

NO. 47007-1

**COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

JAYCEE FULLER, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Bryan Chushcoff
The Honorable Ronald Culpepper

No. 09-1-01865-2

Supplemental Response Brief

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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

Would it be proper to award appellate costs to the State when there is nothing unjust in an able-bodied man fairly convicted of murder being ordered to repay the community for the cost of his appeal?

B. STATEMENT OF THE CASE.

A properly instructed jury convicted defendant of deadly weapon enhanced premeditated and first degree felony murder for brutally killing Mohamud Ahmed by slashing his throat open with a knife during a failed attempt to take from Ahmed the money he earned as a cab driver. CP 503-35; RP (11/6) 321; (11/10/A) 55-56; (11/12) 143; (11/25/14) 187-97. Ex. 224, 226. Within moments of driving defendant to his stated destination, defendant tried to take control by holding the edge of a knife under Ahmed's chin, leaving a sharp-force injury characteristic of prolonged pressure.¹ Eight deep tendon-severing and superficial cuts across Ahmed's hand attested to his painful effort to pry the knife from his neck.² Further proof of their struggle was evident in scratches on defendant's face after the murder.³ Defendant repositioned the knife to Ahmed's throat, pushed the blade into his flesh and cut across to his right ear. It severed the carotid

¹ RP (11/3) 153; 155, 160-61; (11/10/A) 40-41; (11/12) 142-43, 152, 155; Ex 226.

² RP (11/12) 144-45, 151, 157; (11/19) 89; Ex. 216, 219-20, 230.

³ RP (11/10/A) 55-56; (11/19) 20, 25.

artery, jugular vein and several muscles. ⁴ Death followed as blood pumped toward Ahmed's brain only to "spur[t]" out the severed artery as returning blood "drain[ed]" from the severed vein. RP (11/12) 153.

Prior to senselessly taking the life of a productive member of our community—an immigrant from war-torn Somalia who was working and studying to make good on the abundant opportunities this country has to offer the industrious among us—defendant worked as a cab driver and washed dishes for a restaurant. RP (11/4) 19-20; (11/5) 128-30, 133, 136; (11/24) 50; 81-82, 140-41. Defendant presumably retains a productive capacity that approximates, even if poorly, the capacity he stole from Ahmed and Ahmed's family to take the fruits of Ahmed's labor and give action to a deeply seated animosity toward immigrants—people defendant perceived as "foreigners" that took American jobs.⁵

Yet, having taken from us all, the contributions Ahmed might have made, while possessed with the mental and physical prowess he applied to planning, staging and committing Ahmed's murder, defendant asks for what he should not feel comfortable describing as the "just and equitable" result of insulating him from the burden of repaying our community the funds it advanced to cover the cost of his appeal. App. at 3-4. The State responds to comply with the order of August 17, 2016, directing it to do so in ten pages or less, within ten days.

⁴ RP (11/6) 321; (11/10/A) 55-56; (11/12) 143-44; Ex. 224, 226.

C. ARGUMENT.

THERE IS SIMPLY NOTHING UNJUST
OR INEQUITABLE IN A MAN WHO SO
BRUTALLY MURDERED ANOTHER
FOR ANIMOSITY AND GREED BEING
REQUIRED TO REPAY THE PUBLIC
THE COST OF HIS APPEAL.

RCW 10.73.160(1) empowers appellate courts to impose appellate costs on adult offenders. Imposition of legal financial obligations has been historically perceived to be an appropriate method of ensuring able-bodied offenders "repay society for a part of what it lost as a result of [their] commission of a crime." *State v. Barklind*, 87 Wn.2d 814, 820, 557 P.2d 314 (1976). More recently, this community-centric concept of restorative justice has been subordinated to offender-centric concerns focused on the difficulties attending repayment. *E.g. State v. Blazina*, 182 Wn.2d 827, 835-37, 344 P.3d 680 (2015). "Ability to pay is certainly an important factor that may be considered under RCW 10.73.160, but it is not necessarily an indispensable factor." *State v. Sinclair*, 192 Wn. App. 380, 389, 367 P.3d 612 (2016).

According to the record, defendant is an able-bodied man who demonstrated a capacity for gainful employment, then applied his capacity of mind with strength of body to viciously slash another man's throat as the man violently struggled for his life. No doubt a murder conviction for such a brutal and senseless act with its attending imprisonment limits

⁵ RP(11/5) 267, 270; (11/20) 40.

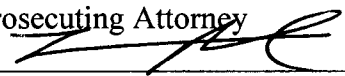
defendant's financial prospects. But if he directed to payment of costs through prison or post-release labor some of the physical and mental effort he applied to planning, staging, then murdering a man who symbolized an immigrant community defendant spent so much energy hating, he might, in small measure, repay the community for the substantial resources it has and continues to expend on his behalf and lost through Ahmed's death.

D. CONCLUSION.

Prison-based indigency for viciously murdering a contributing member of our community should not be a barrier to appellate costs. A return to a community-centric concern for restorative justice is warranted, particularly in this case.

RESPECTFULLY SUBMITTED: August 19, 2016.

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Certificate of Service:

The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

8/19/16 Ther
Date Signature

PIERCE COUNTY PROSECUTOR

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