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COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

ISIAH MARTIN, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Frank Cuthbertson

No. 16-1-01222-3

Brief of Respondent

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

1. Has appellant demonstrated that the sentencing court abused its discretion when it imposed the firearm registration requirement in this case?
2. Has appellant demonstrated that the prosecuting attorney's closing argument was improper?
3. Did a *Blazina* error occur at sentencing in this case?
4. Should this court remand for the sentencing court to conduct an individualized inquiry into defendant's ability to pay discretionary legal financial obligations?
5. Did the State introduce sufficient evidence to prove that defendant was guilty of the offense of unlawful possession of a firearm in the first degree?

B. STATEMENT OF THE CASE.

1. PROCEDURE

The sentencing court in this case imposed a \$5,000.00 fine. CP

151. The sentencing court imposed this fine as it was orally rendering its

sentence. 7 VRP 592. While the Court did consider defendant's ability to pay, it did not give defendant an opportunity to present evidence, so no individualized inquiry into defendant's ability to pay the fine ever took place.

The sentencing court also imposed the firearm registration requirement. CP 150. The factors relating to that imposition are presented along with the argument.

2. FACTS

On March 19, 2016, at about 2:43 in the morning, Tacoma Police Officer Bratcher was in his police car when he was dispatched to a report of an unwanted person at the Pacific Lanes Bowling Alley in the 7000 block of South D Street, in Tacoma, Washington. 4 VRP 283-84. The complaint was that the occupants of a car were "throwing garbage everywhere." 4 VRP 324. There he came into contact with Isiah Martin (hereinafter "defendant"). 4 VRP 283-84.

Defendant was in the driver's seat of a white Camaro automobile. 4 VRP 284-85. Outside the Camaro, Officer Bratcher saw what appeared to be fast food garbage and a clear bag with what looked (to Officer Bratcher) to have urine inside it, and a catheter tube coming from outside the bag. 4 VRP 285. The other vehicle, containing a female in the

driver's seat, was parked next to the Camaro. 4 VRP 284-85. No passengers were in either vehicle. 4 VRP 285.

Officer Bratcher asked defendant to pick up his garbage, and the other debris off the ground. 4 VRP 289. Defendant did that. *Id.* After defendant placed the bag at his feet on the front driver's side floorboard of the Camaro, Officer Bradley (who was with Officer Bratcher) alerted that there was a gun.¹ 4 VRP 291-92. Defendant was ordered to put his hands on the steering wheel and the firearm was secured. 4 VRP 289.

Officer Bratcher found the gun partially under the bag containing what appeared to be urine. 4 VRP 291; 4 VRP 426. The bag was photographed. Exhibit 9. 4 VRP 299, admitted at 298.

Officer Bratcher "had a brief conversation about" defendant's "paralysis from the waist down." 4 VRP 286.

Officer Bratcher rendered the firearm safe by removing the magazine and ejecting a round from the chamber. 4 VRP 301.

Officer Bradley testified how defendant picked up the trash that was outside his car, and put that trash inside the car—where the Glock 17 was.

A. So officer Bratcher instructed the gentleman, you know, or he asked, what is the stuff? Why are you doing

¹ At 4 VRP 289, Officer Bratcher's testimony appeared to indicate that the weapon was discovered "as" defendant was placing the bag on the front driver's side floorboard. It was then corrected at 4 VRP 291-92.

this? What are you -- something to that effect. And are you littering here? And he appeared to be kind of apologetic, then offered to pick up those items and, you know, essentially said sorry. I observed him lean outside of the vehicle and begin to pick up those items with his left hand. As he was grabbing those items with his left hand he was placing them essentially back underneath his left legs while he was seated in the chair. It was—

Q. Where was he placing them in relation to the driver's seat?

A. Directly what would be underneath his left leg while sitting in the driver's seat. So as the sill runs along the left side of his leg there with the steering wheel in front of him, he was reaching essentially between the seat, and as his legs came down, so that little void area that's underneath there.

Q. And when you said he leaned out of the vehicle, how did he do that exactly?

A. He had leaned out, he appeared to be bracing himself onto -- with the steering wheel or the dash area right there. And then he leaned out with his left hand and grabbed those items with his left hand and then leaned back into the vehicle.

Q. Did he seem to have any physical difficulty doing that?

A. It appeared that it was, and as I later learned, you know, that he does have, you know, a medical disability, but it appeared to be, he was able to lean out effectively with that, but it was apparent that he did use some assistance with the steering wheel, yes.

Q. So, he was grabbing onto the wheel base with one hand?

A. Right.

Q. And reaching out and grabbing the stuff on the ground with the other?

A. Yes. Yes.

5 VRP 345-46.

Officer Bradley testified that the pistol was within arm's length of the defendant and that the pistol was found in the same "area to which he was moving the materials on the ground." 5 VRP 348, 377. The pistol was protruding approximately three inches out from under the driver's seat. Officer Bradley testified that while Officer Bratcher grabbed the pistol, defendant said, unprompted "that's not my gun, it's my baby momma's, to that effect." 5 VRP 353. Officer Bradley testified that the defendant did not seem surprised when Officer Bradley announced "gun." 5 VRP 377. Officer Bradley heard defendant state that he was "paralyzed from the waist down." 5 VRP 375, 379.

The firearm in this case was a functional² Glock 17³ pistol with an extended magazine capable of holding 31 rounds⁴, with a round in the chamber⁵ and 21 rounds in the magazine.⁶

² Detective Vold testified that the firearm was operable. 5 VRP 409-411. He fired the pistol three times. 5 VRP 411.

³ 4 VRP 306; 5 VRP 392.

⁴ Officer Bratcher testified that the Glock with the extended magazine was capable of holding 31 rounds of ammunition. 4 VRP 291. The weapon was admitted as Exhibit 13. Officer Bratcher identified Exhibit 13 as the pistol he took from defendant. 4 VRP 303-06.

⁵ 4 VRP 301; 311-12.

⁶ Officer Bratcher testified that 21 rounds were the magazine. 4 VRP 311-12.

Defendant and the State stipulated that defendant had been convicted on March 19, 2016 of a serious offense. 5 VRP 417. The trial court read the stipulation to the jury. *Id.*

C. ARGUMENT.

1. THE IMPOSITION OF THE FELONY FIREARM OFFENDER REGISTRATION REQUIREMENT WAS A PROPER EXERCISE OF DISCRETION.

Defendant was convicted of unlawful possession of a firearm in the first degree. CP 146-58. That offense was a “felony firearm offense” since defendant was “armed with a firearm in the commission of [that] offense.” RCW 9.41.010(9)(e). Because defendant was convicted of a felony firearm offense, the sentencing court was required to determine whether the felony firearm registration requirements of RCW 9.41.330 should be imposed. RCW 9.41.330(1).

RCW 9.41.330 requires the sentencing court to exercise its discretion when making the determination whether or not to impose the felony firearm registration requirement,⁷ and it provides factors that the sentencing court must consider in making that evaluation.⁸ It provides no further guidance.⁹ In *State v. Oxborrow*, 106 Wn.2d 525, 531, 723 P.2d

⁷ RCW 9.41.330(1).

⁸ RCW 9.41.330(2).

⁹ The absence of further definition is not problematical. See *State v. Baldwin*, 150 Wn.2d 448, 459, 78 P.3d 1005 (2003) (discussing void-for-vagueness in the context of the Sentencing Reform Act).

1123, 1127 (1986), addressing the meaning of “clearly excessive” in the Sentencing Reform Act, the Supreme Court applied the abuse of discretion standard: “Thus, for action to be *clearly excessive*, it must be shown to be clearly unreasonable, *i.e.*, exercised on untenable grounds or for untenable reasons, or an action that no reasonable person would have taken.” *Id.*, 106 Wn2d at 531. A trial court abuses its discretion if it issues a manifestly unreasonable order or bases its decision on untenable grounds. *State v. Magers*, 164 Wn.2d 174, 181, 189 P.3d 126 (2008).

The sentencing court was required to consider three non-exclusive factors in the exercise of its discretion: In determining whether to require the person to register, the court shall consider all relevant factors including, but not limited to: “(a) The person's criminal history; (b) Whether the person has previously been found not guilty by reason of insanity of any offense in this state or elsewhere; and (c) Evidence of the person's propensity for violence that would likely endanger persons.” RCW 9.41.330(2). On the record, the Court discussed factors (a) and (c). 7 VRP 593. Factor (b) was plainly inapplicable.¹⁰ Consideration of each of the three factors is expressed in the judgment and sentence. CP 150.

¹⁰ Nothing in the record suggested insanity, factor (b). 7 VRP 593.

Two concerns, each discussed by the sentencing court, informed the court's decision to impose the firearm registration requirement: (1) defendant's criminal history, and (2) defendant's access to firearms. 7 VRP 593.

Defendant's criminal history includes making/having burglary tools, assault in the fourth degree, theft in the third degree, theft in the second degree (x2), taking a motor vehicle without permission, possession of stolen property in the second degree, residential burglary in the second degree (x2), attempted residential burglary, and promoting prostitution in the first degree. CP 149.

Defendant's ready access to firearms is another major concern. Ms. Bonds is defendant's "home health care aide." 5 VRP 436. Ms. Bonds is also the mother of defendant's son. 5 VRP 447. Ms. Bonds provides "Full, full house care" to defendant "24/7" and lives with defendant. *Id.*, 5 VRP 448-49. Ms. Bonds also owns, and likes, firearms. 5 VRP 444. Ms. Bonds testified that she has three firearms. 5 VRP 478. Ms. Bonds testified that she keeps guns in the home, in locations that defendant "cannot get to because of his disability." 5 VRP 449. Ms. Bonds also testified that she knew that defendant was not allowed to have a firearm." 5 VRP 447, 448. Ms. Bonds testified, relating to this case, that she left her loaded gun (the Glock) in her car. 5 VRP 447-48. Ms.

Bonds testified that telling defendant about that loaded gun in the Camaro “didn’t even cross her mind.” 5 VRP 450. She testified that defendant drove that Camaro (which presumably still contained her loaded Glock) to come pick her up. 5 VRP 448-56.

Defendant was arrested at about 2:43 a.m. with a loaded Glock pistol with an extended magazine underneath the driver’s seat in the car defendant was driving, within arm’s length.¹¹ As the Glock was secured, defendant, unprompted, stated “that’s not my gun, it’s my baby momma’s, to that effect.” 5 VRP 353 (*see also*, 4 VRP 301).

Defendant’s conviction in this case is ample proof defendant has access to firearms, regardless of Ms. Bonds.¹² Defendant’s extensive criminal history, compiled in the eight years prior to his sentencing, demonstrates a substantial risk of continued criminal behavior, which access to firearms could only disastrously complicate. CP 149. These undisputed facts provide a factual basis sufficient to support the sentencing court’s imposition of the firearm registration requirement. It cannot be said that the sentencing court imposed the firearm registration

¹¹ The time of the contact was provided by Officer Bratcher. 4 VRP 283. Defendant was identified as the driver of the Camaro at 5 VRP 344. The discovery of the firearm with its extended magazine was related at 5 VRP 347. The “arm’s length” testimony was related at 5 VRP 348. The extended magazine had a 31 round capacity. 5 VRP 392. Officer Bratcher testified that there was a round in the chamber. 4 VRP 301.

¹² Defendant’s factual argument on this issue depends largely on acceptance of Ms. Bonds’ testimony as truthful and correct. Appellant’s Brief at 17-18. The sentencing court was not obligated to view Ms. Bonds as truthful.

requirement in this case based upon untenable grounds or untenable reasons. Nor can it be said that no reasonable person would have imposed the firearm registration requirement in this case. *Oxborrow, supra*.

Defendant challenges the sentencing court's oral statement that it thought defendant had a "propensity for violence." Appellant's Brief at 18; 7 VRP 593. Such oral statements are no foundation for reversible error. "It must be remembered that a trial judge's oral decision is no more than a verbal expression of his informal opinion at that time. It is necessarily subject to further study and consideration, and may be altered, modified, or completely abandoned. It has no final or binding effect, unless formally incorporated into the findings, conclusions, and judgment." *Ferree v. Doric Co.*, 62 Wn.2d 561, 566–67, 383 P.2d 900, 904 (1963).¹³

Defendant argues that because of his paralysis "he obviously cannot handle a firearm." Appellant's Brief at 18. As support for this conclusion, defendant cites only the testimony of Ms. Bonds. The trial court was not obligated to credit the testimony of Ms. Bonds.

This Court should affirm the trial court's imposition of the firearm registration requirement in this case.

¹³ See also *State v. Friedlund*, 182 Wn.2d 388, 395, 341 P.3d 280, 283 (2015), and *State v. Mallory*, 69 Wn.2d 532, 533, 419 P.2d 324, 325 (1966), criminal cases expressing the same proposition.

2. THE PROSECUTING ATTORNEY'S
REBUTTAL ARGUMENT IN THIS CASE WAS
FAIR.

This Court should conclude that there is nothing unfair about the prosecuting attorney's rebuttal argument in this case. 6 VRP 545-57.

Defendant's first argument is that the trial court "shamed" and "belittled" defense counsel into "having the jury believe that she was incompetent." Appellant's Brief at 20. Defendant has not assigned error to those statements nor has he argued those statements as a basis for reversal. Therefore there is no need to examine the justification for the trial court's statements. Furthermore, defendant has not argued that any objection to any particular argument made by the prosecuting attorney was impaired by the trial court's statements.

Defendant's second argument is insubstantial. Appellant's Brief at 21. The prosecuting attorney argued that dominion and control over the Camaro was evidence of dominion and control over the firearm inside the Camaro. 6 VRP 548-49.

Why is that? Because he's got control over the contents of, over the driving sticks that are inside the vehicle that's inside of it, the catheter bag that's by his feet and, guess what, the pistol that's also at his feet.

6 VRP 549. This is a reasonable argument. *State v. Tadeo-Mares*, 86 Wn. App. 813, 939 P.2d 220 (1997); *State v. Partin*, 88 Wn.2d 899, 908, 567 P.2d 1136, 1141 (1977). Defendant correctly argues that this

argument was damaging to the defendant. Appellant's Brief at 21.

However the argument was fair.

Defendant's next argument is more like a closing argument, than a prosecutorial misconduct argument. Appellant's Brief at 22-23. No prosecutor's statements are challenged.

Defendant's next argument is that the prosecutor "mocked" the testimony of Ms. Bonds. Appellant's Brief at 23. The argument made was fair:

How about the meeting location? Ms. Bonds said that morning she went to a party. She testified she owned two vehicles. She got a ride from a friend, and there are other friends at that party. And despite the fact that she had a ride back from that party with that friend, despite the fact she could have consulted with other friends, she said she decided to wake up her significant other, who's disabled and, apparently, a third party to help him get in the car and have him drive by himself without the child to a point what she called halfway in Tacoma just so that her friend wouldn't have to drive the full distance from University Place or Fircrest to Tacoma, saving 15 minutes. All of these things, these internal inconsistencies, whether or not the things that Miss Bonds is saying –

MS. COREY: Your Honor, I'm going to object to the misstatement of the evidence.

5 VRP 550. This is ordinary argument. Ms. Bonds did testify that she owned two cars.¹⁴ 5 VRP 437. Ms. Bonds, who testified that she had

¹⁴ The jury also heard the testimony of Ms. Bonds that one of the two cars was inoperable. 5 VRP 465.

been at a party, did not testify that she asked anybody else at the party for a ride home. 5 VRP 451-482. It was up to the jury to evaluate which elements of Ms. Bonds testimony it was going to believe, and which elements it would disregard.

It could fairly be argued that Ms. Bonds story was somewhat unlikely. Ms. Bonds testified that she was at a party in the Fircrest/University Place area and that she resided in Tacoma. 5 VRP 461. Ms. Bonds testified that “Kiara” drove defendant to the party, but she was too tired to drive defendant “all the way home.” 5 VRP 455. Ms. Bonds testified that it was about a 20-30 minute trip from Tacoma to the party in Fircrest. 5 VRP 462. Ms. Bonds testified that she “called around” to get someone to take her home (5 VRP 455), but could only find the paralyzed defendant, who then drove her car, with her gun underneath the seat. Ms. Bonds testified that she told defendant that she should be at the meeting place “like within ten minutes.” 5 VRP 456. Ms. Bonds testified that meeting place was “halfway” home. 5 VRP 455. In that “like within ten minutes” time, the following things would have had to happen in order for Ms. Bonds’ statement to be accurate: (1) defendant was physically placed into the Camaro;¹⁵ (2) defendant drove “like” ten minutes (halfway)¹⁶ to

¹⁵ 5 VRP 442.

¹⁶ 5 VRP 456.

the parking lot in the 7000 block of South D Street;¹⁷ (3) defendant disposed of his litter (what appeared to be a fast food bag and his urine bag);¹⁸ (4) a person complained about the littering;¹⁹ (5) dispatch sent a police officer to the parking lot;²⁰ (6) the police officers had defendant pick up his garbage;²¹ (7) the Glock 17 pistol was spotted and defendant was taken into custody;²² and (8) additional officers arrived at the scene.²³ The prosecuting attorney fairly challenged Ms. Bonds testimony.

Defendant next claims error in the prosecuting attorney's argument relating to defendant's ability to immediately access the firearm. Appellant's Brief at 23-25. Such evidence is relevant in a possession case. *State v. Davis*, 182 Wn.2d 222, 234, 340 P.3d 820, 827 (2014). The prosecutor fairly argued that defendant is paralyzed from the waist down because evidence, and defense counsel's opening statement supported that statement.²⁴ Defendant could drive. Defendant could reach down and pick up garbage lying outside the car he was driving²⁵—and place it on top

¹⁷ 5 VRP 338.

¹⁸ 5 VRP 344-45 4 VRP 289.

¹⁹ Officer Bradley testified that he and Officer Bratcher were dispatched to an unwanted person possibly littering. 5 VRP 338. Defendant was apologetic and offered to pick up the items. 5 VRP 345.

²⁰ 5 VRP 338.

²¹ 5 VRP 345.

²² 5 VRP 346-350.

²³ Officer Bradley testified that Officer McNeely had to leave the area of the car to go contact Ms. Bonds. 5 VRP 456.

²⁴ 4 VRP 276; 4 VRP 286; 5 VRP 375.

²⁵ 5 VRP 344-45 4 VRP 289.

of the pistol immediately underneath him.²⁶ It was fair to argue from these facts that defendant was capable of immediately grabbing the Glock 17 pistol. Defendant reargues Ms. Bonds' testimony, but the prosecutor was not obligated to credit that testimony in his argument. The argument presented was fair.

The prosecutor asked the jury to infer that the Camaro was defendant's car. 6 VRP 555. There was evidence to support that inference. Defendant was in the car alone,²⁷ at 2:43 a.m.,²⁸ along with a gun²⁹ and defendant's disability placard.³⁰ Defendant also had ready access to the car keys.³¹ The prosecutor was not obligated to credit Ms. Bonds' testimony, and he did not:

Miss Bonds, who claimed to own the car and drive it regularly, didn't know if it had power steering, didn't know if it had power locks, didn't remember much about it at all, including the year. She thought it was from the '80s or maybe the '70s.

6 VRP 555; 5 VRP 471-72. This argument was fair.

²⁶ 5 VRP 348-49.

²⁷ 5 VRP 344.

²⁸ 5 VRP 337-38.

²⁹ 5 VRP 346-48.

³⁰ 4 VRP 298, 5 VRP 363-64.

³¹ How else would he be able to drive to pick up Ms. Bonds?

3. THE SENTENCING COURT DID NOT CONDUCT AN INDIVIDUALIZED INQUIRY INTO DEFENDANT’S ABILITY TO PAY DISCRETIONARY LEGAL FINANCIAL OBLIGATIONS.

The trial court did not conduct an individualized inquiry into defendant’s ability to pay his discretionary legal financial obligations. *See* 7 VRP 592-93. The sentencing court clearly considered defendant’s ability to pay his discretionary financial obligations, but that consideration was only expressed as the court was orally rendering its decision. *Id.* No opportunity for the “individualized inquiry” required by *State v. Blazina*, 182 Wn.2d 827, 838-39, 344 P.3d 680 (2015) was presented. Respondent concedes *Blazina* error, and does not object to remand to the sentencing court for the purpose of considering defendant’s ability to pay his \$5,000 fine.³²

4. SUFFICIENT EVIDENCE SUPPORTS DEFENDANTS CONVICTION FOR UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST DEGREE.

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*

³² Defendant references the “costs of his incarceration.” Appellant’s Brief at 27. The judgment and sentence did not impose costs of incarceration—it imposed a fine. CP 150-51.

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 whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *State v. Joy*, 121 Wn.2d 333, 338, 851 P.2d 654 (1993). 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)); *State v. Turner*, 29 Wn. App. 282, 290, 627 P.2d 1323 (1981). All reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

Circumstantial and direct evidence are considered equally reliable. *Id.*; *State v. Delmarter*, 94 Wn.2d 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)).

In this case, viewing all the evidence in the light most favorable to the State, defendant had dominion and control over the Camaro automobile containing a firearm. He was seated in the driver's seat,³³ and his driving sticks were connected to the brakes and the ignition.³⁴ Ms. Bonds also testified that someone helped defendant get in the car to come get her. 5 VRP 455. Dominion and control over the premises is "only one factor" in determining whether a person had constructive possession of contraband, but it is also sufficient to raise a rebuttable presumption of possession of the contraband. *State v. Tadeo-Mares*, 86 Wn. App. 813, 939 P.2d 220 (1997). Applying the sufficiency of the evidence standard to the facts of this case, constructive possession of the Camaro is sufficient to establish constructive possession of the Glock 17 pistol inside the Camaro. *See also, State v. Partin*, 88 Wn.2d 899, 908, 567 P.2d 1136, 1141 (1977).

Sufficient evidence also establishes that defendant had the ability to immediately take actual possession of the Glock 17 pistol. The pistol at issue in this case was within defendant's "arm's length," and was visible to defendant. Defendant was capable of grabbing that pistol.³⁵ 5 VRP 348. Such ability can also establish dominion and control. *State v. Davis*, 182 Wn.2d 222, 234, 340 P.3d 820, 827 (2014).

³³ 4 VRP 285.

³⁴ 4 VRP 297 (Exhibits 5, 6, and 9).

³⁵ Defendant was able to pick up garbage from outside the vehicle. 5 VRP 345-46.

Finally, defendant actually knew that the pistol was right under him. The pistol extended about three inches out from under the driver's seat,³⁶ was visible from outside the car³⁷ and defendant tried to hide it by covering it with a bag of urine and other garbage.³⁸ 5 VRP 348-49. A rational juror could readily infer that defendant's act of covering up the weapon to hide it from the police was an assertion of actual possession over the weapon, so that defendant could retain the firearm and avoid arrest.

The evidence in this case, viewed in the light most favorable to the State, amply supports defendant's possession of the Glock 17 pistol.

D. CONCLUSION.

The sentencing court appropriately imposed the firearm registration requirement. The sentencing court erred by failing to conduct an individualized inquiry into defendant's ability to pay his legal financial obligations. The prosecutor's rebuttal argument was appropriate. The evidence in this case amply supports defendant's possession of the Glock 17 pistol.

³⁶ 5 VRP 350.

³⁷ *Id.*

³⁸ The bag appeared to be a clear bag with what looked (to Officer Bratcher) to have urine inside it, and a catheter tube coming from outside the bag. 4 VRP 285. Defendant was paralyzed. 5 VRP 375, 379. It is a reasonable inference that the bag contained urine.

This case should be remanded for resentencing so that the superior court can conduct an individualized inquiry into defendant's ability to pay his legal financial obligations. In all other respects, the judgment of the superior court should be affirmed.

DATED: July 2, 2018.

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WSB # 18373

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.

7-3-18 Therese Kar
Date Signature

PIERCE COUNTY PROSECUTING ATTORNEY

July 03, 2018 - 10:52 AM

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