

SUPREME COURT NO. 92558-5
COA NO. 45203-1-II

IN THE SUPREME COURT OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

ANTHONY CLARK,

Petitioner.

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08

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

The Honorable John R. Hickman, Judge
The Honorable Bryan E. Chushcoff, Judge
The Honorable John A. McCarthy, Judge

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Anthony Clark asks this Court to accept review of the Court of Appeals decision designated in Part B of this petition.

B. COURT OF APPEALS DECISION

Clark requests review of the decision in State v. Anthony Clark, Court of Appeals No. 45203-1-II (slip op. filed November 3, 2015), attached as appendix A.

C. ISSUES PRESENTED FOR REVIEW

1. Whether the trial court violated Clark's constitutional right to present a complete defense in excluding expert testimony on how his mental limitations may have impacted his confession to police, necessitating reversal of the convictions?

2. Whether the trial erred in failing to order a second competency evaluation as mandated by RCW 10.77.060 and due process, where defense counsel's assessment supported by new facts demonstrated a renewed reason to doubt competency to stand trial?

3. Whether the trial court violated Clark's rights to a fair trial, confrontation and presence where he was unable to understand the testimony of witnesses due to his mental retardation but no accommodation was made to remedy the problem, necessitating reversal of the convictions?

D. STATEMENT OF THE CASE

The State charged 19-year-old Anthony Clark with residential burglary, third degree malicious mischief and third degree theft, all involving the residence of Patricia Conine. CP 1-2, 59-60. The question of Clark's competency to stand trial was a major focus of the pretrial proceedings. On February 3, 2011, the court ordered a competency evaluation. CP 5-8. Dr. Hendrickson, the State's expert, opined Clark was competent. 4RP¹ 35-37, 54-56; Ex. 2. Dr. Oneal, the defense expert, ultimately concluded Clark understood the proceedings and had a limited basic capacity to assist in his own defense, while recommending accommodations be made to make up for his deficiencies. 5RP 78, 86, 88-89, 109; Ex. 5. Judge Cuthbertson found Clark competent. CP 41-42; 5RP 112. But the judge also found "the Court needs to make some accommodations to make sure that you have a fair trial," anticipating they would later "have discussions about the accommodations that I intend to make." 5RP 113.

¹ The verbatim report of proceedings is referenced as follows: 1RP - 2/29/12; 2RP - 3/30/12; 3RP - 4/6/12; 4RP - 5/11/12; 5RP - 5/30/12; 6RP - 8/23/12; 7RP - 11/26/12; 8RP - 2/11/13; 9RP - 2/28/13; 10RP - 4/22/13 and 4/23/13; 11RP - 4/23/13; 12RP - 5/17/13; 13RP - two consecutively paginated volumes consisting of 5/21/13 and 5/22/13 (voir dire); 14RP - six consecutively paginated volumes consisting of 5/21/13, 5/22/13, 5/23/13, 5/28/13, 5/29/13, 7/26/13; 15RP 5/31/13.

The case, however, was subsequently shuffled to a series of other judges, starting with Judge McCarthy. 9RP 3-5. Defense counsel informed Judge McCarthy of Judge Cuthbertson's intended accommodations. 10RP 4. Judge McCarthy said he did not know what counsel was talking about, as no accommodations appeared in the written competency order, and suggested she file a written motion addressing the issue. 10RP 8-9, 13-14. Counsel also told the court that she believed Clark was incompetent based on her own recent interactions as well as the concerns expressed by Clark's counsel in a murder case that had just recently finished. 10RP 4-5, 18, 22-24. Judge McCarthy responded that Clark's attorneys for the murder case were able to represent him. 10RP 22. The judge continued: "for you to throw your hands up and say, oh, I guess I can't communicate, doesn't understand, that, in and of itself, doesn't result in stopping the proceedings. There has already been a competency hearing. He just completed a trial last week." 10RP 22. Counsel said one of Clark's attorneys had offered to be present "in support of my 10.77; that they had the same concerns. They raised the same concerns, and at some point, you know, you just have to try the case. And I understand that. I just want to -- I will raise it every day --" 10RP 23-24.

The case then went to Judge Chushcoff, where defense counsel again raised her concern that Clark lacked the ability to follow along at

trial and assist in his defense based on his inability to understand the CrR 3.5 hearing in the present case and the proceedings in the murder case. 11RP 4-5, 9-13. Judge Chushcoff believed nothing had changed since Judge Cuthbertson found Clark competent and counsel presented no new information to justify another evaluation. 11RP 12-13, 15.

Counsel also expressed the need for the accommodations referenced by Judge Cuthbertson. 11RP 15. Judge Chushcoff did not know what Judge Cuthbertson had said about accommodations, noting the competency order did not reference them. 11RP 15. Counsel requested a continuance to look into getting a cognitive aide for Clark as someone who could explain to him what was going on. 11RP 16-17. Instead, Judge Chushcoff sent the case out to trial. 11RP 22. The case was then assigned to Judge Hickman for trial. 14RP 3. Defense counsel noted a standing objection to the lack of accommodation. 14RP 20. Counsel also repeatedly raised a competency objection based on her personal interaction with Clark during the course of trial. 14RP 52, 129-30, 310.

Before trial, the State moved to exclude evidence of Clark's mental deficiencies, including Dr. Oneal's testimony regarding Clark's mental limitations. CP 682-89; 693; 14RP 45-47. The State argued such evidence and testimony would only be relevant to a diminished capacity defense, but no such defense was offered. Id. Defense counsel argued Dr.

Oneal's testimony was admissible to attack the weight and reliability of Clark's statements to the detective. 10RP 25, 28-30; 14RP 47-48, 53; CP 79-94. The court excluded Dr. Oneal's testimony, ruling it would only be admissible if a mental defense of insanity or diminished capacity were being presented. 14RP 55-56. The court viewed Dr. Oneal's testimony as something that would only have been relevant at the CrR 3.5 hearing. 14RP 56-57, 84-85.

At trial, Conine testified that she came home from work in April 2010 to find the door to her apartment unlocked. 14RP 96, 100. A screen had been taken off a kitchen window. 14RP 109-10. Her TV had been knocked off its table and damaged. 14RP 101-02. A TV remote control, jewelry, and other items were missing. 14RP 101-09. A fingerprint impression from the TV matched Clark's print. 14RP 188-90, 192. An impression from the window frame matched the print of a person named H.E. 14RP 190-91. Clark's classmate gave conflicting testimony about whether Clark was part of a conversation amongst several individuals, including H.E., about stealing from someone. 14RP 239-41. During that conversation, Clark displayed some jewelry. 14RP 242.

Detective Baker, assigned to investigate a burglary at another address, contacted Clark at his high school. 14RP 254, 272. According to

Baker, Clark confessed to committing the burglary at Conine's residence. 14RP 274-83, 286-88, 378-84. The jury found Clark guilty. CP 606-08.

On appeal, Clark argued the trial court committed reversible error when it (1) excluded expert testimony about Clark's suggestibility and the consequent possibility that he had falsely confessed; (2) refused to order a second competency hearing after his attorney represented to the court that Clark was unable to assist in his defense; and (3) failed to accommodate his developmental disabilities by not ordering a continuance to enable Clark to enlist the services of a cognitive aide. Brief of Appellant at 1-2, 22-48; Reply Brief at 1-6. The Court of Appeals affirmed the convictions. Slip op. at 1. Clark seeks review.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

1. THE COURT COMMITTED REVERSIBLE CONSTITUTIONAL ERROR IN EXCLUDING EXPERT TESTIMONY ON CLARK'S MENTAL RETARDATION AND ITS IMPACT ON THE CREDIBILITY OF HIS CONFESSION.

Clark is mentally retarded. 4RP 49-50; 5RP 72. He has limited cognitive and verbal comprehension skills. 5RP 73-75. Because of these limitations, Clark is suggestible. 5RP 79-80. He is vulnerable to being persuaded by others to say what he thinks they want him to say. 5RP 80. To attack the weight and credibility to be given to Clark's confession to police, defense wanted to inform the jury about Clark's mental limitations.

A defense expert who evaluated Clark in relation to the competency proceedings was prepared to testify about Clark's mental limitations and how Clark would be prone to suggestibility during police interrogation. 10RP 25, 28-30; 14RP 47-48, 53; CP 79-94. That evidence was relevant to Clark's defense theory that he falsely confessed to the crimes. The court's exclusion of this evidence deprived Clark of his constitutional right to present a complete defense, requiring reversal of the convictions under the constitutional harmless error test. Clark's case presents a significant question of constitutional law, warranting review under RAP 13.4(b)(3).

Criminal defendants have the constitutional right to present a defense. Crane v. Kentucky, 476 U.S. 683, 690, 106 S. Ct. 2142, 90 L. Ed. 2d 636 (1986); State v. Jones, 168 Wn.2d 713, 719-20, 230 P.3d 576 (2010); U.S. Const. amend. VI, XIV; Wash. Const. art. 1, §§ 3, 22. Defense evidence need only be relevant to be admissible. State v. Darden, 145 Wn.2d 612, 622, 41 P.3d 1189 (2002). All facts tending to establish a party's theory are relevant. State v. Harris, 97 Wn. App. 865, 872, 989 P.2d 553 (1999), review denied, 140 Wn.2d 1017 (2000).

The trial court excluded evidence of Clark's mental limitations and expert testimony on the subject as irrelevant. 14RP 55-57, 84-85. The court believed evidence of Clark's mental retardation and its effect on

suggestibility could only be raised at the CrR 3.5 hearing if at all. 14RP 56-57, 84-85.

The United States Supreme Court has held when the credibility of a confession is central to a claim of innocence, the exclusion of competent, reliable evidence bearing on that issue violates the defendant's constitutional right to present his defense. Crane, 476 U.S. at 690-91. A criminal defendant must be given the opportunity to explain to the jury the reasons behind his confession. Clark was entitled to present relevant evidence in his own defense, including evidence bearing on the credibility of his confession. Crane disposes of the trial court's suggestion that Clark's mental limitation evidence was admissible only at the CrR 3.5 hearing. 14RP 56-57, 84-85. Crane makes clear evidence of the circumstances surrounding a confession is not only relevant to the legal question of whether a statement was voluntary but also the factual question, to be resolved by the jury, of whether the statement is worthy of belief. Crane, 476 U.S. at 687-88.

The trial court also excluded expert testimony on Clark's mental limitations as irrelevant because Clark had not presented a diminished capacity defense. 14RP 55-57, 84-85. "Diminished capacity is a mental disorder not amounting to insanity that impairs the defendant's ability to form the culpable mental state to commit the crime." State v. Harris, 122

Wn. App. 498, 506, 94 P.3d 379 (2004). Evidence of Clark's mental limitations was irrelevant to a diminished capacity defense because no such defense was presented.

But testimony on Clark's mental limitations was relevant to the credibility of Clark's confession. Expert testimony was admissible to assist the jury in weighing the circumstances giving rise to his confession. See Hannon v. State, 84 P.3d 320, 347, 350-53 (Wyo. 2004) (exclusion of expert testimony related to circumstances of defendant's confession, e.g., his low intelligence, low verbal skills, and suggestibility, violated right to present a defense, even though no diminished capacity defense raised); United States v. Hall, 93 F.3d 1337, 1345 (7th Cir. 1996) (trial court violated right to present defense in excluding doctor's testimony about defendant's susceptibility to various interrogation techniques, suggestiveness, and capability of confessing to a crime he did not commit).

Without evidence of Clark's mental limitations, the jury's picture of Clark's confession was incomplete. The unreliability of Clark's confession to the detective was the heart of Clark's defense. CP 92-93. The exclusion of Dr. Oneal's testimony destroyed that defense. Expert testimony under ER 702 would have assisted the trier of fact to understand the significance of Clark's mental disability. Dr. Oneal could have explained to the jury the effects of retardation on Clark's mental

functioning. From that, the jury would have a complete picture by which to judge Clark's confession. Dr. Oneal's testimony would have assisted the jury, which lacked insight into the psychological reasons a person would confess when subjected to police interrogation.

The denial of the right to present a defense is constitutional error. Crane, 476 U.S. at 690; Jones, 168 Wn.2d at 724. Assuming error, the Court of Appeals found it harmless beyond a reasonable doubt because overwhelming, untainted evidence supported the verdict. Slip op. at 14. That prejudice analysis is flawed.

According to the Court of Appeals, "[o]ne of Clark's classmates testified that Clark bragged that he committed the burglary and that he had shown off rings and necklaces when doing so, which were among the types of items Conine testified had been taken." Slip op. at 13. In fact, the classmate gave conflicting statements on whether Clark participated in the talk about committing a burglary. 14RP 239-41. That witness had a severe credibility problem. A reasonable juror could infer this testimony was unworthy of belief. Further, the burglary talked about was not specific to Conine and no evidence showed the items talked about came from the Conine burglary. 14RP 241-42, 322-24, 410-11. There was evidence that the detective was investigating a different, uncharged burglary, which led him to contact Clark. 14RP 254-56, 271-72. A

reasonable juror could infer the talk and items displayed may have been connected with the other burglary, not Conine's burglary.

The Court of Appeals also noted Clark "was an extremely infrequent guest, visiting only once or twice before the burglary," but Clark's palm print was on Conine's television that "she had bought two months before the burglary and which the burglars had moved." Slip op. at 13. In actuality, Clark had been to Conine's apartment about two or three times before and when those visits occurred was never specified. 14RP 98-99, 134. One inference is that those visits happened before the purchase. The other inference is that Clark on at least one occasion visited after the purchase and so had an opportunity to leave his fingerprint on the TV. In constitutional harmless error analysis, the favorable inference goes to Clark.

Meanwhile, there is no doubt that an officer's testimony about a confession has significant impact on a jury. State v. Wilson, 144 Wn. App. 166, 185, 181 P.3d 887 (2008). "A confession is like no other evidence. Indeed, 'the defendant's own confession is probably the most probative and damaging evidence that can be admitted against him.'" Arizona v. Fulminante, 499 U.S. 279, 296, 111 S. Ct. 1246, 113 L. Ed. 2d 302 (1991) (quoting Bruton v. United States, 391 U.S. 123, 139-40, 88 S. Ct. 1620, 20 L. Ed. 2d 476 (1968) (White, J., dissenting)). The prosecutor naturally

argued Clark's confession proved he committed the crimes. 14RP 419-26. Dr. Oneal's testimony would have provided a defense to that confession. Because Dr. Oneal's testimony went to the heart of Clark's defense, its exclusion cannot be considered harmless beyond a reasonable doubt.

2. THE COURT VIOLATED DUE PROCESS IN FAILING TO ORDER A SECOND COMPETENCY EVALUATION AFTER NEW INFORMATION PROVIDED A REASON TO DOUBT COMPETENCY TO STAND TRIAL.

The trial court refused to order a second competency evaluation despite new information showing a reason to doubt competency. This error violated Clark's right to due process, and he seeks review under RAP 13.4(b)(3).

No incompetent person may be tried, convicted, or sentenced for the commission of an offense so long as the incapacity continues. State v. Wicklund, 96 Wn.2d 798, 800, 638 P.2d 1241 (1982). The conviction of an accused while incompetent violates the due process right to a fair trial. Pate v. Robinson, 383 U.S. 375, 378, 385, S. Ct. 836, 15 L. Ed. 2d 815 (1966); U.S. Const. amend. XIV; Wash. Const. art. 1, § 3. The failure to observe procedures adequate to protect competency is also denial of due process. State v. O'Neal, 23 Wn. App. 899, 901, 600 P.2d 570 (1979); Barnett v. Hargett, 174 F.3d 1128, 1133-34 (10th Cir. 1999). "Chapter

10.77 RCW provides such a procedure." State v. Heddrick, 166 Wn.2d 898, 904, 215 P.3d 201 (2009).

Whenever there is reason to doubt competency, the trial court must order an evaluation under RCW 10.77.060. Courts consider a variety of factors in determining competence, including the defendant's appearance, demeanor, conduct, personal and family history, past behavior, medical and psychiatric reports and the statements of counsel. In re Pers. Restraint of Fleming, 142 Wn.2d 853, 863, 16 P.3d 610 (2001). Since the lawyer has "the closest contact with the defendant," the court must give considerable weight to the lawyer's representations regarding the client's competency and ability to assist in his defense. State v. Israel, 19 Wn. App. 773, 779, 577 P.2d 631 (1978) (quoting Drope v. Missouri, 420 U.S. 162, 177 n.13, 95 S. Ct. 896, 43 L. Ed. 2d 103 (1975)).

Once the trial court makes an initial competency determination, the court should revisit the issue when new information is presented. State v. Ortiz, 119 Wn.2d 294, 301, 831 P.2d 1060 (1992). "[A] trial court must always be alert to circumstances suggesting a change that would render the accused unable to meet the standards of competence to stand trial." Drope, 420 U.S. at 181.

Judge Chushcoff and Judge McCarthy failed to comply with this legal standard in not recognizing sufficient facts existed to show a reason

to doubt competency based on new information. Both judges refused to order a second competency evaluation on the ground that no new information had been presented to warrant one. 10RP 22-23 (McCarthy); 11RP 12-15 (Chushcoff).

As pointed out by defense counsel, the new information casting doubt on competency was Clark's demonstrated inability to understand the testimony during an actual trial. 11RP 13. Clark could not follow the testimony in his murder trial, which occurred after Judge Cuthbertson's competency ruling in May 2012. Clark's trial counsel in the murder case supported the request for a second evaluation. 10RP 23-24. Further, counsel's personal experience with Clark during the present trial confirmed he was unable to follow the testimony. 11RP 5, 10-12; 14RP 52, 129-30, 310. Dr. Hendrickson and Dr. Oneal, in conducting the prior evaluations, did not have this information available to them in formulating their opinions. Neither expert had the benefit of knowing that Clark actually could not understand the testimony as it unfolded during a real trial. Judge Cuthbertson, in making the earlier competency determination, likewise did not have the benefit of this information.

There need only be a factual basis to doubt competency in order to trigger the mandatory evaluation requirements of RCW 10.77.060. State v. Woods, 143 Wn.2d 561, 605, 23 P.3d 1046, cert. denied, 534 U.S. 964,

122 S. Ct. 374, 151 L. Ed. 2d 285 (2001). The Court of Appeals opined "[t]he trial courts were free to disregard counsel's unsupported representations about statements made by the attorneys representing Clark in the murder trial, because of the lack of evidence supporting those representations." Slip op. at 11.

But the judges did not disregard counsel's representation on the ground that it lacked supporting evidence. Defense counsel, an officer of the court, relayed counsels' concerns from the murder trial and offered to bring one of the attorneys in if so desired. 10RP 23-24. The judges felt this was unneeded, not because the court disbelieved counsel's representation, but rather because they thought such representation did not amount to new information. "The motion must be supported by a factual basis. The court will then inquire to verify the facts." City of Seattle v. Gordon, 39 Wn. App. 437, 441-42, 693 P.2d 741, 743 (1985). Counsel's own observations as well as those of counsel in the murder case supported the motion. Yet the trial court did not inquire to verify the facts surrounding counsel's representation based on a misunderstanding of what the law requires in this circumstance.

The Court of Appeals thought "defense counsel's representations about her own observations simply added new evidence about the same developmental disabilities that Judge Cuthbertson found did not render

Clark incompetent to stand trial." Slip op. at 11. This misses the significant fact that Judge Cuthbertson made that competency determination before evidence arose showing Clark's inability to understand during an actual trial and before counsel herself observed Clark's inability to understand the pre-trial hearing in the present case.

Defense counsel had the closest contact with Clark and was in the best position to know whether Clark could assist with his defense. The new information that Clark was unable to understand what was happening in court in real-time, including the testimony of witnesses, was enough to warrant a new competency evaluation. An inability to understand testimony due to mental retardation affects the basic fairness of the trial. Without an understanding of the testimony, a mentally retarded defendant's ability to rationally assist in his defense is undermined. The failure to follow mandatory evaluation procedures under RCW 10.77.060 where there is reason to doubt competency requires reversal. State v. Marshall, 144 Wn.2d 266, 280, 27 P.3d 192 (2001).

3. THE FAILURE TO ACCOMMODATE CLARK'S INABILITY TO FOLLOW THE TESTIMONY DUE TO HIS MENTAL LIMITATIONS IS REVERSIBLE CONSTITUTIONAL ERROR.

"No one 'should face the Kafkaesque spectre of an incomprehensible ritual which may terminate in punishment.'" In re Pers. Restraint of Khan, __ Wn.2d __, __ P.3d __, 2015 WL 7567017 at *7 (slip op. filed Nov. 25, 2015) (quoting United States v. Carrion, 488 F.2d 12, 14 (1st Cir. 1973)). Regardless of whether the trial court erred by refusing to hold a second competency evaluation, it committed reversible constitutional error when it failed to make accommodations to ensure that Clark could understand the testimony at his trial. Clark seeks review under RAP 13.4(b)(3) because this is a significant issue of constitutional law.

Dr. Oneal testified at the competency hearing that Clark had an exceptionally limited verbal comprehension capability and needed accommodation to ensure he understood the testimony of witnesses in real time. 5RP 78, 83-86. Clark scored lower than 98 percent of others in his age range on verbal comprehension. 5RP 73. 99 percent of his peers have higher perceptual reasoning. 5RP 74-75. His receptive language skills were those of a seven-year-old child and his expressive language skills were those of a nine-year-old child. 5RP 74.

Judge Cuthbertson, having presided over the competency hearing, was most familiar with the challenges faced by Clark and believed accommodation was necessary. 5RP 113. Appearing before Judge Chushcoff, counsel later requested a continuance to look into getting a cognitive aide for Clark. 11RP 16-17. Without one, Clark was not able to participate in the trial. 11RP 16. Counsel explained that a cognitive aide — a person with experience with developmental disabilities — could explain to Clark what was going on in language that he understood. 11RP 16-17. Judge Chushcoff, the presiding judge who did not have familiarity with the competency proceeding, questioned the utility of a cognitive aide and ultimately responded that he would send the case out to trial. 11RP 22.

"[T]he Sixth Amendment right to participate in one's own trial encompasses the right to reasonable accommodations for impairments to that participation." United States v. Crandall, 748 F.3d 476, 481 (2d Cir. 2014). Reasonable accommodations ensure that a defendant facing trial can comprehend the proceedings against him. United States v. McMillan, 600 F.3d 434, 453 (5th Cir. 2010).

Criminal defendants have a right to trial accommodations necessary to safeguard their rights to confront witnesses and to be present during their trial. State v. Gonzalez-Morales, 138 Wn.2d 374, 379, 979 P.2d 826 (1999); Crandall, 748 F.3d at 481; U.S. Const. amend. VI, XIV;

Wash. Const. art. I, §§ 3, 22. The right to be present and confront witnesses includes "the right to have trial proceedings presented in a way that the accused can understand." Linton v. State, 275 S.W.3d 493, 503 (Tex. Crim. Ct. App. 2009).

The trial court thus has a duty to explore alternative means and devise a communication solution that provides a defendant with a constitutional minimum understanding of the proceedings. Linton, 275 S.W.3d at 503; Ferrell v. Estelle, 568 F.2d 1128, 1133 (5th Cir. 1978), op. withdrawn as moot due to petitioner's death, 573 F.2d 867 (1978). "A defendant's inability to spontaneously understand testimony being given . . . would be as though a defendant were forced to observe the proceedings from a soundproof booth or seated out of hearing at the rear of the courtroom, being able to observe but not comprehend the criminal processes whereby the state had put his freedom in jeopardy." Arizona v. Natividad, 111 Ariz. 191, 194, 526 P.2d 730 (Ariz. 1974).

The Court of Appeals assumed the trial court erred but found the error harmless beyond a reasonable doubt, disregarding the tainted confession and relying on the evidence addressed in section E.1., supra. Slip op. at 12-13. For the reasons set forth in section E.1., supra, the untainted evidence was not overwhelming and did not necessarily lead to a

finding of guilt. The accommodation error is not harmless beyond a reasonable doubt and the convictions must be reversed.

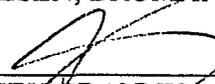
F. CONCLUSION

For the reasons stated, Clark requests that this Court grant review.

DATED this 21st day of December 2015.

Respectfully submitted,

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APPENDIX A

November 3, 2015

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

ANTHONY T. CLARK,

Appellant.

No. 45203-1-II

UNPUBLISHED OPINION

BJORGEN, J. — Anthony Clark appeals his convictions for residential burglary, third degree theft, and third degree malicious mischief. Clark contends that the trial court abused its discretion when it (1) refused to order a second competency hearing after his attorney represented to the court that Clark was unable to assist in his defense, (2) failed to accommodate his developmental disabilities by not ordering a continuance to enable Clark to enlist the services of a cognitive aide, and (3) excluded expert testimony about Clark's suggestibility and the consequent possibility that he had falsely confessed. Alternatively, Clark argues that (4) the trial court erred by imposing conditions of probation after sentencing him to the maximum term for the third degree theft and malicious mischief convictions.

We hold that (1) the trial court exercised its discretion on tenable grounds when it refused to order a second competency hearing given the record before it, (2) any error in denying the continuance was constitutionally harmless, (3) any error in excluding the expert's testimony was also constitutionally harmless, and (4) the trial court erred when it purported to impose

conditions of probation after sentencing Clark to the maximum term of confinement for the third degree theft and malicious mischief convictions. Consequently, we affirm Clark's convictions, but remand with orders to strike the erroneous conditions of probation.

FACTS

I. THE BREAK-IN AND THE INVESTIGATION

In April 2010, Patricia Conine returned from work to find a crime scene in her apartment. Burglars had forced open a ground floor window, entered her apartment, ransacked it, and taken Conine's personal property, including a cell phone, a digital video disc player, jewelry, and loose change.

Conine called police. Forensic investigators processed the scene and found two prints of note. They discovered the first, a fingerprint, on a screen removed from the window used to enter Conine's apartment. They found the second, a palm print, on Conine's television. The television, which Conine had bought less than two months before, had been moved during the break-in.

Soon thereafter, at nearby Lincoln High School, several students bragged about having committed the burglary. This group included Clark and Hector Escobar. Clark displayed jewelry he claimed the group had taken during the robbery; other group members also showed off allegedly stolen property. The bragging came to the attention of Lincoln High School's resource officer, who alerted Tacoma police.

Detective Robert Baker, who was investigating a different burglary possibly involving Clark, contacted him. Clark admitted he had helped Escobar and others burglarize "a grayish apartment." III Verbatim Report of Proceedings (VRP) at 274-76. Clark explained that after they decided to burglarize the apartment when walking by, Escobar proceeded to remove the

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window screen. Clark then crawled through the window, unlocked the apartment door to let the others in, and then stood as the burglars' "lookout." III VRP at 277. Baker then asked Clark to take him to the residence that Clark burglarized. At this point, Baker did not know that the Conine burglary had been reported.

Clark showed Baker the apartment he had helped to burglarize and the window he had used to enter the apartment. Clark and Baker returned to Lincoln High School where Clark gave a recorded statement about the incident.

The State charged Clark with one count of residential burglary in violation of RCW 9A.52.025, one count of third degree malicious mischief in violation of RCW 9A.48.090(1)(b) and .090(2)(c), and one count of third degree theft in violation of RCW 9A.56.020(1) and .050(1), (2).

II. THE COMPETENCY PROCEEDING BEFORE JUDGE CUTHBERTSON¹

The question of Clark's competency to stand trial was a major focus of the pretrial proceedings in his case. Clark's counsel moved for a competency evaluation shortly after the State filed charges, and the trial court ordered an evaluation at Western State Hospital. After that evaluation, the parties contested the issue of Clark's competence to stand trial during a multiple day hearing before Judge Cuthbertson.

Dr. Ray Hendrickson, who had evaluated Clark at Western State Hospital, testified for the State at the competency hearing. Hendrickson testified that Clark had no symptoms of "a major mental illness," but showed moderate developmental disabilities. VRP (May 11, 2012) at 34-35, 49. However, Hendrickson testified that Clark was high functioning such that his

¹ Clark's case proceeded before Judges Cuthbertson, Nelson, McCarthy, Chushcoff, and Hickman. We refer to the trial court using the judge's name for clarity.

developmental disabilities could more properly be classified as mild in effect. In fact, Hendrickson testified that Clark demonstrated a capacity for abstract reasoning and its application to his case. Hendrickson also testified that, during his evaluation of Clark, Clark demonstrated an understanding of the legal process, legal concepts, and the charges against him. Clark's attorney sat in on the evaluation, and Hendrickson watched the two interact, allowing Hendrickson to opine that Clark could communicate with his attorney, work with her, and assist her in his defense. Hendrickson also testified that Clark had shown that his disabilities did not render him suggestible to verbal or nonverbal signals from those asking him questions, although Hendrickson admitted that he did not specifically test for suggestibility. Finally, Hendrickson testified that Clark did not require trial accommodations any more than the typical defendant.

Dr. Brent O'Neal testified for Clark at the competency hearing. O'Neal testified that he measured Clark as having a low intelligence quotient associated with mild retardation. Other tests performed by O'Neal indicated that Clark's "language skills in general [were] markedly deficient." VRP (May 30, 2012) at 75. Nevertheless, O'Neal testified that Clark was competent to stand trial. However, O'Neal testified that Clark's developmental disabilities rendered him highly susceptible to verbal or nonverbal cues from people, leading him to be untruthful under questioning. O'Neal also testified that Clark's verbal difficulties would require accommodations at trial; specifically, giving Clark additional time to communicate with his attorney and limiting the manner in which he was cross-examined.

In his oral ruling, Judge Cuthbertson stated:

I'm going to find, Mr. Clark, that I believe you do, I think, have the capacity to understand the nature of the proceedings against you, that you – and also, I'm going to enter a finding that I believe you have the capacity to assist in your defense, but that the Court needs to make some accommodations to make sure that you have a fair trial.

And before we go to trial, we will have motions in limine and have discussions about the accommodations that I intend to make—so I’m going to not hide the ball—and let you know that I intend to not rush through trial and make it slow, so you have a chance to ask questions of [counsel], and she has a chance to explain what’s going on to you in a way that you can understand.

The other thing I’m going to do is I’m going to talk to the lawyers about the rules of evidence, and should you decide to testify, how the examination should go. I believe I have the inherent authority or the Court has inherent authority under Evidence Rule 611, which I don’t expect you to know about that, but it says I can decide how the questions are asked. I can ask questions like I did today. I can tell the lawyers how to ask the questions to some extent, so I’m going to consider that and we’ll talk about that before trial, about those accommodations, and any other accommodations that would be necessary to make sure it’s a fair trial.

VRP (May 30, 2012) at 112-14.

Judge Cuthbertson later entered an order finding Clark competent. This order did not include any findings or conclusions about the necessity of accommodations.

III. OTHER PROCEEDINGS BEFORE JUDGE CUTHBERTSON

The parties again appeared before Judge Cuthbertson on November 26, 2012, the date scheduled for the start of trial. By this point, the parties were discussing a parallel prosecution in which the State had charged Clark with murder and how the litigation of various issues between the two cases overlapped. Because of other criminal trials with higher priority, the court continued Clark’s trial date until February 2013. Clark’s attorney renewed her objection to the court having found Clark competent at the hearing.

When the parties appeared before Judge Cuthbertson in February 2013, he again stated that other older criminal trials with higher priority had precedence. To ensure Clark’s right to a speedy trial, Judge Cuthbertson stated his intention to assign the case to Judge Nelson, who was familiar with Clark and his competency issues as the judge presiding over his murder trial.

However, Clark filed an affidavit of prejudice against Judge Nelson, which was granted, and the presiding criminal judge assigned Clark's case to Judge McCarthy for trial.

IV. THE CRR 3.5 HEARING BEFORE JUDGE MCCARTHY

Before Judge McCarthy, Clark's attorney argued that Judge Cuthbertson had ruled that Clark would receive accommodations at trial and raised the issue of Clark's competency. The parties also informed Judge McCarthy that the order of competency did not order accommodations. When Clark's attorney argued that the oral ruling had ordered accommodations, Judge McCarthy told her to present any requests for accommodation in a "written motion with supporting information." VRP (Apr. 22, 2013) at 13-14.

Clark's attorney then turned to the issue of his competence. She contended that her interactions with Clark had convinced her that he was not competent to stand trial because he could not assist in his defense. The prosecutor represented that she had witnessed portions of Clark's murder trial and that Clark had shown adequate language skills and recall during cross-examination and that the trial court had not needed to accommodate Clark with long breaks. Clark's attorney responded by stating that Clark's attorneys in the murder trial supported her motion for a competency hearing. The trial court denied Clark's request for another competency hearing, citing the recent order from Judge Cuthbertson and the fact that Clark had recently completed a murder trial and evidenced competency during that trial.

V. PROCEEDINGS BEFORE JUDGE CHUSHCOFF

Because of trial conflict issues, Judge McCarthy sent Clark's case back to the presiding criminal judge, Judge Chushcoff. There, Clark's attorney again raised the issue of Clark's competence to stand trial. The State noted that Clark had recently been found competent and contended that his competence was not raised by his defense counsel in his murder trial. Clark's

attorney took the position that Judge Cuthbertson only found Clark competent assuming that accommodations would be made. She again represented that Clark's attorneys from his murder trial supported her motion for a new competency hearing. The trial court determined that Clark's attorney had not presented evidence of a change in circumstances that would invalidate Judge Cuthbertson's order and denied Clark's motion for a new competency hearing.

Clark's attorney then requested a continuance to allow her to obtain the services of a cognitive aide, a person who could communicate about what was happening at trial with Clark in language that he could readily understand. She described this as a necessary accommodation. The prosecutor represented that Clark had not needed the accommodations during his murder trial. The court noted that Judge Cuthbertson's written order did not require accommodations, noted that Clark's attorney made the motion on the eve of trial, expressed concerns about the impact of allowing Clark to use a cognitive aide on the pace of trial, and denied the motion by stating that it would be sending the case out for trial.

VI. TRIAL BEFORE JUDGE HICKMAN

Clark's trial ultimately occurred before Judge Hickman, beginning on May 21, 2013. Conine testified about the break-in at her apartment. She had known Clark all his life through a friendship with his mother, but testified that he had only visited her apartment two or three times, once after police processed the scene. Conine also testified that she had bought her television within two months of the break-in and that the burglars had moved it when they broke in.

The forensic investigators testified about finding the prints on Conine's window screen and her television. An examiner testified that the latent print on the window screen matched Escobar's fingerprints and that the print on the television matched Clark's fingerprints.

One of Clark's classmates testified about Clark and the other alleged burglars bragging about the break-in. The classmate also testified that Clark and the others had shown off items, with Clark showing jewelry, including rings, necklaces and watches. Among the jewelry Conine testified had been taken were rings and a pendant.

Baker testified that he had gone to Lincoln High School to interview Clark about his possible involvement in a different burglary and that he had no knowledge of a burglary at Conine's apartment. Baker also testified that Clark confessed to burglarizing an apartment and that Clark then directed Baker to the apartment Clark admitted burglarizing, which was Conine's. The story Clark told, that Escobar had taken the window screen off and that Clark had climbed through the window to let the others in and then acted as a lookout, was consistent with the physical evidence, such as Escobar's fingerprint on the screen.

Clark had, over the course of trial, sought permission from the trial court to allow O'Neal to testify about his suggestibility and how that could lead him to falsely confess. He renewed his objection to the trial court's denial of that motion at the close of the State's evidence. The trial court noted the objection, but did not allow O'Neal to testify.

The jury found Clark guilty of all counts. The trial court sentenced him to 18 months' confinement for the felony residential burglary conviction and 364 days' incarceration, with no days suspended, on the gross misdemeanor third degree theft and third degree malicious mischief convictions. The trial court also entered an order establishing conditions of probation, including the payment of the legal financial obligations ordered in his felony judgment and sentence. Clark appeals.

ANALYSIS

I. COMPETENCY

Clark first contends that the trial court abused its discretion when it failed to order a competency evaluation after his counsel represented to the court that Clark was unable to assist her in his defense and that the attorneys in his contemporaneous murder trial made the same claim. We disagree.

Due process forbids the conviction of a person not competent to stand trial. *In re Pers. Restraint of Fleming*, 142 Wn.2d 853, 861, 16 P.3d 610 (2001) (citing *Drope v. Missouri*, 420 U.S. 162, 171, 95 S. Ct. 896, 43 L. Ed. 2d 103 (1975); *Pate v. Robinson*, 383 U.S. 375, 378, 86 S. Ct. 836, 15 L. Ed. 2d 815 (1966)). Washington has broadened the protections due process affords incompetent individuals: by statute “[n]o incompetent person shall be tried, convicted, or sentenced for the commission of an offense so long as such incapacity continues.” *Fleming*, 142 Wn.2d at 862 (alteration in original) (quoting RCW 10.77.050). To be competent, a defendant must have “sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding’ and to assist in his [or her] defense with ‘a rational as well as factual understanding of the proceedings against him [or her].” *Fleming*, 142 Wn.2d at 861-62 (quoting *Dusky v. United States*, 362 U.S. 402, 80 S. Ct. 788, 4 L. Ed. 2d 824 (1960)).

Where “there is reason to doubt” the defendant’s competency, the trial court must order a competency evaluation. RCW 10.77.060(1)(a); *State v. Lord*, 117 Wn.2d 829, 901, 822 P.2d 177 (1991) (citing *City of Seattle v. Gordon*, 39 Wn. App. 437, 441, 693 P.2d 741 (1985)). There must be a factual basis for the reason to doubt the defendant’s competence. *Lord*, 117 Wn.2d at 901. Courts consider a number of factors when evaluating whether this factual basis exists: “the ‘defendant’s appearance, demeanor, conduct, personal and family history, past behavior, medical

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and psychiatric reports, and the statements of counsel.” *Fleming*, 142 Wn.2d at 863 (quoting *State v. Dodd*, 70 Wn.2d 513, 514, 424 P.2d 302 (1967)). The trial court must give the final factor, defense counsel’s statements about the defendant’s competency, “considerable weight” because counsel has the “closest contact” with the defendant, and thus a unique vantage point to gauge the defendant’s competence. *State v. Israel*, 19 Wn. App. 773, 779, 577 P.2d 631 (1978). Nevertheless, the attorney’s representations are simply one factor, even if weighty, and not dispositive to the question before the trial court. *State v. Woods*, 143 Wn.2d 561, 604-05, 23 P.3d 1046 (2001) (citing *Lord*, 117 Wn.2d at 903).

Because the trial court is in the best position to weigh the factors used to determine whether there is a reason to doubt the defendant’s competence, we review its determination for an abuse of discretion. *State v. Sisouvanh*, 175 Wn.2d 607, 621-22, 290 P.3d 942 (2012). A trial court abuses its discretion where it exercises that discretion in a manifestly unreasonable manner, meaning selecting a course of action no reasonable person would take, or if it exercises its discretion for untenable reasons or on untenable grounds, meaning it applies the wrong legal standard or bases its decision on facts unsupported by the record. *Sisouvanh*, 175 Wn.2d at 623 (quoting *State v. Rohrich*, 149 Wn.2d 647, 654, 71 P.3d 638 (2003)). Where the trial court’s decision is “fairly debatable,” we will not disturb its choice to order, or not order, a competency evaluation. *See Sisouvanh*, 175 Wn.2d at 623 (quoting *Walker v. Bangs*, 92 Wn.2d 854, 858, 601 P.2d 1279 (1979)).

As described above, Judge Cuthbertson conducted a full competency hearing and considered Clark’s competency evaluation. The issue before us is whether Judge Chushcoff erred by denying a motion for a second evaluation. Before Judge Cuthbertson, the evidence about Clark’s competency included expert testimony from two doctors indicating that Clark

could assist in his defense, as well as Judge Cuthbertson's observations of Clark. Before the other judges, that evidence included the fact that Judge Cuthbertson had adjudged Clark competent to stand trial, as well as their own observations of Clark. Each of the judges determined that, in light of this evidence, defense counsel's opinion was not sufficient to create a reason to doubt Clark's competency. Although one might analyze the evidence on which the doctors and judges relied differently, that simply shows that the issue was "'fairly debatable.'" *Sisouvanh*, 175 Wn.2d at 623 (quoting *Walker*, 92 Wn.2d at 858). The trial court did not abuse its discretion.

Further, it was not an abuse of discretion to determine that defense counsel's representations about Clark's inability to assist in his defense in the murder trial did not necessitate a second competency evaluation. While the courts will accept the representations of counsel about a defendant's competency, those are based on counsel's personal interaction with the defendant. The trial courts were free to disregard counsel's unsupported representations about statements made by the attorneys representing Clark in the murder trial, because of the lack of evidence supporting those representations. *See Gordon*, 39 Wn. App. at 441-42. Further, defense counsel's representations about her own observations simply added new evidence about the same developmental disabilities that Judge Cuthbertson found did not render Clark incompetent to stand trial. The trial court had the discretion to determine that defense counsel's representations did not warrant a new competency hearing in light of the evidence discussed above.

II. ACCOMMODATIONS

Clark next contends that, regardless of whether the trial court erred by refusing to hold a second competency hearing, it abused its discretion when it failed to make accommodations to

ensure that he could understand the testimony at his trial. The State contends that the trial court did not abuse its discretion when it denied the one specific request for accommodation Clark made, a request for a continuance. We assume, without deciding, that the trial court erred, but hold that any error was harmless beyond a reasonable doubt.

Criminal defendants have a right to trial accommodations necessary to safeguard their rights to confront witnesses and to be present during their trial. *See State v. Gonzalez-Morales*, 138 Wn.2d 374, 379, 979 P.2d 826 (1999) (citing U.S. CONST. amend. VI); *United States v. Crandall*, 748 F.3d 476, 481 (2d Cir. 2014). Decisions about any needed accommodations are constitutionally commended to the discretion of the trial court.² *See Gonzalez-Morales*, 138 Wn.2d at 381; *United States v. Bennett*, 848 F.2d 1134, 1141 (11th Cir. 1988). An exercise of the trial court's discretion that infringes a defendant's constitutional rights is necessarily an abuse of that discretion. *State v. Strizheus*, 163 Wn. App. 820, 829, 262 P.3d 100 (2011) (quoting *State v. Iniguez*, 167 Wn.2d 273, 280, 217 P.3d 768 (2009)).

The denial of a constitutionally required accommodation is subject to constitutional harmless error analysis, *see State v. Woo Won Choi*, 55 Wn. App. 895, 902-03, 781 P.2d 505 (1989), as are violations of the rights protected by the accommodations. *State v. Jasper*, 174 Wn.2d 96, 117, 271 P.3d 876 (2012) (right to confront witnesses); *State v. Irby*, 170 Wn.2d 874, 885, 246 P.3d 796 (2011), *appeal after remand*, 187 Wn. App. 183 (2015) (right to be present). We presume constitutional error is prejudicial and the State bears the burden of showing that the error was harmless beyond a reasonable doubt. *State v. Coristine*, 177 Wn.2d 370, 380, 300 P.3d

² The decision to grant or deny a continuance also lies in the discretion of the trial court. *State v. Early*, 70 Wn. App. 452, 458, 853 P.2d 964 (1993). This discretion is, however, constrained by constitutional mandates. *State v. Strizheus*, 163 Wn. App. 820, 829, 262 P.3d 100 (2011) (quoting *State v. Iniguez*, 167 Wn.2d 273, 280, 217 P.3d 768 (2009)).

400 (2013). The State may discharge this burden by showing that overwhelming untainted evidence supports a conviction. *State v. Tatum*, 74 Wn. App. 81, 87, 871 P.2d 1123 (1994).

Assuming, without deciding, that the trial court abused its discretion by refusing to order accommodations for Clark, that error was harmless beyond a reasonable doubt because the State presented overwhelming untainted evidence of his guilt. One of Clark's classmates testified that Clark bragged that he committed the burglary and that he had shown off rings and necklaces when doing so, which were among the types of items Conine testified had been taken. Conine testified that, although Clark had been to her apartment before, he was an extremely infrequent guest, visiting only once or twice before the burglary. Nevertheless, forensic technicians found Clark's palm print on Conine's television, a television she had bought two months before the burglary and which the burglars had moved. The physical evidence thus corroborated the testimony from Clark's classmate and Conine. With this evidence, any error in failing to grant the requested accommodation was harmless beyond a reasonable doubt.³

III. EXPERT TESTIMONY

Clark also contends that the trial court erred by excluding O'Neal's testimony about Clark's suggestibility and the consequent possibility that he falsely confessed in order to please the interrogating officer. Assuming, without deciding, that the trial court abused its discretion by excluding O'Neal's testimony, any error was harmless.

The constitution guarantees each defendant "the right to present [his or her] version of the facts as well as the prosecution's to the jury so it may decide where the truth lies." *Washington v. Texas*, 388 U.S. 14, 19, 87 S. Ct. 1920, 18 L. Ed. 2d 1019 (1967). Consistently with that right,

³ We assume, without deciding, that Clark's confession to Baker was tainted. Consequently, we do not consider the confession for purposes of harmless error review.

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we may not “exclude competent, reliable evidence bearing on the credibility of a confession when such evidence is central to the defendant’s claim of innocence” without a valid justification for doing so. *Crane v. Kentucky*, 476 U.S. 683, 690-91, 106 S. Ct. 2142, 90 L. Ed. 2d 636 (1986). We generally review a trial court’s decision to admit or exclude evidence or to allow expert testimony for an abuse of discretion. *Strizheus*, 163 Wn. App. at 829; *see State v. Rafay*, 168 Wn. App. 734, 783-84, 285 P.3d 83 (2012), *cert. denied*, 134 S. Ct. 170 (2013). However, we review *de novo* whether the trial court’s exclusion of evidence infringes the defendant’s right to present a defense, and any such infringement would constitute an abuse of discretion. *Strizheus*, 163 Wn. App. at 829 (quoting *Iniguez*, 167 Wn.2d at 280).

Assuming, without deciding, that the trial court infringed Clark’s right to present a complete defense by excluding O’Neal’s testimony about his suggestibility, the error was harmless. As we have described above, overwhelming untainted evidence supported the verdict.

IV. SENTENCING

Finally, Clark contends that the trial court imposed a sentence that exceeded the punishment authorized by law. Specifically, Clark claims that the sentencing court ordered probation despite the fact that it sentenced him to the maximum term allowed for the felony residential burglary, gross misdemeanor third degree theft, and gross misdemeanor third degree malicious mischief. The State contends that the sentencing court did not sentence Clark to probation and therefore did not err. We agree with Clark and remand this matter to the sentencing court to strike the order imposing the conditions of probation for the two gross misdemeanors.

A sentencing court may suspend some of an offender's sentence and instead impose probation. RCW 9.95.210(1).⁴ However, where the sentencing court imposes the maximum sentence, it lacks authorization to impose probation on the offender. *State v. Gailus*, 136 Wn. App. 191, 201, 147 P.3d 1300 (2006), *overruled on other grounds by State v. Sutherby*, 165 Wn.2d 870, 204 P.3d 916 (2009).

Clark's judgment and sentence imposes the maximum term of confinement allowed by RCW 9A.20.021, 364 days, for each of the gross misdemeanor convictions, ordering these sentences to be served concurrently with his felony conviction for residential burglary. The judgment and sentence suspends none of the term of confinement for the gross misdemeanors, and the trial court did not mark the section that would have imposed probation. Nevertheless, the sentencing court entered a separate order the same day as the judgment and sentence purporting to impose conditions of probation for the gross misdemeanors. Because the sentencing court lacked the authority to impose probation for the gross misdemeanors in light of its imposition of the maximum term, the order imposing probation for the gross misdemeanors is erroneous. *Gailus*, 136 Wn. App. at 201. We remand the matter with orders to strike the conditions of probation for the gross misdemeanors.

CONCLUSION

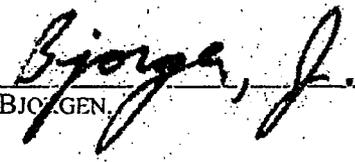
We affirm Clark's convictions, because the trial court did not abuse its discretion by refusing to order a second competency hearing and any error in denying requested accommodations at trial or excluding O'Neal's testimony was harmless beyond a reasonable

⁴ RCW 9.95.210(1)(a) reads, in relevant part, that "in granting probation, the superior court may suspend the imposition or the execution of the sentence and may direct that the suspension may continue upon such conditions and for such time as it shall designate, not exceeding the maximum term of sentence or two years, whichever is longer."

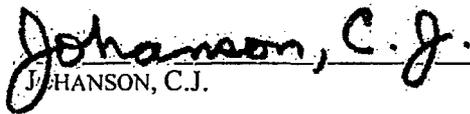
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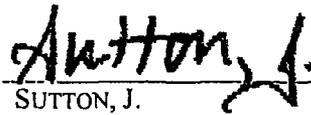
doubt. We remand this matter to the sentencing court with orders to vacate the gross misdemeanor conditions of probation.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.


BJORGE, J.

We concur:


JOHANSON, C.J.


SUTTON, J.

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON)	
)	
Respondent,)	
)	SUPREME COURT NO. _____
v.)	COA NO. 45203-1-II
)	
ANTHONY CLARK,)	
)	
Petitioner.)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 3RD DAY OF DECEMBER 2015, I CAUSED A TRUE AND CORRECT COPY OF THE **PETITION FOR REVIEW** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] ANTHONY CLARK
DOC NO. 365895
WASHINGTON CORRECTIONS CENTER
P.O. BOX 900
SHELTON, WA 98584

SIGNED IN SEATTLE WASHINGTON, THIS 3RD DAY OF DECEMBER 2015.

X *Patrick Mayovsky*

NIELSEN, BROMAN & KOCH, PLLC

December 03, 2015 - 3:32 PM

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