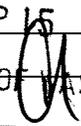


NO. 36978-8-II

FILED
COURT OF APPEALS
DIVISION II

08 SEP 15 AM 11:48

STATE OF WASHINGTON
BY 

DEPUTY

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

STATE OF WASHINGTON, RESPONDENT

v.

CREEDE HARRIS, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Thomas Felnagle

No. 06-1-01467-9

BRIEF OF RESPONDENT

GERALD A. HORNE
Prosecuting Attorney

By
KATHLEEN PROCTOR
Deputy Prosecuting Attorney
WSB # 14811

930 Tacoma Avenue South
Room 946
Tacoma, WA 98402
PH: (253) 798-7400

Table of Contents

A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR..... 1

1. Did the trial court properly give a first aggressor instruction when there was conflicting evidence as to whether defendant or the victim was the first aggressor, and as to when the confrontation began and ended? 1

2. Was there sufficient evidence to convict defendant of second degree manslaughter, when the evidence showed defendant either was negligent when he threatened the victim, or used excessive force to defend himself against the victim? 1

3. Did the trial court properly rule defendant had to reimburse the crime victim's compensation fund for expenses the victim's decedents incurred traveling to the funeral? 1

B. STATEMENT OF THE CASE. 1

1. Procedure..... 1

2. Facts 1

C. ARGUMENT..... 8

1. THE TRIAL COURT PROPERLY GAVE THE JURY A FIRST AGGRESSOR INSTRUCTION BECAUSE THERE WAS CONFLICTING EVIDENCE AT TRIAL REGARDING WHETHER DEFENDANT OR THE VICTIM WAS THE FIRST AGGRESSOR, AND WHEN THE CONFRONTATION BEGAN AND ENDED. 8

2. THERE WAS SUFFICIENT EVIDENCE TO CONVICT DEFENDANT OF SECOND DEGREE MANSLAUGHTER BECAUSE THE EVIDENCE SHOWED THAT DEFENDANT WAS EITHER NEGLIGENT WHEN HE THREATENED THE VICTIM OR USED EXCESSIVE FORCE TO DEFEND HIMSELF AGAINST THE VICTIM. 13

3. THE TRIAL COURT PROPERLY RULED DEFENDANT HAD TO REIMBURSE THE CRIME VICTIM'S COMPENSATION FUND FOR EXPENSES THE VICTIM'S DECEDENTS INCURRED TRAVELING TO THE FUNERAL.....20

D. CONCLUSION.26

Table of Authorities

State Cases

<i>Bravo v. Dolsen Cos.</i> , 125 Wn.2d 745, 752, 888 P.2d 147 (1995).....	21
<i>Dept of Ecology v. Campbell & Gwinn, L.L.C.</i> , 146 Wn.2d 1, 11, 43 P.3d 4 (2002)	21
<i>Duke v. Boyd</i> , 133 Wn.2d 80, 87, 942 P.2d 351 (1997)	21
<i>In re Post Sentencing Review of Charles</i> , 135 Wn.2d 239, 245, 249, 955 P.2d 798 (1998)	21
<i>In re Seago</i> , 82 Wn.2d 736, 513 P.2d 831 (1973)	14
<i>Nissen v. Obde</i> , 55 Wn.2d 527, 348 P.2d 421 (1960).....	14
<i>Seattle v. Gellein</i> , 112 Wn.2d 58, 61, 768 P.2d 470 (1989).....	13
<i>State v. Acosta</i> , 101 Wn.2d 612, 616, 683 P.2d 1069 (1984)	17
<i>State v. Anderson</i> , 72 Wn. App. 453, 458, 864 P.2d 1001, <i>review denied</i> , 124 Wn.2d 1013 (1994).....	13
<i>State v. Barrington</i> , 52 Wn. App. 478, 484, 761 P.2d 632 (1987), <i>review denied</i> , 111 Wn.2d 1033 (1988)	13
<i>State v. Bergeson</i> , 64 Wn. App. 366, 370, 824 P.2d 515 (1992).....	17
<i>State v. Berlin</i> , 133 Wn.2d 541, 551, 947 P.2d 700 (1997).....	15
<i>State v. Bowerman</i> , 115 Wn.2d 794, 809, 802 P.2d 116 (1990).....	8
<i>State v. Burnson</i> , 128 Wn.2d 98, 905 P.2d 346 (1995).....	15
<i>State v. Callahan</i> , 87 Wn. App. 925, 929, 943 P.2d 676 (1997)	17
<i>State v. Camarillo</i> , 115 Wn.2d 60, 71, 794 P.2d 850 (1990).....	14
<i>State v. Casbeer</i> , 48 Wn. App. 539, 542, 740 P.2d 335, <i>review denied</i> , 109 Wn.2d 1008 (1987).....	14

<i>State v. Cord</i> , 103 Wn.2d 361, 367, 693 P.2d 81 (1985)	14
<i>State v. Cunningham</i> , 96 Wn.2d 31, 34, 633 P.2d 886 (1981).....	21
<i>State v. Davis</i> , 119 Wn.2d 657, 666, 835 P.2d 1039 (1992)	9
<i>State v. Deal</i> , 128 Wn.2d 693, 699, 911 P.2d 996 (1996).....	14, 15
<i>State v. Delmarter</i> , 94 Wn.3d 634, 638, 618 P.2d 99 (1980).....	14
<i>State v. Douglas</i> , 128 Wn. App. 555, 561, 116 P.3d 1012 (2005).....	9
<i>State v. Eike</i> , 72 Wn.2d 760, 766, 435 P.2d 680 (1967).....	16
<i>State v. Green</i> , 94 Wn.2d 216, 221-22, 616 P.2d 628 (1980).....	13
<i>State v. Hahn</i> , 100 Wn. App. 391, 398, n. 4, 996 P.2d 1125 (2000)	22
<i>State v. Halsen</i> , 111 Wn.2d 121, 757 P.2d 531 (1988).....	25
<i>State v. Hanna</i> , 123 Wn.2d 704, 710, 871 P.2d 135 (1994).....	14, 15
<i>State v. Hawkins</i> , 89 Wash. 449, 154 P. 827 (1916).....	11
<i>State v. Heath</i> , 35 Wn. App. 269, 666 P.2d 922 (1983)	9, 11
<i>State v. Hennings</i> , 129 Wn.2d 512, 519, 919 P.2d 580 (1996)	21
<i>State v. Holbrook</i> , 66 Wn.2d 278, 401 P.2d 971 (1965).....	13
<i>State v. Horner</i> , 53 Wn. App. 806, 807, 770 P.2d 1056 (1989)	20
<i>State v. Hughes</i> , 106 Wn.2d 176, 191-92, 721 P.2d 902 (1986)	9, 15
<i>State v. J.M.</i> , 144 Wn.2d 472, 480, 28 P.3d 720 (2001).....	21
<i>State v. Jacobsen</i> , 78 Wn.2d 491, 498, 477 P.2d 1 (1970)	16
<i>State v. Janes</i> , 121 Wn.2d 230, 237-38, 850 P.2d 495, 22 A.L.R. 5 th 921 (1993)	17, 20
<i>State v. Jones</i> , 95 Wn.2d 616, 623, 628 P.2d 472 (1981).....	15
<i>State v. Joy</i> , 121 Wn.2d 333, 338, 851 P.2d 654 (1993).....	13

<i>State v. Kidd</i> , 57 Wn. App. 95, 100, 786 P.2d 847 (1990).....	9
<i>State v. Lefaber</i> , 128 Wn.2d 896, 899, 913 P.2d 369 (1996).....	17
<i>State v. Mabry</i> , 51 Wn. App. 24, 25, 751 P.2d 882 (1988).....	13
<i>State v. May</i> , 68 Wn. App. 491, 496, 843 P.2d 1102 (1993)	16
<i>State v. McCullum</i> , 98 Wn.2d 484, 488, 656 P.2d 1064 (1983).....	13
<i>State v. Morse</i> , 45 Wn. App. 197, 723 P.2d 1209 (1986)	25
<i>State v. Rice</i> , 110 Wn.2d 577, 603, 757 P.2d 889 (1988)	9
<i>State v. Riley</i> , 137 Wn.2d 904, 909-10, 976 P.2d 624 (1999).....	9, 10
<i>State v. Schaffer</i> , 135 Wn.2d 355, 358, 957 P.2d 214 (1998)	15
<i>State v. Smith</i> , 33 Wn. App. 791, 798-99, 658 P.2d 1250, <i>review denied</i> , 99 Wn.2d 1013 (1983).....	20-21
<i>State v. Theilken</i> , 102 Wn.2d 271, 276, 684 P.2d 709 (1984).....	16
<i>State v. Thompson</i> , 47 Wn. App. 1, 7, 733 P.2d 584 (1987)	9, 10
<i>State v. Wingate</i> , 155 Wn.2d 817, 822-23, 122 P.3d 909 (2005)	9

Statutes

RCW 7.68	22
RCW 7.68.020	23
RCW 7.68.020(1)	23
RCW 7.68.030	22
RCW 7.68.120	23, 24
RCW 7.68.120(1)	23
RCW 7.68.120(2)(a).....	23
RCW 7.68.300	22

RCW 9.94A.753	21
RCW 9.94A.753(3).....	21
RCW 9.94A.753(5).....	22
RCW 9.94A.753(7).....	22, 23, 24, 25
RCW 9A.32.070(1).....	15

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

1. Did the trial court properly give a first aggressor instruction when there was conflicting evidence as to whether defendant or the victim was the first aggressor, and as to when the confrontation began and ended?
2. Was there sufficient evidence to convict defendant of second degree manslaughter, when the evidence showed defendant either was negligent when he threatened the victim, or used excessive force to defend himself against the victim?
3. Did the trial court properly rule defendant had to reimburse the crime victim's compensation fund for expenses the victim's decedents incurred traveling to the funeral?

B. STATEMENT OF THE CASE.

1. Procedure

On October 23, 2006, the Pierce County Prosecutor's Office filed an information in Cause No. 06-1-01467-9, charging CREEDE RAYMOND HARRIS, hereinafter "defendant," with one count of second degree murder (intentional murder or felony murder predicated on second degree assault), and also alleged a firearm enhancement. CP 1-4. The

matter proceeded to trial before the Honorable Thomas Felnagle on May 24, 2007. 3RP¹ 3.

The trial court instructed the jury on both second degree felony murder and second degree intentional murder. 9RP 956, CP 140-76 (Jury Instructions 7-12). The trial court then instructed the jury on both first and second degree manslaughter as lesser included offenses of intentional murder. CP 140-76 (Jury Instructions 13-19). The court instructed on self-defense at the defendant's request, including a "no duty to retreat" instruction. CP 140-76 (Jury Instructions 20-25). Defense counsel at trial objected to the inclusion of a "first aggressor" instruction, but the trial court overruled defense counsel's objection, and gave the instruction. 9RP 943-47, 949-50, 953-54; CP 140-76 (Jury Instruction 26).

After hearing the evidence, the jury acquitted defendant of second degree murder and first degree manslaughter, but found him guilty of second degree manslaughter, and that he was armed with a firearm during his commission of the crime. 10RP 4, CP 177-81. The court sentenced defendant to 27 months on the second degree manslaughter charge and 36 months on the firearm enhancement, for a total of 63 months, to be served in the Department of Corrections. 11RP 25, CP 195-206. The court also

¹ There are 12 volumes of the Verbatim Report of Proceedings: 1RP, 3/9/07; 2RP, 7/16/07; 3RP, 9/5/07; 4RP, 9/6/07; 5RP, 9/10/07; 6RP, 9/11/07; 7RP, 9/12/07; 8RP, 9/20/07; 9RP, 9/24/07-10/3/07; 10RP, 10/5/07; 11RP, 11/8/07; 12RP, 1/4/08. Pages number 201-21 have been used twice in the ninth volume, and in instances where those pages are cited, the corresponding date of proceedings is included in the citation.

ordered defendant to pay monetary penalties, including restitution. 11RP 25, 12RP 19-21; CP 195-206, 217-18.

The court held a restitution hearing. 12RP 1. Sherry Dowd of the Department of Labor and Industries testified at the hearing that the Crime Victim's Compensation Program had reimbursed Daniel Bills's² family \$438.46 for the headstone, \$1,997.52 for funeral expenses, \$3,253.16 to the victim's mother to cover lost pension benefits, and \$3,217.17 for roundtrip airfare for several of the victim's family members. 12RP 6-7. Part of the trial court's restitution order consisted of compensating the victim's family for their travel expenses to the victim's funeral. 12RP 19-20. At the restitution hearing, the court ordered defendant to pay \$5,687.14 in restitution plus the travel expenses, to be determined at a later date. *Id.*, CP 217-18. Following the submission of sworn affidavits from the victim's mother, grandmother, and grandfather detailing their travel expenses, and that the Crime Victim's Compensation Program had reimbursed them for these expenses, defendant was ordered to pay an additional sum of \$1,665.50, bringing his total ordered restitution to \$7,352.64. 12RP 19-21; CP 224-28. From entry of this judgment, defendant filed a timely notice of appeal. CP 191.

² Daniel Bills is the victim in this case, and is referred to hereinafter as "the victim."

2. Facts

Early in the morning of March 28, 2006, defendant was at his residence along with several other people. 9RP 253, 361. The victim drove up in a Ford Bronco belonging to his girlfriend's father, Daniel Woslager, and parked in front of defendant's residence. 9RP 13, 152-53, 341. The victim got out of the Bronco and approached the house. 9RP 341. The defendant and the victim had a verbal confrontation through the living room window, which included the victim brandishing a firearm and threatening to kill defendant if he did not stay away from his girlfriend, Jennifer Woslager. 9RP 341-43. The victim then returned to the Bronco, put the driver's seat in the reclined position, put the keys in the ignition and kept the car stereo on very loud. 9RP 136-37, 365.

The State presented evidence that defendant's accounts of this confrontation varied in pretrial statements. Detective Tamera Pihl testified that she interviewed defendant, had him write and sign a statement detailing the events, and then interviewed him again. 9RP 338. Detective Pihl testified that defendant told her in the first interview that he watched as the victim approached the house, and that the confrontation took place with him on the inside of the window and the victim on the outside. 9RP 341. Defendant indicated that he had a gun tucked underneath his arm as the victim approached the house. 9RP 342-43. The victim then threatened to kill defendant if he did not stay away from the victim's girlfriend, Jennifer Woslager. 9RP 343. The victim then gestured with his gun

before returning to his vehicle. 9RP 343-44. Defendant stated he went to the bedroom and, along with his roommate, Paul Bruglia, retrieved a “Russian type rifle” from underneath the bed. 9RP 344. Defendant took the gun from Bruglia and approached the victim’s vehicle with the rifle in plain sight. *Id.* Defendant indicated he held the rifle in plain view as he approached the vehicle in order to scare the victim. 9RP 368. Defendant and the victim had another verbal altercation, in which the victim asked defendant, “You got a fucking problem?” 9RP 344-45. The victim then raised up his own weapon, at which point defendant fired one shot from the rifle at the victim. 9RP 345. Bruglia then asked defendant why he shot the victim, and the two fled the scene immediately thereafter. *Id.*

Detective Pihl read defendant’s signed, written statement into evidence. 9RP 348, 361-62. In the written statement, the location of the defendant in the initial altercation with the victim was now in front of the house. 9RP 360. Defendant stated that he went out the front door to confront the victim, and that is when the initial altercation took place. 9RP 360-61. According to the statement, defendant returned to the house and told Bruglia what had just happened; Bruglia retrieved the rifle from the bedroom, and defendant walked with it out to the victim’s Bronco. 9RP 361. The victim and defendant had another argument, the victim raised his gun, and defendant fired one shot at the victim and fled the scene. 9RP 361-62.

Detective Pihl testified about her second interview of defendant. 9RP 362-67. Detective Pihl testified that in this interview, defendant told her he heard a loud vehicle pull up outside his house. 9RP 362. Defendant first looked through the bedroom window, then the living room window, and that is when he saw the victim walking towards the house with a gun in his hand. 9RP 362-63. Defendant stated he walked out of the house to confront the victim. 9RP 364. Detective Pihl testified that when she asked defendant why he went out of the house to confront the armed victim, defendant replied that he did so because he was drunk and stupid. 9RP 364. Detective Pihl testified that defendant never told her he was scared at the time of the confrontation. *Id.* Detective Pihl testified that defendant told her he then went back into the house and called Bruglia, who was at a store, and asked Bruglia to come back to the house. 9RP 364-65. The two then got the rifle from underneath the bed, went out the back door, and approached the Bronco from the passenger's side, with Bruglia three feet to defendant's left. 9RP 365. Detective Pihl testified that defendant told her that the victim threatened him, although he could only articulate that he told the victim, "...[F]ucker, get lost." 9RP 365-66. As defendant made this statement, he pulled the slide back on the rifle, loading a round into the chamber. 9RP 366. Defendant stated that when the victim raised his gun, he fired one shot at the victim before fleeing the scene. 9RP 367. Defendant described the victim's gun was a silver and

black .44 caliber handgun. 9RP 368. In neither interview did defendant state he was scared of the victim. *Id.*

Circumstantial evidence indicates that the victim got out of the vehicle and was able to cross the street before he collapsed and died from his injuries. 9RP 22, 595. The victim did not turn off the Bronco; the keys were in the ignition with the lights and stereo still on when police first arrived. 9RP 136. The only weapon the police found in the Bronco was a .357, belonging to Daniel Woslager, stuffed between the front seats. 9RP 142, 147-48. Police located defendant at 7:44 a.m., hiding in nearby woods. 9RP 230. Police were also able to locate the rifle, which defendant had stashed in some bushes. 9RP 321, 346.

After the State rested its case, defense counsel recalled forensic expert Brenda Lawrence and Officer Joseph Pihl. 9RP 843, 847. Ryan McNutt and defendant also testified as part of defendant's case. 9RP 871, 877. Defendant testified that he heard a vehicle pull up from his bedroom; when he looked out the bedroom window, he saw that the vehicle was a Ford Bronco. 9RP 900-01. Defendant testified that he did not see who had just pulled up, so he went outside to see who it was. 9RP 901. He saw it was the victim and that the victim had a gun. 9RP 901-02. Defendant testified that the victim repeatedly threatened to kill him if he did not stay away from Jennifer Woslager. 9RP 902. Defendant testified that he was "pretty frickin scared" after this altercation. 9RP 903. According to the defendant, he called Bruglia, who was getting money at a

store at the time. *Id.* When Bruglia returned, defendant testified that he followed Bruglia into the bedroom, where Bruglia grabbed the rifle. 9RP 903-04. Defendant testified that both he and Bruglia went out the back door heading for the victim's car, and defendant estimated that he took the gun probably midway between the back door and the Bronco as the two approached the victim's car. 9RP 904. Defendant testified that he did not know why he took the gun away from Bruglia, but that the two went out to the Bronco to make the victim leave and to show the victim that he was not afraid. 9RP 904-07. Defendant testified that he was yelling at the victim to leave, and that he got into another shouting match with the victim. 9RP 907. Defendant testified that he momentarily turned towards Bruglia and when he turned back towards the Bronco he saw the victim raising up his gun. 9RP 908. Defendant testified that he fired one shot and then fled to a nearby parking lot. 9RP 908-09.

C. ARGUMENT.

1. THE TRIAL COURT PROPERLY GAVE THE JURY A FIRST AGGRESSOR INSTRUCTION BECAUSE THERE WAS CONFLICTING EVIDENCE AT TRIAL REGARDING WHETHER DEFENDANT OR THE VICTIM WAS THE FIRST AGGRESSOR, AND WHEN THE CONFRONTATION BEGAN AND ENDED.

Jury instructions that “permit each party to argue his theory of the case and properly inform the jury of applicable law” are sufficient. *State v. Bowerman*, 115 Wn.2d 794, 809, 802 P.2d 116 (1990) (quoting *State v.*

Rice, 110 Wn.2d 577, 603, 757 P.2d 889 (1988)). “[I]t is prejudicial error to submit an issue to the jury where there is not sufficient evidence to support it.” *State v. Thompson*, 47 Wn. App. 1, 7, 733 P.2d 584 (1987) (citing *State v. Heath*, 35 Wn. App. 269, 666 P.2d 922 (1983)). On appeal, the evidence supporting the instruction is viewed in the light most favorable to the party that requested the instruction. *State v. Wingate*, 155 Wn.2d 817, 822-23, 122 P.3d 909 (2005). Generally, Washington appellate courts “review a trial court’s choice of jury instructions for abuse of discretion.” *State v. Douglas*, 128 Wn. App. 555, 561, 116 P.3d 1012 (2005).

A defendant who provokes the victim’s act of aggression does not have the right of self-defense. *Douglas*, 128 Wn. App. at 562. “Where there is credible evidence from which a jury can reasonably determine that the defendant provoked the need to act in self-defense, an aggressor instruction is appropriate.” *State v. Riley*, 137 Wn.2d 904, 909-10, 976 P.2d 624 (1999) (citing *State v. Hughes*, 106 Wn.2d 176, 191-92, 721 P.2d 902 (1986); *State v. Kidd*, 57 Wn. App. 95, 100, 786 P.2d 847 (1990)). If there is conflicting evidence that a defendant’s conduct precipitated the altercation that ultimately lead to that defendant using self-defense, a first aggressor instruction is warranted. *Wingate*, 155 Wn.2d at 822-23 (citing *Riley*, 137 Wn.2d at 910; *State v. Davis*, 119 Wn.2d 657, 666, 835 P.2d 1039 (1992)). One example of the evidence supporting the giving of an aggressor instruction is when there is credible

evidence that the defendant made the first move by drawing a weapon.

Riley, 137 Wn.2d at 910 (citing *State v. Thompson*, 47 Wn. App. 1, 7, 733 P.2d 584 (1987)).

In the present case, the trial court gave the following instruction to the jury:

No person may, by any intentional act reasonably likely to provoke a belligerent response, create a necessity for acting in self defense or defense of [sic] another and thereupon kill[,] offer or attempt to use force upon or toward another person. Therefore, if you find beyond a reasonable doubt that the defendant was the aggressor, and that defendant's acts and conduct provoked or commenced the fight, then self-defense or defense of another is not available as a defense.

CP 140-76 (Jury Instruction No. 26).

The trial court ruled that this first aggressor instruction was proper because there was conflicting evidence at trial as to defendant's conduct. RP 953. The trial court stated that the jury's charge was to determine who acted reasonably and who acted unreasonably on the night in question, and whose actions were aggressive and precipitated the fight. RP 953-54. The trial court then outlined the numerous determinations the jury could make given the evidence presented at trial:

Here, you have got the jury having to ponder out was the shooting caused, was the dispute, the aggression caused by Mr. Bills coming over, creating a loud presence out in the street in front of the house; or was [defendant] going outside and confronting Mr. Bills, or was it Mr. Bills remaining in a loud manner out on the street after [defendant] has gone back in' or was it [defendant] arming himself with a rifle and going back out. Any one of those

could be the point that the jury says, hey, that's what precipitated that, or maybe they see it in combination.

RP 954.

The trial court also cited *State v. Heath*, 35 Wn. App. 269, 666 P.2d 922 (1983) as authority supporting its ruling. RP 953-54. In *Heath*, two witnesses testified that the victim had struck the first blow in the fight. *Heath*, 35 Wn. App. at 270. However, there was also testimony at trial that Heath had blocked the victim from using a door and verbally antagonized the victim before he punched Heath. *Id.* at 271. The fight ended when Heath shot and killed the victim. *Id.* at 270. Division Three held that the trial court's aggressor instruction was proper because there was evidence presented at trial that Heath's actions precipitated the fight. *Id.* at 272. The court in *Heath* also cited *State v. Hawkins*, 89 Wash. 449, 154 P. 827 (1916), in which the State Supreme Court held, "The act of provocation must have been committed *at the time the homicide occurred*, and must have related to the assault in the resistance of which the assailant was killed." *Hawkins*, 89 Wash. at 455 [emphasis added].

A reasonable jury could have found that defendant was the aggressor at the time he shot and killed the victim. Although the victim had threatened defendant with a gun, he had returned to his vehicle and was not confronting defendant at the time defendant shot him. Defendant did not report the victim to the police or remain in his home once the victim retreated, but instead retrieved a rifle loaded with hollow point

bullets, walked around the back of the house to go undetected, approached the vehicle on the passenger's side and pointed the rifle at the victim. Defendant signed a written statement where he stated that he was not afraid of the victim at the time the victim threatened him with a gun. Also in the written statement was defendant's admission that he rendered the rifle ready to immediately fire before the victim allegedly raised his gun. All of these facts support the trial court's first aggressor instruction to the jury.

The fact that evidence was presented at trial that lent itself to multiple interpretations, or conflicted with other evidence, was precisely why the trial court gave the jury a first aggressor instruction. Defendant argues that "[t]here was... no conflicting evidence of whose behavior provoked the fight in this case." Br. of Appellant at 17. Defendant, however, only views the events as one continuous incident, even though the victim had finished threatening defendant and returned to the Bronco before defendant retrieved a rifle and reengaged the victim. The trial court, in great detail, laid out the various interpretations the jury could reasonably reach regarding the events leading up to defendant shooting the victim. The trial court left it up to the jury to conclude whether defendant or the victim precipitated the ultimate confrontation, rather than the penultimate confrontation, that gave rise to the shooting. The trial court properly guided the jury in this endeavor with a first aggressor instruction.

2. THERE WAS SUFFICIENT EVIDENCE TO CONVICT DEFENDANT OF SECOND DEGREE MANSLAUGHTER BECAUSE THE EVIDENCE SHOWED THAT DEFENDANT WAS EITHER NEGLIGENT WHEN HE THREATENED THE VICTIM OR USED EXCESSIVE FORCE TO DEFEND HIMSELF AGAINST THE VICTIM.

Due process requires that the State bear the burden of proving each and every element of the crime charged beyond a reasonable doubt. *State v. McCullum*, 98 Wn.2d 484, 488, 656 P.2d 1064 (1983); *see also Seattle v. Gellein*, 112 Wn.2d 58, 61, 768 P.2d 470 (1989); *State v. Mabry*, 51 Wn. App. 24, 25, 751 P.2d 882 (1988). The applicable standard of review is, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime charged beyond a reasonable doubt. *State v. Joy*, 121 Wn.2d 333, 338, 851 P.2d 654 (1993); *State v. Green*, 94 Wn.2d 216, 221-22, 616 P.2d 628 (1980). Also, a challenge to the sufficiency of the evidence admits the truth of the State's evidence and any reasonable inferences from it. *State v. Barrington*, 52 Wn. App. 478, 484, 761 P.2d 632 (1987), *review denied*, 111 Wn.2d 1033 (1988) (*citing State v. Holbrook*, 66 Wn.2d 278, 401 P.2d 971 (1965)). All reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant. *State v. Anderson*, 72 Wn. App. 453, 458, 864 P.2d 1001, *review denied*, 124 Wn.2d 1013 (1994).

Circumstantial and direct evidence are considered equally reliable. *State v. Delmarter*, 94 Wn.3d 634, 638, 618 P.2d 99 (1980). In considering this evidence, “[c]redibility determinations are for the trier of fact and cannot be reviewed upon appeal.” *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990) (citing *State v. Casbeer*, 48 Wn. App. 539, 542, 740 P.2d 335, review denied, 109 Wn.2d 1008 (1987)). This is because the written record of a proceeding is an inadequate basis on which to decide issues based on witness credibility. The differences in the testimony of witnesses create the need for such credibility determinations. The trier of fact, who is best able to observe the witnesses and evaluate their testimony, should make these determinations. On this issue, the Supreme Court of Washington said:

great deference . . . is to be given the trial courts factual findings. *In re Sego*, 82 Wn.2d 736, 513 P.2d 831 (1973); *Nissen v. Obde*, 55 Wn.2d 527, 348 P.2d 421 (1960). It, alone, has had the opportunity to view the witness’ demeanor and to judge his veracity.

State v. Cord, 103 Wn.2d 361, 367, 693 P.2d 81 (1985).

Therefore, when the State has produced evidence of all elements of a crime, the decision of the trier of fact should be upheld.

The State may use evidentiary devices such as permissive inferences to assist in meeting its burden of proof. *State v. Hanna*, 123 Wn.2d 704, 710, 871 P.2d 135 (1994). A permissive inference permits the jury to find a presumed fact from a proven fact, but does not require them to do so. *State v. Deal*, 128 Wn.2d 693, 699, 911 P.2d 996 (1996) (citing

Hanna, 123 Wn.2d at 710). When permissive inferences are only part of the State's proof supporting an element, due process is not offended if the evidence shows that the inference more likely than not flows from the proven fact. *Deal*, 128 Wn.2d 693, 700, (quoting *State v. Burnson*, 128 Wn.2d 98, 905 P.2d 346 (1995)).

A person is guilty of the crime of second degree manslaughter "when, with criminal negligence, he causes the death of another person." RCW 9A.32.070(1).

Second degree manslaughter may be a lesser included offense for second degree intentional murder. *State v. Berlin*, 133 Wn.2d 541, 551, 947 P.2d 700 (1997). When a defendant raises a claim of self-defense to a murder charge, instruction on manslaughter may be warranted because the defendant might have been justified in using some force, but recklessly or negligently used more force than a reasonably prudent person would have under the circumstances. *State v. Schaffer*, 135 Wn.2d 355, 358, 957 P.2d 214 (1998) (citing *State v. Jones*, 95 Wn.2d 616, 623, 628 P.2d 472 (1981); *Hughes*, 106 Wn.2d at 190). In *Schaffer*, Schaffer was charged with second degree murder for shooting John Magee outside of a Seattle night club. *Schaffer*, 135 Wn.2d at 357. Schaffer asked for a manslaughter instruction, arguing that he thought he saw Magee reach for a weapon when he fired, but the trial court denied his motion. *Id.* at 358. Schaffer ended up shooting Magee three times in the leg and twice in the back, killing Magee. *Id.* at 357. The Supreme Court held that Schaffer's

use of force, shooting Magee five times when he thought Magee was reaching for a gun, supported the inference that Schaffer “recklessly or negligently used excessive force to repel the danger he perceived.” *Id.* at 358. The Court held that this inference supported a manslaughter instruction that the trial court should have given the jury. *Id.*

In the present case, the trial court instructed the jury that in order to convict defendant of second degree manslaughter, it had to find beyond a reasonable doubt that defendant shot the victim, that defendant’s conduct was negligent, that the victim died as a result of defendant’s acts, and that defendant committed those acts in the State of Washington. CP 140-76 (Jury Instruction 19). A defendant can be convicted of second degree manslaughter upon a showing of ordinary negligence. *State v. Theilken*, 102 Wn.2d 271, 276, 684 P.2d 709 (1984). Ordinary negligence is the doing of some act which a reasonably careful person would not do under the same or similar circumstances or the failure to do something which a reasonably careful person would have done under the same or similar circumstances. *State v. Eike*, 72 Wn.2d 760, 766, 435 P.2d 680 (1967); *see also State v. May*, 68 Wn. App. 491, 496, 843 P.2d 1102 (1993) (*citing State v. Jacobsen*, 78 Wn.2d 491, 498, 477 P.2d 1 (1970)).

The trial court also instructed the jury that justifiable homicide was a defense to second degree manslaughter. CP 140-76 (Jury Instructions 19-20). In order for the jury to find that the homicide was justifiable, the trial court instructed the jury that it must find that defendant “reasonably

believed that [the victim] intended to inflict death or great bodily injury,” that defendant “reasonably believed that there was imminent danger of such harm being accomplished,” and that defendant “employed the same amount of force a reasonably prudent person would use under the same or similar circumstances as they reasonably appeared to defendant.” CP 140-76 (Jury Instruction 20).

The latter instruction, as is the case with the other instructions, mirrors the case law in Washington. Washington courts have held that in order for a defendant to succeed on a self-defense claim, the jury must find that a reasonably prudent person, knowing everything the defendant knows and seeing everything the defendant sees, would believe that he was in imminent danger of great bodily harm. *State v. Janes*, 121 Wn.2d 230, 237-38, 850 P.2d 495, 22 A.L.R. 5th 921 (1993); *State v. Callahan*, 87 Wn. App. 925, 929, 943 P.2d 676 (1997). The defendant himself must also have believed that he was in imminent danger of great bodily harm. *State v. Lefaber*, 128 Wn.2d 896, 899, 913 P.2d 369 (1996). The defendant must have then acted with “only that degree of force necessary to repel the danger.” *State v. Bergeson*, 64 Wn. App. 366, 370, 824 P.2d 515 (1992). If a defendant claims self-defense, the State must disprove self-defense beyond a reasonable doubt. *State v. Acosta*, 101 Wn.2d 612, 616, 683 P.2d 1069 (1984).

In the present case, there was sufficient evidence to support a second degree manslaughter verdict on the theory of excessive force,

particularly if the jury believed defendant's contention that the entire series of events constituted one incident. Under the excessive force theory, the jury could have concluded that defendant intended to kill the victim, was justified in defending himself because the victim had just threatened him and was still outside his residence, but that justification for self-defense extended only to the point of arming himself for protection; by shooting the victim, defendant therefore negligently used excessive force because he used more force than a reasonably prudent person would under similar circumstances. The victim not having a gun on him when his body was found, and that the only gun found in the Bronco was stuffed between the front seats, both support the conclusion that the victim did not raise a gun when defendant confronted him from outside the vehicle. RP 147-48. Even if the victim raised his hand immediately prior to defendant shooting him, an assertion supported nowhere in the record other than defendant's own statements, the jury could have concluded that the victim did not have a weapon in his hand, and that defendant then negligently used excessive force to defend himself, just as Schaffer used excessive force to defend himself from a phantom weapon.

The evidence was also sufficient to support the conclusion that defendant did not intend to kill the victim, but negligently caused his death. Defendant's own testimony and his written statement clearly state that he did not approach the victim's vehicle with the intent of shooting

the victim, but to only scare him. Defendant testified that he approached the Bronco to “make [the victim] leave,” and he told Detective Tamera Pihl he carried the assault rifle in plain view to scare the victim. RP 906, 368. Defendant testified that he only fired on the victim after the victim raised his own gun. RP 908. Detective Tamera Pihl testified that defendant told her he pulled back the slide on his rifle, used an obscenity towards the victim, and told him to get lost prior to the victim raising his own gun. RP 366. The victim suffered cuts on the right side of his face from the passenger window glass, and the medical examiner testified that the victim’s injuries were consistent with his head in a down position at the time glass struck his head and face. RP 658-59. No gun was found in the car except for a .357 stashed between the two front seats of the Bronco, indicating that the victim, even if he did raise his arm, was not holding a weapon when he did so. RP 142, 147-48. Defendant also never told Detective Tamera Pihl, or wrote in his signed statement, that he felt afraid of the victim, in contrast to his testimony at trial. RP 367. All of this evidence, at a minimum, pointed to negligence on the part of defendant. If the jury found that defendant did not intend to kill the victim, but by reengaging defendant operated as the first aggressor, then those findings would support the jury’s guilty verdict. Therefore, under this theory, the State provided sufficient evidence for the jury to convict defendant of second degree manslaughter.

Defendant on appeal mischaracterizes both the standard upon which a self-defense claim is judged and the evidence presented in this case. Defendant contends that “[a] claim of self-defense is judged by a subjective standard.” Br. of Appellant at 13. However, a trial court is to instruct the jury, as it did in the present case, to evaluate a claim of self-defense by not only determining whether a defendant believed he was in imminent danger of great bodily harm and acted with appropriate force, but also whether a reasonable person would have reached the same conclusion and used the same level of force. *Janes*, 121 Wn.2d at 237-38. Either theory, that defendant operated as the first aggressor and negligently caused the victim’s death, or that defendant acted in self-defense but in doing so negligently used excessive force, is supported by both the evidence before the jury and the objective standard upon which it was to decide the reasonableness of defendant’s conduct.

3. THE TRIAL COURT PROPERLY RULED
DEFENDANT HAD TO REIMBURSE THE
CRIME VICTIM’S COMPENSATION FUND
FOR EXPENSES THE VICTIM’S DECEDENTS
INCURRED TRAVELING TO THE FUNERAL.

An appellate court’s review of a trial court’s restitution order is limited to whether the court abused its discretion. *State v. Horner*, 53 Wn. App. 806, 807, 770 P.2d 1056 (1989). An abuse of discretion occurs when the order is manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons. *State v. Smith*, 33 Wn. App. 791, 798-

99, 658 P.2d 1250, (quoting *State v. Cunningham*, 96 Wn.2d 31, 34, 633 P.2d 886 (1981)), *review denied*, 99 Wn.2d 1013 (1983).

A court's authority to order restitution is purely statutory. *State v. Hennings*, 129 Wn.2d 512, 519, 919 P.2d 580 (1996). Statutes authorizing restitution are to be broadly construed in order to carry out the Legislature's intent of providing restitution. *Id.* If, however, the language of a statute is plain and clear, the court must apply the language as written. *State v. J.M.*, 144 Wn.2d 472, 480, 28 P.3d 720 (2001); *Duke v. Boyd*, 133 Wn.2d 80, 87, 942 P.2d 351 (1997); *Bravo v. Dolsen Cos.*, 125 Wn.2d 745, 752, 888 P.2d 147 (1995). Interpretation of a statute is a question of law reviewed de novo. *In re Post Sentencing Review of Charles*, 135 Wn.2d 239, 245, 249, 955 P.2d 798 (1998). Plain meaning is "discerned from all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question." *Dept of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 11, 43 P.3d 4 (2002).

Restitution is governed by RCW 9.94A.753. *See* Appendix A for text of statute. In subsection (3) of this statute the legislature directed that "restitution ... shall be based on easily ascertainable damages for injury to or loss of property, actual expenses incurred for treatment for injury to persons, and lost wages resulting from injury," but that it "shall not include reimbursement for damages for mental anguish, pain and suffering, or other intangible losses." RCW 9.94A.753(3). The

Legislature also provided that if there were “extraordinary circumstances ... which make restitution inappropriate in the court’s judgment” that the court could refrain from imposing restitution as long as “the court sets forth such circumstances in the record.” RCW 9.94A.753(5).

However, when the victim is entitled to benefits under the Crime Victim’s Compensation Act (CVCA), the Legislature imposed a different standard regarding restitution stating “[r]egardless of the provisions of subsections (1) through (6) of this section, the court shall order restitution in all cases where the victim is entitled to benefits under the crime victims’ compensation act, chapter 7.68 RCW (CVCA).” RCW 9.94A.753(7) (emphasis added). One Washington court has noted that this subsection of the statute is applicable “where the victim is entitled to benefits under the CVCA.” *See State v. Hahn*, 100 Wn. App. 391, 398, n. 4, 996 P.2d 1125 (2000). The language of this subsection states that restitution shall be ordered “regardless of the provisions of subsections (1) through (6) of this section.” This indicates that the terms of subsection (7) are controlling over the preceding six subsections.

In RCW 7.68 et seq (CVCA) the Legislature found that there was a compelling state interest in compensating the victims of crime and preventing criminals from profiting from their crimes. RCW 7.68.300. As such it enacted the CVCA to establish a program to benefit “innocent victims of criminal acts” under the terms set forth in the chapter. RCW 7.68.030. The CVCA defines a “victim” primarily as “a person who

suffers bodily injury or death as a proximate result of a criminal act of another person.” RCW 7.68.020. This means that terms of the act limit the payment of benefits to situations where the proximate cause of bodily injury or death has been established as being the criminal act of another person. The Legislature provided that “[a]ny person who has committed a criminal act which resulted in injury compensated under this chapter may be required to make reimbursement to the department [of labor and industries]” RCW 7.68.020(1) and 7.68.120. The CVCA goes on to state that “[a]ny payment of benefits to or on behalf of a victim under this chapter creates a debt due and owing to the department by any person found to have committed the criminal act in either a civil or criminal court proceeding in which he or she is a party.” RCW 7.68.120(1).

Consistent with the language in RCW 9.94A.753(7), the Legislature indicated in the CVCA that it wanted the debt owed the department to be included in an restitution order entered in a related criminal proceeding. RCW 7.68.120(1). It directed the department to seek entry of a restitution order in any criminal proceeding where a person was found to have committed a criminal act that resulted in payment of benefits to a victim if the court had not done so as part of the sentencing proceedings. RCW 7.68.120(1). Furthermore, the department is authorized to issue a notice of debt due and owing to a person found guilty of a criminal act that resulted in the payment of benefits. RCW 7.68.120(2)(a). A person receiving such a notice has the right to request a

hearing in superior court. *Id.* The Legislature also provided for the seizure and forfeiture of property to satisfy judgments for debts due and owing. RCW 7.68.120, 310-340.

In the present case, the State submitted evidence at the restitution hearing, through the testimony of Sherry Dowd, that the Crime Victim's Compensation Program paid \$8,906.86 to the victim's family members, including \$3,217.72 in expenses the family members incurred traveling to the victim's funeral³. 12RP 6-7, CP 217-18. The court ordered defendant to pay a total of \$5,687.14 in restitution to the Crime Victim's Compensation Program, plus the travel expenses to be set by a later court order. 12RP 19-21, 24; CP 217-18. The victim's mother, grandmother, and grandfather submitted sworn affidavits detailing their travel expenses that were reimbursed by the Crime Victim's Compensation Program, totaling \$1,665.50 amongst the three of them, bringing defendant's total restitution to \$7,352.64. CP 224-28. Once the State presented the evidence to show that the victim's decedents were entitled to benefits under the CVCA and that CVCA had, in fact, paid the victim's decedents for their travel expenses, the court was mandated to enter this amount as restitution under RCW 9.94A.753(7). In fact, the court erred in not

³ Subtracting the \$3,217.72 in travel expenses from the \$8,906.86 in original restitution is \$5,689.14, two dollars more than the court ordered restitution minus the travel expenses. This seems to be a minor mathematical error.

ordering defendant to fully compensate the Crime Victim's Compensation Program for its reimbursements of travel expenses.

Defendant only challenges the \$1,665.50 in travel expenses on appeal. Br. of Appellant at 18. Defendant challenges this order as unsupported by evidence to show the causal connection between defendant's actions and the damages. Brief of Appellant at 18-22. However, neither of the cases cited by defendant involves a request by the State for reimbursement to the CVC fund for benefits it paid under the CVCA. *State v. Halsen*, 111 Wn.2d 121, 757 P.2d 531 (1988); *State v. Morse*, 45 Wn. App. 197, 723 P.2d 1209 (1986); Br. of Appellant at 20-21. As the CVCA only applies when there is a causal connection between a criminal act and a victim's bodily injury or death, the causal connection has to be satisfied before the payment of benefits. Where the State is making a request to reimburse the CVC fund, the Legislature did not require the same showing as other claims for restitution. The mandatory provisions of RCW 9.94A.753(7) required the court to enter a restitution order because the victim was entitled to benefits under CVCA. Although the trial court did not understand its statutory duty under RCW 9.94A.753(7), its order may be upheld under this authority.

D. CONCLUSION.

For the foregoing reasons, defendant's conviction and sentence should be affirmed.

DATED: SEPTEMBER 12, 2008

GERALD A. HORNE
Pierce County
Prosecuting Attorney

Kathleen Proctor
KATHLEEN PROCTOR
Deputy Prosecuting Attorney
WSB # 14811

FILED
COURT OF APPEALS
DIVISION II
08 SEP 15 AM 11:48
STATE OF WASHINGTON
BY DEPUTY

Stephen P. Johnson, Jr.
Rule 9

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.

9/12/08 *Stephen P. Johnson*
Date Signature

APPENDIX "A"

RCW 9.94A753

§ 9.94A.753. Restitution -- Application dates

This section applies to offenses committed after July 1, 1985.

(1) When restitution is ordered, the court shall determine the amount of restitution due at the sentencing hearing or within one hundred eighty days except as provided in subsection (7) of this section. The court may continue the hearing beyond the one hundred eighty days for good cause. The court shall then set a minimum monthly payment that the offender is required to make towards the restitution that is ordered. The court should take into consideration the total amount of the restitution owed, the offender's present, past, and future ability to pay, as well as any assets that the offender may have.

(2) During the period of supervision, the community corrections officer may examine the offender to determine if there has been a change in circumstances that warrants an amendment of the monthly payment schedule. The community corrections officer may recommend a change to the schedule of payment and shall inform the court of the recommended change and the reasons for the change. The sentencing court may then reset the monthly minimum payments based on the report from the community corrections officer of the change in circumstances.

(3) Except as provided in subsection (6) of this section, restitution ordered by a court pursuant to a criminal conviction shall be based on easily ascertainable damages for injury to or loss of property, actual expenses incurred for treatment for injury to persons, and lost wages resulting from injury. Restitution shall not include reimbursement for damages for mental anguish, pain and suffering, or other intangible losses, but may include the costs of counseling reasonably related to the offense. The amount of restitution shall not exceed double the amount of the offender's gain or the victim's loss from the commission of the crime.

(4) For the purposes of this section, for an offense committed prior to July 1, 2000, the offender shall remain under the court's jurisdiction for a term of ten years following the offender's release from total confinement or ten years subsequent to the entry of the judgment and sentence, whichever period ends later. Prior to the expiration of the initial ten-year period, the superior court may extend jurisdiction under the criminal judgment an additional ten years for payment of restitution. For an offense committed on or after July 1, 2000, the offender shall remain under the court's jurisdiction until the obligation is completely satisfied, regardless of the statutory maximum for the crime. The portion of the sentence concerning restitution may be modified as to amount, terms, and conditions during any period of time the offender remains under the court's jurisdiction, regardless of the expiration of the offender's term of community supervision and regardless of the statutory maximum sentence for the crime. The court may not reduce the total amount of restitution ordered because the offender may lack the ability to pay the total amount. The offender's compliance with the restitution shall be supervised by the department only during any period which the department is authorized to supervise the offender in the community under RCW 9.94A.728, 9.94A.501, or in which the offender is in confinement in a state correctional institution or a correctional facility pursuant to a transfer agreement with the department, and the department shall supervise the offender's compliance during any such period. The department is responsible for supervision of the offender only during confinement and authorized supervision and not during any subsequent period in which the offender remains under the court's jurisdiction. The county clerk is authorized to collect unpaid restitution at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations.

(5) Restitution shall be ordered whenever the offender is convicted of an offense which results in injury to any person or damage to or loss of property or as provided in subsection

(6) of this section unless extraordinary circumstances exist which make restitution inappropriate in the court's judgment and the court sets forth such circumstances in the record. In addition, restitution shall be ordered to pay for an injury, loss, or damage if the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement.

(6) Restitution for the crime of rape of a child in the first, second, or third degree, in which the victim becomes pregnant, shall include: (a) All of the victim's medical expenses that are associated with the rape and resulting pregnancy; and (b) child support for any child born as a result of the rape if child support is ordered pursuant to a civil superior court or administrative order for support for that child. The clerk must forward any restitution payments made on behalf of the victim's child to the Washington state child support registry under chapter 26.23 RCW. Identifying information about the victim and child shall not be included in the order. The offender shall receive a credit against any obligation owing under the administrative or superior court order for support of the victim's child. For the purposes of this subsection, the offender shall remain under the court's jurisdiction until the offender has satisfied support obligations under the superior court or administrative order for the period provided in RCW 4.16.020 or a maximum term of twenty-five years following the offender's release from total confinement or twenty-five years subsequent to the entry of the judgment and sentence, whichever period is longer. The court may not reduce the total amount of restitution ordered because the offender may lack the ability to pay the total amount. The department shall supervise the offender's compliance with the restitution ordered under this subsection.

(7) Regardless of the provisions of subsections (1) through (6) of this section, the court shall order restitution in all cases where the victim is entitled to benefits under the crime victims' compensation act, chapter 7.68 RCW. If the court does not order restitution and the victim of the crime has been determined to be entitled to benefits under the crime victims' compensation act, the department of labor and industries, as administrator of the crime victims' compensation program, may petition the court within one year of entry of the judgment and sentence for entry of a restitution order. Upon receipt of a petition from the department of labor and industries, the court shall hold a restitution hearing and shall enter a restitution order.

(8) In addition to any sentence that may be imposed, an offender who has been found guilty of an offense involving fraud or other deceptive practice or an organization which has been found guilty of any such offense may be ordered by the sentencing court to give notice of the conviction to the class of persons or to the sector of the public affected by the conviction or financially interested in the subject matter of the offense by mail, by advertising in designated areas or through designated media, or by other appropriate means.

(9) This section does not limit civil remedies or defenses available to the victim, survivors of the victim, or offender including support enforcement remedies for support ordered under subsection (6) of this section for a child born as a result of a rape of a child victim. The court shall identify in the judgment and sentence the victim or victims entitled to restitution and what amount is due each victim. The state or victim may enforce the court-ordered restitution in the same manner as a judgment in a civil action. Restitution collected through civil enforcement must be paid through the registry of the court and must be distributed proportionately according to each victim's loss when there is more than one victim.

HISTORY: 2003 c 379 § 16. Prior: 2000 c 226 § 3; 2000 c 28 § 33; prior: 1997 c 121 § 4; 1997 c 52 § 2; prior: 1995 c 231 § 2; 1995 c 33 § 4; 1994 c 271 § 602; 1989 c 252 § 6; 1987 c 281 § 4; 1985 c 443 § 10. Formerly RCW 9.94A.142.