SUPRME COURT NO. 103101-7
COA No. 57532-9-II

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON,

STATE OF WASHINGTON,

Respondent,

vs.

MICHAEL JOHN TESTER, JR.,

Appellant.

RESPONSE TO PETITION FOR REVIEW

RYAN JURVAKAINEN
Prosecuting Attorney
TONY CARLOW/WSBA# 59146
Asst. Chief Criminal Deputy Prosecuting Attorney
Representing Respondent

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I. IDENTITY OF RESPONDENT

The Respondent is the State of Washington, represented by Anthony C. Carlow, Deputy Prosecuting Attorney for Ryan P. Jurvakainen, Cowlitz County Prosecuting Attorney.

II. COURT OF APPEALS' DECISION

The Court of Appeals correctly held Tester's right to a public trial was not violated, and that his juvenile sentencing points still applied to his overall score for the purposes of sentencing. The Respondent respectfully requests this Court deny review of *State of Washington v. Michael John Tester, Jr.*, Court of Appeals No. 57532-9-II.

III. ISSUES PRESENTED FOR REVIEW

(1) Does the Court of Appeals' decision that Tester's public trial right was not violated depart from clear precedent, or involve a significant question of constitutional law, or raise an issue of substantial public interest?

(2) Does the Court of Appeals' decision that Tester's juvenile convictions count toward his overall score for sentencing purposes involve an issue of substantial public interest?

IV. STATEMENT OF THE CASE

George Knight, along with his brother and sister, owned a little over ten acres of land in the area of 5510 Lewis River Road. RP 133. Knight is the caretaker of the property. RP 133. A cabin, a 28-foot travel trailer that is enclosed by a pole barn, and a storage shed were on the property. RP 133-135. The cabin was a "nice, livable cabin, recreational cabin." RP 133-134. The cabin was a building used for lodging, wherein people slept overnight. RP 152. The property was accessed by a dirt easement and secured by three different types of gates. RP 133-135.

The first gate, which was located about 50 feet from Lewis River Road, was a cable that blocked the easement. RP 135-136. The second gate was a 12-14 foot metal cattle gate. RP 146. The third gate was also a metal gate. RP 146.

On May 17, 2022, Knight was traveling on Lewis River Road toward a job site, when he saw that someone had accessed the first gate toward his property. RP 133. Knight was at the cabin two weeks prior and all the gates were standing and secure. RP 150-151.

Knight went to investigate and found the second gate (cattle gate) was busted off its hinges. RP 147. He also found the third gate was down and had been driven over. RP 146. Knight investigated further and found Tester, Tester's girlfriend, and a blue/green Ford Ranger truck on the property. RP 138-139. Tester claimed that he had permission to be there and also claimed he had a receipt that showed he had been paying rent to stay on the property. RP 139. Knight left to get cell phone service to call the police. RP 139. Before leaving, he advised Tester that he better be gone before he returned. RP 138-139.

Once Knight was able to get to an area with cell service, he called the Cowlitz County Sheriff's Office to report the burglary in progress. RP 139. Deputies Clinton Yeager and Craig

Murray responded to the location. RP 163. Upon their arrival, they located a green Ford Ranger pulling a trailer while still on Knight's easement as it approached Lewis River Road. RP 164. The vehicle was occupied by Tester and his girlfriend, Karin Davis. RP 165. The occupants were separated and detained. RP 165, 211, 241. Tester volunteered that everything in the trailer belonged to him. RP 166. Deputy Yeager advised Tester of his Miranda warnings, to which Tester stated that he understood them and agreed to speak with the deputies. RP 167.

Knight walked the premises with Deputy Yeager to see if anything was missing. RP 167-168. Knight identified his property that was located either in Tester's truck bed or in Tester's trailer. RP 141. Knight identified two totes, a set of boat oars, a spool of rope, and a vehicle battery located either in the bed of Tester's truck or in the trailer that Tester was pulling. RP 168. Knight testified that the two totes were inside the cabin and were used to store life jackets. RP 148-149. The life jackets were

found on the floor of the cabin. RP 149. The rest of the property was taken out of the cabin or the trailer. RP 170.

Initially, Tester told the responding deputies that he was renting the property and had a right to be there. RP 205. Tester changed his story and advised the deputies that he heard from a friend that the property was abandoned because it was so close to the power lines. RP 220. Tester later testified that he lied to the deputies and actually chose to stay on Knight's property because he thought it had been abandoned and foreclosed upon. RP 220.

Tester initially denied taking any of Knight's property. RP 186. He eventually admitted to the deputies that he took two boat oars, two totes, a spool of rope, and a battery. RP 186-189. Tester later testified that his girlfriend, Karin Davis, took Knight's property and loaded it in the truck and trailer. RP 206-208, 223-225.

The State charged Tester with Residential Burglary and Theft in the Third Degree. CP 4-5.

A two-day trial commenced on September 21, 2022. RP 15. The court advised that we were "on the record and streaming." RP 15. The courtroom was closed to the public due to the ongoing COVID-19 emergency, as the court announced that a *Bone-Club* order was in effect. RP 15. The court also advised that the proceedings were being broadcasted on YouTube so the general public could watch the proceedings. RP 20-21. On September 22, 2022, the jury found Tester guilty as charged on both counts: Residential Burglary and Theft in the Third Degree. RP 304.

On October 24, 2022, at sentencing, the State announced Tester had an offender score of seven and a standard range of 43-57 months in prison. RP 317. After Tester's attorney advised they would not be contesting the offender score, and after confirming the sentencing range, Tester's attorney asked the court for the bottom of the sentencing range. RP 319-320. The court sentenced Tester to 45 months in prison for Residential Burglary. RP 323.

The court sentenced Tester to 364 days, with 364 days suspended, as to Theft in the Third Degree. RP 323.

The Court of Appeals affirmed Tester's convictions and remanded the case back to the trial court for the sole purpose of striking the $500 victim penalty assessment from the judgment and sentence. Slip Opinion 18.

V. THIS COURT SHOULD DENY REVIEW BECAUSE THE PETITION FAILS TO RAISE GROUNDS UNDER RAP 13.4(B).

Because Tester's petition fails to raise any of the grounds governing review under RAP 13.4(b), it should be denied. Under RAP 13.4(b), a petition for review will be accepted by the Supreme Court only:

> (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
> (2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or
> (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or

(4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

Tester maintains that by finding the trial court properly closed the courtroom under active Washington Supreme Court and Cowlitz County Superior Court COVID-19 emergency orders, the Court of Appeals' decision departed from clear precedent, involved a significant question of constitutional law, and raised an issue of substantial public interest under RAP 13.4(b). Tester also maintains that by finding the trial court properly counted his prior juvenile felony convictions to calculate his offender score, the Court of Appeals' decision departed from clear precedent and raised an issue of substantial public interest. Because Tester fails to raise any of the grounds under RAP 13.4(b), review should not be granted.

A. THE COURT OF APPEALS' HOLDING THAT TESTER CANNOT ESTABLISH THAT THE TRIAL COURT VIOLATED HIS PUBLIC TRIAL RIGHT DOES NOT DEPART FROM CLEAR PRECEDENT, DOES NOT INVOLVE A SIGNIFICANT QUESTION OF CONSTITUTIONAL CONCERN, OR RAISE AN ISSUE OF SUBSTANTIAL PUBLIC INTEREST UNDER RAP 13.4(B).

Because Tester failed to establish that the trial court violated his public trial right, the Court of Appeals' decision does not depart from clear precedent, does not involve a significant question of constitutional law, nor does it raise an issue of substantial public interest.

The Court of Appeals found that Tester's trial was broadcast live via YouTube, which was in accordance with Cowlitz County Superior Court Order 2020-003-08 and the Washington Supreme Court Order directing that "courts should follow the most protective public health guidance applicable in their jurisdiction and should continue using remote proceedings for the public health and safety whenever appropriate." The Court of Appeals found that Tester cannot establish that the

standing *Bone-Club* order was stale. Therefore, the Court of Appeals held that Tester cannot establish the trial court violated his public trial right.

"[A] 'closure' of a courtroom occurs when the courtroom is completely and purposefully closed to spectators so that no one may enter and no one may leave." *State v. Lormor*, 172 Wn.2d 85, 93, 257 P.3d 624 (2011). The trial court is generally in the best position to perceive and structure its own proceedings. Accordingly, a trial court has broad discretion to make a variety of trial management decisions[.]" *State v. Dye*, 178 Wn.2d 541, 547, 309 P.3d 1192 (2013). Art. I § 22 provides the right to a "speedy public trial," however, that right is not absolute, and a courtroom may be closed when certain criteria are met. *See Bone-Club*, 128 Wn.2d at 258-59. Under *Bone-Club*, courts consider five criteria prior to closing a courtroom:

> (1.) The proponent of the closure or sealing must make some showing of a compelling interest;

(2.) Anyone present when the closure motion is made must be given an opportunity to object to the closure;
(3.) The proposed method for curtailing open access must be the least restrictive means available for protecting the threatened interests;
(4.) The court must weigh the competing interests of the proponent of the closure and the public; and
(5.) The order must be no broader in its application and duration than necessary to serve its purpose.

128 Wn.2d at 258-59.

"Not all arguable courtroom closures require satisfaction of the five factor test established in *State v. Bone-Club*[.]" *State v. Slert,* 181 Wn.2d 598, 604, 334 P.3d 1088 (2014). "While open public trial rights are fixed in the stars in our constitutional firmament, they do not shine alone." Id. at 603. The defendant's rights to a fair and speedy trial, the potential juror's privacy, the judge's obligation to provide safe and orderly courtroom, and many other considerations may justify a courtroom closure." Id. at 604.

The mere fact of information not being contemporaneously known to the public is not a closure when that information is later made available. See *State v. Love*, 183 Wn.2d 598, 607, 354 P.3d 841 (2015). In *Love*, the attorneys exercised for cause challenges at the bench and peremptory challenges silently in the courtroom by exchanging a list of jurors between themselves. Id. at 602. However, this did not conceal information from the public, when later "[t]he transcript of the discussion about the for-cause challenges and the struck juror sheet showing the peremptory challenges were both publicly available." Id. at 607.

Art. I § 22 guarantees a speedy public trial. Art. I § 10 requires justice to be administered openly, without unnecessary delay. The application of these rights has become more difficult due to COVID-19, as "[p]rotecting the public from unnecessarily spreading a potentially fatal virus is not only a purpose the government may pursue; it is one it has an obligation to." Stephen E. Smith, the Right to a Public Trial in the Time of

Covid-19, 77 WASH. & LEE L. REV. ONLINE 1, 6 (2020)(emphasis in original).

On February 19, 2021, based on the ongoing COVID-19 public health emergency, the Supreme Court issued an order finding that "many court facilities in Washington are ill-equipped to effectively comply with social distancing and other public health requirements[.]" Supreme Court Order No. 25700-B-658, at 1 [hereinafter "SC Order"]1. The SC Order stated that "courts should follow the most protective public health guidance applicable in their jurisdiction and should continue using remote proceedings for public health and safety whenever appropriate." SC Order, at 3. The Supreme Court further stated that "[n]othing in this Order limits the authority of courts to adopt measures to

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[1] The Supreme Court's Fifth Revised Extended Order Regarding Court Operations No.25700-B-658 was issued on February 19, 2021, and is available on the Washington Courts website at: https://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20Orders/25700-B-658.pdf. This order remained in effect until October 31, 2022, when Order No. 257000-B-697 took effect.

protect health and safety that are more restrictive than this Order[.]" SC Order, at 14. This Order remained in effect during Tester's trial on this matter.

Tester asserts that, without any analysis from the trial court, his trial was closed to the public due to a 'stale' Bone-Club order issued by the Cowlitz County Superior Court on July 27, 2020. Brief of Appellant at 14. This assertion is incorrect. Tester fails to mention that the Cowlitz County Superior Court regularly updated and amended its emergency orders while still under the direction of the SC Order.2 In fact, the Cowlitz County Superior Court followed its original order with at least seven modifications to its original order.

In its original order dated July 27, 2020, the Cowlitz County Superior Court "weighed the importance of open proceedings against the present health risks and has determined

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[2] All Cowlitz County Emergency and Administrative Orders are available at https://www.cowlitzsuperiorcourt.us/all-forms/covid

that it is appropriate to defer to the guidance of public health experts during the pandemic. App. 1, at 2-3. The court stated the risk of further spread of COVID-19 outweighs the public's interest to be physically present in an open court at this time." App. 1, at 3. The court also stated that "[N]o less restrictive alternative is available that will sufficiently protect the health of all present." App. 1, at 3. The court found a compelling interest due to the pandemic that required hearings to be conducted by virtual technology to limit public interaction. App. 1, at 2. The court also provided a means for any person objecting to a virtual hearing to voice their objection. App. 1, at 2. On February 10, 2022, in one of Cowlitz County Superior Court's many modifications to its original order, the court again stated that it would review COVID rates and status on a weekly basis. App. 2.

Here, after the courtroom was appropriately closed under *Bone-Club*, the trial was broadcast via live stream on YouTube and therefore, was not a complete and purposeful closure of the courtroom.

Although the unprecedented public health risk justified closure, the court still provided public access to hearings via YouTube. In fact, Tester does not contest, but admits that the trial was streamed online. Brief of Appellant 17. The court's order stated its intention to stream trials live on YouTube. In Tester's trial, no objection to trial proceeding in this manner was ever made by anyone, despite the court having provided a means for doing so.

Because Tester's trial was made available to the public by way of audio and video via YouTube and by way of transcript, his right to a public trial during a public health emergency was not violated.

The trial court was trying to balance the need to protect public trial rights and the health and well-being of the participants during the pandemic. The courtroom had already been closed after the court appropriately applied the *Bone-Club* factors. The court published an order providing notice that anyone who objected was permitted to telephone into the virtual

courtroom and request to be heard in court. App. 2, at 2. The court also found the means provided for the public to observe and listen to virtual court hearings were the least restrictive for protecting the public, parties, and court staff. App. 2, at 2.

Under these circumstances a complete and purposeful closure of the courtroom did not occur. The trial court was acting under a Washington Supreme Court Order and a Cowlitz County Superior Court Order, both of which were still active and, therefore, not stale. Thus, the Court of Appeals decision does not depart from clear precedent, does not involve a significant question of constitutional law, nor does it raise an issue of substantial public interest significant question of constitutional law under RAP 13.4. Therefore, this Court should deny Tester's petition for review as to the public trial issue.

B. THE COURT OF APPEALS' HOLDING THAT TESTER WAS REQUIRED TO BE SENTENCED BASED ON THE SENTENCING LAW IN EFFECT AT THE TIME HE COMMITTED HIS OFFENSES DOES NOT CONFLICT WITH PRECEDENT AND DOES NOT INVOLVE AN ISSUE OF SUBSTANTIAL PUBLIC INTEREST UNDER RAP 13.4(B).

The Court of Appeals correctly held that RCW 9.94A.345 and RCW 10.01.040 require Tester be sentenced under the law in effect when he committed his offenses. Additionally, the Court of Appeals correctly held that the new sentencing statute, RCW 9.94A.525(1)(b) does not apply prospectively to Tester's offender score calculation.

RCW 10.01.040, generally referred to as the savings statute or savings clause, also requires that the crimes the defendant committed be punished pursuant to the statutes in force when they were committed. That statute provides in pertinent part:

> .... Whenever any criminal or penal statute shall be amended or repealed, all offenses committed or penalties or forfeitures incurred while it was in force shall be punished or enforced as if it were in force, notwithstanding such amendment or repeal, unless a contrary intention is expressly declared in the amendatory or repealing act, and every such amendatory or repealing statute shall be so construed as to save all criminal and penal proceedings, and proceedings to recover forfeitures, pending at the time of its enactment, unless a contrary intention is expressly declared therein.

RCW 10.01.040 (emphasis added).

RCW 9.94A.345 states, "[e]xcept as otherwise provided in this chapter, any sentence imposed under this chapter shall be determined in accordance with the law in effect when the current offense was committed." RCW 9.94A.345. That chapter, 9.94A, is the Sentencing Reform Act (SRA), which governs sentencing for all adult felony convictions. RCW 9.94A.505 (1). The SRA provides that any sentence imposed under its authority must be in accordance with the law in effect when the offense was committed. *State v. Coombes*, 191 Wn. App. 241, 250, 361 P.3d 241 (2015) (citing RCW 9.94A.345).

"In the absence of a contrary expression from the Legislature, all crimes are to be prosecuted under the law existing at the time of their commission. *State v. Kane*, 101 Wn. App. 607, 611 5 P.3d 741 (citing *State v. Lorenzy*, 59 Wash. 308, 309, 109 P. 1064(1910)). Washington courts have long held that under the saving clause of RCW 10.01.040, "amendments to criminal

statutes [...] do not apply retroactively to offenses committed before the effective dates of those amendments." *State v. Molia*, 12 Wn. App. 2d 895, 903, 460 P.3d 1086 (2020) (citing *Rivard v. State*, 168 Wn.2d 775, 781, 231 P.3d 186 (2010)). "Accordingly, statutory amendments are presumed to apply only prospectively to offenses committed on or after the effective date of the amendment unless the legislature indicates a contrary intent." *Id.* (citing *State v. Humphrey*, 139 Wn.2d 53, 55, 60, 983 P.2d 1118 (1999))

All three divisions of the Court of Appeals appear to agree with the holding by the Court of Appeals in Tester's case.

In *State v. Troutman*, a Division One case decided on April 8, 2024, the court held that the new sentencing provisions did not apply to Troutman's offender score. *Troutman*, 546 P.3d 458, 463 (2024). The court reasoned that sentences imposed under the SRA are "generally meted out in accordance with the law in effect at the time of the offense." *Id.* at 461. (citing RCW 9.94A.345; RCW 10.01.040, *State v. Jenks*, 197 Wn.2d 708, 714,

487 P. 3d 482 (2021)). Because "'the fixing of legal punishments for criminal offenses is a legislative function,'...[i]t is therefore 'the function of the legislature and not the judiciary to alter the sentencing process.'" *Id.* ((citing *Jenks* at 713, 487 P.3d 482) (internal marks omitted) (quoting *State v. Ammons*, 105 Wn.2d 175, 180, 713 P.2d 719 (1986)).

Like Tester, the defendant in *Troutman* asserted that the intent section of the amendment supports her argument that the plain language "expresses an intent to apply to pending cases that are not final." *Id.* at 462. The Court found that the "plain language says nothing about retroactivity." *Id.* The court found that the language in the intent section was unambiguous and does not evince a legislative intent for the amendment to apply retroactively. *Id.* The court concluded that under RCW 9.94A345 (SRA) and RCW 10.01.040 (savings clause), the law in effect at the time of the offense applies to Troutman's sentence. *Id.* The Court also found that the savings clause also prevents the new amendment from applying prospectively to

Troutman's sentence due to the application of the savings clause. *Id.*

In *State v. Bienhoff*, a consolidated case from Division One in which co-defendant Pierce appealed his sentence on the basis that the recent amendment to RCW 9.94A.525 removed most prior juvenile felony convictions from offender score. *Bienhoff*, 28 Wn.App.2d 1068 (2023).[3] The court agreed with the State, rejected Pierce's argument, and held that RCW 9.94A.345 and RCW 10.01.040 control and require the "law in effect at the time of a crime must be applied to the imposition of sentence for that crime." *Id.* The court also found that none of the language Pierce cited to in the new amendment to the statute fairly conveyed an intention for the law to apply to pending prosecutions. *Id.*

In State v. Olebar,[4] another Division One unpublished opinion decided on July 15, 2024, the court there also found that RCW's 9.94A.345 and 10.01.040 required Olebar be sentenced

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[3] Unpublished opinion pursuant to GR 14.1.
[4] Unpublished opinion pursuant to GR 14.1.

in accordance with the law in effect at the time he committed the offense. *Olebar*, 2024 WL 3410750.

The Division Three Court of Appeals also agreed as to this issue when it decided *In re Pers. Restraint of Scabbyrobe*[5], 29 Wn.App.2d 1026 (2024). There, Scabbyrobe appealed her offender score because it included two juvenile convictions. *Scabbyrobe*, 29 Wn.App.2d at 2. The State argued that RCW 9.94A.345 and RCW 10.01.040 required the application of the law in effect at the time the offense was committed. *Id.* The court agreed with the State and held that the offender score should count the juvenile convictions. *Id.*

The court reasoned that "no provision of the Laws of 2023 chapter 415 (Engrossed H.B.1324) suggests the legislature intended the amendment to apply retroactively." *Id.* at 3. The court stated that "[t]he legislative history "did not intend for the amendment to apply retroactively." *Id.* "When a bill initially

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[5] Unpublished opinion pursuant to GR 14.1.

includes a provision but is later stricken from the bill, the act of striking the provision from the final version of the bill indicates an intent on behalf of the legislature to exclude the provision." *Id.* (citing *State v. Hirschfelder*, 170 Wn.2d 536, 546-47, 242 P.3d 876 (2010)). The court concluded that the bill, as introduced, provided the right to resentencing to any offender sentenced on an offender score that included points for past juvenile convictions. *Id.* (citing H.B. 1324 § 3, 68th Leg., 2023 Reg. Sess. (Wash.)), The legislature struck that provision before 2023 Wash. Laws, ch. 415 was passed. *Id.*

Under these circumstances, Tester's juvenile convictions were properly applied to his offender score. Thus, the Court of Appeals decision does not depart from clear precedent, nor does it raise an issue of substantial public interest under RAP 13.4. Therefore, this Court should deny Tester's petition for review as to the sentencing issue.

VI. CONCLUSION

Because the petition does not meet any of the considerations governing acceptance of review under RAP 13.4 (b), it should be denied.

CERTIFICATE OF COMPLIANCE

I certify under RAP 18.17(b) that excluding appendices, title sheet, table of contents, table of authorities, certificate of compliance, certificate of service, signature blocks, and pictorial images, the word count of this document is 4,002 words, as calculated by the word processing software used.

Respectfully submitted this 24th day of July, 2024.

Anthony C. Carlow, WSBA #59146
Deputy Prosecuting Attorney

APPENDIX 1

SUPERIOR COURT OF WASHINGTON FOR COWLITZ COUNTY

In re:	
SUPERIOR COURT COURTROOM PROCEEDINGS HELD IN A VIRTUAL COURTROOM	**ADMINISTRATIVE ORDER NO. 2020-003-08**

Governor Inslee declared a statewide State of Emergency on February 29, 2020, and has issued several updates, based on the significant risks of the COVID-19 pandemic. Chief Justice Debra Stephens, on March 4, 2020, issued the first, of several, orders of the Washington Supreme Court, to provide direction to the courts of the State of Washington in response to the pandemic. On March 4, 2020, the Board of Cowlitz County Commissioners declared an emergency also related to the significant health threat caused by COVID-19. The health and safety risks presented by the pandemic continue.

To reflect the public health emergency, Cowlitz County Superior Court has issued Emergency Orders to provide access to justice in a manner to ensure the safety of court personnel, litigants and the public. In furtherance of safety, the Court has invoked the holding of hearings by telephone, video or other means that do not require in-person attendance, unless impossible. Where the Court matters must be heard in person, social distancing, and other recommendations of the CDC and Cowlitz County Health

Department shall be followed. For the matters scheduled today before this Court, the Court finds as follows:

1. A compelling interest has been demonstrated by the ongoing health crisis that requires the Court to conduct hearings by virtual technology (ZOOM platform) and to limit physical public interaction between the parties, public and staff in accordance with the guidelines of the CDC and local health department.

2. Any person that objects to a currently scheduled matter being heard in this manner may telephone into the virtual courtroom hearing and request to be heard by the Court. Contact information can be found on the Cowlitz County Superior Court website (http://cowlitzsuperiorcourt.us/). When the Court grants permission to speak, the person shall then state their objection.

3. No one has authority or permission to record virtual court proceedings except the Cowlitz County Superior Court Clerk, or her designees(s).

4. The Court finds the means provided for the public to observe and listen to virtual court hearings is the least restrictive means available for protecting the public, the parties, and the court staff. Specifically, any party can hear and observe the proceedings by logging into the ZOOM hearing; the information to log in to Superior Court ZOOM hearings can be found on the Cowlitz County Superior Court website (https://cowlitzsuperiorcourt.us/). All Superior Court hearings, unless prohibited by law, will be live streamed on YouTube for the general public to observe any and all proceedings pursuant to State v. Bone-Club, 128 Wash.2d 254, 906 P.2d 325 (1995). This order will also extend to jury trials held at the Cowlitz County Expo Center. Links to every courtroom, except Juvenile Court, and including the Expo Center can be found on the Cowlitz County Superior Court website (https://cowlitzsuperiorcourt.us/). Where possible, jury trials held when this Order is in effect will also be televised through Kelso Longview Television (KLTV).

5. The Court has weighed the importance of open proceedings against the present health risks and has determined that it is appropriate to defer to the guidance of

the public health experts during this pandemic. The risk of further spread of COVID-19 outweighs the public's interest to be physically present in an open court at this time.

6. This Order is in place for the scheduled proceedings and will be reconsidered daily as public health data, directives, and advice are issued. This Order is narrowly tailored as to address present health risks. No less restrictive alternative is available that will sufficiently protect the health of all present.

DATED: July 27, 2020

DocuSigned by:
Gary Bashor
461C59E3145840D...

PRESIDING JUDGE GARY BASHOR

APPENDIX 2

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF COWLITZ

IN RE THE MATTER OF THE RESPONSE BY COWLITZ COUNTY SUPERIOR COURT TO THE PUBLIC HEALTH EMERGENCY IN COWLITZ COUNTY AND THE STATE OF WASHINGTON

No.: 2022.0003-08

EMERGENCY ORDER No. 6-A.4
RE: COURT OPERATIONS
AMENDING NO. 6-A1 & 6-A2 & 6-A3.

This Order adopts all findings from the Court's Emergency Order No. 6-A1, 6-A2, and 6-A3, and modifies those orders as follows:

Effective immediately, (commencing with the February 16, 2022 docket), Superior Court Wednesday criminal plea dockets, will return to in-person hearings. Zoom appearances can be accommodated upon request via Court Administration.

The Court will review the COVID rates and status weekly and inform litigants of changes as soon as we can.

The **effective date of this Order is February 10, 2022.** This Emergency Order No. 6-A.4 amends this Court's prior Emergency Order 6-A1&2&3. Any terms of Emergency Order 6-A, not inconsistent herewith, shall remain in effect.

This Court may modify the time frames in this Order or prior orders as required by continuing public health emergency, and if necessary, will do so by further order.

DATED this _____ day of February 10, 2022.

JUDGE GARY BASHOR
PRESIDING JUDGE OF
COWLITZ COUNTY SUPERIOR COURT

CERTIFICATE OF SERVICE

I, Michelle Sasser, do hereby certify that the Response to Petition for Review was filed electronically through the Supreme Court Portal and which will automatically cause such filing to be served on the opposing counsel listed below:

Richard Lechich
Washington Appellate Project
1511 3rd Ave, Ste 610
Seattle, WA 98101-1683
richard@washapp.org
wapofficemail@washapp.org

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Kelso, Washington on the 24th day of July, 2024.

Michelle Sasser

Michelle Sasser

COWLITZ COUNTY PROSECUTING ATTORNEY'S OFFICE

July 24, 2024 - 8:50 AM

Transmittal Information

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Appellate Court Case Title:	State of Washington v. Michael John Tester Jr.
Superior Court Case Number:	22-1-00559-6

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