

NO. 48373-4-II

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

---

---

STATE OF WASHINGTON,

Respondent,

v.

MARVIN MEADOWS,

Appellant.

---

---

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

The Honorable Jerry Costello, Judge

---

---

BRIEF OF APPELLANT

---

---

CATHERINE E. GLINSKI  
Attorney for Appellant

Glinski Law Firm PLLC  
P.O. Box 761  
Manchester, WA 98353  
(360) 876-2736

## TABLE OF CONTENTS

A.	ASSIGNMENTS OF ERROR.....	1
	Issues pertaining to assignments of error.....	1
B.	STATEMENT OF THE CASE.....	2
	1. Procedural History .....	2
	2. Substantive Facts .....	2
C.	ARGUMENT.....	4
	1. THE STATE FAILED TO PROVE MEADOWS WAS IN KNOWING POSSESSION OF THE FIREARMS. ....	4
	2. THIS COURT SHOULD EXERCISE ITS DISCRETION AND DECLINE TO IMPOSE APPELLATE COSTS.....	8
	a. The serious problems <i>Blazina</i> recognized apply equally to costs awarded on appeal, and this Court should exercise its discretion to deny cost bills filed in the cases of indigent appellants. ....	8
	b. Alternatively, this court should remand for superior court fact- finding to determine Meadows’s ability to pay.....	13
D.	CONCLUSION.....	14

## TABLE OF AUTHORITIES

### Washington Cases

<u>Staats v. Brown</u> , 139 Wn.2d 757, 991 P.2d 615 (2000) .....	12
<u>State v. Blank</u> , 131 Wn.2d 230, 930 P.2d 1213 (1997) .....	10
<u>State v. Blazina</u> , 182 Wn.2d 827, 344 P.3d 680 (2015).....	8, 9, 11
<u>State v. Callahan</u> , 77 Wn.2d 27, 459 P.2d 400 (1969).....	6
<u>State v. Chapin</u> , 118 Wn.2d 681, 826 P.2d 194 (1992) .....	5
<u>State v. Colquitt</u> , 133 Wn. App. 789, 137 P.3d 892 (2006).....	7
<u>State v. Crediford</u> , 130 Wn.2d 747, 927 P.2d 1129 (1996) .....	5
<u>State v. Davis</u> , 182 Wn.2d 222, 340 P.3d 820 (2014).....	6
<u>State v. Echeverria</u> , 85 Wn. App. 777, 934 P.2d 1214 (1997).....	5
<u>State v. Enlow</u> , 143 Wn. App. 463, 178 P.3d 366 (2008).....	5, 6
<u>State v. Green</u> , 94 Wn. 2d 216, 616 P.2d 628 (1980).....	5
<u>State v. Hardesty</u> , 129 Wn.2d 303, 915 P.2d 1080 (1996) .....	5
<u>State v. Hickman</u> , 135 Wn.2d 97, 954 P.2d 900 (1998) .....	5
<u>State v. Lee</u> , 158 Wn. App. 513, 243 P.3d 929 (2010).....	5
<u>State v. Mahone</u> , 98 Wn. App. 342, 989 P.2d 583 (1999).....	11

### Federal Cases

<u>In re Winship</u> , 397 U.S. 358, 25 L. Ed. 2d 368, 90 S. Ct. 1068 (1970).....	4
<u>Jackson v. Virginia</u> , 443 U.S. 307, 99 S. Ct. 2781, 61 L.Ed.2d 560 (1979)	5

### Statutes

RCW 10.01.160 .....	10, 11
RCW 10.73.160(1).....	12
RCW 10.73.160(3).....	9, 10
RCW 10.73.160(4).....	11
RCW 10.82.090(1).....	11
RCW 9.41.040(1)(a) .....	2, 4

**Constitutional Provisions**

U.S. Const. amend. 14 .....	4
Wash. Const. art. 1, § 3.....	4

**Rules**

GR 34 .....	11
RAP 15.2(e) .....	12
RAP 15.2(f).....	12

**Other Authorities**

AM. CIVIL LIBERTIES UNION, IN FOR A PENNY: THE RISE OF AMERICA’S NEW DEBTOR’S PRISONS, at 68-69 (2010).....	9
KATHERINE A. BECKETT, ALEXES M. HARRIS, & HEATHER EVANS, WASH. STATE MINORITY & JUSTICE COMM’N, THE ASSESSMENT AND CONSEQUENCES OF LEGAL FINANCIAL OBLIGATIONS IN WASHINGTON STATE (2008),.....	9

A. ASSIGNMENTS OF ERROR

1. The State failed to present sufficient evidence to convict appellant of unlawful possession of a firearm.

2. The court erred in finding that the firearms were found in a room appellant shared with his wife. (Finding of Fact V).

3. The court erred in finding it was not reasonable to believe appellant's wife did not discuss her purchase of the firearms with him. (Finding of Fact VIII).

4. The court erred in concluding appellant knew about the firearms found in the search. (Conclusion of Law IV).

5. This Court should exercise its discretion to deny appellate costs should the State substantially prevail on appeal.

Issues pertaining to assignments of error

1. Where the State failed to prove appellant was knowingly in possession of the firearms, must his convictions for unlawful possession of a firearm be reversed?

2. Given the serious problems with the LFO system recognized by our Supreme Court in Blazina, should this Court exercise its discretion to deny cost bills filed in the cases of indigent appellants?

B. STATEMENT OF THE CASE

1. Procedural History

On June 6, 2014, the Pierce County Prosecuting Attorney charged appellant Marvin Meadows with four counts of first degree unlawful possession of a firearm. CP 1-2; RCW 9.41.040(1)(a). Meadows waived his right to a jury trial, and the case proceeded to a bench trial before the Honorable Jerry Costello. CP 6. The court found Meadows not guilty on two counts and guilty on the remaining counts, and it entered findings of fact and conclusions of law in support of its verdict. CP 9-15, 24. The court imposed a standard range sentence of 40 months, and Meadows filed this timely appeal. CP 26, 33.

2. Substantive Facts

On June 5, 2014, the Lakewood Police Department Special Operations Unit executed a search warrant at an address on 96<sup>th</sup> Street. RP 33. Michael Reid was the target of the investigation, and police spoke to him during the course of the search. RP 34, 87. Information from Reid led the officers to a house on Clover Park Drive that Reid shared with Marvin and Charnell Meadows. RP 34-35. Police set up surveillance of the Clover Park house and obtained a search warrant. RP 36. Police contacted Marvin and Charnell Meadows as they were driving away from

the house and obtained a key to the residence before executing the search warrant. RP 37-38.

The police located numerous apparent firearms in the upstairs bedrooms of the house. RP 40. After test-firing three, they determined that two were operable. RP 155-58. One was a 12-gauge Remington shotgun, found on the floor of a bedroom closet completely covered with clothing. RP 61. The other was a .357 Ruger revolver, found on the shelf of the closet partially covered by a baseball hat. RP 58-60. Both guns were loaded, and the closet where they were found was five to ten feet from the bed. RP 64-65, 67.

The searching officers designated the bedroom where the guns were found "Marvin's room," because they found men's clothing in the room as well as documents with his name and address. RP 56, 144. No one was in the house when the police searched it, however, and police never saw Meadows in the bedroom they identified as his. RP 117-18, 145.

Marvin Meadows stipulated that he has a prior conviction for a serious offense and is prohibited from possessing firearms. RP 169. He testified that he did not know there were firearms in the house, however. RP 182. At the time of the search, he was staying in a downstairs room, because he and his wife were having marital problems. His wife kept his

belongings locked in the upstairs room they previously shared, and he did not have access to that room. RP 179-80.

Charnell Meadows testified that the shotgun and revolver were hers. RP 205-06. Until shortly before the search she had stored them in the downstairs room, which she kept locked. RP 203. When she and her husband started having marital problems, she moved the guns to the upstairs room and him to the downstairs room. She kept the room locked to keep Meadows from getting his clothes, so that he couldn't leave. RP 200-01. Charnell testified that Meadows did not know she owned the guns and kept them at the house. She knew he was a convicted felon, so she didn't want him to know about the guns. RP 210-12.

C. ARGUMENT

1. THE STATE FAILED TO PROVE MEADOWS WAS IN KNOWING POSSESSION OF THE FIREARMS.

In this case, Meadows was charged with unlawful possession of a firearm. To convict him of this offense, the State had to prove he “knowingly had a firearm in his possession or control.” RCW 9.41.040(1)(a). Constitutional due process required the State to prove these elements beyond a reasonable doubt. U.S. Const. amend. 14; Wash. Const. art. 1, § 3; In re Winship, 397 U.S. 358, 25 L. Ed. 2d 368, 90 S. Ct. 1068 (1970); State v. Crediford, 130 Wn.2d 747, 759, 927 P.2d 1129

(1996). To find the elements beyond a reasonable doubt, the trier of fact must “reach a subjective state of near certitude of the guilt of the accused.” Jackson v. Virginia, 443 U.S. 307, 315, 99 S. Ct. 2781, 61 L.Ed.2d 560 (1979). As a matter of state and federal constitutional law, a reviewing court must reverse a conviction and dismiss the prosecution for insufficient evidence where no rational trier of fact could find that all elements of the crime were proven beyond a reasonable doubt. State v. Hickman, 135 Wn.2d 97, 103, 954 P.2d 900 (1998); State v. Hardesty, 129 Wn.2d 303, 309, 915 P.2d 1080 (1996); State v. Chapin, 118 Wn.2d 681, 826 P.2d 194 (1992); State v. Green, 94 Wn. 2d 216, 616 P.2d 628 (1980).

“Possession may be actual or constructive, and constructive possession can be established by showing the defendant had dominion and control over the firearm or over the premises where the firearm was found.” State v. Echeverria, 85 Wn. App. 777, 783, 934 P.2d 1214 (1997). But proximity alone is insufficient to establish constructive possession, and it is not enough that the State prove Meadows was in the same house with a firearm. State v. Lee, 158 Wn. App. 513, 517, 243 P.3d 929 (2010); State v. Enlow, 143 Wn. App. 463, 469, 178 P.3d 366 (2008).

To determine constructive possession, the court examines whether, under the totality of the circumstances, the defendant exercised dominion and control over the item in question. State v. Callahan, 77 Wn.2d 27, 29-

30, 459 P.2d 400 (1969). Factors supporting dominion and control include ownership of the item, and in some cases ownership of the premises. But dominion and control over the premises containing the item does not, by itself, prove constructive possession. State v. Davis, 182 Wn.2d 222, 234, 340 P.3d 820 (2014). And, while exclusive control of the contraband is not a prerequisite to establishing constructive possession, the absence of evidence that the defendant ever actually handled the item is a significant factor weighing against a finding of constructive possession. Enlow, 143 Wn. App. at 469.

In Enlow, police officers found the defendant under a blanket in the canopy part of a truck. A search of the truck revealed methamphetamine and the materials used to make methamphetamine, as well as identification cards in the defendant's name and property with his fingerprints on it. His fingerprints were not found on items containing methamphetamine or items used to manufacture it, however. Enlow, 143 Wn. App. at 465. Nor did he own the truck or the house where it was parked. Id. at 469. Under the totality of the circumstances, the evidence was insufficient to prove the defendant had dominion and control over the contraband found in the truck. Id. at 470.

Similarly, here, although there were items presumably belonging to Meadows in the room where the firearms were found, there was no

evidence he owned the guns or had ever handled them. There was no evidence that the State even attempted to obtain fingerprints from the guns. The State's case depended on a finding that the guns were in the room at the same time as Meadows. But no one testified to that. Nor did anyone testify to seeing Meadows with the guns or hearing Meadows talk about the guns.

Meadows's wife testified, on the other hand, that the guns belonged to her, Meadows did not know about them, and she kept them locked in rooms to which Meadows had no access. The court rejected this testimony, finding that the price Charnell Meadows said she paid for the guns would have been a major expense for the marital community, and thus it was not reasonable to believe she did not discuss the purchase with Meadows. CP 12. There was absolutely no evidence at trial regarding the couple's finances or spending habits, however, and the court's finding is wholly speculative. Moreover, Charnell Meadows explained that she kept her ownership of the guns from her husband because she knew he was a convicted felon who could not knowingly possess a firearm. The existence of a fact cannot rest on guess, speculation, or conjecture. State v. Colquitt, 133 Wn. App. 789, 796, 137 P.3d 892 (2006). To the extent the court's conclusion that Meadows knew of the guns rests on this unsupported finding, it must be reversed.

2. THIS COURT SHOULD EXERCISE ITS DISCRETION AND DECLINE TO IMPOSE APPELLATE COSTS.

The court entered an order of indigency finding that Meadows was entitled to seek appellate review wholly at public expense, including appointed counsel, filing fees, costs of preparation of briefs, and costs of preparation of the verbatim report of proceedings. CP 34-35.

- a. The serious problems *Blazina* recognized apply equally to costs awarded on appeal, and this Court should exercise its discretion to deny cost bills filed in the cases of indigent appellants.

Our supreme court in Blazina recognized the “problematic consequences” legal financial obligations (LFOs) inflict on indigent criminal defendants. State v. Blazina, 182 Wn.2d 827, 836, 344 P.3d 680 (2015). LFOs accrue interest at a rate of 12 percent so that even persons “who pay[] \$25 per month toward their LFOs will owe the state more 10 years after conviction than they did when the LFOs were initially assessed.” Id. This, in turn, “means that courts retain jurisdiction over the impoverished offenders long after they are released from prison because the court maintains jurisdiction until they completely satisfy their LFOs.” Id. “The court’s long-term involvement in defendants’ lives inhibits reentry” and “these reentry difficulties increase the chances of recidivism.” Id. (citing AM. CIVIL LIBERTIES UNION, IN FOR A PENNY: THE

RISE OF AMERICA'S NEW DEBTOR'S PRISONS, at 68-69 (2010), available at  
[https://www.aclu.org/files/assets/InForAPenny\\_web.pdf](https://www.aclu.org/files/assets/InForAPenny_web.pdf); KATHERINE A.  
BECKETT, ALEXES M. HARRIS, & HEATHER EVANS, WASH. STATE  
MINORITY & JUSTICE COMM'N, THE ASSESSMENT AND CONSEQUENCES OF  
LEGAL FINANCIAL OBLIGATIONS IN WASHINGTON STATE, at 9-11, 21-22,  
43, 68 (2008), available at  
[http://www.courts.wa.gov/committee/pdf/2008LFO\\_report.pdf](http://www.courts.wa.gov/committee/pdf/2008LFO_report.pdf)).

To confront these serious problems, our supreme court emphasized the importance of judicial discretion: “The trial court must decide to impose LFOs and must consider the defendant’s current or future ability to pay those LFOs based on the particular facts of the defendant’s case.” Blazina, 182 Wn.2d at 834. Only by conducting such a “case-by-case analysis” may courts “arrive at an LFO order appropriate to the individual defendant’s circumstances.” Id.

The Blazina court addressed LFOs imposed by trial courts, but the “problematic consequences” are every bit as problematic with appellate costs. The appellate cost bill imposes a debt for losing an appeal, which then “become[s] part of the trial court judgment and sentence.” RCW 10.73.160(3). Imposing thousands of dollars on an indigent appellant after an unsuccessful appeal results in the same compounded interest and retention of court jurisdiction. Appellate costs negatively impact indigent

appellants' ability to move on with their lives in precisely the same ways the Blazina court identified.

Although Blazina applied the trial court LFO statute, RCW 10.01.160, it would contradict and contravene Blazina's reasoning not to require the same particularized inquiry before imposing costs on appeal. Under RCW 10.73.160(3), appellate costs automatically become part of the judgment and sentence. To award such costs without determining ability to pay would circumvent the individualized judicial discretion that Blazina held was essential before including monetary obligations in the judgment and sentence.

Meadows has been determined to qualify for indigent defense services on appeal. To require him to pay appellate costs without determining his financial circumstances would transform the thoughtful and independent judiciary to which the Blazina court aspired into a perfunctory rubber stamp for the executive branch.

In addition, the prior rationale in State v. Blank, 131 Wn.2d 230, 930 P.2d 1213 (1997), has lost its footing in light of Blazina. The Blank court did not require inquiry into an indigent appellant's ability to pay at the time costs are imposed because ability to pay would be considered at the time the State attempted to collect the costs. Blank, 131 Wn.2d at 244, 246, 252-53. But this time-of-enforcement rationale does not account for

Blazina's recognition that the accumulation of interest begins at the time costs are imposed, causing significant and enduring hardship. Blazina, 182 Wn.2d at 836; see also RCW 10.82.090(1) (“[F]inancial obligations imposed in a judgment shall bear interest from the date of the judgment until payment, at the rate applicable to civil judgments.”). Moreover, indigent persons do not qualify for court-appointed counsel at the time the State seeks to collect costs. RCW 10.73.160(4) (no provision for appointment of counsel); RCW 10.01.160(4) (same); State v. Mahone, 98 Wn. App. 342, 346-47, 989 P.2d 583 (1999) (holding that because motion for remission of LFOs is not appealable as matter of right, “Mahone cannot receive counsel at public expense”). Expecting indigent defendants to shield themselves from the State’s collection efforts or to petition for remission without the assistance of counsel is neither fair nor realistic. The Blazina court also expressly rejected the State’s ripeness claim that “the proper time to challenge the imposition of an LFO arises when the State seeks to collect.” Blazina, 182 Wn.2d at 832, n.1. Blank’s questionable foundation has been thoroughly undermined by the Blazina court’s exposure of the stark and troubling reality of LFO enforcement in Washington.

Furthermore, the Blazina court instructed *all* courts to “look to the comment in GR 34 for guidance.” Blazina, 182 Wn.2d at 838. That

comment provides, “The adoption of this rule is rooted in the constitutional premise that *every level of court* has the inherent authority to waive payment of filing fees and surcharges on a case by case basis.” GR 34 cmt. (emphasis added). The Blazina court also suggested, “if someone does meet the GR 34[(a)(3)] standard for indigency, courts should seriously question that person’s ability to pay LFOs.” Blazina, 182 Wn.2d at 839. This court receives orders of indigency “as a part of the record on review.” RAP 15.2(e). “The appellate court will give a party the benefits of an order of indigency throughout the review unless the trial court finds the party’s financial condition has improved to the extent that the party is no longer indigent.” RAP 15.2(f). This presumption of continued indigency, coupled with the GR 34(a)(3) standard, requires this court to “seriously question” an indigent appellant’s ability to pay costs assessed in an appellate cost bill. Blazina, 182 Wn.2d at 839.

This court has ample discretion to deny cost bills. RCW 10.73.160(1) states the “court of appeals . . . *may* require an adult . . . to pay appellate costs.” (Emphasis added.) “[T]he word ‘may’ has a permissive or discretionary meaning.” Staats v. Brown, 139 Wn.2d 757, 789, 991 P.2d 615 (2000). Blank, too, acknowledged appellate courts have discretion to deny the State’s requests for costs. 131 Wn.2d at 252-53. Given the serious concerns recognized in Blazina, this court should

soundly exercise its discretion by denying the State's requests for appellate costs in appeals involving indigent appellants, barring reasonable efforts by the State to rebut the presumption of continued indigency. Meadows respectfully requests that this court deny a cost bill in this case should the State substantially prevail on appeal.

- b. Alternatively, this court should remand for superior court fact-finding to determine Meadows's ability to pay.

In the event this court is inclined to impose appellate costs on Meadows should the State substantially prevail on appeal, he requests remand for a fair pre-imposition fact-finding hearing at which he can present evidence of his inability to pay. Consideration of ability to pay before imposition would at least ameliorate the substantial burden of compounded interest. At any such hearing, this court should direct the superior court to appoint counsel for Meadows to assist him in developing a record and litigating his ability to pay.

If the State is able to overcome the presumption of continued indigence and support a finding that Meadows has the ability to pay, this court could then fairly exercise its discretion to impose all or a portion of the State's requested costs, depending on his actual and documented ability to pay.

D. CONCLUSION

The State failed to prove Meadows was in knowing possession of the firearms, and his convictions must be reversed. In addition, this Court should exercise its discretion not to impose appellate costs should the State substantially prevail on appeal.

DATED June 7, 2016.

Respectfully submitted,



---

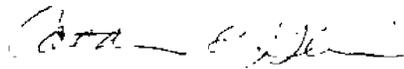
CATHERINE E. GLINSKI  
WSBA No. 20260  
Attorney for Appellant

Certification of Service by Mail

Today I caused to be mailed a copy of the Brief of Appellant in  
*State v. Marvin Meadows*, Cause No. 48373-4-II as follows:

Marvin Meadows DOC# 976745  
Larch Corrections Center  
15314 NE Dole Valley Road  
Yacolt, WA 98675-9531

I certify under penalty of perjury of the laws of the State of Washington  
that the foregoing is true and correct.



---

Catherine E. Glinski  
Done in Port Orchard, WA  
June 7, 2016

**GLINSKI LAW FIRM PLLC**

**June 07, 2016 - 12:36 PM**

**Transmittal Letter**

Document Uploaded: 4-483734-Appellant's Brief.pdf

Case Name:

Court of Appeals Case Number: 48373-4

**Is this a Personal Restraint Petition?** Yes  No

**The document being Filed is:**

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: \_\_\_\_\_

Answer/Reply to Motion: \_\_\_\_\_

Brief: Appellant's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: \_\_\_\_\_

Hearing Date(s): \_\_\_\_\_

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: \_\_\_\_\_

**Comments:**

No Comments were entered.

Sender Name: Catherine E Glinski - Email: [glinskilaw@wavecable.com](mailto:glinskilaw@wavecable.com)

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

[pcpatcecf@co.pierce.wa.us](mailto:pcpatcecf@co.pierce.wa.us)