I don't know." Id. Judge North asked the jail officer present in court if he knew whether Blalock had property with him at the jail. 7RP 22. When the officer responded that he did not know, Judge North suggested to the prosecutor that he find out. Id. Judge North recessed until 1:00 p.m. 7RP 32.

⁸ Blalock designated as Clerk's Papers a kite that was not produced to or considered by Judge North at the time he considered Blalock's April 8, 2013, motion to continue. CP 112. The kite is directed to the King County Jail, not the Snohomish County Jail. Id. Although Blalock hand-dated the kite April 5, 2013, it was stamped "received" by the King County Jail on April 9, 2013 (after Judge North considered Blalock's request for a continuance). Id. In the kite, Blalock requested that the jail recognize his pro se status. Id. The response to Blalock was dated the same day it was received, April 9th, and directs him to "forward the order to proceed pro se to classification A.S.A.P." CP 112.

Before returning to Judge North's court that afternoon, the parties were directed to appear before Assistant Presiding Judge Rogers to again discuss Blalock's request to continue the trial. CP 178-79; 8RP 3. Although the State and Judge North had been unaware that morning whether Blalock's legal materials were still in his jail property or not, the prosecutor had since discovered that the legal materials were no longer in Blalock's jail property, despite Blalock having been transported to the Snohomish County Jail with them. 8RP 3-4, 7-8. The State pointed out that Blalock had indicated in his March 18 kite that he wanted to turn over his discovery to someone else, and stated, "I don't know whether he signed out his discovery to Ms. Davis or not, but the reality is somehow it's no longer with Mr. Blalock."⁹ 8RP 8. The prosecutor told Judge Rogers that, "This is yet another attempt to delay the trial."¹⁰ Id.

⁹ Blalock's wife later revealed that she had the legal materials because Blalock had checked them out to her while he was still at the Snohomish County Jail. CP 183; 11RP 16. Thus, Blalock's claim to Judge North on the morning of April 8, 2013, that the materials had not yet been picked up appears to have been false. 7RP 22-23.

¹⁰ Indeed, when asking to continue the trial date until April 8, Blalock's former counsel had told the court that although she anticipated all necessary preparation would be completed by that date, Blalock himself wanted the trial pushed all the way out to June 15, 2013, because he wanted to finish serving his sentence in Snohomish County and to be out of custody when the trial started. 4RP 5-6.

Blalock also told Judge Rogers that he needed a continuance to interview the Bryants and his own wife. 8RP 10. When Judge Rogers asked Blalock if he was able to contact his wife, Blalock stated, "Yes, sometimes, yes." 8RP 11. Judge Rogers asked Blalock, "Is she someone you could call for trial if you wish . . . I mean you could reach her and call her for trial if you wished?" Blalock replied, "Yes." 8RP 11.

Judge Rogers noted that the case had been pending for "a number of months," indicated that Judge North had already ruled on Blalock's motion for a continuance based on his perceived need to interview the Bryants, and concluded himself that Blalock was able to contact and summon his wife to court. 8RP 12. Judge Rogers stated that there was an "issue" as to whether Blalock had checked his legal materials out to another person, or whether his discovery was "in the custody of any state official at all." 8RP 12-13. Judge Rogers ordered the State to provide another copy of the discovery to Blalock by the end of the day and directed the parties to return to Judge North's court. 8RP 13. Blalock swore at Judge Rogers as he left the courtroom. Id.

When the parties returned to Judge North, the prosecutor asked to recess the remainder of the day to allow Blalock additional

time to review the discovery and the State's trial brief. 7RP 33-34. He stated that he anticipated being ready the following day to proceed with pretrial motions and jury selection. 7RP 34. The court agreed. 7RP 36. However, Blalock told the court that he was "not going to trial," and that the court "could not make [him]." Id. Blalock cursed at the court, and when the prosecutor attempted to give him yet another copy of discovery, Blalock ordered him to "throw that shit in the trash." 7RP 37.

c. The Denial Of Blalock's Motion To Continue Was A Proper Exercise Of Discretion And Did Not Violate His Right To Due Process.

Considering the particular facts of this case, the trial court did not abuse its discretion when it refused Blalock's day-of-trial motion to delay the case further. The case involved a straightforward failure to register charge that had been pending for over two years and that had been previously continued ten times. CP 121-24, 167-70, 174-75. Although part of the delay was due to health concerns of Blalock's first attorney, the trial was continued for almost six months after that attorney withdrew and substitute counsel was appointed. CP 171.

Blalock did not articulate any specific reason for why he needed more time to review the discovery, which he had had access to for over two years. Moreover, although Blalock claimed that he needed more time to review the discovery and his "case files," it is clear from his own statements during the continuance motion that he was familiar with the discovery and the facts of the case. See 7RP 13 (Blalock arguing that the State had his offender score "messed up"); 7RP 29-30 (Blalock admitted that he had listened to the recorded interviews his attorney had conducted and demonstrated familiarity with their contents). Blalock had had well over two years to review the evidence and discovery with his previous attorneys; indeed, he made no claim that he had not done so.

Additionally, Blalock conceded that he had been provided with his discovery and his prior attorney's case files at the time that he waived counsel and was transported to the Snohomish County Jail. 7RP 10. Although there was confusion later regarding his pro se status, Blalock only presented one request to the Snohomish County Jail to access his discovery and legal materials, in which he indicated his intention to sign the materials out to a third party. CP 111. Indeed, Blalock apparently followed through on his stated

intent and had his wife pick up his discovery and legal materials while he was still incarcerated at the Snohomish County Jail. CP 183; 11RP 16. Blalock was untruthful with the court about this fact. 7RP 22-23. And given the facts known to the court at the time, Judge Rogers reasonably concluded that "it's not certain where [Blalock's] discovery is at this point, whether it's even in the custody of any state official at all." 8RP 12-13.

Any difficulty preparing for trial was attributable to Blalock's voluntary decisions to be transported to Snohomish County and to give his legal materials to his wife. Blalock had been warned that he might encounter difficulty preparing his defense if he chose to be housed in a different county's jail, and he was admonished how that fact alone would not be a basis to continue the trial. 6RP 7, 9-10. He chose to be transferred despite the court's clear warning. Blalock alone decided to turn all of his legal materials over to his wife. CP 183; 11RP 16.

Further, the court reasonably refused Blalock's request to continue the trial to interview potential witnesses. Two of the individuals Blalock purportedly needed to question had already given tape-recorded interviews to Blalock's former counsel. 7RP 28. Blalock admitted having heard the interviews. 7RP 29.

The two individuals were the neighbors who lived in the duplex next to Blalock, and in whose home he was caught attempting to evade arrest. CP 190; 7RP 29-31. Their potential testimony (that Blalock was arrested in their unit) was cumulative to the police officers' testimony. 7RP 28-30. See Eller, 84 Wn.2d at 98 (affirming the denial of a continuance to secure a witness whose testimony was cumulative). Blalock made no attempt to show that the Bryants could offer any non-cumulative testimony. 3RP 27-31.

Finally, the trial court reasonably concluded that a continuance was unwarranted based on Blalock's perceived need to interview his own wife, when Blalock admitted that he had been able to contact her and was able to summon her as a witness.¹¹ 8RP 11-12; 9RP 13. Indeed, Blalock himself admitted that he had been able to contact his wife in the Snohomish County Jail without issue. 9RP 13. The court reasonably determined that Blalock had had sufficient time to ascertain what his wife would testify to.

Given the totality of the circumstances, this Court cannot say that the decisions of Judges North and Rogers to deny Blalock's

¹¹ Blalock implies that he was "unable to call his wife because her phone number was blocked." Brf. of App. at 8. However, he claimed that her number was blocked from the King County Jail, and he admitted that he had easily been able to contact her from the Snohomish County Jail. 9RP 13.

day-of-trial motion for a continuance were manifestly unreasonable in light of the inadequate reasons Blalock presented. Kelly, 32 Wn. App. at 114-15. The denial of the continuance was a proper exercise of discretion and did not violate his right to due process and meaningful access to the courts.¹²

Even if Blalock should have been granted further time he is entitled to relief only if he can show prejudice. State v. Barker, 35 Wn. App. 388, 396-97, 667 P.2d 108 (1983) (holding that “[t]he decision to deny the defendant a continuance will be disturbed on appeal only upon a showing that the defendant was prejudiced or that the result of the trial would likely have been different had the motion been granted” (internal quotation marks and citation omitted)); Anderson, 23 Wn. App. at 449. Blalock’s conclusory claim that he did not have enough time to review the discovery in the Snohomish County Jail ignores the fact that he had over two years to review it with his prior attorneys. And although he

¹² Blalock appears to argue that the State was required to demonstrate that it would have been prejudiced by a continuance. Brf. of App. at 16. That is not the law. This Court considers the totality of circumstances when determining whether the decision to deny a continuance was an abuse of discretion. Blalock’s case was over two years old. The court’s interest in avoiding further delay was an entirely tenable basis upon which to deny Blalock’s motion in light of the inadequacy of his stated reasons for the continuance. See State v. Staten, 60 Wn. App. 163, 172-73, 802 P.2d 1384 (1991) (denial of defendant’s motion to continue affirmed where the trial court’s decision was based on its interest in avoiding further unnecessary delay).

speculates how his own further “legal research” might have affected his case, such conjecture is insufficient to meet his burden to show prejudice or that the outcome of the trial would have been different had the continuance been granted.

Blalock claims that reviewing relevant law could have altered his decision not to stipulate to the fact of his prior conviction. However, Blalock had refused to stipulate to his prior conviction since the time he was represented by his first retained counsel. CP 162. It is unlikely that independent research would have changed his mind when the advice of one or more attorneys had not.

Blalock also speculates that he might have been able to successfully admit Jennifer’s testimony about what CCO Dickerson had told him about his need to register. However, as argued below, Blalock himself testified as to what Dickerson told him, and the relevant issue was how Blalock interpreted Dickerson’s statements—a fact his wife could not have speculated about.

Moreover, the evidence at trial was that Blalock had ignored multiple attempts by the King County Sheriff’s Office to contact him. 10RP 10, 15-16; 11RP 21-22, 24. When his wife informed him that the police were present at his home to arrest him for failing to register, Blalock did not come to the door and explain his belief that

he no longer had to register. 11RP 36-37. Instead, he broke through the drywall in his attic, unlawfully entered his neighbor's residence, and hid. 10RP 75-82. Blalock's sheer speculation is insufficient to demonstrate that the outcome of the trial would likely have been different had the continuance been granted.

Blalock cites to State v. Mundon, 121 Haw. 339, 219 P.3d 1126 (2009), and People v. Cruz, 83 Cal. App. 3d 308, 147 Cal. Rptr. 740 (1978), to support his contention that a showing of prejudice is unnecessary. However, in both of those cases, reversal resulted from the combination of multiple serious errors, not the denial of the defendant's continuance request alone. Blalock makes no claim of cumulative error. Washington precedent clearly dictates that reversal is unwarranted unless Blalock demonstrates that the denial of the continuance prejudiced him. He has not made such a showing.

d. The Denial Of Blalock's Motion To Continue Did Not Violate His Right Of Self-Representation.

Blalock also claims that the trial court's denial of his continuance motion violated his right to self-representation and that reversal is required regardless of prejudice. However, Blalock fails

to offer adequate analysis or authority to support this claim, and it should not be considered. See State v. Dennison, 115 Wn.2d 609, 629, 801 P.2d 193 (1990) (appellate court need not consider arguments that are not developed in the briefs and for which a party has not cited authority).

Blalock's conclusory claim that the denial was "tantamount" to denying him the right of self-representation is supported only by citation to the inapposite case of State v. Fritz, 21 Wn. App. 354, 585 P.2d 173 (1978), in which the defendant made a late motion to proceed pro se on the day of trial. The appellate court affirmed the denial of the defendant's motion to waive counsel concluding that "a clearer case of a defendant doing everything possible to delay his scheduled trial and obstruct the orderly course of the administration of justice would be difficult to imagine." Id. at 365. Blalock makes no attempt to explain how Fritz, or any other case, supports the conclusion that Blalock's right to self-representation was violated here.

Indeed, when the trial court granted Blalock's motion to waive counsel a month before trial, it placed no limits on his self-representation and informed him that if he presented a valid reason for a continuance, the request would be considered. As

demonstrated above, Blalock never presented a valid reason for a continuance. His assertion that the denial of the motion to continue violated his right to self-representation is contradicted by the record, lacks any persuasive argument or authority, and should be rejected.

2. BLALOCK'S PRESENCE WHEN TRIAL COMMENCED WAS EXCUSED FOR GOOD CAUSE WHEN HE CLEARLY AND DELIBERATELY REFUSED TO STAY IN THE COURTROOM FOR TRIAL.

Blalock argues that reversal is required because he was not present when the trial commenced, i.e., when the jury was sworn for voir dire. In support of this claim he cites to CrR 3.4(b) and cases relating to the trial court's ability to proceed with an already-commenced trial in the face of a defendant's voluntary (and often unexplained) absence. Blalock's reliance on CrR 3.4(b) is misplaced. CrR 3.4(b)'s permissible presumption of a waiver based upon the defendant's voluntary absence from court is entirely different from an affirmative and deliberate refusal of the defendant to be present after being given the clear choice. Here, Blalock's presence at the start of the trial was excused when he refused to stay in the courtroom and instead chose to return to his cell after

being advised repeatedly that the trial was going to go forward regardless. The court did not err when it commenced trial without him.

Construction of a court rule is reviewed de novo.

State v. Brown, 178 Wn. App. 70, 312 P.3d 1017 (2013) (citing State v. Bertrand, 165 Wn. App. 393, 414, 267 P.3d 511 (2011)).

This Court must interpret court rules like statutes, giving effect to their plain meaning, as determined by reading the rule as a whole, harmonizing its provisions, and referring to related rules to identify the intent behind it. State v. Chhom, 162 Wn.2d 451, 458, 173 P.3d 234 (2007).

CrR 3.4 relates to the presence of the defendant and states the requirement that:

[A] defendant shall be present at the arraignment, at every stage of the trial including the empaneling of the jury and the return of the verdict, and at the imposition of sentence, except as otherwise provided by these rules, or as excused or excluded by the court for good cause shown.

CrR 3.4(a) (emphasis added). The phrase “except as otherwise provided by these rules” refers to CrR 3.4(b), which explicitly permits a trial to continue in the defendant’s voluntary absence when the defendant was present when the trial commenced:

The defendant's voluntary absence after the trial commenced in his or her presence shall not prevent continuing the trial to and including the return of the verdict.

CrR 3.4(b). Trial "commences" for the purposes of CrR 3.4(b) when the jury panel is sworn for voir dire. Brown, 312 P.3d at 1020 (citing State v. Crafton, 72 Wn. App. 98, 103, 863 P.2d 620 (1993)).

However, the requirement that the defendant be present when the trial commences appears only in CrR 3.4(b); no such limiting condition is placed on the court's ability to proceed in the defendant's absence if he has been "excused or excluded by the court for good cause shown" under CrR 3.4(a).

Thus, under the plain language of CrR 3.4, the circumstances by which a trial may proceed without the defendant are limited to situations where (1) the defendant has been excused or excluded by the court for good cause shown, or (2) where a defendant has voluntarily absented himself after trial has commenced. See State v. Jackson, 124 Wn.2d 359, 361, 878 P.2d 453 (1994) ("Except for the limited circumstances when the defendant is excused or excluded, CrR 3.4 permits trial to continue in the defendant's absence only if the defendant was present when

the trial commenced.” (citing State v. Hammond, 121 Wn.2d 787, 793, 854 P.2d 637 (1993))).

The phrase “excused” for good cause shown “refers to a trial court proceeding after the defendant has deliberately and clearly refused to be present.” Hammond, 121 Wn.2d at 793. “Excluded” for good cause “refers to a trial court’s power to exclude the defendant where he or she is disruptive.” Id. In both such circumstances, the rule does not condition proceeding in the defendant’s absence on the trial having “commenced” in the defendant’s presence. Indeed such a requirement would be unreasonable and impractical. The trial court should not be required to bring a disruptive and troublesome defendant to the courtroom for the sole act of swearing the jury panel for voir dire, nor would it make any sense to force a defendant to attend or remain in the courtroom against his clearly stated desires simply for purposes of “commencing” trial in his presence.

Here, Blalock was in custody in the King County Jail. After the court denied his request for a continuance, Blalock informed the court that it “was not going to push [him] to trial,” and stated repeatedly that he was “not coming back.” 7RP 31-32. The prosecutor stated on the record in front of Blalock that he

anticipated going forward the next morning with “motions in limine and into jury selection.” 7RP 34. Blalock continued to express his frustration that the court had not granted him a continuance and stated, “I’m not going to trial. You’re not going to make me.”

7RP 36. Judge North told Blalock that he had made his record, that he could appeal, but that they were going forward. Id. The court then recessed for the day. 7RP 37.

The next morning Blalock refused to come to court. 9RP 3. The prosecutor asked the court to sign an order compelling Blalock to attend so that they could “advise him of the consequences of his choosing not to participate” and to determine that his absence was “knowing and voluntary.”¹³ Id. When Blalock appeared, the court told him that they were “ready to proceed through the various motions and picking a jury and going forward.” 9RP 9.

The court told Blalock multiple times that he could be present and participate if he wanted to, but that the court was not going to force Blalock to attend. 9RP 9, 15. See also 9RP 17

¹³ The deputy prosecutor and the court both appear to have operated under the mistaken belief that the trial “commenced” when the matter was assigned to Judge North for trial, and that CrR 3.4(b) applied. 9RP 3-4. While its underlying analysis was incorrect, the court’s conclusion that the trial could proceed in Blalock’s absence by virtue of his clear refusal to attend was accurate. This Court can affirm the trial court on any basis that is supported by the record. LaMon v. Butler, 112 Wn.2d 193, 200-01, 770 P.2d 1027 (1989).

(“What I’m telling you is that – that you can be here for your trial anytime you want to be here. Now if you don’t want to be here, you don’t have to, but we’re going to go ahead with the trial regardless of whether you’re here or not.”). Judge North told Blalock at least nine times that the trial was going to proceed that morning. 9RP 9, 10, 15, 16, 17, 20. The court even told him that, “I would think you’d want to be here,” and asked him repeatedly if he did. 9RP 9, 14, 19. However, Blalock interrupted, argued with, and swore at the court, accused Judge North of being biased, and ultimately chose to walk out of the courtroom and return to his jail cell. That was his decision to make, and he did so with clear knowledge of the consequences—that the trial was going to proceed regardless.¹⁴ Given his clear and deliberate refusal to stay despite being advised of his right to be there, Blalock’s presence on the first day of trial was “excused for good cause shown.” Hammond, 121 Wn.2d at 793.

In fact, on appeal, Blalock does not claim that his decision to absent himself from the first day of trial was not voluntary and deliberate. Rather, he clings solely to his misplaced reliance on

¹⁴ Although the following day Blalock appeared and tried to claim that he had only left for the “motions hearing” and not jury selection, he had been specifically told prior to his absence that the jury would be selected that day. 7RP 34; 9RP 9.

CrR 3.4(b) to argue that, because he was not present when trial “commenced,” the court was not authorized to proceed in his absence. As outlined above, that argument fails to distinguish the situation where the trial court relies on CrR 3.4(b)’s permissible presumption of a waiver from the circumstances here—where the defendant’s presence is excused due to his clear and deliberate refusal to attend when given the choice. CrR 3.4(b) simply has no application to Blalock’s case. There was no requirement that he be present when the jury panel was sworn for voir dire. Commencing trial in Blalock’s absence was not error.

3. BLALOCK HAS FAILED TO ESTABLISH THAT REVERSAL IS WARRANTED BASED ON THE TRIAL COURT’S EXCLUSION OF HIS WIFE’S TESTIMONY REGARDING CCO DICKERMAN’S OUT-OF-COURT STATEMENTS.

Blalock argues that the trial court improperly excluded as hearsay Jennifer’s testimony regarding statements made by CCO Dickerson “suggesting that [Blalock] was no longer required to register.” Brf. of App. at 24. He contends this evidence was admissible because it was not offered for the truth of the matter asserted, but only “to demonstrate its effect on his knowledge of an ongoing registration requirement.” *Id.* at 25.

However, Blalock failed to preserve this claim because he never articulated a non-hearsay basis for the out-of-court statements. With no specific reason offered for its admission, the trial court properly excluded the testimony as hearsay, and Blalock cannot complain about it on appeal. Even if the testimony should have been admitted, the court's decision to exclude it was harmless when: (1) Blalock failed to make a record as to what Jennifer's testimony would actually have been, (2) assuming Jennifer would have testified consistently with Blalock, the evidence would have been merely cumulative, and (3) there was overwhelming evidence before the jury that Blalock knew that he was required to register as a sex offender.

a. Relevant Legal Standard.

An out-of-court statement offered to prove the truth of the matter asserted is hearsay, and is inadmissible absent a specific exception. ER 801(c); ER 802. A statement is not hearsay if, regardless of its truth, it is offered only to show its effect on the listener. State v. Edwards, 131 Wn. App. 611, 614, 128 P.3d 631 (2006) (citations omitted). However, to be admissible, the evidence must be relevant to an issue in controversy. ER 402; Edwards, 131

Wn. App. at 614 (citing State v. Roberts, 80 Wn. App. 342, 352-53, 908 P.2d 892 (1996)).

Whether or not a statement is hearsay is a question of law reviewed de novo. Edwards, 131 Wn. App. at 614 (citing State v. Neal, 144 Wn.2d 600, 607, 30 P.3d 1255 (2001)). Assuming that the trial court correctly interprets the rules of evidence, its decision to admit or exclude evidence is reviewed for an abuse of discretion. State v. Gresham, 173 Wn.2d 405, 419, 269 P.3d 207 (2012). To constitute an abuse of discretion, a trial court's decision must be manifestly unreasonable or based on untenable grounds or for untenable reasons. State v. Athan, 160 Wn.2d 354, 382, 158 P.3d 27 (2007).

- b. Blalock Failed To Preserve A Claim That The Trial Court Improperly Excluded Jennifer's Testimony About CCO Dickerson's Out-Of-Court Statements.

Blalock argues that the trial court incorrectly interpreted the hearsay rules, and thus abused its discretion when it excluded Jennifer's testimony about CCO Dickerson's out-of-court statements. However, Blalock never told the court what Jennifer's testimony would actually be; he said only that she would testify that Dickerson "made a statement" about "whether or not I had to

register.” 11RP 4-5, 17-20. Blalock never offered or articulated a non-hearsay basis for admission of the out-of-court statements, and has therefore failed to preserve this claim for appeal.

A party asserting error predicated on a ruling excluding evidence must make a timely offer of proof as to the substance of the testimony. ER 103(a)(2). This requirement serves a threefold purpose:

[I]t informs the court of the legal theory under which the offered evidence is admissible; it informs the judge of the specific nature of the offered evidence so that the court can assess its admissibility; and it creates a record adequate for review.

State v. Ray, 116 Wn.2d 531, 538-39, 806 P.2d 1220 (1991) (citations omitted). The party offering the evidence has a duty to make clear to the trial court what is being offered and why it is admissible over the objections of the opposing party so that the trial court may make an informed decision. Id. This requirement is waived only if the substance of the excluded evidence is apparent from the record. ER 103(a)(2); Ray, 116 Wn.2d at 539.

Blalock did not make an adequate or timely offer of proof as required by ER 103(a)(2). He told the court that he planned to elicit out-of-court statements, but never articulated a non-hearsay basis for their admission. Judge North correctly informed Blalock that

Jennifer's testimony was "hearsay if she's telling us what Ms. Dickerson said and that's introduced to prove the truth of what Ms. Dickerson's saying." 11RP 19-20; ER 801(c); ER 802. Blalock's response, to the effect that he was unfamiliar with the rules, did not excuse him from complying with them.¹⁵ Because Blalock never provided a proper basis for admitting Dickerson's out-of-court statements, he has failed to preserve this claim for appeal.

In support of his claim that he sought to introduce Dickerson's statements for a purpose other than for the truth of what they asserted, Blalock cites only to his own testimony acknowledging that he had to register yet claiming that he had misunderstood the requirement. Brf. of App. at 25. Although ER 103(a)(2) states that an offer of proof is unnecessary if the substance of the excluded evidence is "apparent from the context in which the questions are asked," the testimony that Blalock cites to (his own) occurred after his wife testified and after Judge North's ruling on the admissibility of the evidence. 11RP 19, 47, 60-61.

Thus, Blalock asks this Court to conclude that the purpose for which he offered the evidence was made clear from portions of

¹⁵ The right of self-representation does not excuse a pro se defendant from compliance with relevant rules of procedural and substantive law. Fritz, 21 Wn. App. at 363 (citing Faretta v. California, 422 U.S. 806, 834-35 n.46, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975)).

the record that occurred long after Judge North considered and ruled on the admissibility of the evidence. The analysis for whether or not the substance of the evidence was apparent from the record necessarily turns on whether the trial court could have easily understood the basis for its admissibility at the time it considers the evidence and makes its decision. See Ray, 116 Wn.2d at 538-39 (lack of offer of proof excused when the colloquy between the parties and the court revealed the substance of the proposed testimony). Here, Blalock's theory was not at all apparent at the time Judge North ruled on the admissibility of the evidence. The trial court should not be required to divine a party's motivation for offering evidence. Without an adequate offer of proof, Blalock failed to preserve his right to complain that the trial court excluded evidence from his wife about CCO Dickerson's out-of-court statements.

c. Even If The Testimony Should Have Been Admitted, Its Exclusion Was Harmless.

The erroneous exclusion of evidence is grounds for reversal only if, within reasonable probabilities, the outcome of the trial would have been materially affected had the error not occurred.

State v. Smith, 106 Wn.2d 772, 780, 725 P.2d 951 (1986); State v. Powell, 166 Wn.2d 73, 89, 206 P.3d 321 (2009).

First, as noted above, Blalock never articulated what Jennifer's testimony would actually be; he stated only that she would testify that Dickerson "made a statement" about "whether or not I had to register." 11RP 4-5. Because Blalock never made a sufficient offer of proof as to what Jennifer's testimony would have been, it is impossible for this Court to conclude that, within reasonable probabilities, the outcome of the trial would have been materially affected had the testimony been admitted. One of the reasons that ER 103(a)(2) requires a specific offer of proof is to allow for appellate review. Ray, 116 Wn.2d at 538-39. In the absence of such a proffer by Blalock, this Court cannot conclude that error in refusing the evidence was prejudicial.

Furthermore, an error excluding evidence is harmless if the excluded evidence is merely cumulative of other admitted evidence. Jones v. City of Seattle, 179 Wn.2d 322, 360, 314 P.3d 380 (2013) as corrected (2014). Blalock himself testified that he asked Dickerson if he still had to register, and that she responded, "As far as DOC is concerned, you're off DOC." 11RP 86. Blalock told the jury, "I took that the wrong way." Presumably Blalock would not

have offered his wife's testimony if it conflicted with his own. Jennifer could not have testified regarding Blalock's interpretation of Dickerson's statements or the effect that the statements had on his understanding of his registration requirement. Jennifer's testimony about what Dickerson said would have been undisputed¹⁶ and cumulative.

Blalock claims that the trial court erroneously sustained the State's objection to his remarks during closing argument about what Dickerson told him.¹⁷ He argues that this "had the effect of nullifying" his testimony. Brf. of App. at 25-26. However, Blalock mischaracterized his testimony during his closing argument, and he mischaracterizes it again on appeal when he claims that during closing argument he "reminded the jury of his own testimony that according to CCO Henderson [sic], as far as DOC was concerned, Blalock was done registering." Brf. of App. at 25.

Blalock testified that when he asked Dickerson if he still had to register, she told him, "As far as DOC is concerned, you're off

¹⁶ Dickerson could not recall specifically what she told Blalock; she testified that what she typically would say is that DOC no longer has jurisdiction, but the conditions of sentence still apply. 10RP 64, 68.

¹⁷ Blalock did not assign error to the court's act of sustaining the objection. He appears to mention it only in support of his argument that the court's exclusion of his wife's testimony was not harmless.

DOC. I took that the wrong way.” 11RP 86-87. However, during closing argument, Blalock told the jury:

I went in there, I talked to my DOC officer, which you guys actually didn't get a chance to hear it, but I talked to my DOC officer, and I asked her, "Hey am I done? Is this all? Is this all I have?" She said, "Yes." I did ask. "Do I still have to register?" She said, "Well, as far as DOC's concerned, we're done."

11RP 128-29. Blalock's argument to the jury was different than what he testified to. "As far as DOC is concerned, we're done" implies that Blalock was done registering, while, "As far as DOC is concerned, you're off DOC" implies only that he was off of probation. The prosecutor's complaint that Blalock was arguing facts not in evidence was well-founded.¹⁸

Further, the fact that the trial court sustained the State's objection to Blalock's argument did not "nullify" Blalock's testimony. The trial court did not strike Blalock's testimony after it sustained the prosecutor's objection; it told Blalock to "just proceed."

11RP 129. And the court's instructions to the jurors specifically informed them that:

The evidence that you are to consider during your deliberations consists of the testimony that you have

¹⁸ Furthermore, it is not surprising that the prosecutor would have objected (and that the court would have sustained the objection) based on Blalock telling the jury that it "didn't get a chance to hear" something and then proceeding to "tell" the jury what it had not heard. 11RP 128-29.

heard from the witnesses If evidence was not admitted or was stricken from the record, then you are not to consider it in reaching your verdict.

CP 14. The jury was also instructed that:

The lawyers' statements are not evidence. The evidence is the testimony and the exhibits. . . . You must disregard any remark, statement or argument that is not supported by the evidence or the law in my instructions.

CP 15. The jury was specifically instructed that the evidence consisted of the testimony and exhibits, and that they should disregard any statements or argument of the prosecutor (and Blalock) that was not supported by the evidence. The jury is presumed to follow the court's instructions. State v. Warren, 165 Wn.2d 17, 29, 195 P.3d 940 (2008). Blalock's testimony was never stricken. Thus, Jennifer's testimony on the issue of Dickerson's out-of-court statements would have been cumulative of undisputed testimony. Any alleged error is harmless.

Finally, the jury heard overwhelming evidence that Blalock knew that he was required to register. Blalock moved out of the Seal's Motel on November 23, 2010, after having ignored eleven attempts by the King County Sheriff's Office to contact him there. 10RP 10, 48; 11RP 22, 24. Blalock moved from the Seal's Motel to Jennifer's home in Everett. 11RP 32. Blalock did not inform either

the King or Snohomish County Sheriffs' Departments that he had moved. 10RP 11-12, 92, 95. Then, when he went to his CCO's office on December 2, 2010, he was informed in writing that although he was released from probation, the conditions of his judgment and sentence still applied. 11RP 50-51, 74-75.

Later, on January 30, 2011, when the police came to his door looking for Blalock, instead of opening the door, he fled upstairs. 10RP 74, 81-82, 84-85. And despite Blalock's testimony that he initially did not know who was at the door and only jumped up because he was scared of the "weirdos" in the area, he apparently had no qualms sending his wife to the door to determine who was knocking. 11RP 53. After Jennifer spoke to the police, she told Blalock that the police were there to arrest him for failing to register as a sex offender. 11RP 36-37. Rather than coming to the door to explain his belief that he was no longer required to register, Blalock fled into the attic, tore out the sheetrock between his residence and the duplex next door, unlawfully entered his neighbor's residence, and hid. 10RP 72-78, 82.

Given this evidence, it was clear that Blalock knew that he was required to register as a sex offender. There is no reasonable probability that testimony from Jennifer regarding Dickerson's

allegedly ambiguous statements would have materially affected the outcome of the trial. Any error was harmless.

4. THE JUDGMENT AND SENTENCE SHOULD BE AMENDED TO CORRECT A SCRIVENER'S ERROR IN THE CHARGING PERIOD FOR THE CRIME.

The State agrees with Blalock that the judgment and sentence erroneously reflects the date of offense as the charging period from the original information, and not the charging period contained in the amended information and found by the jury. CP 1, 9, 23, 54. The remedy for a clerical or scrivener's error on the judgment and sentence is remand to the trial court for correction. In re Pers. Restraint of Mayer, 128 Wn. App. 694, 701 P.3d 353 (2005).

D. CONCLUSION

The State respectfully requests that this Court affirm Blalock's conviction. This Court should conclude that the court's denial of Blalock's day-of-trial continuance motion was a proper exercise of discretion, that Blalock's presence when trial commenced was excused for good cause shown, and that any error from the trial court's exclusion of Jennifer's testimony about out-of-court statements was not preserved by Blalock and was

harmless. The State asks that the matter be remanded solely to correct the erroneous date of offense on the judgment and sentence.

DATED this 20th day of March, 2014.

Respectfully submitted,

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Office WSB#91002

Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Jennifer M. Winkler, the attorney for the appellant, at Nielsen Broman & Koch, P.L.L.C., 1908 E. Madison Street, Seattle, WA 98122, containing a copy of the BRIEF OF RESPONDENT, in STATE V. TRAVIS BLALOCK, Cause No. 70464-8 -I, in the Court of Appeals, Division I, for the State of Washington.

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

Dated this 28th day of March, 2014

U Brame

Name

Done in Seattle, Washington