Supreme Court No. 93821-1

No. 47258-9-II

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JOHN RUSSELL,

Petitioner.

PETITION FOR REVIEW

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WASHINGTON APPELLATE PROJECT
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A. IDENTITY OF PETITIONER

John Russell, appellant below, seeks review of the Court of Appeals decision designated in Part B.

B. COURT OF APPEALS DECISION

Mr. Russell appealed his conviction for assault in the first degree with a deadly weapon, as well as a sentencing condition, in Grays Harbor County Superior Court. This motion is based upon RAP 13.3(e) and 13.5A.

C. ISSUE PRESENTED FOR REVIEW

The State bears the burden of proving the essential elements of a criminal offense. Here, the State was required to prove that Mr. Russell acted with the intent to inflict great bodily harm against the complainant. Was the evidence presented sufficient to prove that Mr. Russell acted with the intent to cause great bodily harm, and was the Court of Appeals decision in conflict with decisions of this Court, requiring this Court grant review? RAP 13.4(b)(1)?

D. STATEMENT OF THE CASE

The Johnson family has lived for many years in the small community of Wishkah, a few miles up the river, outside Aberdeen. RP 74. Ms. Johnson and her husband Don have been married for 25 years;

they have four adult children, all of whom live nearby with their partners and friends. RP 54-55.

On June 28, 2014, several of the Johnson kids were home with their girlfriends, and a number of neighbors came by as well. RP 59. In addition to the Johnson family, a few of the "neighbor boys" who lived in one of the Johnsons' rental homes came over that night to socialize. RP 56. This group of neighbors included Isaac "Ike" Stone. Id. The group was soon joined by John "Jack" Russell, a friend of the neighbors. RP 60-61. The Johnsons had met Mr. Russell before, since he had attended school in the area, and was friendly with the Johnson kids. RP 62.

Ms. Johnson and her husband made dinner for the entire group, and after some time spent outside, the younger generation returned to the house. RP 63-64. The tone of the evening changed, and the heavier drinking began at this point. The kids and their girlfriends opted to play pool and drink at home that night. RP 64-68, 95-96. Ms. Johnson joined the younger generation as Mr. Johnson turned in for the evening, since he had been at work early that morning. RP 68, 97. By around 1:00 a.m., the Johnson kids had all gone home. Only three people remained in the kitchen – Ike Stone, Ms. Johnson, and Mr. Russell. RP 68, 96.

The three of them sat around drinking and talking until approximately 3:00 a.m., and by all accounts, a great deal of alcohol was

consumed. RP 86, 96, 112 (Ms. Johnson estimates consuming four to five mixed drinks; Mr. Stone estimates five mixed drinks containing two shots in each). Mr. Stone recalled that Mr. Russell was mumbling, incoherent, and so intoxicated that he could barely hold fluids in his mouth or hold his head upright. RP 98, 117. Mr. Stone described, "He asked for a drink and we handed him one and he tried to drink out of [a] straw and it just ran out the other side." Id.

At approximately 3:00 a.m., Ms. Johnson told Mr. Stone and Mr. Russell that it was time to end the evening; considering Mr. Russell's intoxicated state, Ms. Johnson offered to allow him to sleep on the couch, rather than drive home. RP 71. Mr. Russell declined that offer, and the evening continued. RP 72. Approximately 15 minutes later, while Mr. Stone's back was turned to get a glass of water, Mr. Russell suddenly stood up. RP 72, 98-99. Mr. Stone said he turned to see Mr. Russell jump up from his chair – his head had previously been resting on the counter – walk quickly behind Ms. Johnson, and make a motion across her neck. RP 98-99. Ms. Johnson later said she suddenly had felt a rush of warmth, and she realized she had been cut. RP 72. She pinched the large wound in her neck with her hand, and received another cut to her right hand. RP 76-79.

Mr. Stone jumped in and disarmed Mr. Russell, who had apparently grabbed his knife from the bar and inflicted this injury. RP 72,

100-01. Mr. Stone incurred some light wounds in this process, but did not require medical attention; he restrained Mr. Russell until law enforcement arrived moments later. RP 102-03.

After speaking with Mr. Stone for a few seconds, Mr. Russell passed out again on the kitchen floor. RP 157.[1] When deputies arrived, their several attempts to awaken Mr. Russell were unsuccessful, so he was handcuffed in an unconscious state. RP 158-59 (photograph admitted of Mr. Russell handcuffed and propped up, while unconscious, in Johnson kitchen). Deputies ultimately had to carry Mr. Russell to their patrol car because he was unable walk independently. RP 159. Deputy Richard Ramirez transported Mr. Russell to the county jail, and testified that at 5:47 a.m., Mr. Russell "was still passed out." RP 163. When Deputy Ramirez was not able to remove Mr. Russell from his car and carry him into the jail alone, he was advised that in this condition, Mr. Russell would need to be medically cleared for incarceration. RP 163-64.

Mr. Russell was then brought to Summit Pacific Medical Center, and Deputy Ramirez testified it was as if Russell "came out of his alcohol-induced coma." RP 165. Mr. Russell was informed that he was involved

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[1] During this brief period of consciousness, Mr. Russell asked Mr. Stone to remove his wallet from his pocket because it was bothering him. RP 102-03. In addition to the wallet, Mr. Stone removed a loaded pistol, for which Mr. Russell had a concealed carry permit. Id.; 211-12; Ex. 28.

in a stabbing and was read his Miranda[2] rights. He was medically cleared 26 minutes later. RP 166. Mr. Russell stated, both at the hospital and later at the jail, that he had no recollection of evening's events once the heavy drinking began, and did not recall being angry or upset at anyone that night. RP 224. He also could not recall becoming violent, displaying the knife, fighting with anyone, or anything that happened from approximately 1:00 a.m. until the time he awoke inside the patrol car. RP 223-25 (stating he recalled consuming between six and eight mixed drinks that evening).

Based on these events, the State charged Mr. Russell with one count of assault in the first degree for the incident with Ms. Johnson, and one count of assault in the second degree, for that with Mr. Stone. CP 34-35. A deadly weapon enhancement was added to each count, as well as a firearm enhancement, due to the knife and the pistol. Id. Following a jury trial, Mr. Russell was convicted of both counts of assault. CP 15-16; RP 281-87. The jury responded "No" to the special verdict regarding the firearm, and "Yes" regarding the knife. CP 14; RP 281-87.

In addition to a standard range sentence, the court ordered, over defense objection, that Mr. Russell be evaluated for civil commitment

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[2] Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

following his release from confinement, despite the absence of psychiatric evidence presented at trial. CP 7; 2RP 8, 10.

Mr. Russell appealed, arguing there was insufficient evidence to support the conviction for first degree assault, and that the court abused its discretion when it ordered the psychiatric evaluation. He also argued the court erred by imposing discretionary legal financial obligations (LFOs) without making an individualized inquiry as to his ability to pay. On October 11, 2016, the Court of Appeals affirmed his conviction; however, the Court struck $575 in LFOs, remanding for the trial court to modify the judgment and sentence accordingly. Appendix at 10.

He seeks review in this Court. RAP 13.4(b)(1).

E. ARGUMENT WHY REVIEW SHOULD BE GRANTED

THIS COURT SHOULD GRANT REVIEW, AS THE COURT OF APPEALS DECISION IS IN CONFLICT WITH DECISIONS OF THIS COURT. RAP 13.4(b)(1).

1. There was insufficient evidence presented that Mr. Russell intended to commit assault in the first degree.

a. Due process requires the State to prove the essential elements of a criminal offense beyond a reasonable doubt.

The State bears the burden of proving the essential elements of a criminal charge beyond a reasonable doubt. In re Winship, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970); State v. Byrd, 125 Wn.2d 707,

713, 887 P.2d 796 (1995); U.S. Const. amend. XIV; Const. art. I § 3. Evidence is sufficient only if, when viewed in the light most favorable to the prosecution, any rational trier of fact would have found the elements of the crime beyond a reasonable doubt. State v. Green, 94 Wn.2d 216, 220-22, 616 P.2d 628 (1980).

b. Because the State did not prove Mr. Russell committed the crime of assault in the first degree, review is required.

The crime of assault in the first degree, as it was charged and prosecuted by the State, required the State to prove that with intent to inflict great bodily harm, Mr. Russell assaulted Ms. Johnson with a deadly weapon. RCW 9A.36.011(1); CP 34-35. The jury concluded the State proved Mr. Russell committed this offense. But even viewed in the light most favorable to the State, Mr. Russell's conduct did not establish the essential elements of first-degree assault. In particular, the State failed to prove that, under the circumstances adduced at trial, Mr. Russell acted with the requisite intent to inflict great bodily harm. For this reason, the conviction was based upon insufficient evidence, and this Court should grant review of the conviction, as the decision of the Court of Appeals is in conflict with decisions of this Court. RAP 13.4(b)(1).

According to statute, "great bodily harm" is "bodily injury that creates a probability of death, or which causes significant serious

permanent disfigurement, or which causes a significant permanent loss or impairment of the function of any bodily part or organ." RCW 9.94A.110(4)(c). "'Great bodily harm' ... encompasses the most serious injuries short of death. No injury can exceed this level of harm." State v. Stubbs, 170 Wn.2d 117, 128, 240 P.3d 143 (2010).

To support Mr. Russell's conviction for assault in the first degree, the State thus had to prove that he actually intended to kill Ms. Johnson, or that he intended to inflict injuries so serious that they would create a probability of death. The State did not meet this burden.

Mr. Russell was practically unconscious at the time of the assault. RP 117-18, 135. In his statement, Mr. Russell said he had consumed between six and eight mixed drinks, and his drinking companion Mr. Stone noted that just before the incident, Mr. Russell could barely lift his head off the counter or keep liquids from dribbling out of his mouth. Id. Immediately after the burst of physical energy required to effectuate the assault, Mr. Russell was tackled by Mr. Stone; then Mr. Russell almost immediately collapsed onto the kitchen floor, passing out. RP 135-37. Mr. Russell remained unconscious, or as deputies put it, in an "alcohol-induced coma," until he regained consciousness in the patrol car, in the sally port of the county jail more than two hours later. RP 155-57, 165.

Nothing about Mr. Russell's conduct immediately before or after the incident supports the inference that he actually intended to kill Ms. Johnson or inflict great bodily harm on her. There was no argument or sharp words exchanged. RP 71-72. Mr. Russell did not lunge at Ms. Johnson. He quickly rose to his feet from what had been described as a virtual drunken stupor. RP 121. He then made one swift move with the knife and was quickly tackled by Mr. Stone and restrained in a "bear hug." RP 122, 124-25, 128. Mr. Russell then collapsed to the kitchen floor, motionless again in a state of drunken unconsciousness. RP 155-57.

Ms. Johnson was not even sure how she sustained the injury on her throat, noting it all happened so quickly. RP 72. She assumed it happened after Mr. Russell rose from the table, but neither she, nor Mr. Stone, saw Mr. Russell pick up the knife. RP 72, 132.

The accidental infliction of injury, even if serious, is not sufficient to prove specific intent to inflict great bodily harm. State v. Elmi, 166 Wn.2d 209, 215, 207 P.3d 439 (2009) (mens rea for assault in the first degree is specific intent to inflict great bodily harm).

The evidence does not establish that Mr. Russell intended to inflict an injury that would create a probability of death, cause significant serious permanent disfigurement, or cause a significant permanent loss or impairment of the function of any bodily part or organ. Accordingly, the

State did not meet its high burden of proof regarding this essential element of assault in the first degree.

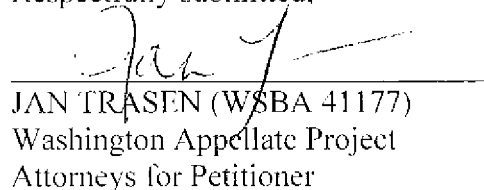
For the reasons stated, the evidence was insufficient to support Mr. Russell's conviction for assault in the first degree. Mr. Russell conceded at trial that the evidence was sufficient to prove assault in the second degree, as to Ms. Johnson. RP 267; CP 20 (Jury Instruction 9); CP 26 (Verdict Form A2). Mr. Russell's conviction for assault in the first degree should have been reversed; consequently, the Court of Appeals decision is in conflict with this Court's decisions, requiring review. See Elmi, 166 Wn.2d at 215; RAP 13.4(b)(1).

F. CONCLUSION

For the above reasons, the Court of Appeals decision should be reviewed, as it is in conflict with decisions of this Court. RAP 13.4(b)(1).

DATED this 9th day of November, 2016.

Respectfully submitted,



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APPENDIX

Filed
Washington State
Court of Appeals
Division Two

October 11, 2016

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. JOHN W. A. RUSSELL, Appellant.	No. 47258-9-II UNPUBLISHED OPINION

Sutton, J. — John W. A. Russell appeals his conviction for first degree assault with a deadly weapon[1] and his sentencing condition. We hold that there was sufficient evidence to support Russell's conviction for first degree assault with a deadly weapon, the trial court did not abuse its discretion when it ordered that he be evaluated for civil commitment prior to his release, and the trial court erred when it imposed discretionary legal financial obligations (LFOs) without making an individualized inquiry as to his ability to pay. As to Russell's statement of additional grounds (SAG) claim, we hold that the trial court did not violate his right to an impartial jury when it permitted a juror with prior knowledge of the case to remain on the jury. Therefore, we affirm Russell's conviction and the sentencing condition requiring that he be evaluated for civil commitment prior to his release, but we strike the discretionary LFOs and remand for the trial court to modify his judgment and sentence accordingly.

[1] Russell does not appeal his conviction for assault in the second degree.

FACTS

I. BACKGROUND FACTS

On the evening of June 28, 2014, Don and Jeanette Johnson had several of their children and their friends from the neighborhood over for dinner at their home in Aberdeen. Ike Stone and Jack Russell were among the friends having dinner that evening. Jeanette[2] testified that Stone visited their home often and that Russell had been to the house before, but she did not know him well.

Several people were drinking throughout the night, including Jeanette, Stone, and Russell. Jeanette testified that Don went to bed around midnight and that she, Stone, and Russell were sitting at the dining room table talking and drinking. Around 2:30 a.m., all other guests had left, and Jeanette told Stone and Russell to "wrap it up" because it was getting late. 1 Verbatim Report of Proceedings (VRP) (Jan. 27, 2015) at 71. Both Jeanette and Stone testified that there were no arguments or disagreements that evening. Stone testified that just before 3:00 a.m., Russell "seemed . . . out of it," was resting his head on the counter, and that he was so intoxicated that he was unable to hold fluids in his mouth. 1 VRP (Jan. 27, 2015) at 117.

Jeanette testified that Russell stood up suddenly and she thought he was standing up to leave when she felt a "rush of warm going down [her neck]." 1 VRP (Jan. 27, 2015) at 72. Stone testified that Russell "suddenly jumped up, got behind Jeanette, and slashed her throat with a knife." 1 VRP (Jan. 27, 2015) at 98. Russell also cut Stone on his neck and chest before Stone was able to grab the knife and restrain Russell. Stone continued to restrain Russell until he got

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[2] We refer to parties with the same last name by first names to avoid confusion; we intend no disrespect.

weaker, and Stone eventually laid him on the floor. Stone testified that Russell explained his actions and stated that Jeanette "hurt [him]" and he "wanted to show that people will do things for no reason." 1 VRP (Jan. 27, 2015) at 101-02.

Jeanette suffered extensive injuries. Her neck was slashed with a knife causing her to lose a great deal of blood. The wound required a lengthy surgery to repair and a multiple day hospital stay. The State charged Russell with one count of first degree assault as to Jeanette and one count of second degree assault as to Stone with a deadly weapon enhancement and a firearm enhancement added to each count.

II. Jury Voir Dire

Following jury voir dire but before opening statements, juror 10 stated that she was the charge nurse on duty at the hospital when Jeanette was being treated. Both Russell and the State questioned juror 10 outside the presence of the other jurors. Juror 10 stated that she understood that Jeanette had been cut with a knife by a man, that she may have said "hello" to her, and that she received reports about her care. VRP (Feb. 5, 2015) at 6. However, juror 10 also stated that she did not "know any details of what . . . happened" and that her knowledge of the case would not influence her decision. VRP (February 5, 2015) at 8. Defense counsel did not exercise a preemptory challenge to dismiss juror 10 or challenge juror 10 for cause.

III. Guilty Verdict

To find Russell guilty of first degree assault as to Jeanette, the jury is required to find beyond a reasonable doubt that he acted "with intent to inflict great bodily harm." RCW 9A.36.011(1). The jury found Russell guilty of one count of first degree assault and one count of

second degree assault, both with a deadly weapon enhancement, but did not find him guilty of the firearm enhancement on either count.

IV. SENTENCE

The trial court sentenced Russell to 147 months of confinement as to count one and 14 months of confinement as to count two. The trial court also imposed a term of community custody of 36 months as to count one and 18 months as to count two. The trial court ordered that Russell "shall be evaluated for civil commitment on mental health grounds prior to release" and stated,

> I want . . . [to] have him evaluated for civil commitment after he is released from prison, because I don't know what his mental state is going to be after he serves time in prison, but I know that he did something that is so horrible, without any explanation.
>
> . . .
>
> [B]ecause I can't understand what he did.

Clerk's Papers (CP) at 7; VRP (February 20, 2015) at 7-8, 10.

The trial court also imposed $575 in discretionary LFOs, $200 in court costs, $100 in DNA collection fees, $500 in victim assessment, and an undetermined amount in restitution. The trial court did not make a finding as to whether Russell had the ability to pay discretionary LFOs. The trial court found Russell indigent at trial and for appeal. Russell was 27 years old at the time and no information was presented as to his ability to work upon his release. Russell appeals.

ANALYSIS

I. SUFFICIENCY OF EVIDENCE

Russell argues that the State did not present sufficient evidence that he intended to inflict great bodily harm on Jeannette because he could not act with the required intent when he was so

intoxicated, and thus the State failed to prove that he committed assault in the first degree with a deadly weapon beyond a reasonable doubt. We disagree.

When reviewing a sufficiency of the evidence claim, we ask whether, after viewing the evidence in a light most favorable to the State, any rational trier of fact could have found the essential elements of the charged crime beyond a reasonable doubt. *State v. Witherspoon*, 180 Wn.2d 875, 883, 329 P.3d 888 (2014). When a defendant challenges the sufficiency of the evidence, the defendant necessarily admits the truth of the State's evidence and all reasonable inferences that can be drawn from it. *State v. Homan*, 181 Wn.2d 102, 106, 330 P.3d 182 (2014). We defer to the trier of fact as to resolving conflicting testimony, evaluating witness credibility, and evaluating the persuasiveness of the evidence. *Homan*, 181 Wn.2d at 106.

To support a conviction for assault in the first degree with a deadly weapon as charged, the State was required to prove the following elements beyond a reasonable doubt:

> That [Russell] in Grays Harbor County, Washington, on or about June 29, 2014, with intent to inflict great bodily harm, did assault [Jeanette] with a deadly weapon or by force or means likely to produce great bodily harm

RCW 9A.36.011(1)(a); CP at 34. First degree assault requires the specific intent to inflict great bodily harm. *State v. Elmi*, 166 Wn.2d 209, 215, 207 P.3d 439 (2009). Specific intent is defined as the "intent to produce a specific result, as opposed to intent to do the physical act that produces the result." *Elmi*, 166 Wn.2d at 215.

Although the voluntary intoxication of a defendant does not make an act by that individual "less criminal," his intoxication may be considered in determining whether they possessed the necessary mental state required to commit the crime. RCW 9A.16.090. The trier of fact may consider the defendant's intoxication, but the voluntary intoxication statute "does not require that

consideration to lead to any particular result." *State v. Coates*, 107 Wn.2d 882, 889-90, 735 P.2d 64 (1987)

By challenging the sufficiency of the evidence, Russell necessarily admits the truth of Stone's testimony and all reasonable inferences that can be drawn from it. *Homan*, 181 Wn.2d at 106. Here, Stone testified that Russell "suddenly jumped up, got behind Jeanette, and slashed her throat with a knife." 1 VRP at 98. Stone also testified that Russell explained his actions and stated that Jeanette "hurt [him]" and he "wanted to show that people will do things for no reason." 1 VRP at 101-02. The jury was allowed to consider Russell's intoxication but was not required to find that his voluntary intoxication precluded him from forming the required specific intent to inflict great bodily harm as required for the crime of first degree assault. *Coates*, 107 Wn.2d 889-90. We defer to the trier of fact to determine the persuasiveness of the evidence. *Homan*, 181 Wn.2d at 106. We hold that in viewing the evidence in a light most favorable to the State, a rational trier of fact could find that Russell intended to inflict great bodily harm with a deadly weapon beyond a reasonable doubt. Thus, we affirm the first degree assault conviction with a deadly weapon.

II. Sentencing Condition

Russell argues that the trial court erred when it ordered that he be evaluated for civil commitment prior to his release because there was no evidence at trial that he had a mental health disorder or mental defect requiring an evaluation, and because he was not evaluated for competency.[3] We disagree.

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[3] Although Russell argues that he was not evaluated for competency under RCW 71.05, he does not cite any authority that such an evaluation is required prior to sentencing.

Sentencing conditions are usually upheld if they are reasonably crime related. *State v. Warren*, 165 Wn.2d 17, 32, 195 P.3d 940 (2008). However, the court is required to enter findings of fact that the defendant's mental illness contributed to his crimes before it orders a defendant to participate in mental health treatment. *State v. Jones*, 118 Wn. App. 199, 209, 76 P.3d 258 (2003). We review a sentencing condition for an abuse of discretion. *Warren*, 165 Wn.2d at 32.[4]

Here, the trial court did not order Russell to participate in mental health treatment; it only ordered that he "shall be evaluated for civil commitment on mental health grounds prior to release." CP at 7. The trial court reasoned that it "[couldn't] understand what [Russell] did" when "he did something that is so horrible, without any explanation." VRP (Feb. 20, 2015) at 8, 10.

Thus, we hold that the trial court did not abuse its discretion because the condition that Russell be evaluated for civil commitment is reasonably crime related when the court had no other rational explanation for Russell's actions.

III. Discretionary LFOs

Russell argues that the trial court erred when it imposed $575 in discretionary LFOs without inquiring as to his ability to pay. We agree.

"A defendant who makes no objection to the imposition of discretionary LFOs at sentencing is not automatically entitled to review." *State v. Blazina*, 182 Wn.2d 827, 832, 344 P.3d 680 (2015). Generally, we may refuse to review a claim of error raised for the first time on appeal. RAP 2.5(a). But, as our Supreme Court in *Blazina* noted, an appellate court may

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[4] Russell does not argue that the trial court did not have the authority to impose a crime-related condition, including a mental evaluation, but simply argues that there was "no evidence presented at trial that Russell suffered a mental health disorder." Br. of Appellant at 11.

exercise its discretion to reach unpreserved claims of error. *Blazina*, 182 Wn.2d at 832-33. We choose to exercise our discretion to review this issue given the length of Russell's sentence and his indigency.

RCW 10.01.160(3) provides,

> The court shall not order a defendant to pay costs unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose.

The sentencing court must make an "individualized inquiry into the defendant's current and future ability to pay before the court imposes LFOs." *Blazina*, 182 Wn.2d at 839. The inquiry must "consider important factors, such as incarceration and a defendant's other debts, including restitution, when determining a defendant's ability to pay." *Blazina*, 182 Wn.2d at 839.

Here, the record does not show that the trial court made any individualized inquiry into Russell's ability to pay prior to imposing discretionary LFOs. Given the length of his sentence, 15 years, and his indigency, it is unlikely that Russell has or will have the ability to pay the discretionary LFOs. Thus, the trial court erred when it imposed discretionary LFOs without making an individualized inquiry as to his ability to pay and we strike the imposition of discretionary LFOs. We remand to strike the discretionary LFOs and order the trial court to modify Russell's judgment and sentence accordingly.

IV. Statement of Additional Grounds

In his SAG, Russell claims that the court infringed upon his right to an impartial jury because it allowed a juror to continue serving when the juror admitted that she had prior knowledge of the case. We disagree.

We assume without deciding under RAP 2.5(a) that Russell raises a constitutional error that is reviewable for the first time on appeal. A defendant raising a constitutional error must show that the constitutional error is "manifest." *State v. Lamar*, 180 Wn.2d 576, 583, 327 P.3d 45 (2014). An error is manifest if the defendant can show that it "resulted in . . . practical and identifiable consequences in the trial." *Lamar*, 180 W.2d at 583.

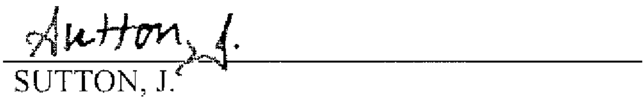
Here, defense counsel did not exercise a preemptory challenge to dismiss juror 10 or challenge juror 10 for cause. Both Russell and the State had an opportunity to question juror 10 after she stated that she had prior knowledge of the case. Juror 10 stated that she understood that Jeanette had been cut with a knife by a man, that she may have said "hello" to her, and she received reports about her care. VRP (Feb. 5, 2015) at 6. However, juror 10 also stated that she "did not know any details of what . . . happened" and that her knowledge of the case would not influence her decision. VRP (Feb. 5, 2015) at 8. There is no evidence in the record that juror 10 could not be impartial. And Russell cannot show that the alleged constitutional error affected the outcome of the trial. Thus, we hold that Russell's right to an impartial jury was not violated when the trial court allowed juror 10 to serve on the jury.

CONCLUSION

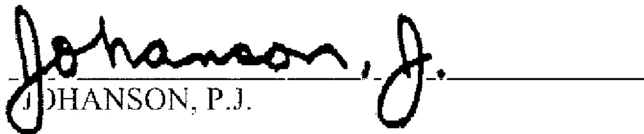
We hold that there was sufficient evidence to support Russell's conviction for first degree assault with a deadly weapon, that the trial court did not abuse its discretion when it ordered that he be evaluated for civil commitment prior to his release, but that the trial court erred when it imposed discretionary LFOs without making an individualized inquiry as to his ability to pay. As to his SAG claim, we hold that the trial court did not violate his right to an impartial jury when it permitted a juror with prior knowledge of the case to remain on the jury.

We affirm Russell's conviction and the sentencing condition that he be evaluated for civil commitment prior to his release. But we strike the $575 in discretionary LFOs from his judgment and sentence, and remand for the trial court to modify his judgment and sentence accordingly.

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


SUTTON, J.

We concur:


JOHANSON, P.J.

LEE, J.

DECLARATION OF FILING AND MAILING OR DELIVERY

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☒ respondent Katherine Svoboda, DPA
Grays Harbor County Prosecutor's Office
[ksvoboda@co.grays-harbor.wa.us]

☒ petitioner

☐ Attorney for other party

MARIA ANA ARRANZA RILEY, Legal Assistant
Washington Appellate Project

Date: November 9, 2016

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- Answer/Reply to Motion: ____
- Brief: ____
- Statement of Additional Authorities
- Cost Bill
- Objection to Cost Bill
- Affidavit
- Letter
- Copy of Verbatim Report of Proceedings - No. of Volumes: ____
  Hearing Date(s): ________
- Personal Restraint Petition (PRP)
- Response to Personal Restraint Petition
- Reply to Response to Personal Restraint Petition
- ■ Petition for Review (PRV)
- Other: ________

Comments:

No Comments were entered.

Sender Name: Maria A Riley - Email: maria@washapp.org

A copy of this document has been emailed to the following addresses:

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