
IN THE COURT OF APPEALS OF THE STATE OF OREGON

STATE OF OREGON, Plaintiff-Respondent, v. RUSSELL BOYD MCCORMACK, Defendant-Appellant.	Wasco County Circuit Court Case No. 19CR36453 CA A173714 (Control)
STATE OF OREGON, Plaintiff-Respondent, v. STEVEN DELROY SENTER JR, Defendant-Appellant.	Wasco County Circuit Court Case No. 19CR36463 CA A173715

APPELLANT'S OPENING BRIEF AND EXCERPT OF RECORD

Appeal from the Judgment of the Circuit Court
for Wasco County
Honorable Janet L. Stauffer, Judge

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APPELLANT'S OPENING BRIEF

STATEMENT OF THE CASE

Nature of the Proceeding

Article III of the Treaty with the Nez Perces, June 11, 1855, 12 Stat 957 (“Nez Perce Treaty”), preserves the right of the members of the Nez Perce Tribe to fish at “usual and accustomed” places on the Columbia River free from all state regulation save that necessary for the conservation of a fish species. In this consolidated criminal appeal, Russell McCormack and Steven Senter, Jr., (defendants) ask this court to reverse their convictions because the state failed to establish that the gillnet prohibition contained in OAR 635-041-0025(3) is necessary for conservation.

The state charged each defendant with a single count of unlawfully taking food fish, ORS 509.006. *A173714 Complaint*, ER-1; *A173715 Complaint*, ER-2.

Nature of the Judgment

After the trial court denied defendants’ motion to dismiss, defendants waived their right to a jury and consented to a stipulated-facts trial. The court found defendants guilty as charged.

The court sentenced McCormack to 12 months' probation and imposed a \$250 fine. *A173714 Judgment*, ER 3-5. The court sentenced Senter to 12 months' probation and imposed a \$625 compensatory fine. *A173715 Judgment*, ER 6-8.

Jurisdiction

This court has jurisdiction pursuant to ORS 138.035.

Notice of Appeal

Defendants timely filed notices of appeal on March 23, 2020, from the judgments entered in Wasco County Circuit Court on February 28, 2020.

Question Presented

Article III of the Nez Perce Treaty reserves the right of the Nez Perce people to fish at their ancestral fishing sites. The State of Oregon lacks the authority to regulate the manner of treaty fishing in those areas, unless the state establishes that a given regulation is necessary for the conservation of a species. Oregon generally prohibits treaty fishers from using gillnets to fish for subsistence purposes. Did the state establish that that prohibition is necessary for conservation, such that the state could enforce the regulation against members of the Nez Perce Tribe?

Summary of Argument

The State of Oregon may regulate the manner in which members of the Nez Perce Tribe exercise their treaty right to fish only if it can show that the regulation is the least restrictive means of ensuring the necessary escapement of fish for conservation purpose (*i.e.*, that sufficient fish escape the efforts of fishers to reproduce in healthy numbers). Here, the state charged defendants with the crime of unlawfully taking food fish because they used gillnets while engaging in subsistence fishing,¹ an act prohibited by OAR 635-041-0025(3). But, because defendants are members of the Nez Perce Tribe, the state had the burden to prove that that prohibition on the use of gillnets for subsistence fishing is the “least restrictive means” of ensuring the necessary escapement of fish for conservation purpose.

The state failed to carry that burden. Under a joint management agreement adopted by a federal court order, the Nez Perce Tribe and other treaty tribes² have the right to a specific allotment of harvestable fish. The state

¹ Oregon law defines “subsistence fishing” to mean “taking fish for Indians’ personal use, including the sale or exchange with other treaty Indians, but not sale or trade with non-Indians.” OAR 635-041-0010(5).

² The joint management agreement uses the term “Columbia River Treaty Tribes” to mean the Confederated Tribes of the Warm Springs Reservation of Oregon, the Confederated Tribes of the Umatilla Indian Reservation, the Nez Perce Tribe, and the Confederated Tribes and Bands of the Yakama Nation. TCF 142. Defendants use that phrase, or simply “treaty tribes,” to refer to the same.

presented no evidence that the treaty tribes have exceeded that allotment recently or at any time in the past. The state presented no evidence that the conservation measures enacted by the Nez Perce Tribe itself were insufficient to keep tribal members within the harvest allotment. The state presented no evidence that defendants' actions violated fishing regulations promulgated by the Nez Perce Tribe. Given that lack of evidence, the state failed to prove that there was a conservation necessity for imposing a gillnet prohibition on Nez Perce subsistence fishers. So long as the treaty tribes remain within their harvest allotment, there is no need for Oregon to regulate the means by which tribal members go about catching the fish that they have a right to harvest.

An expert witness called by the state testified to three general facts: (1) gillnets are capable of catching large amounts of fish in a short time; (2) gillnets are particularly effective where fish congregate; and (3) fish congregate near fish ladders in order to navigate around dams. At most, those assertions support an argument that there might be a need to prohibit gillnets *near fish ladders*. But the issue presented in this case is not whether a gillnet prohibition is necessary near fish ladders, it is whether a general prohibition on subsistence gillnetting is necessary.

In short, the state failed to establish that a general prohibition on the use of gillnets by subsistence fishers is the least restrictive means of ensuring that the treaty tribes do not exceed their allotment of harvestable fish. Accordingly,

the state failed to establish that it had the authority to prohibit the defendants from using gillnets. Thus, the trial court erred when it denied defendants' motion to dismiss and when it entered convictions against defendants.

Summary of Facts³

Evidence from Motion Hearing

Defendants are both enrolled members of the Nez Perce Tribe. Tr 12, 31. The state stipulated that all relevant events occurred at a “usual and accustomed” fishing site on the Columbia River. Tr 12, 31.

On the morning of May 16, 2019, defendants were fishing with gillnets near The Dalles Dam on the south bank of the Columbia River, between Covington Point and the mouth of 15 Mile Creek. Tr 42, 44. That location is within Zone 6.⁴ Tr 42, 44. At the time, spring-run Chinook salmon were migrating. Tr 103.

³ Defendants cite to the transcript filed in A173714 throughout their brief.

⁴ Zone 6 is the portion of the Columbia River between the Bonneville Dam and the McNary Dam. It is one of the primary places where the Confederated Tribes of Warm Springs, the Confederated Tribes of the Umatilla Indian Reservation, the Nez Perce Tribe, and the Confederated Tribes and Bands of the Yakama Nation each reserved by treaty “the right of taking fish at all usual and accustomed places in common with citizens of the territory.” Tr 39, 79.

A gillnet is a mesh net sized to the specific species a fisher desires to catch. Tr 81; *see also* Josh Stellmon, *Under the Guise of “Treaty Rights”: the Nez Perce Tribe of Idaho, Steelhead, and Gillnetting*, 29 Pub Land & Resources L Rev 63, 64 (2008) (describing gillnets). The nets are constructed so that a fish is able to get its head and gills through the net, but not its body. Tr 81. When the fish attempts to back out of this trap, its gills become caught in the net. Tr 81. McCormack’s net was 32 feet long by 11 feet deep, with eight-inch mesh. Tr 61. Senter’s net was 42 ½ feet long by 17 ½ feet deep, with seven-and-a-half inch mesh. Tr 61. Where the nets were positioned, the river is several hundred feet wide. Tr 65.

Oregon State Police Fish and Wildlife Division Senior Troopers Craig Gunderson, Brent Ocheskey, and Justin Frazier cited defendants for fishing with gillnets and seized the nets. Tr 60. Senter told the troopers that they had been fishing with hoop nets earlier in the week with little success, so they switched to gillnets. Tr 63.

Tucker Jones, the Ocean Salmon and Columbia River Program Manager for Oregon’s Department of Fish and Wildlife, testified regarding Oregon’s subsistence-fishing regulations. Tr 77. He has a master’s degree in fisheries and aquatic sciences and a bachelor’s degree in biology. Tr 78. He has worked in fisheries since 2001 in a “professional capacity,” and in lower level technical jobs since 1997. Tr 78.

Jones explained that “salmon are an anadromous fish, so they spawn in headwater streams; they migrate out to the ocean as juveniles. They spend a portion of time there, and then they return as adults to their natal streams.”

Tr 86. Prior to reaching the treaty fisheries in Zone 6, salmon must survive the journey from the Pacific Ocean to Bonneville Dam. Tr 90. The stretch of river between Astoria and the Bonneville Dam contains Zones 1 through 5. Tr 90. Those five commercial fishery zones are non-treaty fisheries. Tr 90.

A joint fisheries management agreement—negotiated by Oregon, Washington, the federal government, and the Columbia River treaty tribes—sets the number of harvestable fish that are allotted to treaty and non-treaty fishers. Tr 105. Exceeding those allotment numbers would impede species recovery. Tr 105. A harvest report published by the Oregon and Washington Departments of Fish and Wildlife concluded that the treaty tribes were within their harvest allotment for spring-run Chinook salmon in 2019. Tr 103-04; Ex 101 at 50. Jones was not aware of any instance where fishing by treaty fishers impeded the recovery of any fish population. Tr 105-06.

Jones summarized some the applicable fishing regulations enacted by the State of Oregon and applicable to Zone 6. So long as the fishing gear is actively attended, “[t]reaty subsistence fishing is open year-round” and at all times of day. Tr 79, 87-88; *accord* OAR 635-041-0015. “Subsistence fishing can occur * * * on platforms, hook-and-line gear is allowed, as are hoop nets

and bag nets up to about 26 feet in circumference.” Tr 80. There is no limit on the number of fish a treaty fisher can catch with subsistence gear on a given day. Tr 87.

Gillnets are allowed for commercial fishing by treaty fishers, but commercial fishing is limited to specific dates and locations. Tr 80-81. The specific area where defendants were fishing is open to subsistence fishing, but it is never open to commercial fishing because fish congregate there in large numbers so that they can ascend the fish ladder that allows them to move around The Dalles Dam. Tr 82-83, 92. Jones explained that “gillnets have the capacity to catch a tremendous amount of fish in a short amount of time, where subsistence gears * * * generally do not have that capacity.” Tr 83. If a gillnet were “left too long or unattended or just an unlucky swarm of fish came through in a very short amount of time, you could catch a high amount of fish.” Tr 85. For that reason, Jones believes that the prohibition on gillnets at that location is a necessary conservation regulation. Tr 85, 87, 108. He also testified more generally that all of the “current regulations of the treaty Indian fishery in Zone 6 are necessary to * * * prohibit impeding recovery of” fish stocks. Tr 108.

Finally, Jones acknowledged that there are many threats to Columbia River species aside from fishing. Indeed, the greatest threat to the survival of anadromous fish in the Columbia River is the federal dam system. Tr 109-10.

Among other threats are habitat loss and various land-use activities that effect the river via run off or changes in water temperature. Tr 105, 110-15.

Stipulated-Facts Trial

McCormack orally stipulated that the state would be able to produce the same evidence produced during the motion hearing. Tr 149-50. Additionally, he stipulated to the admissibility of Gunderson's police report, admitted as State's Exhibit 1. Tr 150. Senter filed written stipulations to the same. A173715 TCF 190.

FIRST ASSIGNMENT OF ERROR

The trial court erred when it ruled that Oregon's prohibition on the use of gillnets for subsistence treaty fishing could be enforced against defendants.

SECOND ASSIGNMENT OF ERROR

The trial court erred when it denied McCormack's motion to dismiss.

THIRD ASSIGNMENT OF ERROR

The trial court erred when it denied Senter's motion to dismiss.

FOURTH ASSIGNMENT OF ERROR

The trial court erred when it entered a conviction for the unlawful taking of food fish against McCormack.

FIFTH ASSIGNMENT OF ERROR

The trial court erred when it entered a conviction for the unlawful taking of food fish against Senter.

Combined Preservation of Error

On appeal, defendants argue that the state failed to establish that Oregon's gillnet prohibition for subsistence fishing is a permissible restriction on the fishing rights retained by the Nez Perce Tribe. For that reason, the state lacked the authority to enforce that restriction against defendants, and the court erred by entering convictions premised on that restriction. Defendants preserved that argument in a pretrial motion to dismiss and in closing arguments during the stipulated-facts trial.

Both defendants filed substantively identical pretrial motions giving notice of tribal enrollment and asking the court to dismiss the cases because of a lack of jurisdiction. TCF 23.⁵ Defendants argued that the state could not enforce its gillnet prohibition against enrolled members of the Nez Perce Tribe without establishing “(1) that the regulation is a reasonable and necessary conservation measure; (2) the application of the specific regulation to treaty

⁵ Because both defendants filed substantively identical motions and the state filed substantively identical responses, unless specifically stated otherwise, defendants cite only to the trial court record in A173714.

fishers is necessary in the interest of conservation; and (3) the regulation does not discriminate against treaty fishers.” TCF 26, 31 (citing *State v. Warner Jim*, 81 Or App 177, 181, 725 P2d 365 (1986)). In its written response, the state argued that the state would be able to establish through witness testimony that Oregon’s gillnet prohibition for subsistence treaty fishers satisfied the conservation-necessity test.⁶ TCF 63-66. During oral argument, the parties reiterated their written arguments. Tr 26-27, 29, 32, 118, 128-36, 140-44.

⁶ Below, the parties disputed whether the defendants’ fishing rights under the Nez Perce Treaty presented an issue of subject-matter jurisdiction, personal jurisdiction, or simply a legal defense to prosecution. TCF 23-26, 54-57. That dispute is not surprising as it remains an open question in Oregon, and other states are split. Compare *State v. Peterson*, 98 Wis 2d 487, 495, 297 NW2d 52 (Ct App 1980) (“[The] reasonableness and necessity of enforcing a regulation against Indian fishermen is an element of subject matter jurisdiction * * *”) with *State v. Jim*, 173 Wash 2d 672, 680 n 2, 273 P3d 434 (2012) (explaining that a treaty defense “is an issue for trial, not a question of jurisdiction.”). This court has made statements that point in both directions. See *State v. Watters, Jr.*, 211 Or App 628, 638-39, 156 P3d 145 (2007), *rev den*, 343 Or 186 (2007) (noting that the defendant’s “status as a tribal member constituted a possible defense to the game offenses” but addressed the issue in the context of a demurrer); *Warner Jim*, 81 Or App at 183 n 6 (noting that presenting a treaty defense to the jury would be “an odd way to resolve what has been characterized as a jurisdictional question for the court”); *State v. Smith*, 51 Or App 223, 227, 625 P2d 1321 (1981), *rev den*, 291 Or 118 (1981) (explaining that the defendant’s argument that the court lacked subject-matter jurisdiction due to treaty fishing rights “confuses matters of jurisdiction with matters of defense”).

The trial court denied defendants’ motions to dismiss, finding that the conservation-necessity doctrine was satisfied:

“THE COURT: All right. I’m not going to dismiss the case. I am going to find that the evidence by the witnesses today did show the reasonable necessity for conservation.

“The proof put on by both of the witnesses that testified, I think it made it pretty clear that it is necessary in this very small area of the Columbia River, where the fish have to congregate in order to get back home and where they do congregate in high numbers; and thus, if gill nets are used in particular, high numbers are caught.

“I think [the prosecutor’s] parallel description of hunting tags versus catch is a good—is a really good description, very visual for me anyway, of even though they hadn’t met their bag limits—I’ll call them bag limits, probably not a native term.

“That the reason for the regulation is not that they hit their bag limits but that with this regulation in place, granted it makes the fishing a little bit more difficult in that area. However, the species are hopefully controlled and not imperiled by gill nets in this area.

This court need not delve into those murky waters in this case. *See State v. Bruce Jim*, 81 Or App 189, 191 n 2, 725 P2d 372 (1986) (“[The] [d]efendant raises the same issue in two ways. First, he challenges the state’s jurisdiction. Second, he raises a treaty defense. The analysis in both cases is the same.”). Despite their disagreement as to the proper framing of legal issue presented, the parties did agree on the applicable legal test—the conservation-necessity standard. Tr 20-21, 30. Moreover, the trial court applied that test and ruled on the merits. Tr 20-21, 144-47. The conservation-necessity standard was the proper and dispositive legal test in this case. Therefore, at least in the context of this case, the framing of the issue as a matter of jurisdiction or as a legal defense is largely academic. Even if some cases involving treaty rights could require factfinding by a jury, the issue in this case—whether Oregon established its authority to prohibit the use of gillnets by subsistence fishers—is a question of law to be decided by the court. *Warner Jim*, 81 Or App at 184.

“As far as the least restrictive means, the tribes are still allowed to fish in this area. They’re still allowed to fish by several different means at all times. It is just this type of fishing that is extremely deadly to the congregated fish in this area that meets the requirements.

“It is, I think, the least restrictive way to deal with it and still allow tribal fishing in the area. It doesn’t discriminate against the treaty fishers. They’re still allowed to fish there. Other people are not.

“They are still allowed to fish day and night by multiple means, and it doesn’t discriminate against the tribes or the tribal fishers by any means.

“I’m finding this by preponderance of the evidence, by the way. So if I’m applying the wrong burden, then my decision’s going to go out the window when it hits the Court of Appeals.

“The evidence was strong enough for preponderance of the evidence. I don’t think it would have been strong enough for beyond a reasonable doubt.

“The fact that the tribes haven’t and in the past have not reported catches that met the quotas is not important in this decision because they probably haven’t—they could have met that quota in two days of fishing in gill nets if every member of the Nez Perce tribe was there stretching nets across that area. Would have designated the fish and it would have probably met their quotas.

“Are there other findings that I need to make?

“[PROSECUTOR:] Yes, Your Honor. I’d ask the Court to make, then, a specific finding that this specific regulation is required to prevent a demonstrable harm to actual conservation.

“THE COURT: Based on Mr. Jones’ testimony, I would make that finding.

“[PROSECUTOR:] And that it is essential to the perpetration of a particular run or species of fish.

“THE COURT: It is essential to the spring runs of the salmon for that reason.

“[PROSECUTOR:] So it’s the spring Chinook run that the Court is finding it on?

“THE COURT: The salmon.”

Tr 144-47.

Following the trial court’s ruling, defendants consented to a stipulated-facts trial. During closing arguments, defendants again argued that the Nez Perce Treaty provided a defense against conviction:

“[DEFENSE COUNSEL:] Just for purposes of appellate record, we are continuing our objection to this due to the legal issue of conservation necessity, understanding the Court’s prior ruling.

“Just to reiterate, we do not believe that this regulation is conservation necessity as applied to these tribal treaty fishermen, who were fishing pursuant to their tribe’s regulations for that area and time.

“And again, we just feel the State has not met its burden under the case law, federal law cited in my motion, and I just incorporate my motion for the jurisdictional argument and then also the argument I gave at the end of that motion hearing into my closing.”

Tr 155. *See, e.g., State v. Gonzalez*, 188 Or App 430, 431, 71 P3d 573 (2003)

(stating that a challenge to the sufficiency of the evidence made during closing argument in a bench trial “is the equivalent of a motion for judgment of acquittal”).

The court returned a verdict of guilty as to both defendants:

“[THE COURT:] Probably no surprise here, I will find both of you guilty as alleged in your citations and as proven today.”

Tr 156.

Combined Standard of Review

Whether the state has the authority to regulate treaty-protected fishing rights is an issue of law. *Warner Jim*, 81 Or App at 184. This court is “bound by the trial court’s findings of historical fact if there is evidence in the record to support them.”⁷ *State v. Jordan*, 308 Or App 547, 552, ___ P3d ___ (2021).

Combined Argument

Under the Supremacy Clause,⁸ states lack the power to restrict or regulate the exercise of a treaty right, except when necessary for conservation.

⁷ When faced with an issue of federal law, this court is entitled to apply the state standard of review “unless doing so would necessarily lead to a different substantive outcome than would otherwise be reached in federal court.” *Northwest Steelheaders Ass’n, Inc. v. Simantel*, 199 Or App 471, 479 n 8, 112 P3d 383, *rev den*, 339 Or 407 (2005). Under federal law, the trial court’s findings of fact would be reviewed for “clear error.” *United States v. Gainza*, 982 F3d 762, 765 (9th Cir 2020); *see United States v. State of Oregon*, 769 F2d 1410, 1417 (9th Cir 1985) (applying that standard in the context of the conservation-necessity doctrine). “Clear error exists only when the court is left with a ‘definite and firm conviction that a mistake has been committed.’” *Gainza*, 982 F3d at 765.

⁸ The Supremacy Clause provides as follows:

“This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.”

US Const, Art VI, para 2.

See Washington v. Washington State Commercial Passenger Fishing Vessel Ass’n, 443 US 658, 682, 99 S Ct 3055, 61 L Ed 2d 823, *modified sub nom Washington v. United States*, 444 US 816 (1979) (“[T]reaty fishermen are immune from all regulation save that required for conservation.”). By treaty, the members of the Nez Perce Tribe retain the right to fish at the “usual and accustomed” fishing sites of their ancestors. Nez Perce Treaty at Art III. The State of Oregon may regulate that right only when it establishes, among other things, that its regulation is the least restrictive means of ensuring the conservation of a fish species. *Sohappy v. Smith*, 302 F Supp 899, 907-08 (D Or 1969) (*Sohappy I*).

In this case, the state attempted to prove that Oregon’s prohibition on the use of gillnets for subsistence fishers meets the conservation-necessity standard. But the relatively brief testimony by a single fisheries manager was not sufficient to carry the state’s heavy burden. Given the complex nature of fisheries management and treaty-based fishing rights,⁹ its doubtful such a scant record could ever be enough to meet the standard. But in this case specifically, the content of the expert’s testimony was simply insufficient to support the trial

⁹ Describing the extensive litigation over treaty-based fishing rights in Washington, the Ninth Circuit has repeatedly said, “We cannot think of a more comprehensive and complex case than this.” *Upper Skagit Indian Tribe v. Washington*, 590 F3d 1020, 1022 (9th Cir 2010) (quoting *United States v. Suquamish Indian Tribe*, 901 F2d 772, 775 (9th Cir 1990)).

court's conclusion that Oregon's gillnet prohibition satisfied the "least-restrictive means" standard. Because the state failed to establish that its regulation was a valid restriction on defendants' treaty right to fish, the court erred when it denied defendants' motions to dismiss and entered convictions against defendants.

I. This case presents but one episode in a decades-long dispute concerning Oregon's authority to restrict treaty fishing rights in the Columbia River.

Since time immemorial, the Nez Perce people, the Nimi'ipuu, have fished the Columbia River and its tributaries. K. Heidi Gudgell, et al., *The Nez Perce Tribe's Perspective on the Settlement of Its Water Right Claims in the Snake River Basin Adjudication*, 42 Idaho L Rev 563, 564 (2006). "Nez Perce culture and subsistence activities revolved around the fish * * * and water." *Id.* at 567. Fish made up roughly one-half of their total food supply.¹⁰ *Id.* at 565. Thus, in 1855, when the Nez Perce agreed to cede 7.5 million acres of land to the United States Government, they elected to retain their right to fish at their traditional off-reservation fishing sites:

"The exclusive right of taking fish in all the streams where running through or bordering said reservation is further secured to

¹⁰ Today, it is estimated that members of the Nez Perce Tribe catch less than 1% of the fish that they caught prior to 1855. Nez Perce Tribe Dept of Fisheries Resources Management, *Management Plan: 2013-2028* at 44, available at <https://nezperce.org/wp-content/uploads/2020/09/DFRM-Management-Plan-2013-2028.pdf> (last accessed Feb 22, 2021).

said Indians; as also *the right of taking fish at all usual and accustomed places in common with citizens of the Territory* * * *.”

Nez Perce Treaty at Art. III (emphasis added).

The Nez Perce were not alone in reserving that right. Substantially identical provisions appear in treaties with the Confederated Tribes of Warm Springs, the Confederated Tribes of the Umatilla Indian Reservation, and the Confederated Tribes and Bands of the Yakama Nation. Laura Berg, *Let Them Do as They Have Promised*, 14 Hastings W-NW J Envtl L & Pol’y 311, 311 (2008) (forward by Hon. Robert C. Belloni).

Not long after the treaties were signed, problems arose over the tribes’ off-reservation fishing rights. “From the beginning, American citizens resisted the treaties. They tormented off-reservation Indian fisherman, often violently.” Charles Wilkinson, *The Belloni Decision: A Foundation for the Northwest Fisheries Cases, the National Tribal Sovereignty Movement, and an Understanding of the Rule of Law*, 50 Envtl L 331, 333 (2020). In addition, there was a sharp decline in fish populations:

“As more and more settlers arrived * * * they began to farm, mine, and log the land. These activities diverted water and covered riverbeds with silt which harmed spawning grounds. White commercial fishermen devised mechanical methods of catching vast quantities of salmon. Then came the most damaging change of all, the hydroelectric dams, built to furnish cheap electrical power.

“By the early 1960’s, the number of salmon returning from the Pacific Ocean to the Indians’ upriver fishing sites had so

diminished that the Indians' accustomed usage of the fish resource could not be met. Each year the problem became worse."

Berg, 14 Hastings W-NW J Env'tl L & Pol'y at 311-12. Making matters more difficult, treaty fishers became perennial scapegoats for the sharp drop in fish populations:

"White people put seventeen dams between salmon and their Columbia and Snake river spawning grounds. White people took river water to irrigate their farms and returned it laden with fish-killing fertilizer and pesticides. White people, mostly, logged the forests, grazed cattle on the plains, and built riverside factories, sending silt and pollution into the rivers. White fishermen in the Pacific Ocean caught more than half the Columbia River salmon. So when the river's salmon runs hit a twenty-year low in 1980, white fisherman and white governments naturally blamed the Indians."

Stellmon, 29 Pub Land & Resources L Rev at 64 (quoting Roberta Ulrich, *Empty Nets: Indians, Dams, and the Columbia River* 159 (1999)).

Throughout much of this history, the state governments of Oregon and Washington "took no action to protect the tribes." Berg, 14 Hastings W-NW J Env'tl L & Pol'y at 333-34. Quite the opposite. The states sought to restrict treaty fishing rights:

"[B]oth Oregon and Washington developed a heavy-handed argument that the states' 'police power,' * * * gave them the right to regulate all hunting and fishing * * *. Coupled with that, the states trumpeted their virtually unlimited right to regulate for 'conservation,' claiming that the states, and the states alone, must restrict Indian fishing to preserve the runs. Throughout the early twentieth century, the state agencies increased their crackdowns on Indian fishermen, and state officials and state courts refused to intervene. All the while, * * * there was no evidence that tribal fishermen were over-fishing or wasting fish. By the 1950s and

'60s the state agencies and popular press increasingly referred to Indian fishermen as 'renegades,' 'poachers,' and 'outlaws.'"

Id. at 334.

By the mid-1960s, federal officials were becoming "greatly disturbed" by the rapid increase in the criminal prosecution of treaty fishers by Oregon and Washington prosecutors. Wilkinson, 50 *Envtl L* at 336. In fact, "U.S. Attorneys helped defend treaty fishermen in state criminal prosecutions." Michael C. Blumm & Cari Baermann, *The Belloni Decision and Its Legacy: United States v. Oregon and Its Far-Reaching Effects After A Half-Century*, 50 *Envtl L* 347, 365 (2020).

In the summer of 1968, "as part of the extensive crackdowns by Oregon and Washington fish and game officials on Indian fishing, Oregon officers arrested thirteen Yakama fishermen * * * for fishing on the Columbia River with gillnets contrary to state law." Wilkinson, 50 *Envtl L* at 336. Those individual members of the Yakama Nation filed what would become a groundbreaking federal lawsuit: *Sohappy v. Smith*. Berg, 14 *Hastings W-NW J Env'tl L & Pol'y* at 311-12. "[T]he plaintiffs asked the court to define the treaty fishing right and the extent of Oregon's regulatory authority over Indian fishing." *Id.* at 316-17. About the same time, the United States filed a lawsuit against State of Oregon to ensure that treaty fishers were able to catch "a fair and equitable share of the salmon and steelhead destined to reach the Indians'

‘usual and accustomed ‘fishing places.’” *Id.* at 311-12. The Nez Perce Tribe and other treaty tribes immediately intervened as plaintiffs alongside the United States. *Id.*

As discussed below, the declaratory judgment issued in those cases defined the treaty fishing rights retained by the treaty tribes and the extent to which Oregon could regulate those rights. *Sohappy v. Smith*, 529 F2d 570, 571 (9th Cir 1976) (*Sohappy II*). The district court retained continuing jurisdiction over the disputes between Oregon, the United States government, and the treaty tribes. *Sohappy I*, 302 F Supp at 911. In the years that followed, the district court ordered the parties to cooperate on developing a comprehensive fisheries management plan. Blumm, 50 Env'tl L at 374. Most recently, in March 2018, the court approved the “2018-2027 *United States v. Oregon* Management Agreement” (“Joint Management Agreement”).¹¹ *Id.* at 377.

II. Under *Sohappy I* and *United States v. Oregon*, Oregon may regulate treaty fishing only when it can prove that its regulation is the least restrictive means of accomplishing conservation goals.

“Indian treaties, like [other] international treaties, entered into by the United States are part of the supreme law of the land which the states and their officials are bound to observe.” *Sohappy I*, 302 F Supp at 905; *accord State v. Watters, Jr.*, 211 Or App 628, 637, 156 P3d 145, *rev den*, 343 Or 186 (2007)

¹¹ The Joint Management Agreement can be found at TCF 74-193.

(“[T]he state’s power to regulate wildlife must yield to treaty rights under the Supremacy Clause”). Nonetheless, “the manner of fishing, the size of the take, the restriction of commercial fishing, and the like may be regulated by the State in the interest of conservation, provided the regulation meets appropriate standards and does not discriminate against the Indians.” *Puyallup Tribe et al. v. Department of Game et al.*, 391 US 392, 88 S Ct 1725, 20 L Ed 2d 689 (1968) (*Puyallup I*).

In *Sohappy I*, District Court Judge Robert Belloni applied the general principles announced in *Puyallup I* to the specific treaty provision at issue in this case, defining the limitations on Oregon’s power to regulate treaty fishing rights in the Columbia River and its tributaries.¹² 302 F Supp at 906-07. As relevant here, Judge Belloni declared that Oregon may regulate treaty fishing rights only when it establishes the following:

(1) That the regulation is “the least restrictive [regulation] which can be imposed consistent with assuring the necessary escapement of fish for conservation purposes,” and

¹² That decision, often referred to simply as “the Belloni decision,” and a similar counterpart in Washington by District Court Judge George Boldt, often referred to simply as “the Boldt decision,” were groundbreaking works in the field of federal Indian law. For more on those decisions see Wilkenson, *The Belloni Decision*, 50 Env’tl L at 331; Blumm, *The Belloni Decision and Its Legacy*, 50 Env’tl L at 347; and Berg, *Let Them Do as They Have Promised*, 14 Hastings W-NW J Env’tl L & Pol’y at 311.

(2) The regulation accords treaty fishers an opportunity to take “by reasonable means feasible to them, a fair and equitable share of all [harvestable] fish[.]”

Id. at 907-08, 11 (adopting the plaintiffs’ arguments as the correct statement of the law); *accord United States v. Oregon*, 769 F2d 1410, 1416 (9th Cir 1985) (identifying those requirements among the “standards” that a state regulation must satisfy to restrict a treaty fishing right).

One of the principal tools used for managing most runs of the anadromous fish resources of the Columbia River system is the “escapement goal.” *Sohappy I*, 302 F Supp at 910. That is the estimated number of fish which must escape fishers in order for a sustainable number of fish to spawn in their natal streams and return down the Columbia to the Pacific Ocean. *Id.* In establishing the escapement goal, biologists consider the losses which will occur from all causes, including natural causes, losses at dams and the sport catch upstream and in Columbia River tributaries in Oregon, Washington and Idaho. *Id.* “Harvestable fish” are those fish that exceed the escapement goal. *Id.* In a later decision, the Judge Belloni defined an “equitable share” of harvestable fish to mean that the treaty tribes have the right to 50 percent of the harvestable spring Chinook Salmon run destined to reach the tribes’ usual and accustomed grounds and stations. *Sohappy II*, 529 F2d at 570.

In this case, defendants primarily argue that the state failed to meet the first requirement. Yet it is imperative to remember that the Nez Perce Tribe

must always be afforded to right to take its share of harvestable fish “by reasonable means feasible to them.”

Three principles demonstrate the high bar set by the least-restrictive-means standard. First, the term “conservation” is used “narrowly” to encompass “only those [measures] that are necessary for the perpetuation of a species.” *State v. Bruce Jim*, 81 Or App 189, 193, 725 P2d 372 (1986). “[T]he state must show there is a need to limit the taking of fish and that the particular regulation sought to be imposed upon the exercise of the treaty right is necessary to the accomplishment of the needed limitation.” *Sohappy I*, 302 F Supp at 908-09.

Second, “the state must demonstrate that the tribe’s own conservation measures are insufficient to meet the needs of conservation.” *Shoshone-Bannock Tribes v. Fish & Game Comm’n, Idaho*, 42 F3d 1278, 1283 (9th Cir 1994); accord *United States v. Washington*, 520 F2d 676, 686 (9th Cir 1975) (“[R]egulatory interference by the state with treaty fishing is obnoxious to the treaty tribes. These tribes have the power to regulate their own members * * *

*. So long as the tribes responsibly [e]nsure that the run of each species in each stream is preserved, the legitimate conservation interests of the state are not infringed.”); *Settler v. Lameer*, 507 F2d 231, 237 (9th Cir 1974) (“The Tribe has the authority to regulate the exercise of the fishing rights it retained at ‘all usual and accustomed places,’ even those off the reservation.”).

Finally, the state must establish that its conservation goals cannot be accomplished by regulating non-treaty fishers alone:

“The state must pursue its goals as best it can by regulating its own non-treaty Indian citizens. * * * Direct regulation of treaty Indian fishing in the interests of conservation is permissible only after the state has proved unable to preserve a run by forbidding the catching of fish by other citizens under its ordinary police power jurisdiction.”

Washington, 520 F2d at 686; *accord Bruce Jim*, 81 Or App at 195 (“The state must show * * * that restriction of the sale of deer by non-treaty hunters is insufficient to accomplish conservation of the resource.”).

III. The state failed to produce sufficient evidence that a general prohibition on the use of gillnets for treaty subsistence fishing is the least restrictive means of ensuring the necessary escapement of fish for conservation purposes.

The state charged both defendants with the crime of unlawfully taking food fish:

“It is unlawful to take, possess, buy, sell or otherwise handle any food fish in or from any waters of this state, during times, in a manner or by means of the fishing gear prohibited by law.”

ORS 509.006. “Take” means to “fish for, hunt, pursue, catch, capture or kill or attempt to fish for, hunt, pursue, catch, capture or kill.” ORS 506.006(12); *see* ORS 509.001 (incorporating the definition in ORS 506.006(12) to ORS 509.001 *et seq*). The state’s theory was that defendants took food fish using fishing gear that was “prohibited by law.” To identify that prohibited fishing gear, the state

pointed OAR 635-041-0025, which purports to regulate the manner in which treaty fishers may engage in subsistence fishing:

“(1) It is lawful at all times to take fish for subsistence purposes by dip net or bag net of a mesh size not exceeding five inches attached to a hoop 26 feet or less in circumference, or by spear, gaff, club, or fouling-hook. All such fishing gear must be tended at all times. The owner’s tribal affiliation and enrollment number must be either placed on the upper side of the hoop, or on a tag attached to the hoop, pole, or cable.

“(2) It is lawful to use angling gear as defined by the Oregon Wildlife Laws and regulations of the Department.

“(3) It is *unlawful* to use gill nets, set nets, hoop nets, setlines, or dip nets or bag nets of a mesh size exceeding five inches, or any other type of fishing gear not otherwise specifically authorized in section (1) of this rule, except during the times and in the areas where such gear is authorized for commercial fishing.

“* * * * *

“(4) Notwithstanding the provisions of this rule a treaty subsistence fishing season with gillnets for salmon may occur provided rules for ceremonial fishing and notice requirement (OAR 635-041-0040) are followed.”

OAR 635-041-0025 (emphasis in original). That regulation sets out a general ban on the use of gillnets for subsistence fishers, unless the fishers also comply with commercial or ceremonial fishing regulations.

Before analyzing the evidence produced by the state below, it is important to highlight evidence that the state did *not* produce. First, the state made little, if any, effort to establish that the general prohibition described in OAR 635-041-0025(3) was necessary for conservation. Instead, the thrust of

the state's evidence was aimed at the effect of gillnets near fish ladders or other areas where fish congregate. The problem, of course, is that the legal issue presented was whether OAR 635-041-0025(3) was a permissible restriction of the treaty rights retained by the Nez Perce Tribe, not whether it was advisable to prohibit the use of gillnets in specific locations. *See Bruce Jim*, 81 Or App at 194 (“When the state seeks to enforce a hunting regulation against treaty Indians in ceded areas, the burden is on the state to establish that *its regulation* is valid * * *.”) (emphasis added). OAR 635-041-0025(3) applies irrespective of location, and the prosecution agreed that defendants were cited based on the gear they were using and not based on their location. Tr 16-17.

Second, the Joint Management Agreement currently in effect—having been negotiated by the parties in *United States v. Oregon* and approved of by a federal court—sets the allotment of harvestable fish that the treaty tribes have a legal right to harvest. *See* TCF 161 (containing the harvest-rate schedule for spring Chinook). The state presented absolutely no evidence that the treaty tribes have exceeded that allotment recently or at any time in the past.

Third, the state presented no evidence that the conservation measures enacted by the Nez Perce Tribe were insufficient to keep tribal members within the harvest allotment.

Fourth, the state presented no evidence that defendants' actions violated fishing regulations promulgated by the Nez Perce Tribe itself.¹³

Finally, the state presented no evidence that the conservation goal served by the gillnet prohibition could not be accomplished by applying further regulation to non-treaty fishers.

The state's failure to produce the above categories of evidence makes it extremely difficult, if not impossible, to conclude there was a conservation necessity for imposing a gillnet prohibition on Nez Perce subsistence fishers. When the state fails to show that the treaty tribes are exceeding their harvest allotment, there is no justification for Oregon to micromanage the means by

¹³ The state presented a portion of the Nez Perce Code that defines the term "gillnet," but it presented no evidence that the Nez Perce Code prohibited defendants' use of gillnets for subsistence purposes. Tr 136; TCF 62. In an affidavit, defense counsel presented evidence that defendants were not in violation of Nez Perce law. TCF 36.

The state also argued that the Joint Management Agreement indicates the assent of the Nez Perce Tribe to be bound by Oregon fishing regulations. Tr 130-35; TCF 59-62. But the agreement does not include such an assent explicitly, and, in section B.3 of the agreement, the treaty tribes specifically express the position that their treaty fishing rights can be limited only as allowed by the conservation-necessity doctrine:

"The Columbia River Treaty Tribes maintain that tribal fisheries are subject to limitations only under the conservation necessity standards in federal case law, including case law governing the *United States v. Oregon* litigation. Other Parties, including the States, disagree."

TCF 82.

with tribal members go about catching the harvestable fish that they have a right to harvest. *See Washington*, 520 F2d at 683 (“The state may not regulate treaty Indians’ taking of this harvestable run at their ‘usual and accustomed grounds and stations’ unless necessary to limit them to 50 percent of the harvest at those grounds.”). Unless and until the state establish that the Nez Perce Tribe is failing to do its part to keep its harvest numbers in check, there is no basis to find that Oregon’s restriction of the Nez Perce Tribe’s treaty right is necessary.

The testimony of Jones, the fisheries manager, does nothing to change that conclusion. Jones’s testimony regarding gillnetting can be effectively summed up as three assertions:

- Gillnets are capable of catching large amounts of fish in a short time;
- Gillnets are particularly effective where fish congregate; and
- Fish congregate near fish ladders in order to navigate around dams.

As stated above, those assertions appear to be an effort to demonstrate that there is a need to prohibit gillnets *near fish ladders*. But the issue is not whether a gillnet prohibition is necessary near fish ladders, it is whether the prohibition on subsistence gillnetting set out in OAR 635-041-0025(3) is necessary. And even if the issue were the necessity of prohibiting gillnets near fishing ladders, the state’s evidence does not establish that such a prohibition is “the least restrictive [regulation] which can be imposed consistent with assuring the necessary

escapement of fish for conservation purposes.” *Sohappy I*, 302 F Supp at 907-08.

Below, the trial court’s ruling was largely based on the fact that defendants were using gillnets near a fish ladder:

“[THE COURT:] The [testimony] made it pretty clear that it is necessary [to prohibit gillnets] in *this very small area* of the Columbia River, *where the fish have to congregate* in order to get back home and *where they do congregate in high numbers*; and thus, if gill nets are used in particular, high numbers are caught.

“* * * * *

“That the reason for the regulation is not that they hit their bag limits but that with this regulation in place, granted it makes the fishing a little bit more difficult in that area. However, the species are hopefully controlled and not imperiled by gill nets *in this area*.

“As far as the least restrictive means, the tribes are still allowed to fish *in this area*. They’re still allowed to fish by several different means at all times. It is just this type of fishing that is extremely deadly *to the congregated fish in this area* that meets the requirements.”

Tr 144-45 (emphasis added). Again, that is the wrong focus. Additionally, the court reasoned that state regulation may have been the reason for the tribes’ compliance with the harvest allotments:

“The fact that the tribes haven’t and in the past have not reported catches that met the quotas is not important in this decision because they probably haven’t—they could have met that quota in two days of fishing in gill nets if every member of the Nez Perce tribe was there stretching nets across that area. Would have designated the fish and it would have probably met their quotas.”

Tr 146. But the trial court's reasoning was based on nothing more than speculation. There is no evidence as to what role, if any, Oregon's gillnet restriction has played in keeping treaty tribes within their harvest allotment. Nor is there any evidence to suggest that the Nez Perce Tribe is not currently preventing its members from overfishing in other ways. The trial court simply assumed that it was Oregon law—rather than responsible fisheries management and regulation by the Nez Perce Tribe—that was keeping tribal members within the harvest allotment agreed to by the tribe.

In short, the state failed to establish that the prohibition on the use of gillnets described in OAR 635-041-0025(3) is the least restrictive means of ensuring the treaty tribes do not exceed their allotment of harvestable fish. Perhaps in another case with a much more developed record the state could do so. But the sparse record here was not enough to carry the state's burden. Accordingly, the state failed to establish that it had the authority to enforce that regulation against defendants. Thus, the trial court erred when it denied defendants' motions to dismiss and when it entered convictions against defendants.

CONCLUSION

For the above reasons, this court should reverse defendants' convictions and remand for entry of judgments of acquittal or dismissal of the cases.

Respectfully submitted,

ERNEST G. LANNET
CHIEF DEFENDER
CRIMINAL APPELLATE SECTION
OFFICE OF PUBLIC DEFENSE SERVICES

Signed

By John Evans at 3:25 pm, Mar 10, 2021

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DEPUTY PUBLIC DEFENDER
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Attorneys for Defendant-Appellant
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Senter, Jr.

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OREGON UNIFORM CITATION AND COMPLAINT

Use for All Violations or Crimes Where Separate Complaint Will Not be Filed/ORS 153.045 or 133.069

<input checked="" type="checkbox"/> CRIME(S) (see A below)	OR (Not Both)	<input type="checkbox"/> VIOLATION(S) (see B below)	Type. COMMERCIAL FISHING
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STATE OF OREGON
CITY/OTHER PUBLIC BODY **OREGON STATE POLICE**

COUNTY OF: **WASCO**

Case No.. **SP19171307**

Court **WASCO CO CIRCUIT COURT**

DEFENDANT The undersigned certifies and says that the following person

ID Type **DL** ID No **KA140381E** State ID **Ph.**
Name: Last **MCCORMACK**
First **RUSSELL** MI **BOYD**
Address **1117 SNAKE RIVER AVE**
City **LEWISTON** State **ID** Zip: **83501** Passenger ☐
Sex **M** Race **N** DOB **11/18/1963** Hgt **6'00"** Wgt **205** Hair
Eyes **B** Lic. Exp. **Juv.** ☐ Lic. Class **Emp. to Drive:** ☐

TIME/PLACE

At the following time and place in the above-mentioned state and county

On or About Date/Time **05/16/2019** **10:00 AM**

At or Near
COLUMBIA RIVER

NB ☐ SB ☐ EB ☐ WB ☐ **THE DALLES DAM VISITOR CENTER**

Highway ☐ Premise Open to Public ☒ Other ☐

VEHICLE

Involving the following
Year **Make** **Model**
Color **Type**
Regis/Vin/ID# **State**
Accident: ☐ Prop Damage ☐ Injury ☐ Endanger Other ☐
Com'l Veh. ☐ Haz Mat: ☐ Driver Not Reg Owner ☐
Other **Com'l Pass:** ☐

OFFENSE(S)

Did then and there commit the following offense(s):
HWY Work Zone ☐ School Zone ☐ VBR: ☐ Safety Corridor: ☐
Radar: ☐ Pace ☐ Laser ☐ Other: ☐
Alleged Speed **Designated Speed** **Posted Limit:** ☐

Offense # **509.006**

Warning: ☐ **SUBSTANCE FISHING: GEAR RESTRICTIONS - MISD**

Presumptive Fine1: **MUST APPEAR**
Intentional: ☐ Knowing: ☒ Reckless ☐
Criminal Negligence: ☐ No Culpable Mental State ☐

Offense #

Warning ☐

Presumptive Fine2
Intentional: ☐ Knowing ☐ Reckless ☐
Criminal Negligence: ☐ No Culpable Mental State. ☐

Offense #:

Warning ☐

Presumptive Fine3
Intentional: ☐ Knowing: ☐ Reckless ☐
Criminal Negligence: ☐ No Culpable Mental State: ☐

OTHER

SEIZED: **GILLNET**

Expl..

SIGNATURE

I certify under ORS 153.045 and 153.990 and under other applicable law and under penalties for false swearing, do swear/affirm that I have sufficient grounds to and do believe that the above-mentioned defendant/person committed the above offense(s) and I have served the defendant/person with this complaint.

Signature of Officer

Officer name1 **GUNDERSON, CRAIG. H.**

Officer ID: **36969**

Officer name2:

Officer ID

Agency Name: **OREGON STATE POLICE**

Issue Date **05/16/2019**

YOUR COURT APPEARANCE DATE, TIME AND LOCATION ARE

06/10/2019

08:30 AM

Location: **WASCO CO CIRCUIT COURT**

511 WASHINGTON STREET

THE DALLES

OR 97058

541-506-2700

DMV Use Only

ER - 1

19CR36453

FILED

3021601686

RECORD AND: ☐ CIRCUIT COURT REGISTER ☐ JUSTICE COURT DOCKET

☐ MUNICIPAL COURT DOCKET

HANDLED BY: ☐ VIOLATIONS BUREAU ☐ COURT

BASED ON: ☐ WRITTEN SUBMISSION ☐ APPEARANCE

DATE

EVENT/NOTES **WASCO COUNTY CIRCUIT COURT**

INITIAL

COMPLAINT FILED	
WRITTEN RESPONSE RECEIVED	
ARRAIGNED <input type="checkbox"/> MISD <input type="checkbox"/> 161 566 OR <input type="checkbox"/> VIOL <input type="checkbox"/> 161 568 (REDUCTION)	
SECURITY RELEASE AT \$ RECEIPT NO	
COURT/JURY TRIAL (<input type="checkbox"/> WAIVED)	
CRIMINAL RIGHTS GIVEN	
ATTORNEY OSB# (<input type="checkbox"/> WAIVED)	
WARRANT ORDERED ISSUED	
DIVERSION AGREEMENT	
CONTINUED TO REASON	
<input type="checkbox"/> ORS 135 355 CONDITIONAL PLEA	

THE ATTACHED ADDITIONS TO THIS RECORD/REGISTER ARE INCORPORATED BY REFERENCE, SEE PAGE(S) ☐ 1 (BY _____), ☐ 2 (BY _____),

JUDGMENT OF THE COURT

(SUBMIT ABSTRACT COPY UNDER ORS 153.11)

OFF #	RESPONSE/ PLEA	CHANGE PLEA	FINDING DETERMINATION	OFFENSE SITE	TYPE	CLASS
1	G NG NC FTA		G NG	C A DISM	VM	A B C D OTH
2	G NG NC FTA		G NG	C A DISM	VM	A B C D OTH
3	G NG NC FTA		G NG	C A DISM	VM	A B C D OTH

DISPOSITION ☐ 137 533 DEFERRED SENTENCE ☐ SENT IMP SUS.

☐ DR PRIV SUSP (TIME) CONV.SPD

JAIL

PROBATION/OTHER

THE ATTACHED ADDITIONS TO THIS JUDGMENT ARE INCORPORATED BY REFERENCE, SEE PAGE(S) ☐ 1 (BY _____), ☐ 2 (BY _____), ☐ 3 (BY _____),

MONEY JUDGMENT OFFENSE 1 OFFENSE 2 OFFENSE 3
MONEY OBLIGATION IMPOSE SUSPEND IMPOSE SUSPEND IMPOSE SUSPEND

FINE					
COSTS					
RESTITUTION					
TOTAL					

TOTAL AMOUNT TO PAY THAT IS NOT SUSPENDED (FROM OFFENSES 1,2 AND 3) \$

TERMS OF PAYMENT

☐ ALL MONEYS, INCLUDING SUSPENDED MONEYS, BECOME DUE IMMEDIATELY UNDER ORS 153.090(4) IF NONSUSPENDED MONEYS NOT PAID IN ACCORDANCE WITH TERMS OF PAYMENT

THE ATTACHED ADDITIONS TO THIS MONEY JUDGMENT ARE INCORPORATED BY REFERENCE, SEE PAGE(S) ☐ 1 (BY _____), ☐ 2 (BY _____),

JUDGMENT CREDITOR ☐ STATE OF OREGON ☐ OTHER

JUDGMENT DEBTOR ☐ DEFENDANT ☐ OTHER

DATE SIGNATURE OF ☐ JUDGE (☐ VIOLATIONS CLERK, WHERE ALLOWED)

OREGON UNIFORM CITATION AND COMPLAINT

Use for All Violations or Crimes Where Separate Complaint Will Not be Filed/ORS 153.045 or 133.069

<input checked="" type="checkbox"/> CRIME(S) (see A below)	<input type="checkbox"/> OR (Not Both)	<input type="checkbox"/> VIOLATION(S) (see B below)	Type: COMMERCIAL FISHING
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STATE OF OREGON
CITY/OTHER PUBLIC BODY: **OREGON STATE POLICE**
COUNTY OF **WASCO**
Case No. **SP19171307**
Court **WASCO CO CIRCUIT COURT**

DEFENDANT The undersigned certifies and says that the following person

ID Type **DL** ID No **KA101158E** State **OR** Ph. **208-791-0584**
Name: Last: **SENTER JR**
First: **STEVEN** MI **DELOY**
Address **P.O. BOX 59**
City: **LAPWAI** State: **ID** Zip: **83540** Passenger ☐
Sex: **M** Race: **N** DOB: **05/31/1964** Hgt: **5'9"** Wgt: **190** Hair: **BRO**
Eyes: **BRO** Lic. Exp. Juv.: ☐ Lic. Class Emp. to Drive ☐

TIME/PLACE
At the following time and place in the above-mentioned state and county

On or About Date/Time: **05/16/2019 10:00 AM**
At or Near
COLUMBIA RIVER

TD DAM VISITOR CENTER BELOW
NB: ☐ SB ☐ EB ☐ WB ☐
Highway ☐ Premise Open to Public ☐ Other: ☒

VEHICLE Involving the following

Year: Make: Model:
Color: Type:
Regis/Vin/ID# State:
Accident ☐ Prop. Damage ☐ Injury: ☐ Endanger Other ☐
Com'l Veh ☐ Haz Mat ☐ Driver Not Reg Owner ☐
Other: Com'l Pass: ☐

OFFENSE(S) Did then and there commit the following offense(s)

HWY Work Zone: ☐ School Zone: ☐ VBR: ☐ Safety Corridor: ☐
Radar: ☐ Pace ☐ Laser: ☐ Other: ☐
Alleged Speed. Designated Speed Posted Limit ☐
Offense # **509.006**

SUBSISTENCE FISHING: GEAR RESTRICTIONS -
Warning ☐ **MISD-GILL NET**

Presumptive Fine1 **MUST APPEAR**
Intentional ☐ Knowing ☒ Reckless: ☐
Criminal Negligence: ☐ No Culpable Mental State: ☐

Offense #

Warning ☐

Presumptive Fine2.
Intentional ☐ Knowing: ☐ Reckless: ☐
Criminal Negligence: ☐ No Culpable Mental State: ☐

Offense #.

Warning ☐

Presumptive Fine3
Intentional ☐ Knowing: ☐ Reckless: ☐
Criminal Negligence: ☐ No Culpable Mental State: ☐

OTHER

SEIZED ONE GILLNET, APPROX 30 FT., 5 SALMON 3 RELEASED
Expl.:

SIGNATURE

I certify under ORS 153.045 and 153.990 and under other applicable law and under penalties for false swearing, do swear/affirm that I have sufficient grounds to and do believe that the above-mentioned defendant/person committed the above offense(s) and I have served the defendant/person with this complaint

Signature of Officer 

Officer name1: **FRAZIER, JUSTIN. C.** Officer ID: **39720**
Officer name2: Officer ID

Agency Name **OREGON STATE POLICE**
Issue Date: **05/16/2019**

YOUR COURT APPEARANCE DATE, TIME AND LOCATION ARE

06/10/2019 08:30 AM
Location: **WASCO CO CIRCUIT COURT**
511 WASHINGTON STREET
THE DALLES OR 97058
541-506-2700

DMV Use Only **ER - 2**

19CR36463

RECORD AND: ☐ CIRCUIT COURT REGISTER ☐ JUSTICE COURT DOCKET
☐ MUNICIPAL COURT DOCKET

HANDLED BY: ☐ VIOLATIONS BUREAU ☐ COURT
BASED ON: ☐ WRITTEN SUBMISSION ☐ APPEARANCE

DATE	EVENT/NOTES	INITIAL
	COMPLAINT FILED	
	WRITTEN RESPONSE RECEIVED	
	ARRAIGNED <input type="checkbox"/> MISD. <input type="checkbox"/> 161.566 OR <input type="checkbox"/> VIOL. <input type="checkbox"/> 161.568 (REDUCTION)	
	SECURITY RELEASE AT \$ RECEIPT NO.	
	COURT/JURY TRIAL (<input type="checkbox"/> WAIVED)	
	CRIMINAL RIGHTS GIVEN	
	ATTORNEY. OSB# (<input type="checkbox"/> WAIVED)	
	WARRANT ORDERED ISSUED	
	DIVERSION AGREEMENT	
	CONTINUED TO REASON	
	<input type="checkbox"/> ORS 135.355 CONDITIONAL PLEA	

THE ATTACHED ADDITIONS TO THIS RECORD/REGISTER ARE INCORPORATED BY REFERENCE, SEE PAGE(S) ☐ 1 (BY _____), ☐ 2 (BY _____),

JUDGMENT OF THE COURT (SUBMIT ABSTRACT COPY UNDER ORS 153.11)

#	PLEA	CHANGE PLEA	FINDING DETERMINATION	OFFENSE SITE	TYPE	CLASS
1	G NG NC FTA		G NG	C A DISM	V M	A B C D OTH
2	G NG NC FTA		G NG	C A DISM	V M	A B C D OTH
3	G NG NC FTA		G NG	C A DISM	V M	A B C D OTH

DISPOSITION ☐ 137.533 DEFERRED SENTENCE ☐ SENT IMP SUS

☐ DR PRIV SUSP (TIME) CONV SPD

JAIL _____

PROBATION/OTHER _____

THE ATTACHED ADDITIONS TO THIS JUDGMENT ARE INCORPORATED BY REFERENCE, SEE PAGE(S) ☐ 1 (BY _____), ☐ 2 (BY _____), ☐ 3 (BY _____),

MONEY JUDGMENT OFFENSE 1 OFFENSE 2 OFFENSE 3
MONEY OBLIGATION IMPOSE SUSPEND IMPOSE SUSPEND IMPOSE SUSPEND

FINE						
COSTS						
RESTITUTION						
TOTAL						

TOTAL AMOUNT TO PAY THAT IS NOT SUSPENDED
(FROM OFFENSES 1, 2 AND 3) \$ _____

TERMS OF PAYMENT _____

☐ ALL MONEYS, INCLUDING SUSPENDED MONEYS, BECOME DUE IMMEDIATELY UNDER ORS 153.090(4) IF NONSUSPENDED MONEYS NOT PAID IN ACCORDANCE WITH TERMS OF PAYMENT

THE ATTACHED ADDITIONS TO THIS MONEY JUDGMENT ARE INCORPORATED BY REFERENCE, SEE PAGE(S) ☐ 1 (BY _____), ☐ 2 (BY _____),

JUDGMENT CREDITOR ☐ STATE OF OREGON ☐ OTHER _____

JUDGMENT DEBTOR ☐ DEFENDANT ☐ OTHER _____

DATE SIGNATURE OF ☐ JUDGE (☐ VIOLATIONS CLERK, WHERE ALLOWED)

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF WASCO

State of Oregon,)	
Plaintiff)	
)	Case No.: 19CR36453
vs.)	
)	JUDGMENT
)	
Russell Boyd McCormack,)	Case File Date: 06/04/2019
Defendant)	

DEFENDANT

True Name: Russell Boyd McCormack

Date Of Birth: 11/18/1963

Fingerprint Control No (FPN): JNOR119252953

HEARING

Proceeding Date: 02/27/2020

Judge: Janet L Stauffer

Court Reporter: FTR Recording, Courtroom 202

Defendant appeared in person and was not in custody. The court determined that the defendant was indigent for purposes of court-appointed counsel, and the court appointed counsel for the defendant. The defendant was represented by Attorney(s) Jerrett C Glass, OSB Number 123237. Plaintiff appeared by and through Attorney(s) PATRICK L AITCHISON, OSB Number 082459, Attorney(s) SARAH E CARPENTER, OSB Number 002277. Defendant knowingly waived two day waiting period before sentencing.

COUNT(S)

It is adjudged that the defendant has been convicted on the following count(s):

Count 1 : Unlawful Take/Possess/Buy/Sell/Handle Food Fish

Count number 1, Unlawful Take/Possess/Buy/Sell/Handle Food Fish, 509.006, Misdemeanor Class A, committed on or about 05/16/2019. Conviction is based upon a Court Verdict of Guilty on 02/27/2020.

Probation

Defendant is sentenced to Bench Probation for a period of 12 month(s) and shall be subject to the following conditions of Probation:

Furthermore, Defendant is subject to the following Special Conditions of Probation (ORS 137.540(2)):
Defendant shall:

- Obey all laws, municipal, county, state and federal.
- Forfeit evidence/property seized.
- Jail time shall equal time served.

Monetary Terms

Defendant shall be required to pay the following amounts on this count:

Fees and Assessments: Payable to the Court.

Type	Amount	Modifier	Reduction	Actual Owed
Fine	\$250.00			\$250.00
Total	\$250.00			\$250.00

If convicted of a felony or a crime involving domestic violence, you may lose the right to buy, sell, transport, receive, or possess a firearm, ammunition, or other weapons in both personal and professional endeavors pursuant to ORS 166.250, ORS 166.291, ORS 166.300, and/or 18 USC 922(g).

MONEY AWARD

Judgment Creditor: State of Oregon

Judgment Debtor: Russell Boyd McCormack

Payees are to be paid as ordered under Monetary Terms.

Defendant is ordered to pay the following monetary totals, including restitution or compensatory fine amounts stated above, which are listed in the Money Award portion of this document:

Type	Amount Owed
Fine	\$250.00
Total	\$250.00

The court may increase the total amount owed by adding collection fees and other assessments. These fees and

assessments may be added without further notice to the defendant and without further court order.

Subject to amendment of a judgment under ORS 137.107, money required to be paid as a condition of probation remains payable after revocation of probation only if the amount is included in the money award portion of the judgment document, even if the amount is referred to in other parts of the judgment document.

Any financial obligation(s) for conviction(s) of a violation, which is included in the Money Award, creates a judgment lien.

Payment Schedule

Payment of the fines, fees, assessments, and/or attorney's fees noted in this and any subsequent Money Award shall be scheduled by the clerk of the court pursuant to ORS 161.675.

Payable to:

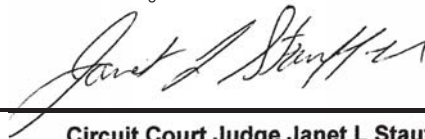
Wasco County Circuit Court
511 Washington St.
The Dalles, Oregon 97058
P: 541.506.2700
F: <http://www.courts.oregon.gov/courts/wasco/Pages/default.aspx>

Dated the _____ day of _____, 20____

Signed: 2/27/2020 04:01 PM

Signed: _____

Janet L Stauffer



Circuit Court Judge Janet L. Stauffer

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF WASCO

State of Oregon,)	
Plaintiff)	
)	Case No.: 19CR36463
vs.)	
)	JUDGMENT
)	
Steven Delroy Senter, Jr,)	Case File Date: 06/04/2019
Defendant)	

DEFENDANT

True Name: Steven Delroy Senter, Jr

Date Of Birth: 05/31/1964

Fingerprint Control No (FPN): JNOR119252944

HEARING

Proceeding Date: 02/27/2020

Judge: Janet L Stauffer

Court Reporter: FTR Recording, Courtroom 202

Defendant appeared in person and was not in custody. The court determined that the defendant was indigent for purposes of court-appointed counsel, and the court appointed counsel for the defendant. The defendant was represented by Attorney(s) JEFFREY M WALLACE, OSB Number 763730. Plaintiff appeared by and through Attorney(s) PATRICK L AITCHISON, OSB Number 082459, Attorney(s) SARAH E CARPENTER, OSB Number 002277. Defendant knowingly waived two day waiting period before sentencing.

COUNT(S)

It is adjudged that the defendant has been convicted on the following count(s):

Count 1 : Unlawful Take/Possess/Buy/Sell/Handle Food Fish

Count number 1, Unlawful Take/Possess/Buy/Sell/Handle Food Fish, 509.006, Misdemeanor Class A, committed on or about 05/16/2019. Conviction is based upon a Court Verdict of Guilty on 02/27/2020.

Probation

Defendant is sentenced to Bench Probation for a period of 12 month(s) and shall be subject to the following conditions of Probation:

Furthermore, Defendant is subject to the following Special Conditions of Probation (ORS 137.540(2)): Defendant shall:

- Obey all laws, municipal, county, state and federal.
- Jail time shall equal time served.
- Forfeit evidence/property seized.

Monetary Terms

Defendant shall be required to pay the following amounts on this count:

Compensatory Fine/Restitution:

A compensatory fine is ordered to be paid to the court and disbursed to the payee(s) named below.

Payee	Not To Exceed	Amount
Oregon Dept of Fish and Wildlife		\$312.50
Oregon Dept of Fish and Wildlife		\$312.50
Total		\$625.00

If convicted of a felony or a crime involving domestic violence, you may lose the right to buy, sell, transport, receive, or possess a firearm, ammunition, or other weapons in both personal and professional endeavors pursuant to ORS 166.250, ORS 166.291, ORS 166.300, and/or 18 USC 922(g).

MONEY AWARD

Judgment Creditor: State of Oregon

Judgment Debtor: Steven Delroy Senter, Jr

Compensatory Fine

Payee	Amount
Oregon Dept of Fish and Wildlife	\$625.00

Payees are to be paid as ordered under Monetary Terms.

Defendant is ordered to pay the following monetary totals, including restitution or compensatory fine amounts stated above, which are listed in the Money Award portion of this document:

Type	Amount Owed
Compensatory Fine	\$625.00
Total	\$625.00

The court may increase the total amount owed by adding collection fees and other assessments. These fees and assessments may be added without further notice to the defendant and without further court order.

Subject to amendment of a judgment under ORS 137.107, money required to be paid as a condition of probation remains payable after revocation of probation only if the amount is included in the money award portion of the judgment document, even if the amount is referred to in other parts of the judgment document.

Any financial obligation(s) for conviction(s) of a violation, which is included in the Money Award, creates a judgment lien.

Payment Schedule

Payment of the fines, fees, assessments, and/or attorney's fees noted in this and any subsequent Money Award shall be scheduled by the clerk of the court pursuant to ORS 161.675.

Payable to:

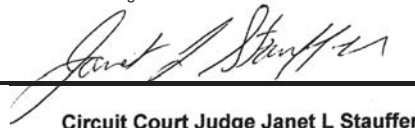
Wasco County Circuit Court
511 Washington St.
The Dalles, Oregon 97058
P: 541.506.2700
F: <http://www.courts.oregon.gov/courts/wasco/Pages/default.aspx>

Dated the _____ day of _____, 20_____

Signed: 2/27/2020 04:03 PM

Signed:

Janet L Stauffer



Circuit Court Judge Janet L Stauffer

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REGISTER OF ACTIONS

[CASE No. 19CR36453](#)

State of Oregon vs Russell Boyd McCormack

§
§
§
§
§
§

Case Type: **Offense Misdemeanor**
Date Filed: **06/04/2019**
Location: **Wasco**
Case Number History: **19V182902**

PARTY INFORMATION

Defendant	McCormack, Russell Boyd 1117 Snake River Avenue Lewiston, ID 83501	DOB: 1963	Attorneys Jerrett C Glass Court Appointed 541-296-9601(W)
Plaintiff	State of Oregon		SARAH E CARPENTER 541 506-2680(W) PATRICK L AITCHISON 971 673-1880(W) Wasco County District Attorney 541-506-2680(W)

CHARGE INFORMATION

Charges: McCormack, Russell Boyd	Statute	Level	Date
1. Unlawful Take/Possess/Buy/Sell/Handle Food Fish	509.006	Misdemeanor Class A	05/16/2019

EVENTS & ORDERS OF THE COURT

DISPOSITIONS				
08/05/2019	Plea (Judicial Officer: Ostrye, Karen) 1. Unlawful Take/Possess/Buy/Sell/Handle Food Fish Not Guilty Created: 08/05/2019 11:42 AM			
02/27/2020	Disposition (Judicial Officer: Stauffer, Janet L) 1. Unlawful Take/Possess/Buy/Sell/Handle Food Fish Convicted Created: 02/27/2020 3:05 PM			
02/27/2020	Sentence (Judicial Officer: Stauffer, Janet L) 1. Unlawful Take/Possess/Buy/Sell/Handle Food Fish Fee Totals:			
		Amount	Reduction	Owed
	Fine	\$250.00		\$250.00
	Fee Totals \$	\$250.00		\$250.00
	Fee Modifier			
	Probation Bench (Active) Start Date: 02/27/2020 Duration: 12 Months Estimated End Date: 02/27/2021 Special Conditions: No - Violate No Laws, 02/27/2020, Obey all laws, municipal, county, state and federal. Forfeit - Property, 02/27/2020, Forfeit evidence/property seized. Special Condition 1, 02/27/2020, Jail time shall equal time served. Created: 02/27/2020 3:08 PM			
OTHER EVENTS AND HEARINGS				
05/30/2019	Citation Created: 06/04/2019 10:31 AM			
06/10/2019	Arraignment (8:30 AM) (Judicial Officer Crowley, Paul G) Result: Held Created: 06/04/2019 10:33 AM			
06/10/2019	Arraignment (Judicial Officer: Crowley, Paul G) Created: 06/10/2019 8:51 AM			
06/10/2019	Order - Hearing (Judicial Officer: Crowley, Paul G) Signed: 06/10/2019 Created: 06/10/2019 11:32 AM			
06/10/2019	Affidavit - Eligibility - ACP Created: 06/10/2019 4:51 PM			
06/10/2019	Notice - Advise Appeal Rights			

06/11/2019 Created: 06/10/2019 4:52 PM
[Agreement - Conditional Release](#)
 Created: 06/11/2019 3:25 PM

08/05/2019 **Hearing - Plea** (10:00 AM) (Judicial Officer Ostrye, Karen)
07/15/2019 Reset by Court to 08/05/2019
 Result: Held
 Created: 06/10/2019 8:56 AM

08/05/2019 [Order - Hearing](#) (Judicial Officer: Ostrye, Karen)
 Signed: 08/05/2019
 Created: 08/05/2019 2:56 PM

11/15/2019 [Subpoena](#)
 Created: 11/15/2019 10:24 AM

11/15/2019 [Subpoena](#)
 Created: 11/15/2019 10:24 AM

11/15/2019 [Subpoena](#)
 Created: 11/15/2019 10:24 AM

01/06/2020 [Call](#) (9:30 AM) (Judicial Officer Stauffer, Janet L)
 Result: Held
 Created: 08/06/2019 8:17 AM

01/06/2020 [Order - Hearing](#) (Judicial Officer: Stauffer, Janet L)
 Signed: 01/06/2020
 Created: 01/06/2020 10:20 AM

01/06/2020 [Waiver - Jury Trial](#)
 Created: 01/06/2020 1:17 PM

01/16/2020 **CANCELED** [Trial - Six Person Jury](#) (8:30 AM) (Judicial Officer Jones, Edward J)
Continued
 Created: 08/06/2019 8:16 AM

01/16/2020 [Motion](#)
 Created: 01/16/2020 10:07 AM

02/10/2020 [Call](#) (9:30 AM) (Judicial Officer Stauffer, Janet L)
 Result: Held
 Created: 02/07/2020 10:38 AM

02/10/2020 [Order - Hearing](#) (Judicial Officer: Stauffer, Janet L)
 Signed: 02/10/2020
 Created: 02/10/2020 10:45 AM

02/10/2020 [Order](#) (Judicial Officer: Stauffer, Janet L)
- Pre-Trial Order for Trial on 2/27/20
 Signed: 02/10/2020
 Created: 02/10/2020 1:56 PM

02/21/2020 [Motion - Exclude Evidence](#)
 Created: 02/21/2020 1:08 PM

02/21/2020 [Response](#)
 Created: 02/24/2020 8:28 AM

02/26/2020 [Response](#)
 Created: 02/26/2020 11:30 AM

02/27/2020 [Trial - Court](#) (8:30 AM) (Judicial Officer Stauffer, Janet L)
02/27/2020, 02/27/2020
 Result: Held
 Created: 01/06/2020 10:20 AM

02/27/2020 [Order - Pleading](#) (Judicial Officer: Stauffer, Janet L)
 Signed: 02/27/2020
 Created: 02/27/2020 2:51 PM

02/27/2020 [Judgment - Offense General Creates Lien](#) (Judicial Officer: Stauffer, Janet L)
 Signed: 02/27/2020
 Created: 02/28/2020 11:13 AM

02/27/2020 **Closed**
 Created: 02/28/2020 11:17 AM

02/28/2020 **Disposition - Reported**
 Created: 02/28/2020 10:50 PM

03/03/2020 [Exhibit - List](#)
and witness list
 Created: 03/03/2020 8:56 AM

 FINANCIAL INFORMATION

	Defendant McCormack, Russell Boyd	
	Total Financial Assessment	250.00
	Total Payments and Credits	0.00
	Balance Due as of 03/06/2020	250.00
02/27/2020	Transaction Assessment	250.00

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REGISTER OF ACTIONS

[CASE No. 19CR36463](#)

State of Oregon vs Steven Delroy Senter, Jr

§
§
§
§
§

Case Type: **Offense Misdemeanor**
Date Filed: **06/04/2019**
Location: **Wasco**

PARTY INFORMATION

Defendant	Senter, Steven Delroy, Jr P.O. Box 59 Lapwai, ID 83540	DOB: 1964	Attorneys JEFFREY M WALLACE <i>Court Appointed</i> 541-296-9900(W)
Plaintiff	State of Oregon		SARAH E CARPENTER 541 506-2680(W) PATRICK L AITCHISON 971 673-1880(W) Wasco County District Attorney <i>Court Appointed</i> 541-506-2680(W)

CHARGE INFORMATION

Charges: Senter, Steven Delroy, Jr	Statute	Level	Date
1. Unlawful Take/Possess/Buy/Sell/Handle Food Fish	509.006	Misdemeanor Class A	05/16/2019

EVENTS & ORDERS OF THE COURT

DISPOSITIONS				
08/05/2019	Plea (Judicial Officer: Ostrye, Karen) 1. Unlawful Take/Possess/Buy/Sell/Handle Food Fish Not Guilty Created: 08/05/2019 10:16 AM			
02/27/2020	Disposition (Judicial Officer: Stauffer, Janet L) 1. Unlawful Take/Possess/Buy/Sell/Handle Food Fish Convicted Created: 02/27/2020 2:44 PM			
02/27/2020	Sentence (Judicial Officer: Stauffer, Janet L) 1. Unlawful Take/Possess/Buy/Sell/Handle Food Fish Fee Totals:			
		Amount	Reduction	Owed
	Compensatory Fine	\$625.00		\$625.00
	Fee Totals \$	\$625.00		\$625.00
	Fee Modifier			
	Probation Bench (Active) Start Date: 02/27/2020 Duration: 12 Months Estimated End Date: 02/27/2021 Special Conditions: No - Violate No Laws, 02/27/2020, Obey all laws, municipal, county, state and federal. Special Condition 1, 02/27/2020, Jail time shall equal time served. Forfeit - Property, 02/27/2020, Forfeit evidence/property seized. Created: 02/27/2020 2:59 PM			
OTHER EVENTS AND HEARINGS				
05/30/2019	Citation Created: 06/04/2019 10:39 AM			
06/10/2019	Arraignment (8:30 AM) (Judicial Officer Crowley, Paul G) Result: Held Created: 06/04/2019 10:39 AM			
06/10/2019	Arraignment (Judicial Officer: Crowley, Paul G) Created: 06/10/2019 8:58 AM			
06/10/2019	Order - Hearing (Judicial Officer: Crowley, Paul G) Signed: 06/10/2019 Created: 06/10/2019 11:32 AM			
06/11/2019	Agreement - Conditional Release Created: 06/11/2019 2:50 PM			
06/11/2019	Notice			

Created: 06/11/2019 3:14 PM
08/05/2019 **Hearing - Plea** (10:00 AM) (Judicial Officer Ostrye, Karen)
Result: Held
Created: 06/10/2019 9:08 AM
08/05/2019 **Order - Hearing** (Judicial Officer: Ostrye, Karen)
Signed: 08/05/2019
Created: 08/05/2019 2:56 PM
01/02/2020 **Motion - Continuance**
Created: 01/02/2020 2:16 PM
01/06/2020 **Call** (9:30 AM) (Judicial Officer Stauffer, Janet L)
Result: Held
Created: 08/06/2019 8:08 AM
01/06/2020 **Order - Hearing** (Judicial Officer: Stauffer, Janet L)
Signed: 01/06/2020
Created: 01/06/2020 10:21 AM
01/06/2020 **Waiver - Jury Trial**
Created: 01/06/2020 1:20 PM
01/15/2020 **CANCELED Trial - Six Person Jury** (8:30 AM) (Judicial Officer Jones, Edward J)
Continued
Created: 08/06/2019 8:08 AM
01/27/2020 **Motion**
Created: 01/27/2020 3:11 PM
02/10/2020 **Call** (9:30 AM) (Judicial Officer Stauffer, Janet L)
Result: Held
Created: 02/07/2020 10:40 AM
02/10/2020 **Order - Hearing** (Judicial Officer: Stauffer, Janet L)
Signed: 02/10/2020
Created: 02/10/2020 10:45 AM
02/10/2020 **Order** (Judicial Officer: Stauffer, Janet L)
- Pre Trial Order for Trial on 2/27/20.
Signed: 02/10/2020
Created: 02/10/2020 1:59 PM
02/21/2020 **Motion - Exclude Evidence**
Created: 02/21/2020 1:07 PM
02/21/2020 **Response**
Created: 02/24/2020 8:30 AM
02/26/2020 **Response**
Created: 02/26/2020 11:34 AM
02/27/2020 **Trial - Court** (8:30 AM) (Judicial Officer Stauffer, Janet L)
02/27/2020, 02/27/2020
Result: Held
Created: 01/06/2020 10:22 AM
02/27/2020 **Stipulation**
of facts
Created: 02/27/2020 2:41 PM
02/27/2020 **Waiver**
of right to cross examine co def
Created: 02/27/2020 2:42 PM
02/27/2020 **Exhibit - List**
and witness list
Created: 02/27/2020 2:43 PM
02/27/2020 **Order - Pleading** (Judicial Officer: Stauffer, Janet L)
Signed: 02/27/2020
Created: 02/27/2020 2:51 PM
02/27/2020 **Judgment - Offense General Creates Lien** (Judicial Officer: Stauffer, Janet L)
Signed: 02/27/2020
Created: 02/28/2020 11:11 AM
02/27/2020 **Closed**
Created: 02/28/2020 11:13 AM
02/28/2020 **Disposition - Reported**
Created: 02/28/2020 10:50 PM

FINANCIAL INFORMATION

	Defendant Senter, Steven Delroy, Jr	
	Total Financial Assessment	625.00
	Total Payments and Credits	0.00
	Balance Due as of 03/06/2020	625.00
02/27/2020	Transaction Assessment	625.00

CERTIFICATE OF COMPLIANCE WITH ORAP 5.05

Brief length

I certify that this brief complies with the word-count limitation in ORAP 5.05, which word-count is 7,902 words.

Type size

I certify that the size of the type in this brief is not smaller than 14 point for both the text of the brief and footnotes.

NOTICE OF FILING AND PROOF OF SERVICE

I certify that I directed the original Appellant's Opening Brief to be filed with the Appellate Court Administrator, Appellate Courts Records Section, 1163 State Street, Salem, Oregon 97301, on March 10, 2021.

I further certify that, upon receipt of the confirmation email stating that the document has been accepted by the eFiling system, this Appellant's Opening Brief will be eServed on Benjamin Gutman #160599, Solicitor General, attorney for Plaintiff-Respondent.

Respectfully submitted,

ERNEST G. LANNET
CHIEF DEFENDER
CRIMINAL APPELLATE SECTION
OFFICE OF PUBLIC DEFENSE SERVICES

Signed

By John Evans at 3:25 pm, Mar 10, 2021

JOHN EVANS OSB #133532
DEPUTY PUBLIC DEFENDER
John.P.Evans@opds.state.or.us

Attorneys for Defendant-Appellants
Russell Boyd McCormack, Steven Delroy
Senter Jr