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SUPREME COURT  
STATE OF WASHINGTON  
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No. 97967-7  
Court of Appeals No. 78026-3-I

THE SUPREME COURT OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent

v.

JAMES CASON,

Petitioner.

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

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PETITION FOR REVIEW

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TABLE OF CONTENTS

|    |  |          |
|----|--|----------|
| A. | IDENTITY OF PETITIONER .....                                   | 1        |
| B. | OPINION BELOW.....   | 1        |
| C. | ISSUES PRESENTED .....   | 2        |
| D. | STATEMENT OF THE CASE .....                                    | 2        |
| E. | ARGUMENT.....  | 4        |
|    | <i>Following Mr. Cason's acquittal based on his lawful use</i> |          |
|    | <i>of self-defense, t .....</i>                                | <i>4</i> |
| F. | CONCLUSION .....   | 8        |

TABLE OF AUTHORITIES

**Washington Court of Appeals**

*State v. Anderson*. 72 Wn. App. 253, 863 P.2d 1370 (1993)..... 7

**Statutes**

Laws of 1995, ch. 44..... 7

RCW 9A.16.110 ..... 1, 2, 4, 5, 6, 7

**Court Rules**

RAP 13.4..... 1, 8

A. IDENTITY OF PETITIONER

Petitioner James Cason asks this Court to accept review pursuant to RAP 13.4 of the opinion of the Court of Appeals in *State v. Cason*, 78026-I.

B. OPINION BELOW

A jury acquitted James Cason of first degree assault finding he acted in self-defense. Mr. Cason spent several months in custody awaiting trial. Because he was in custody, his Social Security Disability benefits –his sole source of income-- were terminated.

After being acquitted of all charges, Mr. Cason requested reimbursement under RCW 9A.16.110 of his benefits. The court denied Mr. Cason's request, citing an ambiguous special verdict and lack of mitigating factors as prohibiting reimbursement of these crucial benefits. Ultimately the court concluded that but for Mr. Cason's drug use the need to sue self-defense would not have arisen.

Mr. Cason appealed arguing, drug use is not sufficiently serious conduct to deny reimbursement. The Court of Appeals denied his claim.

C. ISSUES PRESENTED

Where a jury acquits a person based on self-defense RCW 9A.16.110 permits reimbursement from the State for losses incurred as a result of the prosecution. The statute permits the trial court to reduce or deny an acquitted defendant's reimbursement award only when the trier of fact has found the defendant engaged in criminal conduct substantially related to the charged event which necessitated the need for self-defense and the trial court has weighed the seriousness of that initial criminal conduct. Did the trial court err in denying Mr. Cason reimbursement for critical disability benefits when the court the seriousness of the underlying conduct did not warrant such denial?

D. STATEMENT OF THE CASE

Mr. Cason relies on his monthly Social Security Disability Income (SSDI) benefits of \$921.00 per month. 1/26/18 RP 11. Mr. Cason's benefits were terminated for more than a year while he awaited trial for an act committed in self-defense.

Mr. Cason invited Chinita Manuel to join him for an evening at the Star Hotel in Seattle. RP 445. Although they had not seen each other for several months, Ms. Manuel and Mr. Cason were acquainted.

RP 441. Both struggled with addiction. RP 442. Whenever they got together, they shared what drugs they had. RP 441-444.

When Ms. Manuel arrived at the hotel that night, she and Mr. Cason drank beer, smoked crack cocaine, and watched TV. RP 446. When Ms. Manuel tried to coax Mr. Cason into sharing more drugs, he refused her advances. RP 449. Ms. Manuel became irate and attacked Mr. Cason with a chain and padlock she kept in her backpack. RP 450. Mr. Cason successfully avoided Ms. Manuel's attack and enlisted the help of the hotel manager in removing Ms. Manuel from the premises. RP 451-52. A short while later, Ms. Manuel called Mr. Cason, asking for drugs. RP 454. Again Mr. Cason refused her request, but she soon appeared at his hotel door and asked to use the bathroom. RP 458. Mr. Cason reluctantly allowed her back in. RP 458. After several minutes had passed, Ms. Manuel emerged from the bathroom and attacked Mr. Cason with a small knife she kept in her backpack. RP 458. The two wrestled for control of the knife. RP 461. During the struggle, Ms. Manuel received knife wounds to her chest. RP 275.

At trial, a jury acquitted Mr. Cason of his charged offense of first-degree assault, finding Mr. Cason had acted in self-defense. RP 580. After the verdict, the jury considered whether Mr. Cason used

lawful force in defending his life. RP 591. The jury returned special verdicts, finding Mr. Cason had acted with lawful force and that he was engaged in criminal conduct which was substantially related to the events related his need to defend himself. RP 602.

Based on the jury's special verdict, Mr. Cason asked for reimbursement of the social security benefits he could not receive while he awaited trial in prison. RP 1/26/18 3. The court could not identify which criminal conduct the jury found was substantially related to Ms. Manuel's attack on Mr. Cason. RP 1/26/18 22. Still, the court denied Mr. Cason's reimbursement, stating the jury found Mr. Cason's drug use was substantially related to his need to use lawful force in self-defense. CP 29-30.

E. ARGUMENT

*Following Mr. Cason's acquittal based on his lawful use of self-defense, the trial court erred in finding Mr. Cason's drug use was sufficient basis to deny reimbursement.*

Under RCW 9A.16.110, a defendant who is found to have used lawful force in defense of self or property is entitled to reimbursement for losses while incarcerated. The jury must consider not only whether the defendant used lawful force, but also whether the defendant was

engaged in “criminal activity substantially related to the events giving rise to the charged offense.” RCW 9A.16.110(3). If the jury answers “yes” to the second question, then the trial judge has discretion to reduce or deny the defendant’s reimbursement. RCW 9A.16.110(3). In weighing the amount of the award, the judge must consider the seriousness of the criminal conduct identified by the jury. RCW 9A.16.110(3).

The court denied Mr. Cason’s reimbursement, stating “but for Mr. Cason smoking crack cocaine with the alleged victim in his motel room, the events giving rise to these charges would not have occurred. The jury so found.” CP 24. The court also explained that it could see “no mitigating circumstances that would warrant reimbursement.” CP 25. Mr. Cason is entitled to reimbursement because the court not only failed to perform the correct inquiry into the seriousness of his initial conduct but could not do so without knowing what that initial conduct was in the first place.

Under the reimbursement statute, only the trier of fact has the authority to determine whether an acquitted person “was engaged in criminal conduct substantially related” to the events giving rise to the need to use lawful force. RCW 9A.16.110(3). Here, the jury was the



trier of fact. RP 1/21/217 11. And despite a record replete with accusations of various criminal behavior, the special verdict *did not* identify which conduct the jury believed was substantially related to Mr. Cason's need to use lawful force to defend his life. Even the judge, who was present throughout the trial, was unsure of which conduct the jury had identified in the special verdict. RP 1/26/2018 22.

Even had the jury actually found that sharing drugs with Ms. Manuel was substantially related to Mr. Cason's need to defend himself, it is manifestly unreasonable to deny reimbursing Mr. Cason for his loss of his only source of income on the basis of his personal drug use.

In requiring trial courts to consider the seriousness of an acquitted person's initial criminal conduct, the legislature clearly anticipated certain criminal conduct could not justify denying an award. The legislative history of RCW 9A.16.110(3) demonstrates Washington lawmakers were concerned about far more serious conduct than simple drug use or possession.

Prior to 1995, an acquitted defendant was entitled to recover legal fees and time loss from the state, no matter the initial circumstances leading to the need to use lawful force in self-defense.

Laws of 1995, ch. 44 § 1. However, in 1995 the legislature became concerned the law was allowing individuals who knowingly and willingly engaged in criminal conduct likely to necessitate the need to use self-defense to recover costs. See Final Bill Report SSB 5278.

The legislation was in a part a response to cases such as *State v. Anderson*. 72 Wn. App. 253, 863 P.2d 1370 (1993). In *Anderson*, a person, drunk and high on cocaine, loaded a shotgun with the intent of buying more drugs in a dangerous neighborhood. *Id.* at 257. Predictably, the defendant got into a confrontation over a drug deal, during which he shot two people, killing one. *Id.* After finding he acted in self-defense, the trial court denied reimbursement based on Anderson's behavior. *Id.* at 258. The Court of Appeals reversed, holding that the contemporary version of RCW 9A.16.110 did not "disqualify a claimant because he or she is of bad character or because the need to use self-defense was precipitated by unsavory or even illegal activities." *Id.* at 259-260.

But that statutory precipitated by *Anderson*, cannot sweep as broadly as the trial court concluded. Mr. Cason merely checked into a motel and invited a friend to join him. RP 445. Mr. Cason's previous interactions with Ms. Manuel did not put him on notice that a

dangerous situation would occur. RP 441. It is unclear from the record whether Mr. Cason or Ms. Manuel was the original possessor of the knife. CP 1, RP 533-34, 562-63.

Drug use in and of itself is not “serious” criminal activity. Mr. Cason’s drug possession and use did not instigate an aggressive confrontations. Such drug use is not the egregious criminal conduct with which the legislature was concerned. See Final Bill Report SSB 5278 C 44 L 95 (July 23, 1995).

The denial of reimbursement in this case is a significant issue of public importance warranting review under RAP 13.4.

F. CONCLUSION

This Court should grant Mr. Cason’s petition for review.

Submitted this 10<sup>th</sup> day of December, 2019.



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IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON,  
  
Respondent,  
v.  
JAMES ARTIS CASON,  
  
Appellant.

No. 78026-3-I

DIVISION ONE

UNPUBLISHED OPINION

FILED: November 12, 2019

LEACH, J. — James Artis Cason appeals the trial court’s denial of his request for reimbursement of government benefits he lost while jailed waiting for trial. For the first time on appeal, he challenges the inquiry the trial court made into the seriousness of Cason’s criminal conduct related to the charged crime for which the jury found him not guilty. Because this challenge does not fall within a recognized exception to the general rule preventing a party from raising a claim for the first time on appeal, we decline to consider it and affirm.

BACKGROUND

The State charged James Cason with first degree assault. The jury acquitted him. The jury then returned a special verdict, finding that Cason proved “by a preponderance of the evidence that the use of force was lawful” and

that he “engaged in criminal conduct substantially related to the events giving rise to the crime with which [he] was charged.”

Cason later requested reimbursement under RCW 9A.16.110 for Social Security disability benefits that he lost while jailed before trial. At a hearing on this request, Cason and the State discussed with the judge whether or not Cason’s Social Security benefits could be considered under the “loss of time” language included in the reimbursement statute, RCW 9A.16.110.

The defense attorney stated, “[F]irst, I’ll say [Cason’s] conduct in using illegal narcotics does meet the definition of illegal conduct that was substantially related to the need for his lawful force.” He also briefly discussed how drug use is a common affliction in our state and country and “the legislature’s intent is that people who are otherwise not doing things that would incur violence should be reimbursed if they use lawful force.”

The judge then analyzed how to use her discretion to decide whether to award reimbursement to Cason:

[H]ow do I make the determination really of the seriousness of the criminal conduct? [W]e’re identifying the use of crack cocaine and the provision of crack cocaine as the criminal conduct that’s substantially related to the events giving rise to the charges—because . . . that’s what the jury found, [because] had they not gotten together to smoke crack, he wouldn’t have been in the position to stab her or feel the need to stab her; right?

The court denied Cason’s reimbursement request, noting that “but for Mr. Cason smoking crack cocaine with the alleged victim in his motel room, the

events giving rise to these charges would not have occurred. The jury so found.”

Cason appeals.

### ANALYSIS

Cason claims that the trial court erred in denying reimbursement because the jury did not specify which criminal conduct of Cason presented at trial gave rise to the need for him to act in self-defense. And he claims that the court could not consider the seriousness of Cason’s initial criminal conduct without knowing exactly what that conduct was.

RCW 9A.16.110 requires the State to reimburse a defendant who has been found not guilty by reason of self-defense:

[T]he state of Washington shall reimburse the defendant for all reasonable costs, including loss of time, legal fees incurred, and other expenses involved in his or her defense.

[I]f the trier of fact also determines that the defendant was engaged in criminal conduct substantially related to the events giving rise to the charges filed against the defendant[,] the judge may deny or reduce the amount of the award. In determining the amount of the award, the judge shall also consider the seriousness of the initial criminal conduct.

During the hearing about reimbursement, Cason never claimed that RCW 9A.16.110 requires that the jury specify what criminal conduct by Cason was substantially related to the events giving rise to the charges filed against him before the trial court had discretion to deny his reimbursement request.<sup>1</sup> Also,

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<sup>1</sup> We note that RCW 9A.16.110 does not require that the fact finder identify a particular crime; it requires only a finding “that the defendant was engaged in criminal conduct substantially related to the events giving rise to the charges filed against the defendant.”

Cason never claimed to the trial judge that she did not consider the seriousness of his admitted initial criminal conduct, providing his assailant with crack cocaine and smoking it with her. Generally, we will not consider issues raised for the first time on appeal unless an exception applies, like manifest error affecting a constitutional right.<sup>2</sup> Cason did not raise either issue below. Neither fits within an exception to the rule barring review of a claim not raised in the trial court. So we decline to review these two issues.

Cason also claims drug use is not a sufficiently serious criminal activity to deny reimbursement of critical disability benefits under RCW 9A.16.110. But he identifies no legal authority supporting this claim. “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.”<sup>3</sup> Because Cason provides no authorities in support of his proposition, we decline to consider this argument.<sup>4</sup>

#### CONCLUSION

Because Cason did not raise the first two issues below and because he provides no authority supporting his assertion that drug use is not sufficiently

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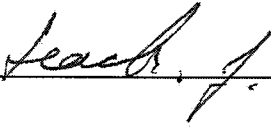
<sup>2</sup> RAP 2.5(a); State v. McFarland, 127 Wn.2d 322, 332-33, 899 P.2d 1251 (1995).

<sup>3</sup> State v. Logan, 102 Wn. App. 907, 911 n.1, 10 P.3d 504 (2000) (quoting DeHeer v. Seattle Post-Intelligencer, 60 Wn.2d 122, 126, 372 P.2d 193 (1962)).

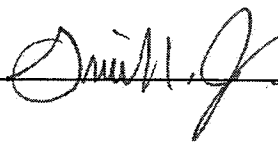
<sup>4</sup> Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992) (stating that where an appellant provides no authorities in support of his or her proposition, this court need not consider his or her argument).

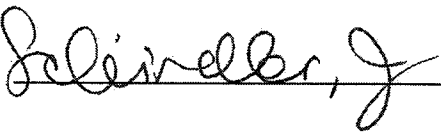
No. 78026-3-1 / 5

serious criminal activity to deny reimbursement, we decline to review any of these issues. We affirm.

  
\_\_\_\_\_

WE CONCUR:

  
\_\_\_\_\_

  
\_\_\_\_\_



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The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original document **Petition for Review to the Supreme Court** to which this declaration is affixed/attached, was filed in the **Court of Appeals** under **Case No. 78026-3-I**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

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Date: December 10, 2019

# WASHINGTON APPELLATE PROJECT

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