

FILED
Court of Appeals
Division I
State of Washington
3/4/2020 4:46 PM

FILED
SUPREME COURT
STATE OF WASHINGTON
3/5/2020
BY SUSAN L. CARLSON
CLERK

Supreme Court No. 98238-4
(COA No. 78934-1-I)

THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

MICHAEL ZICK,

Petitioner.

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

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER AND DECISION BELOW

Michael Zick, petitioner here and appellant below, asks this Court to accept review of the Court of Appeals decision terminating review dated February 3, 2020, pursuant to RAP 13.3(a)(2)(b) and RAP 13.4(b). A copy of the decision is attached.

B. ISSUES PRESENTED FOR REVIEW

1. The Court of Appeals agreed the offense of malicious mischief requires the prosecution prove the accused acted with specific intent to vex, annoy or harm “another person.” But it sidestepped the essential question presented of whether the federal government is “a person” under the statute and affirmed Mr. Zick’s conviction despite the lack of evidence Mr. Zick’s intent was anything other than protesting the federal government. Should this Court grant review to address the unsettled question of whether property damaged by someone whose intent is to draw attention to acts by the federal government does not satisfy the essential element of malicious mischief mandating malice against a person?

2. A permissive inference instruction dilutes the prosecution’s burden of proof by instructing the jury it may infer

an essential element of an offense. It violates due process unless there is proof beyond a reasonable doubt that the inference flows from a proven fact. The court instructed the jury it could infer Mr. Zick acted with malice based on evidence he willfully damaged property. Did the court impermissibly dilute the prosecution's burden of proof by instructing the jury it could infer an essential element that was the critical contested issue?

D. STATEMENT OF THE CASE

Michael Zick broke numerous windows outside a United States post office as a means of "protest against the U.S. government." RP 131. He told the police he chose the post office because "it represents the government," and pointed to the American flag flying in front of the building. *Id.* He was protesting mistreatment he had received by the federal government. *Id.* When a Bellingham police officer arrested him, Mr. Zick said to the officer, "he wanted to go to federal court" for his actions, rather than state court. RP 132.

Leonard Saunders was inside the post office when he heard loud bangs and thought it might be a shooting. RP 114. He ran outside but when he saw Mr. Zick hitting windows with

a tire iron, he stopped running and took a video of Mr. Zick. RP 115-16. The video shows Mr. Zick appearing calm as he walks from window to window, banging a hole into each with a long tool. Ex. 1. The video concludes with Mr. Zick standing still and saluting the police when they arrive, then compliantly submitting to his arrest. Ex. 1.

The prosecution charged Mr. Zick with malicious mischief in the first degree. CP 1. At his jury trial, the court instructed the jury it could infer Mr. Zick acted with malice if he acted in willful disregard of the rights of another. CP 19. The prosecution argued that Mr. Zick's intent to protest the federal government met the legal requirement of malice even though malice requires an evil intent to vex another person. RP 157.

The facts are further explained in Appellant's Opening Brief, in the relevant factual and argument sections, and are incorporated herein.

D. ARGUMENT

1. The Court of Appeals misconstrued the essential elements of malicious mischief, which mandates intentional malice against another person and defines “person” to exclude the federal government.

a. Malicious mischief requires the prosecution prove the essential element of malice against another person.

The prosecution unequivocally bears the burden of proving the essential elements of a crime. *In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970); U.S. Const. amend. XIV; Const. art. I, §§ 3, 22. Proof beyond a reasonable doubt of all essential elements is an “indispensable” threshold of evidence the State must establish to garner a conviction. *Winship*, 397 U.S. at 364. The jury may not rely on inferences “based on speculation.” *State v. Vasquez*, 178 Wn.2d 1, 16, 309 P.3d 318 (2013).

To convict Mr. Zick of first degree malicious mischief, the prosecution was required to prove he “knowingly and maliciously” caused physical damage to the property of another, with the damaged caused exceeding \$5000. RCW 9A.48.070. The State does not meet its burden by merely proving the accused knew the

act was wrong or acted with the intent to alert the government to a problem.

Malice is statutorily defined as:

[A]n evil intent, wish, or design to vex, annoy, or injure another person. Malice may be inferred from an act done in willful disregard of the rights of another, or an act wrongfully done without just cause or excuse, or an act of omission of duty betraying a willful disregard of social duty.

RCW 9A.04.110.

The mens rea for malicious mischief requires the person act both “knowingly and maliciously.” RCW 9A.48.070(1). Knowledge that actions are against the law alone does not suffice, or the added requirement of acting with malice would be superfluous. *See* RCW 9A.08.010(1)(b) (defining knowledge).

“The court must give effect to all language within the statute so that no portion is rendered meaningless or superfluous.” *State v. H.Z.-B.*, 1 Wn. App. 2d 364, 366, 405 P.3d 1022 (2017), *rev. denied*, 190 Wn.2d 1015 (2018). The legal element of malice exists in addition to the mens rea of knowledge.

Malice is not proven by simple awareness a person is committing a crime. Other cases where malice was proved involve patent animosity with no plausible alternate motive. *See, e.g., State v. O'Connor*, 155 Wn.2d 335, 338, 119 P.3d 806 (2005) (defendant slashed ex-girlfriend's tires); *State v. Coria*, 146 Wn.2d 631, 634, 48 P.3d 980 (2002) (defendant broke mirror, slashed floor, smashed door, and broke bird cage of home shared with wife); *State v. Schaeffer*, 120 Wn.2d 616, 617, 845 P.2d 281 (1993) (defendant smashed mailboxes with baseball bat); *State v. Lopez*, 105 Wn. App. 688, 692, 20 P.3d 978 (2001) (defendant broke globe in victim's home); *State v. Vanvalkenburgh*, 70 Wn. App. 812, 814, 856 P.2d 407 (1993) (defendant broke windows in Special Enforcement offices, stating he did it "for the public good").

In addition, the object of malicious intent must be "another person." Malice requires the "evil intent" of vexing "another person." RCW 9A.04.110(12). The federal government is not a person under this statute.

RCW 9A.03.110 defines "malice" to require an evil intent or design against "another person." RCW 9A.04.110(12). This same statute separately defines "government" as a governmental unit,

RCW 9A.04.110(8), while also defining “person” as a natural being or corporation, but not a governmental unit. *See* RCW 9A.04.110(8) (defining “Government” as “any branch, subdivision, or agency of the government of this state and any county, city, district, or other local governmental unit”); RCW 9A.04.110(17) (defining “person” as “any natural person and, where relevant, a corporation, joint stock association, or an unincorporated association”).

When the legislature uses different words in the same statute, courts must presume the words have different meanings. *Simpson Inv. Co. v. Dep't of Revenue*, 141 Wn.2d 139, 160, 3 P.3d 741 (2000) (quoting *State ex rel. Pub. Disclosure Comm'n v. Rains*, 87 Wn.2d 626, 634, 555 P.2d 1368 (1976)).

Consequently, when the same statute defines malice as an intent to vex another person, and also defines person separately and distinct from government, the government is not “another person” for purposes of malicious mischief.

b. A protest designed to vex the federal government does not constitute malice against a person.

Here, the State presented no evidence that Mr. Zick intended ill will toward any person. He paused when people passed by. He looked around to be sure no one was there. Ex. 1. When the police arrived, he saluted and calmly submitted to his arrest. *Id.*; RP 132.

Mr. Zick's intent was to alert the federal government about his complaints. RP 131-32. When asked why he broke the windows, he explained his desire to go to federal court to protest harm that befell him in his past and alert the federal government to his grievance. RP 131. His actions supported this description of his purpose – although he damaged property that did not belong to him, he remained outside the building and walked slowly from window to window, putting holes in them. Ex. 1. He knew he was damaging the windows, but his intent was to voice his protest against the government. RP 131.

During closing argument, the prosecution conceded its evidence of malicious intent was only that “he intended to vex, annoy, or injure the federal government by attacking that

building.” RP 157. Yet the prosecution improperly claimed that malice against the “federal government” met the legal requirement of malice against “another person,” erroneously contending the federal government is a person. *Id.*

The prosecution’s argument to the jury demonstrates its evidence merely showed Mr. Zick’s intent was to protest the federal government and not designed to vex a person. His mere knowledge that people were present, or that it is wrong to destroy property, does not meet the legal requirements of malice.

Willfully destroying property at a U.S. post office is a federal offense, without any requirement of malice. 39 CFR § 232.1(c) (conduct on postal property). As Mr. Zick told the arresting officer, his offense was directed to the federal government and should be presented in federal court, not state court. RP 131.

c. This Court should grant review to resolve an important question of statutory interpretation.

The Court of Appeals sidestepped the critical question of whether the federal government is not a person under the malicious mischief statute. “[W]ithout deciding” this issue, the

Court of Appeals ruled the presence of people at the time of the protest proved Mr. Zick acted with malice against a person. Slip op. at 5. Sidestepping the question of this essential element does not settle this important legal issue and shows that review should be granted.

The Court of Appeals rationale is inadequate. The attention of the jury and the prosecution was on Mr. Zick's intent to vex the government, not a person. This Court should resolve the definition of the essential elements the prosecution must prove to establish the offense of malicious mischief.

2. This Court should address the reliance on a permissive inference instruction to prove the critical contested elements of malicious mischief when this instruction dilutes the prosecution's burden of proof.

a. Permissive inference instructions are disfavored because they reduce the prosecution's burden of proving the essential elements of an offense.

Inferences of criminal intent are disfavored in the criminal law because they dilute the State's burden of proof or shift the burden of proof to the accused. *Mullaney v. Wilbur*, 421 U.S. 684, 702-03 n.31, 95 S. Ct. 1881, 44 L. Ed. 2d 508 (1975); *State v. Cantu*, 156 Wn.2d 819, 826, 132 P.3d 725 (2006); U.S.

Const. amend. 14; Const. art. I, §§ 3, 22. Mandatory inferences violate due process because they relieve the prosecution of its obligation to prove all elements of a crime. *Cantu*, 156 Wn.2d at 826-27.

“Jury instructions satisfy the fair trial requirement when, taken as a whole, they properly inform the jury of the law, are not misleading, and permit the parties to argue their theories of the case.” *State v. Morgan*, 123 Wn. App. 810, 814-15, 99 P.3d 411 (2004), citing *State v. Kennard*, 101 Wn. App. 533, 536-37, 6 P.3d 38 (2000) (internal citations omitted). When read as a whole, jury instructions must make the legal standard “manifestly apparent to the average juror.” *State v. LeFaber*, 128 Wn.2d 896, 900, 913 P.2d 369 (1996). An instruction that tends to dilute the State’s burden of proof is a manifest constitutional error subject to review on appeal. *State v. McCullum*, 98 Wn.2d 484, 488, 656 P.2d 1064 (1983).

Here, the trial court instructed the jury:

Malice may be, but is not required to be, inferred from an act done in willful disregard of the rights of another.

CP 19 (Instruction 10).

This paragraph creates a permissive inference, as the parties agreed on appeal. Slip op. at 6 & n.19.

When a permissive inference is “the sole and sufficient proof of an element, the presumed fact must flow beyond a reasonable doubt from the proven fact, so that the prosecution does not circumvent its burden of proof.” *State v. Ratliff*, 46 Wn. App. 325, 330, 730 P.2d 718 (1986). It violates due process to give this instruction when it allows a conviction under facts that cannot support a finding of malice beyond a reasonable doubt. *See State v. Johnson*, 23 Wn. App. 605, 608, 596 P.2d 1047 (1979); *Bellevue v. Kinsman*, 34 Wn. App. 786, 790, 664 P.2d 1253 (1983) (both rejecting similar instructions and reversing convictions). Even when the inference is only part of the prosecution’s proof, the presumed fact must flow more likely than not from a proven fact. *State v. Drum*, 168 Wn.2d 23, 36, 225 P.3d 237 (2010).

b. The act of damaging property does not presumptively establish the mandatory mens rea, contrary to the permissive inference instruction.

Mr. Zick’s conduct was wrongful, objectively measured, because he broke windows at the post office and he understood he was damaging property at the time. Ex. 1; RP 131. But he

explained the reasons for his actions. RP 131. His reasons were not to vex, annoy or injure another person, but to send a message to the federal government, as the prosecution conceded in its closing argument. RP 151, 157.

The court's permissive inference instruction undermined his defense and diluted the State's burden of proof. This instruction informed jurors that by finding Mr. Zick willfully damaged property belonging to another, they could presume he acted with malice, thus relieving the prosecution of its burden of proving the essential element of malice. But the inference of malice does not flow from the proven act of disregarding the property owner's rights to the property as required for this instruction to be given. *See Drum*, 168 Wn.2d at 35-36.

Malice remains the mens rea for the offense, and malice means evil intent directed at another person. RCW 9A.48.070(1)(a); RCW 9A.04.110(12). Even if Mr. Zick acted in "willful disregard" of the other people present or the rights of the property owner, this wrongful act does not prove he acted with malice beyond a reasonable doubt, or more likely than not.

This instruction violated due process by relieving the prosecution of its burden of proof. Here, there is no other evidence of malicious intent beyond Mr. Zick's acts of breaking windows, which shocked and surprised the people present. The inference substituted for the absence of evidence of Mr. Zick's evil intent toward another person, which is precisely what due process forbids.

c. This Court should grant review of the permissive inference instruction.

Substantial public interest favors review. On several occasions, the Court of Appeals has questioned the propriety of this instruction. *See Johnson*, 23 Wn. App. at 608 (holding that a similar instruction violated due process, since it permitted “a conviction under facts which, if believed, could not be used to infer malice”); *Kinsman*, 34 Wn. App. at 790-91 (rejecting second sentence of same instruction, as at best, confusing, and at worst, contradictory).

This pattern will recur without this Court addressing the circumstances, if any, in which the prosecution should be excused from actually proving malice and may instead rest on proving an

act of damaging property. Here, the sole question for the jury was whether Mr. Zick's act of protest toward the federal government was maliciously performed. Due to this improperly given instruction Mr. Zick's conviction should be reversed, as a violation of due process. Review should be granted.

E. CONCLUSION

Based on the foregoing, Petitioner Michael Zick respectfully requests that review be granted pursuant to RAP 13.4(b).

DATED this 3th day of March 2020.

Respectfully submitted,



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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,)	No. 78934-1-I
)	
Respondent,)	
)	
v.)	
)	UNPUBLISHED OPINION
MICHAEL WAYNE ZICK,)	
)	FILED: February 3, 2020
Appellant.)	
_____)	

VERELLEN, J. — Michael Zick appeals his conviction for first degree malicious mischief. Zick broke 44 windows at a post office during business hours, while people were inside. He told police that breaking the windows was his form of protest against the federal government. The State presented sufficient evidence of Zick's malice through testimony that he knowingly damaged property with the intent to vex, annoy, or injure the people inside the post office.

In jury instruction 10, the court instructed the jury: "Malice may be, but is not required to be, inferred from an act done in willful disregard of the rights of another."¹ The court did not abuse its discretion by allowing the jury to make this permissible inference because the inferred fact, Zick's malicious intent, flows

¹ Clerk's Papers at 19.

“more likely than not” from the proven fact that Zick broke the windows at the post office during business hours, while people were inside.

At sentencing, for the first time, Zick mentioned hearing voices. The court did not abuse its discretion by not sua sponte ordering a mental health evaluation to address Zick’s competency because there was no evidence that Zick lacked the capacity to understand the nature of the proceedings or to assist in his defense.

The court also imposed a \$500 victim penalty assessment. Because Zick’s sole source of income is federal disability benefits, the sentence must be amended to prohibit the collection of the assessment from those benefits.

Therefore, we affirm but remand for the trial court to revise the sentence to indicate that the crime victim assessment may not be satisfied out of Zick’s disability income.

FACTS

On April 28, 2018, Zick broke 44 windows at a post office in Bellingham. The State charged Zick with first degree malicious mischief. The jury convicted Zick as charged. The court sentenced Zick to 36 months’ incarceration and imposed a \$500 victim penalty assessment.

Zick appeals.

ANALYSIS

I. Sufficiency of the Evidence

Zick contends there was insufficient evidence of malice to sustain his conviction for malicious mischief.

We review sufficiency of the evidence de novo.² “Under both the federal and state constitutions, due process requires that the State prove every element of a crime beyond a reasonable doubt.”³ To determine whether there is sufficient evidence to sustain a conviction, we view the evidence in the light most favorable to the State and ask whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.⁴ “A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom.”⁵

“A person is guilty of malicious mischief in the first degree if he or she knowingly and maliciously . . . [c]auses physical damage to the property of another.”⁶ RCW 9A.04.110(12) defines “malice and maliciously” as “an evil intent, wish, or design to vex, annoy, or injure another person. Malice may be inferred from an act done in willful disregard of the rights of another, or an act wrongfully done without just cause or excuse, or an act or omission of duty betraying a willful disregard of social duty.”

² State v. Rich, 184 Wn.2d 897, 903, 365 P.3d 746 (2016)).

³ State v. Johnson, 188 Wn.2d 742, 750, 399 P.3d 507 (2017) (citing U.S. CONST. AMEND. XIV; WASH. CONST. art. I, § 3; In re Winship, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970); Rich, 184 Wn.2d at 903).

⁴ State v. Elmi, 166 Wn.2d 209, 214, 207 P.3d 439 (2009).

⁵ State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

⁶ RCW 9A.48.070(1)(a).

Here, Zick told police breaking the windows at the post office “was his form of protest against the U.S. government that he felt let him down when he was 12 years old.”⁷ Zick told police he chose the post office because “it represents the government” and “[h]e pointed to the U.S. flag.”⁸ He also told the police that he was “fully” aware that what he was doing was wrong.⁹

Zick argues the State failed to show he acted with malice toward another person because the federal government does not constitute a person. RCW 9A.04.110(8) defines “government” as “any branch, subdivision, or agency of the government of this state and any county, city, district, or other local government unit.” And RCW 9A.04.110(17) defines “person” as “any natural person and, where relevant, a corporation, joint stock association, or an unincorporated association.”

However, our Supreme Court has acknowledged, in dicta, “that statutes defining ‘malicious mischief’ do not require damage to the property of an intended victim.”¹⁰ It is sufficient for the State to prove the defendant damaged the property of another with the intent to vex, annoy, or injure someone.¹¹

⁷ Report of Proceedings (RP) (Aug. 28, 2018) at 131.

⁸ Id.

⁹ Id. at 132.

¹⁰ State v. Wooten, 178 Wn.2d 890, 897 n.6, 312 P.3d 41 (2013) (emphasis omitted).

¹¹ Id. (citing RCW 9A.48.070; RCW 9A.04.110(12)).

Here, the State proved Zick damaged property by breaking the windows at the post office during business hours, while people were inside. Zick broke windows for a few minutes.¹² After the third or fourth window, “most of the people in the lobby were panicking.”¹³ Some people ran outside. He continued to break the windows, even after some people panicked and fled. This is sufficient evidence that Zick intended to vex, annoy, or injure the people inside the post office.

Without deciding whether the government may constitute a “person” under RCW 9A.48.070(1)(a), the evidence established Zick knowingly damaged property with the intent to vex, annoy, or injure the people inside the post office. The State presented sufficient evidence to sustain Zick’s conviction for first degree malicious mischief.

II. Jury Instruction 10

Zick argues the court improperly instructed the jury that it could infer malice from wrongful conduct.

Generally, we review instructional errors de novo.¹⁴ However, “[i]f a jury instruction correctly states the law, the trial court’s decision to give the instruction will not be disturbed absent an abuse of discretion.”¹⁵ “Jury instructions satisfy the

¹² See RP (Aug. 28, 2018) at 116 (“I figured it would be helpful to take a video of it . . . [s]o I taped for probably five minutes.”)

¹³ Id. at at 104.

¹⁴ State v. Stacy, 181 Wn. App. 553, 568, 326 P.3d 136 (2014).

¹⁵ Id. at 569.

fair trial requirement when, taken as a whole, they properly inform the jury of the law, are not misleading, and permit the parties to argue their theories of the case.”¹⁶

Here, in jury instruction 10, the court instructed the jury: “Malice and maliciously mean an evil intent, wish, or design to vex, annoy, or injure another person. Malice may be, but is not required to be, inferred from an act done in willful disregard of the rights of another.”¹⁷ This language is contained in the statutory definition of “malice” and “maliciously.”¹⁸ Zick does not argue jury instruction 10 misstates the law. And the parties agree the second sentence of jury instruction 10 sets out a permissive inference.¹⁹ “A permissive inference is valid when there is a ‘rational connection’ between the proven fact and the inferred fact, and the inferred fact flows ‘more likely than not’ from the proven fact.”²⁰ Zick argues the second sentence of jury instruction 10 should have been excluded because there was no rational connection between him breaking the windows and a malicious intent.

¹⁶ State v. Morgan, 123 Wn. App. 810, 814-15, 99 P.3d 411 (2004).

¹⁷ Clerk’s Papers at 19.

¹⁸ RCW 9A.04.110(12).

¹⁹ See Appellant’s Br. at 14; Resp’t’s Br. at 21; see also State v. Ratliff, 46 Wn. App. 325, 330, 730 P.2d 716 (1986) (“A permissive inference suggests to the jury a possible conclusion to be drawn if the State proves predicate facts, but does not require the jury to draw that conclusion.”).

²⁰ Ratliff, 46 Wn. App. at 330-31.

As stated above, the evidence shows that Zick broke 44 windows at the post office during business hours, while people were inside. Zick broke windows for a few minutes. He continued to break the windows, even after some people panicked and fled.

The inferred fact, Zick's malicious intent, flows "more likely than not" from the proven fact that Zick broke the windows at the post office during business hours, while people were inside. The court did not abuse its discretion when it instructed the jury that it could infer malice from wrongful conduct.

III. Competency

Zick contends the court abused its discretion because it did not sua sponte order a competency evaluation. We review whether a trial court should have sua sponte ordered a competency evaluation for abuse of discretion.²¹

The due process clause of the Fourteenth Amendment guarantees an accused person the fundamental right not to stand trial, including sentencing, unless legally competent.²² A defendant is incompetent if they "lack[] the capacity to understand the nature of the proceedings against him or her or to assist in his or her own defense as a result of mental disease or defect."²³

²¹ State v. McCarthy, 193 Wn.2d 792, 803, 446 P.3d 167 (2019).

²² State v. Ortiz-Abrego, 187 Wn.2d 394, 403, 387 P.3d 638 (2017); see also RCW 10.77.050 ("No incompetent person shall be tried, convicted, or sentenced for the commission of an offense so long as such incapacity continues.").

²³ RCW 10.77.010(15).

Under RCW 10.77.060, “[w]henver there is reason to doubt a defendant’s competency to stand trial, the court must order an expert to evaluate the defendant’s mental condition.”²⁴ If the issue of competency is “fairly debatable,” failure to order an evaluation does not violate RCW 10.77.060 and does not constitute an abuse of the court’s discretion.²⁵

Here, at sentencing, the court provided Zick an opportunity to make a statement about his case. For the first time, Zick mentioned hearing voices.

For the last eight years I’ve just been subjected to some kind of people blasting their voices in my head. I can’t understand what they are saying. I can’t hear what they are saying. All day, every day, 24-7, without respite, without losing, and it’s driven me absolutely bonkers. I mean, it’s just a throbbing in my head with the voices just not letting me know what’s going on, what they are saying and saying my name and other people’s names in my life and it’s really been hard.^[26]

In response, the court asked whether it should order a mental health examination.

I’m sympathetic to Mr. Zick’s description of the voices that he hears and how hard it is for him to function in that way with those voices. I know that there was not an issue of competency or sanity in this trial, but given his comments about the voices I’m wondering if a mental health examination by the Department of Corrections and appropriate treatment, if any, would be helpful to Mr. Zick.

²⁴ State v. Coley, 180 Wn.2d 543, 552, 326 P.3d 702 (2014) (citing RCW 10.77.060).

²⁵ McCarthy, 193 Wn.2d at 803 (quoting State v. Sisouvanh, 175 Wn.2d 607, 623, 290 P.3d 942 (2012)).

²⁶ RP (Sept. 5, 2018) at 185-86.

I'm not going to order that if there is an objection, but if the parties believe that would be helpful and Mr. Zick agrees, I'll make that part of the sentence.^[27]

Zick's defense counsel indicated, "Mr. Zick would like it not to be ordered, please."²⁸

Given this evidence, there was no reason for the court to doubt Zick's competency. Although he complained of hearing voices, there is no evidence that Zick lacked the capacity to understand the nature of the proceedings or to assist in his own defense.

The court did not abuse its discretion when it failed to order a mental health evaluation.

IV. Legal Financial Obligations

In the judgment and sentence, the trial court imposed a \$500 victim penalty assessment. Zick's sole source of income is federal disability. Zick argues, and the State concedes, because Zick's sole source of income is federal disability benefits, the judgment and sentence must be amended to prohibit the collection of legal financial obligations from those benefits.²⁹

²⁷ Id. at 200.

²⁸ Id.

²⁹ State v. Catling, 193 Wn.2d 252, 266, 438 P.3d 1174 (2019) ("[W]e affirm the imposition of the \$500 crime victim fund assessment but remand to the trial court to revise the judgment and sentence . . . to indicate that this [legal financial obligation] may not be satisfied out of any funds subject to the Social Security Act's antiattachment statute."); see 42 U.S.C.A. §§ 401 and 407 (federal disability payments are subject to the antiattachment statute).

Therefore, we affirm but remand for the trial court to revise the sentence to indicate that the crime victim assessment may not be satisfied out of Zick's disability income.

WE CONCUR:

Chun, J.

Verdy, J.

Andrus, J.

DECLARATION OF FILING AND MAILING OR DELIVERY

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. 78934-1-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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- petitioner
- Attorney for other party



MARIA ANA ARRANZA RILEY, Legal Assistant
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Date: March 4, 2020

WASHINGTON APPELLATE PROJECT

March 04, 2020 - 4:46 PM

Transmittal Information

Filed with Court: Court of Appeals Division I
Appellate Court Case Number: 78934-1
Appellate Court Case Title: State of Washington, Respondent v. Michael Wayne Zick, Appellant
Superior Court Case Number: 18-1-00603-4

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