FILED
9/8/2025
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. CRISTIAN ALEXANDER QUIJAS, Appellant.	No. 86476-9-I DIVISION ONE OPINION PUBLISHED IN PART

DÍAZ, J. — Cristian Alexander Quijas participated in two fights with other inmates while incarcerated at the Skagit County Jail. A jury convicted Quijas inter alia of two counts of prison riot under RCW 9.94.010. He now argues the statute is unconstitutionally vague and overbroad. Alternatively, he claims that insufficient evidence supported those convictions, that those counts should have been severed, and that the State failed to provide sufficient evidence for the amount of restitution ordered. We reverse the restitution order and remand for further proceedings consistent with this opinion. Otherwise, we affirm Quijas' convictions.

I. BACKGROUND

The following facts are undisputed on appeal. The two fights underlying this appeal occurred in November and December 2022 at the Skagit County Jail. Both fights occurred in a common area between two antagonistic groups of inmates.

Quijas participated in both fights and assaulted other inmates. Correctional officers commanded the inmates, including Quijas, to stop fighting and physically broke up the fights after approximately one minute. Joseph Nelson and Robert Pierce were the main targets of the first and second fights respectively and received medical treatment afterwards.

For each fight, the State charged Quijas with one count of prison riot and one count of assault in the fourth degree. Prior to trial, Quijas unsuccessfully moved to sever and, separately, to dismiss the prison riot charges, arguing in the latter that the statute unconstitutionally lacked a mens rea element. Clerk's Papers (CP) at 105 (citing Blake, 197 Wn.2d 170, 481 P.3d 521 (2021)) . In response to Quijas' constitutional challenge, the court added the word "intentionally" to the "to-convict" prison riot jury instructions.

In early 2024, a jury convicted Quijas on both prison riot counts and both counts of assault in the fourth degree, the latter two of which he does not challenge here. The court imposed a period of confinement and ordered Quijas to pay restitution for Nelson and Pierce's medical bills. Quijas now appeals only from his convictions for prison riot and from the order of restitution.

II. ANALYSIS

A. Constitutional Challenges

Quijas first argues that Washington's prison riot statute is unconstitutionally vague and overbroad, the latter by criminalizing conduct protected by the First Amendment. U.S. CONST. amend I. The statue, in full, states that:

> (1) Whenever two or more inmates of a correctional institution assemble for any purpose, and act in such a manner as to disturb

> the good order of the institution and contrary to the commands of the officers of the institution, by the use of force or violence, or the threat thereof, and whether acting in concert or not, they shall be guilty of prison riot.
>
> (2) Every inmate of a correctional institution who is guilty of prison riot or of voluntarily participating therein by being present at, or by instigating, aiding, or abetting the same, is guilty of a class B felony and shall be punished by imprisonment in a state correctional institution for not less than one year nor more than ten years, which shall be in addition to the sentence being served.

RCW 9.94.010.

"When interpreting a statute, the court's fundamental objective is to ascertain and carry out the legislature's intent." State v. Sweany, 162 Wn. App. 223, 230, 256 P.3d 1230 (2011). We "begin[] by reading the text of the statute or statutes involved. If the language is unambiguous, a reviewing court is to rely solely on the statutory language." State v. Roggenkamp, 153 Wn.2d 614, 621, 106 P.3d 196 (2005). "Where statutory language is amenable to more than one reasonable interpretation, it is deemed to be ambiguous" and we may turn to "[l]egislative history, principles of statutory construction, and relevant case law." Id. "We review a question of statutory construction de novo." Id.

As for constitutional challenges more specifically, "[s]tatutes are presumed constitutional." State v. Batson, 196 Wn.2d 670, 674, 478 P.3d 75 (2020). "'Wherever possible, it is the duty of this court to construe a statute so as to uphold its constitutionality.'" Id. (internal quotation marks omitted) (quoting State v. Abrams, 163 Wn.2d 277, 282, 178 P.3d 1021 (2008)). As such, the challenging party "has the burden of proving the statute is unconstitutional beyond a

reasonable doubt."[1] State v. Watson, 130 Wn. App. 376, 378, 122 P.3d 939 (2005).

The parties do not claim that there is, and we have not found, a case which squarely addresses the constitutionality of RCW 9.94.010 on the two bases asserted here. Nonetheless, applying the foregoing principles of statutory construction, and the relevant constitutional principles below, we disagree with both arguments, which we address in turn.[2]

1. Vagueness

The "due process vagueness doctrine under the Fourteenth Amendment and article I, section 3 of [Washington's] constitution requires that citizens have fair warning of proscribed conduct." State v. Bahl, 164 Wn.2d 739, 752, 193 P.3d 678 (2008); U.S. CONST. amend XIV. A statute is unconstitutionally vague if it "'(1) . . . does not define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is proscribed, or (2) . . . does not provide

[1] "As used in this context, 'beyond a reasonable doubt' is not an evidentiary standard but a reflection of 'respect for the legislature.'" Quinn v. Dep't of Revenue, 1 Wn.3d 453, 471 n.9, 526 P.3d 1 (2023) (quoting Sch. Dists.' All. for Adequate Funding of Special Educ. v. State, 170 Wn.2d 599, 606, 244 P.3d 1 (2010)). "It signifies we will not invalidate a statute unless the challenger, 'by argument and research, convince[s] the court that there is no reasonable doubt that the statute violates the constitution.'" Id. (alteration in original) (quoting Island County v. State, 135 Wn.2d 141, 147, 955 P.2d 377 (1998)).

[2] The State preliminarily claims that Quijas failed to preserve both his vagueness and overbreadth challenges. Even assuming arguendo one or more of his specific arguments are unpreserved, we exercise our discretion under RAP 2.5 to review each of his vagueness and overbreadth challenges, as both sets of issues are fully briefed and interrelated to at least one admittedly preserved issue. See CP at 105 (citing State v. Blake, 197 Wn.2d 170, 182-83, 481 P.3d 521 (2021)); State v. Ford, 137 Wn.2d 472, 477, 973 P.2d 452 (1999) (holding that RAP 2.5 "never operates as an absolute bar to review").

ascertainable standards of guilt to protect against arbitrary enforcement.'" Id. at 752-53 (alterations in original) (quoting City of Spokane v. Douglass, 115 Wn.2d 171, 178, 795 P.2d 693 (1990)). The former is often called the common intelligence requirement. As to the latter, a statute permits arbitrary enforcement and "will be overturned only if the court is unable to place a sufficiently limiting construction on a standardless sweep of legislation." City of Tacoma v. Luvene, 118 Wn.2d 826, 840, 827 P.2d 1374 (1992).

"Vagueness must be considered in light of the entire statutory context, 'afford[ing] a sensible, meaningful, and practical interpretation.'" State v. Birge, 16 Wn. App. 2d 16, 39, 478 P.3d 1144 (2021) (alteration in original) (quoting State v. Evergreen Freedom Found., 192 Wn.2d 782, 796, 432 P.3d 805 (2019)). "[A]n enactment is not facially vague if it is susceptible to a constitutional interpretation." Luvene, 118 Wn.2d at 844-45.[3]

"If either of [the above] *requirements* is not satisfied, the ordinance is unconstitutionally vague." Bahl, 164 Wn.2d at 753 (emphasis added). Here, Quijas argues the statute fails both of the above "requirements," which we address in turn. Id.

[3] It appears that Quijas initially asserted only that the statute is facially vague, as his arguments were based on hypotheticals broader than his conduct. See State v. Birge, 16 Wn. App. 2d 16, 39, 478 P.3d 1144 (2021) (defining a facial challenge as one which alleges a statute is improper in any context, in contrast to an as applied challenge which focuses on the matter's specific facts). But, in his reply brief, Quijas specifies that he is bringing an as applied vagueness challenge in the "alternative" with no further elaboration or citation to the record. (Citing Douglass, 115 Wn.2d at 182). As neither party briefs the matter, we need not linger on this distinction. And, given the way we resolve this matter, we need not reach the State's secondary argument that Quijas has no standing to bring a facial void-for-vagueness challenge.

a. Common Intelligence Requirement

Under the first requirement, a "statute is void for vagueness if it is framed in terms so vague that persons of common intelligence must necessarily guess at its meaning and differ as to its applicability." Luvene, 118 Wn.2d at 844. On the other hand, a statute is constitutional if the "public has adequate notice of what conduct is proscribed." State v. Saunders, 132 Wn. App. 592, 599, 132 P.3d 743 (2006).

A "statute is not unconstitutionally vague merely because a person cannot predict with complete certainty the exact point at which his actions would be classified as prohibited conduct." City of Seattle v. Abercrombie, 85 Wn. App. 393, 399-400, 945 P.2d 1132 (1997). "[S]ome degree of vagueness is inherent because language must be used to proscribe the conduct." In re Det. of Albrecht, 129 Wn. App. 243, 254, 118 P.3d 909 (2005).

Quijas makes two overarching arguments as to why the statute fails the common intelligence requirement, namely, that the statute improperly lacks a mens rea and actus rea, which we address in turn.

i. Mens Rea

Quijas argues that, "[w]ithout an express mental state, the crime is a strict liability offense," which in turn "creates a trap for the innocent" as "any mental state will suffice," even "essentially innocent conduct." We disagree.

We hold that RCW 9.94.010(1) includes various undefined terms that contain an implied element of intent. "'[N]onstatutory elements are implied'" if they are "'derived from our reasoned judgment as to legislative intent,'" including "impliedly adding a mens rea element to a criminal statute." State v. Moreno, 198

Wn.2d 737, 742, 499 P.3d 198 (2021) (quoting State v. Miller, 156 Wn.2d 23, 28, 123 P.3d 827 (2005)). "An undefined term is 'given its plain and ordinary meaning unless a contrary legislative intent is indicated.'" State v. Ervin, 169 Wn.2d 815, 820, 239 P.3d 354 (2010) (quoting Ravenscroft v. Wash. Water Power Co., 136 Wn.2d 911, 920–21, 969 P.2d 75 (1998)).

Namely, the pertinent portion of the statute requires a defendant-inmate to "*assemble* for any purpose, and *act* in such a manner as to disturb the good order of the institution and *contrary* to the commands of the officers of the institution." RCW 9.94.010(1) (emphasis added). "We may rely upon the dictionary when statutory terms are undefined." State v. Mitchell, 169 Wn.2d 437, 444, 237 P.3d 282 (2010).

"Assemble" is defined as "to come or meet together in a group . . . *often purposefully*" and "to bring together (as in a particular place or for a *particular purpose*)." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 131 (2002) (emphasis added); MERRIAM-WEBSTER ONLINE DICTIONARY, https://www.merriam-webster.com/dictionary/assemble (last visited Jun. 13, 2025) (emphasis added).

"Act" is defined as "produc[ing] a *desired* effect" or "something done *voluntarily*." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY at 20 (emphasis added); MERRIAM-WEBSTER ONLINE DICTIONARY, https://www.merriam-webster.com/dictionary/act (last visited Jun. 13, 2025) (emphasis added).

"Contrary" is defined as "a *self-willed* opposition to others' wishes" or "temperamentally unwilling to accept control or advice." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY at 495 (emphasis added); MERRIAM-WEBSTER ONLINE

DICTIONARY, https://www.merriam-webster.com/dictionary/contrary (last visited Jun. 13, 2025).

The plain and ordinary meaning of the above words indicates that, to be convicted of this crime, a defendant-inmate must have acted with intent or volition in assembling, acting, and disregarding an officer's commands.

Moreover, the following provision, RCW 9.94.010(2), states that "[e]very inmate of a correctional institution . . . *voluntarily* participating [in a prison riot] by being present at, or by instigating, aiding, or abetting the same [] is guilty of a class B felony." (Emphasis added.) Contrary to Quijas' assertions, even RCW 9.94.010(2) does not "create[] a trap for the innocent."

In short, the "plain language" of RCW 9.94.010 "as a whole" signals that the legislature included an implicit intent requirement in its first provision. State v. Myles, 127 Wn.2d 807, 813-14, 903 P.2d 979 (1995). As the "surest indication of legislative intent is the language enacted by the legislature," we hold the text of RCW 9.94.010(1) contains at least an implied requirement of purposeful, desired, or self-willed, i.e., intentional action, defeating Quijas' argument that this statute is vague because it lacks a mens rea. Ervin, 169 Wn.2d at 820.[4]

ii. Actus Reus

Quijas next asserts the prison riot statute is vague because it "lacks any

[4] Relatedly, Quijas argues the phrase "'to disturb the good order' is highly subjective and indefinite" as it implicates inmates "simply because they were together." Br. of Appellant at 20 (quoting RCW 9.94.010). He also similarly argues "officers strictly control inmates' grouping, schedule, and whereabouts" and "yet [inmates] may be charged with prison riot simply because they are with others who cause a disturbance" or if they "try to defend themselves." These arguments fail for the same reason.

clearly identified actus reus," i.e., what physical actions or conduct are prohibited. (Emphasis omitted.) He focuses on two phrases within RCW 9.94.010(1). First, he claims that the statute's requirement that the inmate "act in such a manner as to *disturb the good order* of the institution" defines prison right "by its effect" and is "highly subjective and indefinite" because an impact on the institution as innocuous as "a simple delay or inconvenience . . . may constitute prison riot." Second, he asserts the statute may incriminate one inmate for the conduct of another inmate as long as they "assemble for *any purpose*," which is "not limited to unlawful purposes." RCW 9.94.010(1) (emphasis added).

Quijas' argument presents an artificially constricted view of RCW 9.94.010(1). "[I]n a vagueness challenge the court does not analyze portions of a statute in isolation; instead, a statute is viewed as a whole to see if it has the required degree of specificity." Myles, 127 Wn.2d at 814; see also State v. Maloney, 78 Wn.2d 922, 924-25, 481 P.2d 1 (1971) (rejecting a vagueness challenge to the term "disorderly" after considering the word "in its context").

Here, the statute requires, not just that the good order of the institution be disturbed or the defendant-inmate gather for some purpose, but that the defendant-inmate utilize "force or violence, or the threat thereof" in doing so. RCW 9.94.010(1). That is, the use of force, of violence, or of threat thereof defines the actus reus and allays any ambiguity in the terms "disturbs," "good order", and "any purpose" when viewed in isolation. RCW 9.94.010(1). Even only as to threats, "threats to harm the person or property of an individual, whether immediate or in the future, require no additional element of intent because the defendant must

intentionally utter the words; one cannot innocently threaten harm to another." City of Seattle v. Ivan, 71 Wn. App. 145, 157, 856 P.2d 1116 (1993).[5]

In short, when viewing RCW 9.94.010(1) in its full context as we should, Birge, 16 Wn. App. 2d at 39, we reject Quijas' arguments that the statute fails the common intelligence requirement.

b. Arbitrary Enforcement

As to the second Bahl requirement, Quijas argues RCW 9.94.010(1) "does nothing to limit how it is enforced" in two new ways. First, he argues that the element requiring an inmate to do something contrary to the officers' commands means that the "officers' actions are directly related to whether an inmate committed the offense," such that an "officer's actions . . . [are] part of the crime . . . even if the officer issues . . . dangerous or impossible" orders. This fact could lead to arbitrary enforcement, he argues, because it could allow an officer to "intentionally . . . create a scenario that satisfies the statute." Second, he argues that "officers also control the circumstances that may lead to a disturbance that constitutes prison riot," meaning that an officer could also negligently "create[] circumstances that lead to," e.g., a fight, as he claims happened here, when the officer negligently permitted antagonistic groups to mix. In short, Quijas claims

[5] Quijas also argues the "text does not clarify who or what the use or threat of violence must be directed towards." Again, a "statute is not unconstitutionally vague merely because a person cannot predict with complete certainty the exact point at which his actions would be classified as prohibited conduct." Abercrombie, 85 Wn. App. at 399-400. Quijas otherwise presents no authorities that such granularity is required. DeHeer v. Seattle Post-Intelligencer, 60 Wn.2d 122, 126, 372 P.2d 193 (1962) ("Where no authorities are cited in support of a proposition, the court is not required to search out authorities, but may assume that counsel, after diligent search, has found none.").

the statute grants officers "unfettered discretion."

These arguments disregard the fact that RCW 9.94.010(1) only criminalizes an inmate's action that is, among other elements, contrary to an officer's command if and only if that action is done by "force or violence, or the threat thereof." Even assuming an inmate is given an intentionally or negligently dangerous order, a jury could not convict them of this crime unless it is inter alia shown beyond a reasonable doubt that the inmate intentionally chose to utilize "force or violence, or the threat thereof" or voluntarily participated therein in specific ways. RCW 9.94.010(1)-(2). This case does not present a situation where an inmate is attacked unprovoked and is forced to defend themselves, and immediately desisted when commanded. We need not reach that question. For today, it is sufficient that the force and violence clause provides ascertainable standards of guilt to protect against arbitrary enforcement. See Luvene, 118 Wn.2d at 847 (holding that "prior decisions have stated that an intent element in an enactment provides a sufficient limit on police discretion.").[6]

Reading RCW 9.94.010(1) in its full context as we must, Birge, 16 Wn. App. 2d at 39, we hold Quijas failed to establish RCW 9.94.010 unconstitutionally permits arbitrary enforcement. Bahl, 164 Wn.2d at 753. In turn, we hold Quijas

[6] Largely repeating his claims above, Quijas also argues that the terms "disturb" and "good order" are "'inherently subjective'" allowing arbitrary enforcement, quoting inter alia Myles, 127 Wn.2d at 812, and that the statute criminalizes passive nonconduct. As explained above, RCW 9.94.010(1)'s layers of volitional requirements distinguish it from the statute in Blake, where the court considered "entirely passive" and even "unknowing" conduct, i.e., "standing outside" versus "active trafficking." 197 Wn.2d at 182-83 (emphasis omitted). Thus, these arguments fail too.

failed to establish, as is his burden, that RCW 9.94.010 is unconstitutionally vague under either Bahl prong. Watson, 130 Wn. App. at 378.

2. Overbreadth

Our analysis of a claim that a statute is overbroad based on the First Amendment is the same under both the federal and Washington's constitutions. State v. Patterson, 196 Wn. App. 451, 457, 389 P.3d 612 (2016). Preliminarily, we must "determine whether the enactment at issue reaches a substantial amount of constitutionally protected speech or expressive conduct." Id. To do so, we "undertake the task of weighing 'the amount of protected speech proscribed by the [law] against the amount of unprotected speech that the [law] legitimately prohibits.'" Id. at 459 (alterations in original) (quoting State v. Immelt, 173 Wn.2d 1, 11, 267 P.3d 305 (2011)). This analysis applies to claims involving speech and "expressive conduct." State v. Knowles, 91 Wn. App. 367, 373, 957 P.2d 797 (1998).

Under the above analysis, an "enactment is overbroad if it 'sweeps within its prohibitions' a substantial amount of constitutionally protected conduct." Patterson, 196 Wn. App. at 457 (quoting Immelt, 173 Wn.2d at 6). "Criminal statutes receive a more exacting scrutiny and may be facially invalid even if they have a legitimate application." Ivan, 71 Wn. App. at 150.

Quijas argues that RCW 9.94.010 reaches a substantial amount of First Amendment conduct in two ways. First, he claims the statute infringes on the right to assembly as it "sweeps in all inmates who are 'assemble[d] 'for any purpose' even if there is no criminal or unlawful purpose." Br. of Appellant at 39 (quoting

RCW 9.94.010(1)). Second, he claims the statute "unduly infringes on inmates' freedom of expression by prohibiting speech beyond 'true threats'" as the "statute does not include any mental element." Id. at 39-40 (quoting Counterman v. Colorado, 600 U.S. 66, 74, 143 S. Ct. 2106, 216 L. Ed. 2d 775 (2023)).

Similar to our analysis of his vagueness claim, Quijas ignores those portions of RCW 9.94.010 which require the defendant, to be convicted, to act with "force or violence, or the threat thereof." When part of the calculation, Quijas' argument fails because our Supreme Court has held that "rights of peaceable assembly and freedom of speech are not abridged by laws which prohibit . . . formulat[ing] a purpose to breach the peace, or injure persons or property or do any other unlawful acts." State v. Dixon, 78 Wn.2d 796, 807, 479 P.2d 931 (1971); see also State v. Monschke, 133 Wn. App. 313, 331-32, 135 P.3d 566 (2006) (holding that violence is unprotected by the First Amendment, even where such violence or force has expressive content); Ivan, 71 Wn. App. at 150-51 ("[c]ommunications that are 'fighting words' and inflict injury or encourage immediate breach of the peace are not protected speech under the First Amendment" as opposed to merely "offensive and provocative speech" which "is protected.").[7]

As to threats specifically, RCW 9.94.010(1) further clarifies it prohibits "force or violence, or the threat *thereof*," i.e. threats of force or violence. (Emphasis added.) Such threats fall under the definition of "[t]rue threats," defined as "'serious

[7] Even "offensive and provocative speech" can lose its First Amendment protections if "likely to produce a 'clear and present danger of serious substantive evil.'" Ivan, 71 Wn. App. at 151 (quoting Terminiello v. Chicago, 337 U.S. 1, 4, 69 S. Ct. 894, 896, 93 L. Ed. 1131 (1949)).

expression[s]' conveying that a speaker means to 'commit an act of unlawful violence.'" Counterman, 600 U.S. at 74 (quoting Virginia v. Black, 538 U.S. 343, 359, 123 S. Ct. 1536, 155 L. Ed. 2d 535 (2003)). And we already rejected Quijas' claim that the statute "does not include any mental element." Even if that were the case, the "existence of a threat depends not on 'the mental state of the author,' but on 'what the statement conveys' to the person on the other end." Id. (quoting Elonis v. United States, 575 U.S. 723, 733, 135 S. Ct. 2001, 192 L. Ed. 2d 1 (2015)); see also Ivan, 71 Wn. App. at 157 ("threats to harm . . . require no additional element of intent.").[8]

Moreover, "a prison inmate retains those First Amendment rights that are not inconsistent with his status as a prisoner or with the legitimate penological objectives of the corrections system." Pell v. Procunier, 417 U.S. 817, 822, 94 S. Ct. 2800, 41 L. Ed. 2d 495 (1974). Quijas acknowledges this precedent, but offers no substantive argument on how preventing inmates from disobeying orders through violence or threats thereof falls outside such objectives.

As a final note, Quijas' argument that RCW 9.94.010 "allows content-based restrictions on the freedom of speech" is unavailing. He claims that the statute

[8] Quijas' reliance on State v. Bower, 28 Wn. App. 704, 626 P.2d 39 (1981) is inapposite. Br. of App. at 47-48. There, this court focused squarely on the jury instructions, the actual text of which the opinion did not reproduce. Id. at 706-08, abrogated on other grounds by State v. Kjorsvik, 117 Wn.2d 93, 99 n.5, 812 P.2d 86 (1991). Indeed, the opinion focuses on the formatting of instructions at a high level as opposed to their specific wording, including whether they were "conjunctive" or "disjunctive." Id. at 708. Further, Bower did not substantively discuss the First Amendment, unconstitutional vagueness, or the actual text of the underlying statute (former RCW 9.94.030 (1957)), which is nonetheless distinct from RCW 9.94.010. Id. at 707-08. Here, Quijas does not challenge this matter's jury instructions.

"criminalizes the heckler's veto" and "lawful expression simply because it may 'disturb the good order.'" Br. of Appellant at 41 (quoting RCW 9.94.010). We are unconvinced. The statute is "speech neutral, and focuses on the disruption rather than the viewpoint expressed by the disrupter." Patterson, 196 Wn. App. at 459.

We hold RCW 9.94.010's plain and unambiguous focus on force or threats thereof "does not reach a substantial amount of constitutionally protected speech" because the statute only seeks to regulate violent assemblies—to which there is no right, particularly in a penological setting—and is thus "not overbroad." Id. at 460. In turn, we hold Quijas failed to establish RCW 9.94.010 is unconstitutionally overbroad. Id. at 457, 459.

Therefore, we hold Quijas failed to show, as is his burden, that RCW 9.94.010 is unconstitutional. Watson, 130 Wn. App. at 378.

A majority of the panel determined that only the foregoing portion of this opinion will be published in the Washington Appellate Reports. The remainder, starting with this paragraph, shall be filed for public record pursuant to RCW 2.06.040.[9]

B. Alternative Challenges

In the alternative, Quijas claims insufficient evidence supports those convictions and that the court erred in failing to sever those charges and in ordering restitution. We address each in turn.

[9] We deny the State's motion to strike the amicus brief filed by the Center for Civil Rights and Critical Justice at the Seattle University School of Law. Given the manner in which we resolve this matter, i.e., on the statutes' plain language on the assignments of error Quijas actually brought, we need not address its arguments.

1. Sufficient Evidence

Quijas claims both of his prison riot charges lacked sufficient evidence because the State presented no evidence he "intended to disturb the good order of the institution" as he claims was required in the jury instruction. We disagree.

The jury instructions in pertinent part stated that, to convict Quijas of the crime of prison riot, the jury had to find beyond a reasonable doubt that:

> (1) On or about November 23, 2022 the defendant was an inmate in a correctional institution, and
>
> (2) He did assemble with one or more other inmates for any purpose, and
>
> (3) By the use of force or violence, or the threat thereof, he did act in such a manner as to disturb the good order of the institution, and
>
> (4) He did so *intentionally* contrary to the commands of the officers of the institution.

(Emphasis added.) These instructions track the language of RCW 9.94.010(1), other than the fact that the court added the term "intentionally" in paragraph (4). See 1 Rep. of Proc. (RP) (Feb. 14, 2024) at 356, 361-62 (where the court ruled that "a proper reading of the statute requires a clear intent on that portion to avoid confusion by the jurors, of which we had the last time, clearly based on their questions and based on . . . Defense Counsel's inappropriate arguments during closing.").

Quijas concedes that "[n]obody objected to the court's to-convict instruction," and, thus, the above instruction serves as "the law of the case." State v. Johnson, 188 Wn.2d 742, 755, 399 P.3d 507 (2017) (holding that unchallenged instructions serve as the "'law of the case'" and "'are treated as the properly

applicable law for purposes of appeal.'") (quoting Roberson v. Perez, 156 Wn.2d 33, 41, 123 P.3d 844 (2005)).

Quijas argues that an "adverb modifies a verb, and the most obvious and logical verb is found in the third element." That is, he argues that "the adverb 'intentionally' modifies the phrase 'did so'" and "'did so' refers to the previously mentioned action, namely the verb in the third element: 'he *did an act* in such a manner as to disturb the good order of the institution.'" We disagree with this reading.

It is true that "adverbs modify verbs," but adverbs also modify "adjectives or other adverbs" and, importantly, "typically precede the adjectives and adverbs they seek to modify." Confederated Tribes of Grand Ronde Cmty. of Oregon v. Jewell, 830 F.3d 552, 560 (D.C. Cir. 2016) (citing MICHAEL STRUMPF & AURIEL DOUGLAS, THE GRAMMAR BIBLE 112 (2004)).

Given this more fulsome grammatical understanding, we hold that the more natural reading is that the term "intentionally," which is an adverb, modifies the adjective "contrary," which is found immediately thereafter. WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY at 495, 1176. In turn, the court instructed the jury to determine, not whether he intentionally disturbed the good order of the institution, but whether the State proved inter alia that Quijas acted intentionally contrary "to the commands of the officers of the institution."

More substantively, Quijas' argument also ignores that the court expressly stated that it intended that "intentionally" apply or modify only paragraph (4), stating "I am adopting the State's argument as to strict liability *with the exception of a*

single clause and that will be an intentional clause" or "mens rea". (Emphasis added.)

With that understanding of the State's burden, the "test for determining the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found guilt beyond a reasonable doubt" for every element. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). "[A]ll reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant." Id. This "standard is a deferential one, and questions of credibility, persuasiveness, and conflicting testimony must be left to the jury." In re Pers. Restraint of Martinez, 171 Wn.2d 354, 364, 256 P.3d 277 (2011).

Trial testimony from multiple correctional officers provides ample evidence that Quijas continued his assaults contrary to repeated commands from corrections officers during both fights. Thus, we reject Quijas' claim that the jury had evidence insufficient to convict him of the crimes of prison riot.

2. Severance

Quijas argues the court erred when it refused to sever the charges. We disagree.

"The court . . . on application of the defendant . . . shall grant a severance of offenses" if it "determines that severance will promote a fair determination of the defendant's guilt or innocence of each offense." CrR 4.4(b). "Prejudice may result from joinder if the defendant is embarrassed in the presentation of separate defenses, or if use of a single trial invites the jury to cumulate evidence to find guilt

or infer a criminal disposition." State v. Russell, 125 Wn.2d 24, 62-63, 882 P.2d 747 (1994).

"In determining whether the potential for prejudice requires severance, a trial court must consider (1) the strength of the State's evidence on each count; (2) the clarity of defenses as to each count; (3) court instructions to the jury to consider each count separately; and (4) the admissibility of evidence of the other charges even if not joined for trial." Id. at 63. "In addition, any residual prejudice must be weighed against the need for judicial economy." Id. A "trial court's refusal to sever charges is reversible only where it constitutes a manifest abuse of discretion." Id. "The defendant bears the burden of demonstrating such abuse." Id.

As a preliminary matter, Quijas argues that reversal is required as the court failed to walk through all four factors on the record, specifically the fourth factor. While it is best practice to do so, and the failure to do so risks reversal, the record is sufficient for our review.

It is true that this court recently held that a court "abused its discretion by failing to conduct a *complete* analysis of the prejudice to [the defendant] on the record." State v. McCabe, 26 Wn. App. 2d 86, 95-96, 526 P.3d 891 (2023) (emphasis added). But even there, this court held that this failure was harmless as we could still "ensure that its 'exercise of discretion was based upon a careful and thoughtful consideration of the issue'" and [the defendant's] "broad[] claim[s]" failed to show "specific prejudice" from the court's omission. Id. at 95-97 (quoting State v. Bluford, 188 Wn.2d 298, 310, 393 P.3d 1219 (2017) (holding that a court considering a pretrial joinder motion *should* conduct its analysis on the record)).

Thus, we reject Quijas' procedural argument and proceed to the merits of his claim.

It was not an abuse of discretion to find that the first Russell factor—"the strength of the State's evidence on each count"—weighed against severance. 125 Wn.2d at 63. As described above, the strength of the evidence for the November and December incidents is similar, as in both, multiple officers testified to each element of the crimes and videos were admitted supporting that testimony.

It was not an abuse of discretion to find that the second Russell factor—"the clarity of defenses as to each count"—also weighed against severance. 125 Wn.2d at 63. Quijas presented a unified defense for both prison riot counts at trial, focusing on the failure to show that Quijas did not disturb the order of the jail. For example, his opening argument did not distinguish either charge, instead emphasizing their similarities and summarizing the crux of his defense, namely, that on "11/23/22 and 12/13/22, Mr. Quijas committed crimes against people, not against the institution."

It was not an abuse of discretion to find that the third Russell factor—whether the "court instructions to the jury [required it] to consider each count separately"—weighed against severance as well. 125 Wn.2d at 63. In full, the court instructed the jury that "[a] separate crime is charged in each count. You must decide each count separately. Your verdict on one count should not control your verdict on any other count." This court approved the same instruction in McCabe, 26 Wn. App. 2d at 93, 96. See also State v. Weaver, 198 Wn.2d 459, 469, 496 P.3d 1183 (2021) (holding that we presume jurors follow instructions). Here, as in McCabe, it does not appear Quijas proposed an alternate instruction

nor does he claim otherwise on appeal. 26 Wn. App. 2d at 96.

Although the court made no finding on the record, we also cannot say that it would have been an abuse of discretion to find that the fourth factor—"the admissibility of evidence of the other charges even if not joined for trial"—weighed against severance.[10]

Here, Quijas argues the court improperly allowed the State to call at least nine officers in a single trial, "even though each officer could only testify about one fight." It is true that most officers only testified on one of the two incidents.[11] Thus, it may appear that these witnesses do not "overlap," thus weighing in favor of severance. State v. Slater 197 Wn.2d 600, 660, 486 P.3d 873 (2021).

But, we must consider the entirety of the officers' testimony and, in doing so, we conclude there is significant overlap, beyond their individual involvement in one of the incidents. Id. For example, multiple officers described the jail's general security protocols and how it aims to keep certain groups separated to prevent violence. Numerous officers also contextualized the broader animosity between the inmates in both incidents, which appeared to arise due to tensions from the jail reassigning a "pod trustee" position.

---

[10] This factor appears to largely revolve on "whether evidence of each count would be cross admissible under ER 404(b)." Russell, 125 Wn.2d at 66. To admit other-act evidence under ER 404(b), "'the trial court must (1) find by a preponderance of the evidence that the misconduct occurred, (2) identify the purpose for which the evidence is sought to be introduced, (3) determine whether the evidence is relevant to prove an element of the crime charged, and (4) weigh the probative value against the prejudicial effect.'" State v. Gresham, 173 Wn.2d 405, 421, 269 P.3d 207 (2012) (quoting State v. Vy Thang, 145 Wn.2d 630, 642, 41 P.3d 1159 (2002)). Quijas does not address the ER 404(b) factors.

[11] As acknowledged by Quijas, one officer testified to his involvement in both events.

Additionally, the above overlap is buttressed by the State eliciting testimony on each fight in a roughly sequential manner (i.e., discussing the November fight before turning to witnesses for the December fight) with one exception. This generally sequential presentation lessened the risk of jurors conflating the two fights.

Thus, viewing the totality of the officers' testimony in the full context of the trial, we cannot say that it would have been a "manifest" abuse of discretion to hold that this factor also weighs against severance. Russell, 125 Wn.2d at 63.

Finally, "any residual prejudice must be weighed against the need for judicial economy." Id. Quijas argues that "[a]ny benefit to judicial economy was negligible," repeating only that "[n]one of the State's witnesses overlapped."

This argument is unpersuasive. In State v. Bythrow, our Supreme Court held that, although "[d]ifferent witnesses testified concerning different [robberies]," given "the short [two day] trial, the relatively simple issues, the jury instructions, and the strength of the State's evidence, it does not appear likely that the jury was influenced in determining the defendant's guilt of either robbery by knowledge of the other." 114 Wn.2d 713, 723, 790 P.2d 154 (1999) (noting also the general benefits of joining trials, including "significantly" reducing the amount of "judicial resources and public funds" expended as well as "reduced delay" which "serves the public.").

This case is similar to Bythrow. Quijas' trial was relatively short, three days. The issues were relatively simple, the instructions directed the jury to consider each count separately, and the State provided ample evidence for both counts.

Thus, we hold any residual prejudice does not outweigh the need for judicial economy. In turn, we hold the court did not manifestly err in denying Quijas' motion.

3. Restitution

Finally, Quijas asks us to remand this matter for partial re-sentencing because the "State failed to prove the amount of restitution it requested" and failed to prove that he "caused any, much less all, of the injuries." We agree.

At sentencing, the State requested $4,209.89 in restitution for "the injuries and hospital bills for the [two] victims in the matter." Quijas objected, asking the court to "reserve on restitution" and argued the court "may waive any restitution monies to be paid to the government" and the November incident "could not have happened but for negligence of the jail." The court ultimately granted the State's request.

This court reviews a restitution award for an abuse of discretion. State v. Griffith, 164 Wn.2d 960, 965, 195 P.3d 506 (2008). "Although there is no right to a jury determination of facts supporting the amount of restitution, '[r]estitution is allowed only for losses that are 'causally connected' to the crimes charged.'" Id. (alteration in original) (quoting State v. Tobin, 161 Wn.2d 517, 524, 166 P.3d 1167 (2007)).

The State did not brief the merits of the restitution issue.[12] State v. McNeair,

[12] Rather, the State simply argues the restitution issue is unpreserved for appeal. Br. of Resp't at 65-66 (citing RAP 2.5). Even assuming arguendo the issue is unpreserved, we exercise our discretion to consider the issue under RAP 2.5. Ford, 137 Wn.2d at 477.

88 Wn. App. 331, 340, 944 P.2d 1099 (1997) (deeming the failure to put forth an argument "a concession that" any opposition "has no merit.").

The record indeed shows the State gave the court nothing more than a total amount owed and claimed it related to the two victims. Our Supreme Court rejected a restitution award based on more particularized and itemized testimony in Griffith, 164 Wn.2d at 966-67. Even itemized "proof of expenditures" alone isinsufficient to establish restitution given the need to guard against potential overestimates and windfalls. State v. Dedonado, 99 Wn. App. 251, 257, 991 P.2d 1216 (2000).

Thus, we hold the State failed to prove restitution and the court abused its discretion in ordering restitution. Griffith, 164 Wn.2d at 965. In turn, we vacate the order of restitution and remand this matter for resentencing limited to any restitution owed.

III. CONCLUSION

We otherwise affirm Quijas' convictions.

Díaz, J.

WE CONCUR:

Feldman, J.