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COURT OF APPEALS, DIVISION II  
STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

TROY BOTTEMILLER, APPELLANT

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Appeal from the Superior Court of Pierce County  
The Honorable Bryan Chushcoff

No. 16-1-01559-1

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**Brief of Respondent**

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

1. Did sufficient evidence support the jury's finding that Mr. Bottemiller was engaged in criminal activity that was substantially related to the events giving rise to the crime with which he was charged.
2. Did RCW 9A.16.100(3) invest the trial court with discretion to deny or reduce the amount of the award of defense costs and expenses incurred in this case?
3. Did the trial court abuse its discretion when it denied an award of defense costs and expenses incurred in this case?

B. STATEMENT OF THE CASE.

1. PROCEDURE

Mr. Bottemiller was acquitted of murder and lesser offenses at trial. CP 76-78, CP 79. The jury found that Mr. Bottemiller established by a preponderance of the evidence that his use of force was justified. CP 81. The jury also found that Mr. Bottemiller was engaged in criminal conduct substantially related to the events giving rise to the crime with which he was charged. *Id.*

Based upon RCW 9A.16.110(3), the trial court denied defense costs and expenses in this case. CP 249-52. The trial court incorporated its oral ruling into its written judgment. CP 250. The oral ruling is located at 15 VRP 1721-28.

## 2. FACTS

Drug use and a friendship with Lucas Gritzke's girlfriend Sabrina Westfall first brought Mr. Gritzke and Mr. Bottemiller together. 6/29/17 VRP 28. Mr. Bottemiller and Mr. Gritzke had a fight. 6/29/17 VRP 28-29. After that Mr. Bottemiller saw Mr. Gritzke maybe once or twice a year after the fight. *Id.* Mr. Bottemiller's testimony is replete with statements expressing his great fear of Mr. Gritzke. Before the day he killed Mr. Gritzke, Mr. Bottemiller testified that about two years had passed since Mr. Bottemiller had last seen Mr. Gritzke. 6/29/17 VRP 30.

Mr. Bottemiller testified that about a month before the shooting he met Erik Jensen. 6/29/17 VRP 33. Mr. Jensen and Mr. Bottemiller spent four or five weeks together from motel to motel. 6/29/17 VRP 34. The choice of place to live was determined specifically to further drug activity:

Q. Motel to motel. Was that in furtherance of drug activity?

A. Yes. You don't want to stay in one spot too long.

Q. He didn't, or you didn't?

A. We both didn't.

Q. For purposes of avoiding law enforcement?

A. Exactly, yes.

6/29/17 VRP 34.

Mr. Bottemiller described how drug addiction took over his life:

It takes over your -- all your judgments. I mean, it rules your life. A good analogy would be it's like it's driving the bus. You know, it's making all the turns and decisions, and you're just along for the ride.

6/29/17 VRP 34.

In the hours leading up to “that evening” Mr. Bottemiller “came up” with about \$5,000 worth of drugs. 6/29/17 VRP 38. Mr.

Bottemiller’s intention was “[t]o resell them” and to feed his habit *Id.*

Mr. Bottemiller sold drugs to pay for his drug habit. 6/29/17 VRP 25.

That drug habit cost him about five hundred dollars per day. 10 VRP

1270. The money for that habit came out of the sales that he was making.

*Id.*

Mr. Bottemiller had been robbed of drugs before. 10 VRP 1269.

Mr. Bottemiller was aware that Mr. Gritzke had robbed another person

before. 10 VRP 1340. More specifically, Mr. Bottemiller was aware that

Mr. Gritzke had done “a bunch of more drug rips:”

I just know a bunch of more drug rips. I know that he was selling drugs, and he was constantly in and out of that lifestyle, fighting, robbing people, going in and out of jail constantly, you know.

10 VRP 1340.

Mr. Bottemiller described the scene in his room immediately before Mr. Gritzke entered the room:

At that point, that room is full of drug users. You can't trust really anyone in the room. There is drug paraphernalia

everywhere. There are people coming and going that you know or you don't know between sales and whatnot. You don't really know what is going on in the room at all times. It smells really bad in that room. It is just a mess. You don't feel safe.

10 VRP 1328.

On the night he killed Mr. Gritzke, Mr. Bottemiller was terrified when Mr. Gritzke entered the room. 10 VRP 1285. Mr. Bottemiller testified about what he was afraid of:

I was very concerned, yes. Just his demeanor and actions. It seemed like he was really amped up. He was looking for trouble or looking for a problem, and I just really had a bad feeling there was going to be a robbery or an assault about to happen.

10 VRP 1287.

Mr. Bottemiller's concern began after Mr. Gritzke and a person he was with named Tarreq "inquired about buying \$1,000 worth of heroin. that seemed really fishy" to Mr. Bottemiller. 10 VRP 1287-88. Mr. Bottemiller testified "I believe they originally told Sabrina they wanted a 20 sack and a 40 sack." *Id.* Sabrina Westfall testified to the same effect and expressly stated that the "sacks" were heroin. 6 VRP 761.

About an hour before Mr. Gritzke arrived, defendant had smoked enough heroin to get high. 10 VRP 1303.

Mr. Gritzke left the room with Erik Jensen. 10 VRP 1301. Mr. Bottemiller retrieved his gun when they left. 10 VRP 1305. Mr.

Bottemiller tucked the gun into his basketball shorts. 10 VRP 1307. Mr.

Bottemiller testified:

I retrieved the gun because at that point I had a really, really bad feeling that he was either going to rob me or assault me. I just felt like he was going to attack me in some way. I was scared at that point.

10 VRP 1308.

Mr. Gritzke then re-entered the room. 10 VRP 1308. An argument ensued. 10 VRP 1309-13.

Q. What happened next?

A. So then she [Sabrina] stands up and starts screaming at Lucas, you know, "No, no, no. What are you doing? Why are you doing this? Half of this is mine. I don't know why you are -- why are you doing this?" She was kind of asking, "Why are you doing this?"

Q. Asking him or you?

A. Asking Lucas.

Q. What happened next?

A. I remember she got in between us, and Lucas just kind of pushed her off and said, "This is going to happen. You can't stop it."

Q. Did she ever make any reference to heroin when she was talking to him?

A. The whole, you know -- "half of it is mine," I guess that would be reference to heroin.

Q. Did you hear her say that?

A. I believe so, yes.

10 VRP 1313-14. There was no question that a robbery was occurring. Ms. Westfall testified that during Mr. Gritzke's confrontation with Mr. Bottemiller (something about "impersonating"<sup>1</sup>), Mr. Gritzke grabbed Mr. Bottemiller's phone . . . "And took it and then told him to give me everything else that you have." 6 VRP 770-71. Mr. Bottemiller testified he was carrying "[a] lot of heroin" in his pocket at that time, and "[t]here was money too. . . ." 10 VRP 1315.

In the course of this attempted drug ripoff, justifiably acting to defend himself, Mr. Bottemiller shot Mr. Gritzke. CP 81.

The jury found that Mr. Bottemiller was "engaged in criminal conduct substantially related to the events giving rise to the crime with which [he] was charged. *Id.*

C. ARGUMENT.

1. SUFFICIENT EVIDENCE SUPPORTED THE JURY'S FINDING THAT MR. BOTTEMILLER WAS ENGAGED IN CRIMINAL ACTIVITY THAT WAS SUBSTANTIALLY RELATED TO THE EVENTS GIVING RISE TO THE CRIME WITH WHICH HE WAS CHARGED.

The jury applied a preponderance of the evidence standard when it concluded that Mr. Bottemiller was engaged in criminal conduct substantially related to the events giving rise to the crime with which he

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<sup>1</sup> 6 VRP at 766. Ms. Westfall testified that after Mr. Gritzke grabbed Mr. Bottemiller's cell phone, "[h]e didn't even try to look at it." 6 VRP 771.

was charged. CP 81; RCW 9A.16.110. Appellant now raises a sufficiency of the evidence argument that is only an attempt to reargue that matter *de novo* in this Court. This court should deny appellant's attempt to relitigate the matter in a court of review.

Appellant presents no standard of review for the evidentiary sufficiency issue he presents. Respondent suggests the following:

Whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the that Mr. Bottemiller was engaged in criminal activity that was substantially related to the events giving rise to the crime with which he was charged by a preponderance of the evidence.

This standard is drawn from the standard expressed in *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980), but modified to reflect the particular element at issue in this appeal, along with the relaxed burden of proof.

The "criminal activity" at issue in this appeal is not just drug possession. It is drug dealing while armed with a firearm. Drug dealing was substantially related to every decision Mr. Bottemiller made and every relevant event in this case. The killing happened as Mr. Bottemiller was preparing to sell a "20 sack and a 40 sack" of heroin to Mr. Gritzke and another person. 6 VRP 761 10 VRP 1288, 1342. Mr. Bottemiller was holding (intending to sell) a large amount of heroin and some money. 6/29/17 VRP 38. The killing stopped a person who was attempting to rob

Mr. Bottemiller of his money and heroin. 10 VRP 1313-14; 6 VRP 770-71. The killing happened at a location chosen due to drug dealing considerations. 6/29/17 VRP 34. The innocent bystanders to the attempted robbery and killing were all drug addicts. 10 VRP 1328.

Mr. Bottemiller sold drugs to pay for his drug habit. 6/29/17 VRP 25. The resulting drug use took over all his “judgments.” 6/29/17 VRP 34. Mr. Bottemiller had consumed heroin about an hour before Mr. Gritzke arrived. 10 VRP 1303. Mr. Bottemiller’s drug selling thus supplied the addiction which, in turn, took over every judgment he made. Mr. Bottemiller was fully aware of the dangerous nature of selling drugs. He had been robbed of drugs before. 10 VRP 1269.

After taking all the evidence in the light most favorable to the State, a rational finder of fact could conclude, by a preponderance of the evidence, that Mr. Bottemiller was dealing heroin while armed with a firearm and that his heroin dealing was substantially related to his killing of Mr. Gritzke (the person who tried to rob him of his heroin). The evidence in this case was sufficient to support the jury’s special verdict finding.

2. RCW 9A.16.100(3) INVESTED THE TRIAL COURT WITH DISCRETION TO DENY OR REDUCE THE AMOUNT OF THE AWARD OF COSTS AND EXPENSES INCURRED IN THIS CASE.

RCW 9A.16.110 states:

Notwithstanding a finding that a defendant's actions were justified by self-defense, if the trier of fact also determines that the defendant was engaged in criminal conduct substantially related to the events giving rise to the charges filed against the defendant the judge may deny or reduce the amount of the award. In determining the amount of the award, the judge shall also consider the seriousness of the initial criminal conduct.

*Id.* This statute invests the trial court with discretion to determine whether or not costs and expense should be denied if the jury determines that “the defendant was engaged in criminal conduct substantially related to the events giving rise to the charges filed against the defendant.” *Id.* ***State v. Anderson***, 72 Wn. App. 253, 256, 863 P.2d 1370, 1372 (1993) was abrogated by the 1995 amendments to RCW 9A.16.100.

Appellant’s citation to ***State v. Jones***, 92 Wn.2d 555, 964 P.2d 398 (1998) is inapposite because the defendant who prevailed with his self defense claim in ***Jones*** was not engaged in any criminal activity whatsoever—when the need for self defense arose he was in his own living room, watching a video. ***State v. Jones***, 92 Wn. App. at 557. The provisions of RCW 9A.16.110(3) were not implicated.

3. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION WHEN IT DENIED COSTS AND EXPENSES IN THIS CASE.

- a. The facts in this case demonstrate very serious criminal behavior.

Judge Chuschcoff made the following unchallenged findings of fact which are verities on appeal:<sup>2</sup>

It is clear at this point in time at least -- not today, but at the time all of this happened -- that Mr. Bottemiller was a drug dealer that and he and Ms. Westfall were working together to sell drugs just as Ms. Westfall and Mr. Gritzke had done doing that previously. They apparently have been doing it for many years, that is, Mr. Gritzke and Ms. Westfall. It appears that Mr. Bottemiller may have been a drug-user of many years as well. How long he has been selling is not entirely clear to me. Lots of users sell periodically just to get a little bit of money. I don't know anything about that in terms of Mr. Bottemiller. Certainly, at the time, he was now engaged in a much more robust selling. There was some testimony in the case that there may have been as much as \$3,000 to \$5,000 worth of drugs depending on how you look at it. I think Mr. Jensen had told Gritzke or words to -- at least it was believed that he told him it was as much as \$5,000. That may have been, you know, retail price of the drugs. It may have been that he paid \$3,000 dollars for them. That's why we have this kind of range.

By that time, Mr. Gritzke and Ms. Westfall had broken off their relationship, and Mr. Gritzke has been in jail. Mr. Jensen helped him get out of jail. Mr. Jensen was now associated with Bottemiller. In many ways, I think Mr. Jensen was the bad guy in this whole deal I have to say. Mr. Bottemiller and Mr. Gritzke had their own bad guy aspect of this thing, but Mr. Jensen, I think, is the one that put this all together.

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<sup>2</sup> These unchallenged findings of fact were expressly incorporated into the order denying attorney fees. CP

And it may well be that Mr. Jensen was supposed to inherit, if you will, Mr. Gritzke's drug business as part of this thing. He needed some supply to get into the business. He was going to try to rip off Mr. Bottemiller and needed Mr. Gritzke for muscle, at least that seems like a reasonable possibility about what's going on here. The ostensible reason that Mr. Gritzke was at Mr. Bottemiller's hotel room was to buy drugs. Mr. Bottemiller may not have liked the idea of Mr. Gritzke coming over to his hotel room. He didn't leave when he found out about it. There are some issues to whether he had enough time to leave. I think that he did. Even still, there was a moment where Mr. Gritzke leaves before all of the emotions and the robbery attempt occurred. Mr. Gritzke was gone for 15 or 20 minutes, and Mr. Bottemiller didn't leave. Now, how does this all tie in? Well, a known risk of drug dealing is getting robbed. People who deal drugs are likely to get robbed because the people who would rob them realize that the people who are dealing drugs are unlikely to go to the police. We get this thing.

I have to tell you my that my experience is I have been on both sides of this stuff. In practice, there was people involved in this. As a judge, I have seen this multiple times. I have had homicide cases where people break in, kill the drug dealer, try to find his stash and his money. As often as not, they don't find much of anything, but they do it. Mr. Bottemiller, whether you appreciate the significant risk involved, there certainly is, indeed. Anybody who knows much about this business knows there is a great deal of risk in dealing drugs that someone would, in fact, try to rip you off.

Now, Mr. Schacht, of course, was convinced that this was at least about property, at least part about property, about keeping the drugs. By his view, the resort to deadly force was really unavailable here. One does ask oneself, if Mr. Bottemiller had felt the need to use a weapon at all if he had not so much in the way of drugs to lose \$3,000 to \$5,000 and how hard it is to accumulate that much. If this had just been some kind of personal amount of drugs, do you think that he would have used a gun? I don't know.

One also wonders whether Mr. Gritzke would have brought this whole ruse about him being an impersonator and so on in order to justify, if you will, some kind of robbery of Mr. Bottemiller. If Mr. Jensen hadn't told him just how much he had, I don't know that he ever would have.

I did think it was interesting, as a side here, that Ms. Westfall stepped between these guys at one point. She was disputing Mr. Gritzke's claim to all of the drugs and money claiming at least half of it was hers. I don't know that she would have done that if she really thought an assault was inevitable between Mr. Gritzke and Mr. Bottemiller. She was bartering with them over the fairness of this whole thing. I don't think that she saw an assault coming at that point in time.

Gritzke clearly threatened Mr. Bottemiller by his feigning or flinching at him and so on as if to strike him and, indeed, saying he was going to strike him or "beat his ass" or however he put it. The fact is, he never did strike Mr. Bottemiller, which is very interesting. If Gritzke wanted to hurt him, he could have easily done so as Mr. Bottemiller sat on the bed. Why didn't he? When Mr. Bottemiller told Gritzke that he had the money or drugs in the car, Gritzke did not forcibly take the car keys from him, but rather said, "Okay, let's go to the car."

...

He took his phone, but he wasn't interested in the phone. That was just part of the BS business about him being an impersonator. He didn't look at it. He never got the password to open it. He wasn't interested in stealing a phone. That's not what this was about. He wanted the phone -- I guess Mr. Bottemiller, in so many ways, offered him the phone to prove that this whole thing about impersonation wasn't true. "Just look at my phone. You will see that it is not true." Gritzke wasn't interested in whether it was true or not. He knew it didn't matter to him. He just invented the whole thing as far as I can tell. That was just his way of showing that he was not attacking Mr. Bottemiller unreasonably. Of course, that is exactly what he did.

Anyway, and so he -- Gritzke heads to the door, and he turns around and says, "Hey, are you coming?" I think Gritzke was also surprised that the defendant pulled a gun on him, and I think for more than one reason.

First, as Mr. Hershman put it, Gritzke knew the defendant wouldn't fire it. I think, in that sense, he also thought -- Mr. Gritzke, that is -- the defendant wouldn't shoot him. He didn't have the will to do it. I think that is all true. I think Mr. Gritzke was convinced that all he had to do was threaten Mr. Bottemiller, and he would get what he wanted. The problem is shooting is a far different prospect than fighting. One of the reasons people choose a gun instead of beating people to death is because it offers the prospect of inflicting injury without getting hurt yourself. By having sufficient range between the two of them, this was to preclude getting injured.

The second reason I think Gritzke was surprised by all of this is because I think in Gritzke's own mind was, "Hey, look, all I want is the drugs and money. I'm not interested in hurting Mr. Bottemiller, frankly. I'm just interested in telling him that in order to get what I want." He knew Mr. Bottemiller for a long time. I think he didn't really think the situation merited getting shot over. I think he was surprised by that. I thought it was interesting, as well, that Mr. Bottemiller relied on this prior fight between them -- that was four years before all of this -- to talk about how he was fearful of Mr. Gritzke. He also claimed that he frequently tried to monitor Mr. Gritzke's movements in the community after that so as to avoid him, but there's a couple of things about that that doesn't quite make sense to me. One, Mr. Bottemiller also made it a point to stay in contact with Ms. Westfall, which was Mr. Gritzke's girlfriend all of that time. This was long before the two of them broke up. In doing that, it seemed, to me, that was calculated to upset Mr. Gritzke. Certainly, it was to bring him into contact with him, not to avoid him. Moreover, in that prior fight, it was the defendant who initiated the physical fight. He is the one that went to Gritzke's house. He threw the first punch. He missed. In a way, one could say he threw the first punch here, too; although, Mr. Gritzke's wrongful conduct clearly was the

cause of the need to use any force at all. I understand why the jury found the defendant not guilty. They saw that he was sorely provoked by Mr. Gritzke. There is no doubt in that. From Mr. Gritzke's point of view, when one initiates a strongarmed robbery, one can expect that it is going to be resisted by force. I think that's what the jury said.

15 VRP 1719-1726. Another undisputed fact is that the room where the shooting took place was full of people. 10 VRP 1328.<sup>3</sup> Another undisputed fact is that Mr. Bottemiller consumed heroin about an hour before the shooting. 10 VRP 1303. Another undisputed fact is that Mr. Bottemiller had been robbed of drugs before. 10 VRP 1269.

Taking the trial court's undisputed facts along with Mr. Bottemiller's own testimony, Mr. Bottemiller's criminal conduct was very serious: He was a pistol-armed drug dealer, holding a substantial quantity of drugs on his person, in the midst of an ostensible drug deal, using drugs himself, aware of the risk of robbery, in a "room full" of other people when he defended himself by shooting the person who was trying to rob him of his drugs.

Appellant only assigns error to the findings of fact contained in the following passage:

I do think that Mr. Bottemiller's illegal drug dealing was substantially related to the need to use any force at all. It gave rise to this homicide in many ways.

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<sup>3</sup> Mr. Bottemiller referred to those people as "drug users." *Id.*

...

So the question really is -- there is clearly -- I think Mr. Gritzke wouldn't be here if Mr. Bottemiller -- would be here with us still. He wouldn't be dead because of this, if Mr. Bottemiller had not been a drug dealer.

My view is that I'm going to decline any award of attorney's fees or costs for Mr. Bottemiller. I don't think that the legislature wanted to award somebody similarly-situated. I think it is the nature of the decision -- one could argue that not just any criminal behavior would do. Therefore, there is some discretion of the trial court to figure out what to do, to ignore the illegal conduct, to have it mitigated at some part, or to have it declined. I think should be declined.

Appellant's Brief at 1; 15 VRP 1726-27.

Substantial evidence supports the trial court's factual finding that Mr. Bottemiller was dealing drugs. He admitted it in his testimony<sup>4</sup> and in Appellant's Brief.<sup>5</sup>

The trial court's finding that "Mr. Bottemiller's illegal drug dealing was substantially related to the need to use any force at all" is merely a reflection of the jury's special verdict. 15 VRP 1726. That issue is discussed above.

The trial court's conclusion that Mr. Gritzke "wouldn't be dead because of this, if Mr. Bottemiller had not been a drug dealer" is amply supported by substantial evidence. 15 VRP 1727. The trial court

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<sup>4</sup> 6/29/17 VRP 25, 38. 10 VRP 1270, 1287-88.

<sup>5</sup> Mr. Bottemiller possessed drugs, the purchase of which Mr. Gritzke used as the excuse to get close enough to Mr. Bottemiller..." Appellant's Brief at 28.

explicitly found that Mr. Gritzke's motivation was straightforward: "Hey, look, all I want is the drugs and money . . ." 15 VRP 1725. No assignment of error has been made to this finding of fact.

b. The trial court did not abuse its discretion.

Appellant's Brief acknowledges that the abuse of discretion standard applies to this case (Appellant's Brief at 23), but argues that the reimbursement of expenses is **mandatory** (emphasis not added).

Appellant's Brief at 27. The statutory grant of discretion is rather explicit: ". . . the judge may deny or reduce the amount of the award. In determining the amount of the award, the judge shall also consider the seriousness of the initial criminal conduct." RCW 9A.16.110(3). *See Public Utility District No. 1 of Lewis County v. Washington Public Power Supply System*, 104 Wn.2d 353, 383–84, 705 P.2d 1195, 1214 (1985).<sup>6</sup>

Review of this matter is governed by the abuse of discretion standard. A trial court abuses its discretion if its decision is "manifestly unreasonable or based on untenable grounds." *Washington State*

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<sup>6</sup> "In accord with the rule that words in a statute must be given their usual and ordinary meaning, use of the word "shall" is imperative and operates to create a duty. The presumption which follows the use of the word "shall" is strengthened when "a provision contains both the words 'shall' and 'may,' " the court further presuming "that the lawmaker intended to distinguish between them, 'shall' being construed as mandatory and 'may' as permissive." *Id.* (citing *Scannell v. Seattle*, 97 Wn.2d 701, 704, 648 P.2d 435, 656 P.2d 1083 (1982)).

*Physicians Insurance Exchange & Association v. Fisons Corp.*, 122 Wn.2d 299, 339, 858 P.2d 1054 (1993). “A decision is based ‘on untenable grounds’ or made ‘for untenable reasons’ if it rests on facts unsupported in the record or was reached by applying the wrong legal standard.” *State v. Rohrich*, 149 Wn.2d 647, 654, 71 P.3d 638 (2003) (quoting *State v. Rundquist*, 79 Wn. App. 786, 793, 905 P.2d 922 (1995)). “A trial court would necessarily abuse its discretion if it based its ruling on an erroneous view of the law.” *Fisons Corp.*, 122 Wn.2d at 339.

A review of the trial court’s findings of fact shows that the trial court carefully considered the very serious nature of Mr. Bottemiller’s criminal conduct. The court discussed the use and sale of drugs and the fact that Mr. Bottemiller’s selling was “much more robust” than “just to get a little bit of money” (15 VRP 1719-20), the known risk of drug robberies (15 VRP 1721), and some details of the attempted drug robbery in this case. 15 VRP 1722-25.

The trial court’s denial of defense costs and expenses was well within its discretion. Defendant’s armed drug dealing was more than just substantially related to the killing in this case—it was inextricably intertwined.

It is difficult to conceive of more serious criminal conduct resulting in justified self defense. Mr. Bottemiller was dealing drugs, while carrying a firearm and a substantial amount of drugs. He knew the risk of robbery. 10 VRP 1269. He shot the person trying to rob him of his drugs in a room “full of” innocent people. 10 VRP 1328. Mr. Bottemiller’s drug selling fueled his addiction, which in turn drove every judgment he made, leading up to and including the decision to shoot Mr. Gritzke to death. 6/29/17 VRP 25, 34; 10 VRP 1303.

The trial court acted within its discretion when it denied defense costs and expenses in this case.

D. CONCLUSION.

The jury’s verdict that Mr. Bottemiller’s killing of Mr. Gritzke was substantially related to criminal activity. RCW 9A.16.110(3) required the trial court to exercise its discretion in deciding whether Mr. Bottemiller should be reimbursed for some, all, or none of his defense costs and expenses. The trial court, looking at Mr. Bottemiller’s extremely serious

criminal behavior that was inextricably intertwined with his need to inflict justified lethal force, acted within its discretion when it denied Mr. Bottemiller's defense costs and expenses.

The trial court's judgment should be affirmed.

DATED: November 14, 2018.

MARK LINDQUIST  
Pierce County Prosecuting Attorney



Mark von Wahlde  
Deputy Prosecuting Attorney  
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.

11.14.18   
Date Signature

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**November 14, 2018 - 2:58 PM**

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**Appellate Court Case Number:** 51571-7  
**Appellate Court Case Title:** State of Washington, Respondent v. Troy E. Bottemiller, Appellant  
**Superior Court Case Number:** 16-1-01559-1

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