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Division II
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No. 51818-0-II

THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

ROBERT DAGNON,

Appellant.

Appeal from the Superior Court of Washington for Lewis County

Respondent's Brief

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I. ISSUES

- A. Did the State present sufficient evidence of Disorderly Conduct to sustain Dagnon's conviction for Count II?
- B. Did the trial court improperly impose discretionary legal financial obligations on an indigent defendant due to the retroactivity of the 2018 legislative amendments to the legal financial obligations statutes?

II. STATEMENT OF THE CASE

Cody Muller is employed as a correctional hearings officers with the Washington State Department of Corrections (DOC). RP¹ 84. On August 20, 2017, Muller was not on duty when he, and the woman he was dating, Stacy Dagnon, went to a restaurant in Morton for dinner and a couple of drinks. RP 51, 58, 84-85, 100. Muller and Stacy² left the restaurant, stopped by Angie Middleton's house, then proceeded to the Pioneer, a bar in Mossyrock, in Lewis County, Washington. RP 50-52, 85-86, 100-01; CP 23-24.

Stacy's brother, Robert Dagnon entered the Pioneer, which made Stacy uncomfortable because Stacy and Dagnon do not get along. RP 52-53, 86; CP 24. Dagnon entered the bar, walked up to the counter briefly, and then proceeded towards the rear exit of the

¹ There are four verbatim report of proceedings. As the bench trial is the primary proceedings that will be cited to the State will cite this verbatim report of proceedings, occurring on April 17, 2018 as RP.

² The State will refer to Stacy Dagnon by her first name for clarity purposes, no disrespect intended.

bar. RP 87; CP 24. Dagnon stopped on his way out and stated, "Stacy, you don't hide very well." RP 87. Dagnon then stated to Muller, "Brother, if you're dating her, you better run." RP 88.

Dagnon's demeanor appeared angry, agitated. RP 88. Dagnon continued to berate Stacy, so Muller told Dagnon, "You need to leave." RP 88; CP 24. Dagnon replied to the effect, who the fuck are you? RP 89. Dagnon then opened the door and said, "Here's the door." RP 88-89; CP 24. Muller took the door statement to mean Dagnon was challenging Muller to physically remove Dagnon from the bar. RP 89; CP 24. Muller did not entertain Dagnon's invitation, and remained seated. RP 89.

Stacy left to use the restroom. RP 89; CP 24. Dagnon left the bar, then returned to the table while Stacy was still in the restroom. *Id.* Dagnon sat down, across from Muller, where Stacy had been seated. RP 89. Muller told Dagnon, "I'm a correctional hearings officer with the department of corrections. Okay. If you make -- you know, if you make any more threats like I perceived what you did near the door the first time, then I'm going to have you arrested for threatening a DOC employee." RP 90; CP 24. Dagnon replied, "I didn't do nothing." RP 90. Pioneer staff came over, spoke to Dagnon, who left after speaking to the staff. RP 90-91; CP 24.

Muller was agitated after the exchange with Dagnon. RP 92-93. Muller and Stacy had words. RP 56. Ms. Middleton came into the bar, Muller got up to pay the bill, and had an exchange with Ms. Middleton. RP 91-93. Muller was still upset and agitated when he spoke to Ms. Middleton. RP 93.

Muller walked out of the Pioneer alone out of the back exit, towards his vehicle, which was parked across the street approximately 70 feet away in front of a vacant building. RP 94-95; CP 24. Muller was approximately 20 feet from his car when he saw, out of the corner of his eye, Dagnon approaching. RP 95; CP 24. Dagnon came up to Muller and began cussing Muller out. RP 96; CP 24.

Dagnon got within a foot of Muller, so Muller put out his left arm to keep Dagnon within a distance Muller felt was safe. RP 96; CP 24. Dagnon then stated, "Touch me again and I'm going to fucking knock you out." RP 97; CP 24. Muller replied, "Then you need to step back." RP 97. Dagnon "took one step backwards and stated, 'Now we can talk like men.'" RP 97. Dagnon was angry, agitated. RP 97. Dagnon's statement about knocking Muller out caused Muller concern for his safety. RP 97. Muller believed Dagnon was going to assault him. RP 97; CP 24.

Then, Dagnon attempted to shake Muller's hand, and Muller declined. RP 98; CP 25. Dagnon came closer to Muller and began to close the distance, stating, "You don't have your mace, your Taser. This isn't your office. This is my town. I work for a living." RP 98. Muller took these statements as threats, believing there was a strong likelihood things would get physical. RP 98. Ms. Middleton then drove up and had a verbal confrontation with Dagnon. RP 99; CP 25. Muller took the opportunity, when Dagnon was otherwise occupied, to call the police. RP 99; CP 25.

The police were able to contact Dagnon about the incident, at Dagnon's friend's house on Laurel Street. RP 15; CP 25. Officer Cournyer arrested Dagnon, who used profane language towards the officer and was resistant. RP 18; CP 25. While inside Officer Cournyer's police vehicle, Dagnon began to kick the door of the patrol car. RP 20; CP 25. The kicking caused a gap in the door frame. RP 20-21; CP 26. The vehicle had to be taken out of service to have an estimate for the damages. RP 21; CP 26. Dagnon also spit in Officer Cournyer's vehicle which caused Officer Cournyer to take it out of service to clean the vehicle. RP 115; CP 26. Taking a patrol vehicle out of the service disrupts emergency services. RP 22.

The State charged Dagnon with Count I: Malicious Mischief in the Second Degree and Count II: Disorderly Conduct. CP 5-6. Dagnon elected to have his case tried to the bench sitting without a jury. See RP; CP 4. The trial court found Dagnon guilty as charged. CP 26-27. Dagnon was sentenced to three months in jail, with credit for forty days served. CP 11-12; 22. Dagnon was ordered to pay discretionary legal financial obligations. CP 13. Dagnon timely appeals his conviction and sentence. CP 18.

The State will supplement the facts as necessary in its argument section below.

III. ARGUMENT

A. THE STATE PRESENTED SUFFICIENT EVIDENCE TO SUSTAIN THE TRIAL COURT'S FINDING THAT DAGNON COMMITTED THE CRIME OF DISORDERLY CONDUCT.

Contrary to Dagnon's assertion, the State did prove under the totality of the circumstances, Dagnon used "fighting words" to incite an immediate injury of the peace. Dagnon glosses over much of Muller's testimony and focusses predominately on how a police officer on duty should act. Brief of Appellant at 4-8. This Court should find the State presented sufficient evidence to sustain the trial court's finding of guilty for Disorderly Conduct and affirm the conviction.

1. Standard Of Review.

Sufficiency of evidence following a bench trial is reviewed for “whether substantial evidence supports the challenged findings of fact and whether the findings support the trial court’s conclusions of law.” *State v. Smith*, 185 Wn. App. 945, 956, 344 P.3d 1244 (2015) (citation omitted). Unchallenged findings are verities on appeal. *State v. Lohr*, 164 Wn. App. 414, 418, 263 P.3d 1287 (2011).

2. The Trial Court’s Conclusion That Dagnon Used Abusive Language And Intentionally Created A Risk Of Assault Is Supported By Substantial Evidence.

The State is required under the Due Process Clause to prove all the necessary elements of the crime charged beyond a reasonable doubt. U.S. Const. amend. XIV, § 1; *In re Winship*, 397 U.S. 358, 362-65, 90 S. Ct 1068, 25 L.Ed.2d 368 (1970); *State v. Colquitt*, 133 Wn. App. 789, 796, 137 P.3d 893 (2006). An appellant challenging the sufficiency of evidence presented at a trial “admits the truth of the State’s evidence” and all reasonable inferences therefrom are drawn in favor of the State. *State v. Goodman*, 150 Wn.2d 774, 781, 83 P.2d 410 (2004). When examining the sufficiency of the evidence, circumstantial evidence is just as reliable as direct evidence. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

“Substantial evidence is evidence sufficient to persuade a fair-minded, rational person that the findings are true.” *Smith*, 185 Wn. App. at 956 (citation omitted). The reviewing court defers to the trier of fact on issues regarding witness credibility, conflicting testimony, and persuasiveness of the evidence presented. *State v. Thomas*, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004).

Dagnon did not assign error to any of the findings of fact or conclusions of law.³ Given Dagnon is arguing insufficient evidence to support his conviction, the State will work under the assumption Dagnon neglected to assign error to conclusions of law 2.6 and 2.7. The State, however, will not make any assumptions regarding the findings of fact, and therefore failure to assign error make them verities on appeal. *Lohr*, 164 Wn. App. at 418; See CP 16-19.

The crime of Disorderly Conduct requires the State to prove Dagnon used abusive language, thereby intentionally creating a risk of assault on August 20, 2017 in Lewis County, Washington. RCW 9A.84.030(a); CP 6; RP 172-73, 180-83, 185-86.⁴ In this instance, the allegation was Dagnon used abusive language towards Muller,

³ The State has attached the Findings of Fact and Conclusions of Law as Appendix A.

⁴ The State elected in this case to only proceed under the theory Dagnon had committed disorderly conduct under the abusive language prong, RCW 9A.84.030(a).

thereby intentionally creating a risk of assault. CP 6; RP 88-98, 172-73, 185-86.

Dagnon, once he entered the Pioneer, sought out Stacy and Muller for a confrontation. RP 87-88; CP 24. Dagnon was angry and agitated. RP 88. Dagnon invited Muller to fight by opening the back door to the Pioneer and stating, "Here's the door." RP 88-89; CP 24. Muller refused to engage, Dagnon left the establishment, returned and approached Muller again. RP 89-90; CP 24. Muller warned Dagnon to leave Muller alone, that Muller perceived Dagnon's actions as threats. RP 90; CP 24. Dagnon's actions rattled Muller, leaving Muller agitated, irritated, and upset. RP 56, 92-93, 121.

Dagnon approached Muller for a third time when Muller was attempting to leave the Pioneer. RP 94-95. Muller exits the Pioneer alone out of the back exit and walks to his car approximately 70 feet away when Dagnon began closing the distance on Muller. RP 94-96; CP 24. Dagnon was swearing at Muller. RP 96; CP 24. Dagnon continues to approach and comes within a foot of Muller, which causes Muller to extend out his left arm to keep Dagnon at a safe distance. RP 96; CP 24. Dagnon is still angry and agitated. RP 97. Dagnon states, "Touch me again and I'm going to fucking knock you

out.” RP 97; CP 24. Muller believed Dagnon was going to assault him. *Id.*

Muller told Dagnon to take a step back and Dagnon complied. RP 97. When Muller refused to shake Dagnon’s hand, Dagnon closed the distance between the men once again. RP 98. Dagnon told Muller, “You don’t have your mace, your Taser. This isn’t your office. This is my town. I work for a living.” RP 98. Muller took Dagnon’s statement as a threat and things were about to get physical. RP 98.

Dagnon asserts the State failed to prove beyond a reasonable doubt Dagnon is guilty of Disorderly Conduct because there was no evidence Dagnon’s words “actually created a risk of assault.” Brief of Appellant at 8. Dagnon argues, in part, because Muller is a trained DOC officer, he is expected to exercise a higher degree of restraint than the average citizen, and therefore, this precludes the possibility of Muller being incited to assault Dagnon. *Id.* at 6-7. Dagnon does not use the correct standard and analyze the facts with all reasonable inferences drawn in favor the State. *Goodman*, 150 Wn.2d at 781. Further, Dagnon fails to fully address the third step of the “fighting words” analysis set forth by the Washington State Supreme Court in

Seattle v. Camby, 104 Wn.2d 49, 53-55, 701 P.2d 499 (1985). See Brief of Appellant at 6-8.

“Fighting words” are defined as words which by their very utterance tend to incite an immediate breach of the peace or inflict injury and thus are not protected by the First Amendment. *Camby*, 104 Wn.2d at 52, citing *Chaplinsky v. New Hampshire*, 315 U.S. 568, 527, 86 L. Ed. 1031, 62 S. Ct. 766 (1942) (other citations omitted). There is a three step analysis to determine if words constitute “fighting words.” *Camby*, 104 Wn.2d at 53. “First, the words must be directed at a particular person or a group of persons.” *Id.* (internal citations omitted). Second, the actual words “must be those personally abusive epithets which, when addressed to the ordinary citizen are, as a matter of common knowledge inherently likely to provoke a violent reaction.” *Id.* If the words meets the first two criteria, the Court then moves to the third step and analyzes the words in the situation or context which they were made in. *Id.*

The third step in the analysis requires the Court to consider the circumstances surrounding the utterance of the words. *Id.* The nature of the analysis is not to look and see if the addressee responded to the words spoken. *Id.* at 53-54. Rather than a subjective test, the reviewing court employs an objective test, but not

in the abstract, it is one that considers the factors of the actual situation before the court. *Id.* Therefore, all factors should be considered, including if the addressee is a civilian or the police. *Id.* “A civilian addressee need not, in fact, be incited to breach the peace” as the addressee’s reaction is not the sole criteria, but will be considered by the reviewing court when it evaluates the situation in which the words were actually spoken. *Id.* at 54.

Dagnon compares his case to *State v. Yoakum*, 90 Wn. App. 874, 875-76, 638 P.2d 1264 (1982), where an intoxicated man attempted to incite a commissioned, on duty, sheriff’s deputy who was at the police station to fight by threatening the deputy, clenching his fists, being vulgar, and inviting the deputy outside to fight. See Brief of Appellant at 6-7. The Court of Appeals held there was not any evidence the words spoken by Yoakum were about to incite an assault, as properly trained police officers are trained to react to frustration and anger without violence. *Yoakum*, 90 Wn. App. at 877-78.

While Muller may be a trained officer for the Washington State Department of Corrections, Muller was off duty, had been lawfully consuming a few beers, and had an altercation with the brother of the woman he was dating. This is not analogous to the situation in

Yoakum were there was a trained sheriff's deputy on duty carrying out his law enforcement duties. Simply put, Muller was dealing with a highly charged personal matter, on personal time, and while he may have made reference to Dagnon regarding his position as a DOC officer in an attempt to diffuse the situation and be left alone, that does not change the dynamic.

Muller testified multiple times he felt threatened by Dagnon. RP 89-90, 94, 97-98. In particular, Muller testified Dagnon approached Muller, got within a foot of Muller and Muller had to put his hand out to put distance between the two men. RP 96-97. Dagnon responded, "Touch me again and I'm going to fucking knock you out." RP 97. Muller was concerned for his safety. RP 97. The confrontation continued, Dagnon threatened Muller again after Muller refused to shake Dagnon's hand. RP 97-98. Muller testified he believed there was a strong likelihood things were going to get physical after Dagnon made additional threats. RP 98. Just then, Ms. Middleton drives up and has her own confrontation with Dagnon, which allows Muller to get into his vehicle and call the police. RP 98-99.

The evidence presented, in the light most favorable to the State, with all reasonable inferences drawn in favor of the State,

proved all the essential elements of Disorderly Conduct. The State acknowledges on cross-examination Muller agreed he worked for DOC, agreed if somebody used harsh language he was not going to punch them, and it would probably get Muller in trouble to do such. RP 109. Yet, this line of questioning can be seen, in the light most favorable to the State as questions regarding Muller's conduct in his official capacity. Further, the rest of Muller's testimony and the testimony of others, paints a picture of Muller being upset, agitated, and amped up over his interaction with Dagnon, not the reaction a calm police officer would be considered to have in the course of their duties. This is because Muller was not in a situation where he would be expected to act in his official capacity. Muller had three plus drinks, was confronted by his girlfriend's brother, Dagnon was aggressive, threatening, and continually sought out Muller in an attempt to provoke an altercation between the two men.

The words used by Dagnon were of the characteristic of plainly tending to entice Muller to breach the peace, therefore constituting "fighting words." There unchallenged findings of fact support conclusion of law 2.6 and 2.7. Not only do the unchallenged findings of fact, which are verities, support the conclusions of law, there is substantial evidence as outlined above to support them. This

Court should affirm the trial court's verdict on Count II, Disorderly Conduct.

B. THE RECORD DOES NOT SUPPORT DAGNON'S ASSERTION HE IS INDIGENT PER SE, BUT RATHER INDIGENT ONLY FOR OBTAINING COUNSEL, THEREFORE, THE LEGAL FINANCIAL OBLIGATIONS WERE PROPERLY IMPOSED.

Dagnon, like many other appellants and defendants before him (and surely after him), mistakenly reads the 2018 legislative amendments to the legal financial obligation statutes enacted under Engrossed Second Substitute House Bill 1783 to eliminate all discretionary legal financial obligations for all indigent defendants. See Brief of Appellant 8-10. While the legal financial obligation reforms eliminate interest, the DNA fee for previously convicted defendants who have had the sample already taken, and many other useful reforms in regards to eliminating fees for indigent defendants, all indigent defendants are not created equal. Laws of 2018, ch. 269 §§ 1, 2, 3, 4, 5, 17, 18, 20; RCW 10.01.160(3); RCW 10.101.010.

The 2018 amendments apply to defendants whose appeals were pending — i.e., their cases were not yet final — when the amendment was enacted. *State v. Ramirez*, 191 Wn.2d 732, 747-49, 426 P.3d 714 (2018). Therefore, Dagnon receives the benefit of the amendments that apply to him, which in Dagnon's case is only

the DNA provision. Pursuant to RCW 43.43.7541, effective June 7, 2018, and retroactively applied to Dagnon, the imposition of the DNA-collection fee is required “unless the state has previously collected the offender’s DNA as a result of a prior conviction.” The State’s records show Dagnon’s DNA was previously collected and is on file with the Washington State Patrol Crime Lab.⁵ The State respectfully asks this Court to remand this case to the superior court to amend the judgment and sentence to strike the imposition of the \$100 DNA fee.

Dagnon asserts because he was indigent for counsel purposes, both at trial and for appeal, he is entitled to have the remaining discretionary legal financial obligations stricken. Brief of Appellant 8-10. This is simply not true. Per the statutory amendments of 2018, the filing fee is no longer a nondiscretionary legal financial obligation if a defendant qualifies for indigency under RCW 10.101.010(3)(a)-(c). RCW 36.18.020(h). Further, only if a defendant is indigent “per se” under RCW 10.101.010(3)(a)-(c) shall the sentencing court not order a defendant to pay costs. RCW 10.01.160(3).

⁵ The State acknowledges the record on appeal is lacking this information, but the undersigned deputy prosecutor can attest if this case is remanded to strike the fee, this information would be put into the trial record.

(3) "Indigent" means a person who, at any stage of a court proceeding, is:

(a) Receiving one of the following types of public assistance: Temporary assistance for needy families, aged, blind, or disabled assistance benefits, medical care services under RCW 74.09.035, pregnant women assistance benefits, poverty-related veterans' benefits, food stamps or food stamp benefits transferred electronically, refugee resettlement benefits, medicaid, or supplemental security income; or

(b) Involuntarily committed to a public mental health facility; or

(c) Receiving an annual income, after taxes, of one hundred twenty-five percent or less of the current federally established poverty level;

RCW 10.101.010(3)(a)-(c).

There is no evidence in the record Dagnon meets this criteria of indigence. Simply having court appointed counsel only falls under RCW 10.101.010(3)(d), not the subsection that exempts a defendant from paying the filing fee or paying the cost of his court appointed counsel. Therefore, contrary to Dagnon's assertion, the legislature did not categorically prohibit the imposition of any cost on indigent defendant.

In actuality, the record supports the imposition of the fees on Dagnon. At sentencing Dagnon explained to the trial court he voluntarily took eight months off work to fight his case, because he wanted to go and check to see if the police car was parked at the

station. RP (4/25/18) 6-7. "I was determined to beat this case, and I took everything in my life to do so, including work." *Id.* at 7. When asked by the trial court if he would go back to work when released from custody, Dagnon replied, "I had a job interview the day after our trial. I'll absolutely be going to work. I have an excellent work history." *Id.* Dagnon also explained he had a job lined up if he had not been found guilty. *Id.* at 8. "I have worked all the time. I've got plenty of people that would hire me right now." *Id.*

The nature of Dagnon's work was touched upon during the trial. RP 164-65. Dagnon, at the time of trial was a 46 year old, six foot and four inches tall, 220 pound, welder and mechanic. RP 164; CP 9. Dagnon worked on large projects such as the tunnel boring project, Big Bertha, in Seattle. RP 165. Dagnon is not indigent under the per se definition in RCW 10.101.010(3)(a)-(c). Further, while Dagnon may meet the definition of indigent pursuant to RCW 10.101.010(d), he clearly is able to pay discretionary legal financial obligations given his profession and substantial work history, including his ability to have a job immediately upon release. This Court should reject Dagnon's demand to strike the criminal filing fee and the court appointed attorney fees imposed by the trial court.

IV. CONCLUSION

There was sufficient evidence to sustain Dagnon's conviction for Disorderly Conduct. Dagnon's words were "fighting words" and this Court should not hold Muller to the higher standard of an active duty police officer acting in his or her official capacity. Dagnon is not indigent per se, and therefore the trial court correctly imposed the criminal filing fee and court appointed attorney fees. This Court should remand this matter back for the trial court to strike the DNA fee, as Dagnon has previously been convicted of a felony and has had his sample taken.

RESPECTFULLY submitted this 6th day of December, 2018.

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by: _____
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Appendix A

Findings of Fact and Conclusion of Law

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Findings of Fact and Conclusions of Law
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Scott Tinney, Clerk
By _____, Deputy

IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR LEWIS COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

ROBERT JAMES DAGNON,

Defendant.

No. 17-1-00614-21

FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND ORDER FROM BENCH TRIAL.

On April 16, 2018, a bench trial was held in this court before the Honorable Joely O'Rourke. The defendant was present and represented by his attorney of record, Christopher Baum. The State was represented by its Deputy Prosecuting Attorney, Paul E. Masiello. The State presented testimony from Cody Muller, Officer Cole Courmyer, Stacy Dagnon, and Brian Sansouci. The Defendant testified and also presented testimony from Angie Middleton and Wendy Phillips. Both parties had exhibits admitted into evidence, which the court reviewed in reaching its verdict. The Court makes the following findings of fact, conclusions of law, and order from that bench trial:

FINDINGS OF FACT

- 1.1 On August 20, 2017, Officer Cole Courmyer, with the Morton Police Department, was dispatched to the Pioneer regarding a call from Cody Muller about an incident that had occurred there.
- 1.2 The Pioneer is a bar and is located in Mossyrock, Lewis County, Washington.

- 1 1.3 Officer Cournyer made contact with Muller at a nearby bus depot and
2 questioned Muller about events that led to him calling for assistance from
3 law enforcement.
4
5 1.4 Muller had been at the Pioneer with Stacy Dagnon, and they were seated
6 towards the back of the bar, when Stacy's brother, Robert Dagnon, the
7 defendant herein, entered the bar.
8
9 1.5 Shortly after Robert arrived, he made a derogatory remark to Stacy, which
10 prompted Muller to ask him to leave.
11
12 1.6 Robert told Muller, while motioning outside, "here's the door."
13
14 1.7 Muller took this as an invitation to fight, given the surrounding
15 circumstances in which the statement was made.
16
17 1.8 After this encounter, Stacy left the table and went to the bathroom. Robert
18 re-entered the bar and sat down next to Muller while she was gone.
19
20 1.9 Muller identified himself as a Department of Corrections (DOC) Officer
21 (off-duty) and asked Robert to leave. Muller was able to smell alcohol on
22 Robert's breath and described Robert's demeanor as threatening. Robert
23 did eventually leave the bar.
24
25 1.10 Stacy left the bar with a friend, and Muller paid the bill, which took
26 approximately five minutes.
27
28 1.11 After leaving the bar and while heading towards his car, Muller observed
29 Robert several feet away from his vehicle:
30
1.12 Muller proceeded towards his vehicle, but was eventually contacted by
Robert prior to entering.
1.13 While Robert was walking towards Muller, his approach became so close
that Muller held out his hand to keep Robert from walking into him.
1.14 Robert walked into Muller's hand and told Muller that if he touched him
again he would "knock him out."
1.15 Muller did not enter his vehicle and kept the car door between he and
Robert because he did not want to risk being assaulted while entering.

- 1 1.16 Robert took one step back and attempted to shake Muller's hand, saying
2 they needed to talk like men.
3
4 1.17 At this time, a vehicle being driven by Angie Middleton approached the
5 area, and Middleton got out of the vehicle and started talking to Robert.
6
7 1.18 Robert and Middleton began arguing with each other, which allowed
8 Muller to enter his vehicle and call law enforcement.
9
10 1.19 After his contact with Muller, Officer Cournyer contacted Robert at a
11 friend's residence on Laurel Street in Mossyrock, Washington.
12
13 1.20 Robert came out of the residence on his own and was advised of why law
14 enforcement was at the residence.
15
16 1.21 Robert attempted to re-enter the residence, but was detained by law
17 enforcement after a brief struggle.
18
19 1.22 Officer Cournyer took Robert to his patrol vehicle and patted Robert down
20 for weapons.
21
22 1.23 Officer Cournyer noted the smell of alcohol on Robert.
23
24 1.24 Robert had chewing tobacco in his mouth.
25
26 1.25 While checking for weapons, Robert was saying derogatory things to
27 Officer Cournyer such as, "dumb nigger" and "stupid cunt".
28
29 1.26 Robert was advised of *Miranda* warnings, and when asked whether he
30 understood the warnings, responded by saying, "fuck you, you dumb
nigger cunt."
1.27 After being placed in the back of Officer Cournyer's patrol vehicle, Officer
Cournyer called DOC in order to advise them of the Robert's probation
violations.
1.28 After completing his phone call, Officer Cournyer observed Robert
repeatedly kicking the rear passenger side door to the patrol vehicle. The
kicks were to the window portion of the door.

- 1 1.29 The patrol vehicle Officer Cournyer was driving is an emergency vehicle
2 and is owned by the city of Morton.
3
4 1.30 Officer Cournyer went to tell Robert to stop, and when he opened the
5 door, he observed that Robert had spit all over the interior of the car.
6 Robert continued to spit in the car all the way to the Lewis County Jail.
7
8 1.31 The kicks from Robert to the door were so hard that after Robert stopped
9 kicking, there was an approximate half-inch gap between the door and the
10 car frame.
11
12 1.32 Once Robert was booked into jail, Officer Cournyer had to clean the
13 vehicle of the spit because his training was that saliva was considered a
14 bio-hazard. It took Officer Cournyer approximately 15 minutes to clean the
15 vehicle with sanitizer.
16
17 1.33 Approximately two weeks later – due to scheduling issues – Officer
18 Cournyer took the patrol vehicle to McGregor's Automotive to obtain an
19 estimate for damage the was done to the door.
20
21 1.34 McGregor's Automotive is located in Chehalis, Washington.
22
23 1.35 By the time the vehicle was taken to McGregor's, the door had worked
24 itself back into its original position, but there was an observable divot in
25 the track that holds the window in place as the window travels up and
26 down.
27
28 1.36 McGregor's estimated the cost to repair this damage at \$785.63.
29
30 1.37 Officer Cournyer took the patrol vehicle to McGregor's because they
performed good work and they had lower prices than other shops they had
taken their patrol vehicles to for repairs.
1.38 To repair the window track would have required taking the patrol vehicle
out of service due to necessary travel time between Morton and Chehalis,
and also time for repairs to be made.

CONCLUSIONS OF LAW

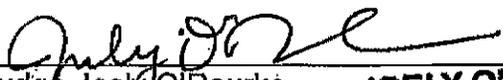
- 2.1 The Court has jurisdiction over the subject matter and the parties.

- 1 2.2 All of these acts took place on August 20, 2017, and occurred in the State
2 of Washington.
3
4 2.3 The defendant, Robert Dagnon, caused physical damage to the property
5 of another in an amount exceeding \$750.
6
7 2.4 The defendant, Robert Dagnon, created a substantial risk of interruption or
8 impairment of service rendered to the public, by physically damaging an
9 emergency vehicle.
10
11 2.5 The defendant acted knowingly and maliciously when he engaged in the
12 acts constituting conclusion 2.3 and 2.4.
13
14 2.6 The defendant, Robert Dagnon, used abusive language and intentionally
15 created a risk of assault.
16
17 2.7 The defendant is guilty beyond a reasonable doubt of Malicious Mischief –
18 Second Degree and Disorderly Conduct as charged.
19

20 **ORDER**

21 A judgment and sentence consistent with these findings shall be entered.

22 DATED this 2 day of May, 2018.

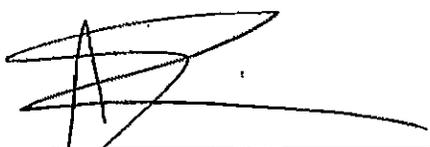
23 
24 Judge Joel O'Rourke **JOELY O'ROURKE**

25 Presented by:

26 JONATHAN L. MEYER
27 Lewis County Prosecuting Attorney

28 
29 Paul E. Masiello, WSBA #33039
30 Deputy Prosecuting Attorney

Copy received; Approved as to form
Notice of Presentation waived:


Christopher Baum, WSBA #32279
Attorney for Defendant

LEWIS COUNTY PROSECUTING ATTORNEY'S OFFICE

December 06, 2018 - 3:02 PM

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Appellate Court Case Number: 51818-0
Appellate Court Case Title: State of Washington, Respondent v. Robert Dagnon, Appellant
Superior Court Case Number: 17-1-00614-3

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