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No. 51822-8-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

ARKANGEL HOWARD,

Appellant.

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

BRIEF OF APPELLANT

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A. INTRODUCTION

Arkangel Howard appeals his convictions and sentence for two counts of first-degree murder and one count of unlawful possession of a firearm. Because the State presented insufficient evidence of premeditation, this Court should reverse the first-degree murder convictions and remand for entry of convictions on second-degree murder, and for resentencing. Resentencing is also required because the trial court erred in including a prior Oregon conviction in the offender score based on “factual comparability.” Finally, the filing fee should be stricken because Mr. Howard is indigent.

B. ASSIGNMENTS OF ERROR

1. In violation of the due process clauses of the Fourteenth Amendment and article I, section 3, the State presented insufficient evidence of premeditation on counts one and two.

2. In violation of the Sixth and Fourteenth Amendments and the Sentencing Reform Act, the trial court included a prior Oregon conviction in the offender score based on “factual comparability.”

3. The filing fee should be stricken in light of RCW 36.18.020(2)(h) and *State v. Ramirez*, 191 Wn.2d 732, 426 P.3d 714, 721-23 (2018).

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. The State is required to prove the element of premeditation beyond a reasonable doubt to sustain a conviction for first-degree murder. In other words, it must prove the defendant “thought [it] over beforehand” and deliberated for “some time.” Here, the State presented no evidence of a motive and no evidence that Mr. Howard made any threats or statements indication premeditation. The State presented evidence that Mr. Howard and the victims were friends, that they were chatting calmly just before the shooting, that Mr. Howard carried a gun for self-protection, and that the shooting was “quick.” Did the State present insufficient evidence to prove premeditation, requiring reversal and remand for entry of convictions on second-degree intentional murder?

2. An out-of-state conviction may not be included in a defendant’s offender score for sentencing purposes if the elements of the out-of-state crime are broader than the analogous Washington crime. It does not matter if the defendant pleaded guilty and admitted facts that would fit within the Washington statute; if those facts were not essential to the elements in the in the foreign jurisdiction, they may not be relied on for comparability purposes. Did the trial court err in including an Oregon conviction in Mr. Howard’s offender score, where the court concluded the Oregon statute was broader than the analogous Washington statute, but counted the

conviction on the basis that Mr. Howard pleaded guilty and in so doing admitted facts that would fall within the Washington crime?

3. RCW 36.18.020(2)(h) prohibits the imposition of a \$200 filing fee upon an indigent criminal defendant. Although this provision went into effect after Mr. Howard's sentencing, the Supreme Court has held the amendment applies to all cases with direct appeals still pending on the effective date. Because Mr. Howard is indigent, should the \$200 filing fee be stricken?

D. STATEMENT OF THE CASE

Arkangel Howard agreed to help his girlfriend, Valerie Sizemore, move out of her apartment in Vancouver. RP 570, 572, 581. While Ms. Sizemore packed her boxes, Mr. Howard drove her car to Portland. RP 589. There, he enlisted two of his friends, Allen Collins and Jason Benton, to help him bring a truck back to Vancouver to use for the move. RP 593. The three returned to Ms. Sizemore's apartment complex with Ms. Sizemore's car, the borrowed truck, and Mr. Collins's car. RP 606.

Ms. Sizemore went outside to talk to the men. RP 592-93. Neighbor Andrew Kallenberger saw the four in the parking lot and "didn't notice anything" unusual like arguing. RP 659, 665. He said, "It looked like they were just talking." RP 659. Neighbor Cynthia McDaniel was also home, and did not hear any arguing. RP 702.

According to Ms. Sizemore, Mr. Collins was just talking to her about how the car needed gas, when all of a sudden and for no apparent reason, “there was quick gunfire” and Mr. Collins and Mr. Benton were on the ground with fatal wounds. RP 593-95. The gunshots were “quick. Quick. Like, not even seconds.” RP 595. She was shocked and asked Mr. Howard what he had done. RP 596.

Neighbors heard gunshots but did not see the shooting. RP 494, 542, 661-63, 671. Mr. Howard drove away after the incident. RP 497-98.

Mr. Benton died of a single gunshot wound to the head, and Mr. Collins died of three gunshot wounds to the left side of his body. RP 1135, 1143-53.

Officers later found a gun under a shed at Mr. Howard’s mother’s home, and the State hired an expert who averred the bullets that killed Mr. Collins and Mr. Benton were fired from this gun. RP 1105.

The State charged Mr. Howard with two counts of first-degree premeditated murder and one count of unlawful possession of a firearm. CP 1-2. Mr. Howard exercised his right to trial. During closing argument, the prosecutor admitted the State was not aware of any motive Mr. Howard would have for shooting his friends, but he urged the jury to find Mr. Howard was the perpetrator in light of the testimony and physical evidence. RP 1315, 1344. The prosecutor also acknowledged the events

unfolded rapidly, but stated, “It is up to you, ladies and gentlemen, to decide, to determine what length of time is required for premeditation in this case.” RP 1345. The prosecutor noted, “in the event that for whatever reason you feel that the premeditated intent was not proved to you, you have the option of considering the alternative charge of murder in the second degree, which is defined for you in Instruction No. 16.” RP 1347.

The jury entered “guilty” verdicts for first-degree murder with firearm enhancements on counts one and two, and unlawful possession of a firearm on count three. CP 80-86. At sentencing, the State asked the court to count this case as a third “strike” based on two prior Oregon convictions, and to sentence Mr. Howard to life without parole. RP 88-89.

The court concluded that one of the two Oregon convictions was comparable to a Washington crime and could be counted in the offender score, but that the other was not comparable. RP 1392-95. The court calculated an offender score of “4” on counts one and three, and sentenced Mr. Howard to 760 months in prison. CP 201-02.

E. ARGUMENT

1. The convictions for first-degree murder should be reversed for insufficient evidence of premeditation.

To convict a defendant of first-degree murder, the State must prove premeditated intent to kill, not merely intent to kill. Here, the State

presented no evidence of planning, threats, or motive. The State’s evidence showed the shooting was “quick” and lasted only a few seconds. This Court should accordingly reverse the convictions for first-degree murder and remand for entry of convictions for second-degree murder.

- a. Due Process requires the State to prove each element of the offense beyond a reasonable doubt.

“[A]n essential of the due process guaranteed by the Fourteenth Amendment [is] that no person shall be made to suffer the onus of a criminal conviction except upon sufficient proof – defined as evidence necessary to convince a trier of fact beyond a reasonable doubt of the existence of every element of the offense.” *State v. Hummel*, 196 Wn. App. 329, 352, 383 P.3d 592 (2016) (quoting *Jackson v. Virginia*, 443 U.S. 307, 316, 99 S. Ct. 628, 61 L. Ed. 2d 560 (1970)); U.S. Const. amend. XIV; Const. art. I, § 3.

The State bears the burden of proving each element of the crime charged beyond a reasonable doubt. *In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed.2d 368 (1970). The beyond a reasonable doubt standard is designed to impress “upon the factfinder the need to reach a subjective state of near certitude of the guilt of the accused.” *Jackson*, 443 U.S. at 315. It “symbolizes the significance that our society attaches to the criminal sanction and thus to liberty itself.” *Id.*

This Court reviews a claim of insufficient evidence de novo. *Hummel*, 196 Wn. App. at 352. It will affirm a conviction only if, “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.” *Jackson*, 443 U.S. at 318; *State v. Vasquez*, 178 Wn. 2d 1, 6, 309 P.3d 318 (2013).

- b. The State presented insufficient evidence to prove the element of premeditated intent beyond a reasonable doubt.

The State charged Mr. Howard with two counts of first-degree murder for the deaths of Mr. Collins and Mr. Benton. CP 1. To prove each count, the State was required to show beyond a reasonable doubt not just that Mr. Howard killed the victims, but that he did so with *premeditated* intent to cause death. 9A.32.030(1)(a)¹; *Hummel*, 196 Wn. App. at 354.

- i. *Premeditation means thinking beforehand, deliberation, reflection, weighing, or reasoning for a period of time.*

Premeditation is a distinct element of the offense of first-degree murder, and cannot be inferred from the intent to kill. *State v.*

¹ RCW 9A.32.030 provides, in relevant part: “A person is guilty of murder in the first degree when: (a) with a premeditated intent to cause the death of another person, he or she causes the death of such person or of a third person.”

Commodore, 38 Wn. App. 244, 247, 684 P.2d 1364 (1984). “While intent means only ‘acting with the objective or purpose to accomplish a result which constitutes a crime,’ premeditation involves ‘the mental process of thinking beforehand, deliberation, reflection, weighing, or reasoning for a period of time, however short.” *Id.* The element of premeditation is what distinguishes first-degree murder from second-degree murder, which requires proof of intent to kill. *State v. Bingham*, 105 Wn.2d 820, 823, 719 P.2d 109 (1986).

Premeditation “must involve more than a moment in point of time.” RCW 9A.32.020(1). But a showing that more than a moment of time elapsed is not enough:

Having the opportunity to deliberate is not evidence the defendant did deliberate, which is necessary for a finding of premeditation. Otherwise, any form of killing which took more than a moment could result in a finding of premeditation, without some additional evidence showing reflection.

Bingham, 105 Wn.2d at 826.

Nor is a showing that the attack was violent sufficient:

[V]iolence and multiple wounds, while more than ample to show an intent to kill, cannot standing alone support an inference of a calmly calculated plan to kill requisite for premeditation and deliberation, as contrasted with an impulsive and senseless, albeit sustained, frenzy.

State v. Ollens, 107 Wn.2d 848, 852, 733 P.2d 984 (1987) (quoting *Austin v. United States*, 382 F.2d 129, 139 (D.C. Cir. 1967)).

Factors to consider in evaluating the sufficiency of premeditation evidence include: (1) whether the attack involved multiple acts or one continuous act, (2) whether the defendant procured a weapon in order to carry out the act, and if so whether it was one weapon or many, (3) whether the victim was attacked from behind, (4) whether a jury could find the presence of a motive, (4) whether there was evidence of a struggle or of injuries inflicted by various means over a period of time, (5) whether there was evidence of prior threats, and (6) whether the defendant made statements indicating premeditation. *See Ollens*, 107 Wn.2d at 853; *State v. Hoffman*, 116 Wn.2d 51, 83-84, 804 P.2d 577 (1991); *State v. Pirtle*, 127 Wn.2d 628, 645-46, 904 P.2d 245 (1995); *State v. Allen*, 159 Wn.2d 1, 8, 147 P.3d 581 (2006).

Where the State presents circumstantial evidence but no direct evidence of premeditation, the evidence is sufficient only if the inferences drawn by the jury are reasonable and the evidence supporting the jury's verdict is substantial. *Hummel*, 196 Wn. App. at 355; *Bingham*, 105 Wn.2d at 824. Although a jury may infer the existence or nonexistence of facts based on circumstantial evidence alone, "an inference should not arise where there are other reasonable conclusions that would follow from

the circumstances.” *State v. Bencivenga*, 137 Wn.2d 703, 708, 974 P.2d 832 (1999).

- ii. *The State did not prove deliberation; there was no evidence of statements, threats, planning, or motive, and the killing itself took mere seconds.*

Here, the State presented insufficient evidence of premeditated intent to kill.

The State presented *no* evidence of prior threats, *no* evidence of statements indicating premeditation, and *no* evidence of motive. RP 1315, 1344. The State’s evidence showed Mr. Howard and the decedents were friends, not enemies. RP 593. Mr. Howard did not procure a weapon to carry out this crime; he always carried a gun in his waistband, and had bought it to protect himself. RP 603-04.

The three men were at the apartment complex to help Ms. Sizemore move, and she was in the parking lot chatting with them just before the shooting. RP 570, 572, 581, 589, 592-93. Other witnesses described seeing the group talking normally – there was no indication anyone was yelling or arguing. RP 659, 665, 702. Ms. Sizemore was not aware of any disputes between Mr. Howard and his friends. RP 609.

Viewing the evidence in the light most favorable to the State, Mr. Howard

simply shot the two in quick succession, after which a stunned Valerie Sizemore asked, “what the [expletive] did you just do?” RP 595-96.

Given the dearth of evidence of deliberation, the State presented insufficient evidence to prove the premeditation element of the crime.

Hummel is instructive. There, this Court held the State presented insufficient evidence of premeditation notwithstanding overwhelming evidence of two different motives for the killing – one to collect financial benefits and the other to hide sexual misconduct. *Hummel*, 196 Wn. App. at 345. The State’s evidence showed the defendant killed his wife a few days after their daughter told her mother that the defendant had been sexually abusing her. *Id.* at 339. The daughter assumed her mother confronted her father about the abuse prior to being killed. *Id.* After the defendant killed his wife, he fraudulently appropriated his dead wife’s disability benefits for years. *Id.* at 336. But despite the strong evidence of two motives for the murder, this Court held the State presented insufficient evidence of premeditation because “the State presented no evidence of planning or method of killing.” *Id.* at 355.

Here, the State proved the method of attack was a gun, but as in *Hummel*, it presented no evidence of planning. And, unlike in *Hummel*, the State here presented no evidence of motive. Thus, if the evidence of premeditation was deemed insufficient in *Hummel* – where the State

proved multiple motives for the killing – it is certainly insufficient here, where the State had no evidence of motive, planning, or preparation.

Although courts have excused the absence of “planning” evidence, they have done so only where the evidence shows the defendant deliberated during the event in question. For instance, the State proves premeditation if the attack involves multiple acts and a struggle or injuries inflicted by various means over a period of time. *E.g. State v. Bushey*, 46 Wn. App. 579, 585, 731 P.2d 553 (1987) (sufficient evidence of premeditation where defendant tied victim’s hands, dealt several blows to the face, and then strangled her until she stopped breathing). But here, the State’s evidence showed a “quick” series of shots that took only seconds. RP 595. This sudden turn of events is insufficient to prove premeditation.

Moreover, even in cases where the killing took a longer time, more is needed to prove premeditation. In *Bingham*, for example, the Supreme Court held that three to five *minutes* of strangling was insufficient, on its own, to prove premeditation. *Bingham*, 105 Wn.2d at 824-27. Certainly here, mere *seconds* of shooting is insufficient.

Cases in which courts found sufficient evidence of premeditation involved significantly different facts than those presented here. For instance, in *Neslund*, the defendant threatened the victim previously, had her brother hold the victim down while she shot him, and decided to kill

him after he discovered her financial misconduct. *State v. Neslund*, 50 Wn. App. 531, 749 P.2d 725 (1988). In *Allen*, 159 Wn.2d at 4, the defendant killed his mother after an argument, and retrieved and used multiple weapons during a prolonged struggle. In *Pirtle*, 127 Wn.2d at 637, the defendant brutally killed two former fellow employees using multiple weapons during an extended struggle, in retaliation for his firing. Unlike these cases, the evidence here, like the evidence in *Hummel* and *Bingham*, was insufficient to support the element of premeditation.

- c. The remedy is reversal of the convictions and remand for entry of convictions on the lesser offense of second-degree murder.

As explained above, insufficient evidence supports the premeditation element, requiring reversal of the convictions for first-degree murder. Because the court instructed the jury on the lesser offense of second degree murder, the remedy is remand for entry of convictions on second-degree murder, and for resentencing. *In re Heidari*, 174 Wn.2d 288, 292, 274 P.3d 366 (2012).

- 2. The sentence should be reversed because the trial court improperly included in the offender score an Oregon conviction that is not comparable to a Washington crime.**

The court sentenced Mr. Howard based on an offender score of four, but in so doing it counted a prior Oregon conviction for attempted

first-degree robbery despite concluding the elements were broader than the elements for the same crime in Washington. This was error warranting reversal of the sentence and remand for resentencing.

- a. An out-of-state conviction for a crime that is not comparable to a Washington crime may not be included in the offender score, regardless of the underlying facts of the crime.

The Sentencing Reform Act (“SRA”) creates a grid of standard sentencing ranges calculated according to the seriousness level of the crime in question and the defendant’s offender score. RCW 9.94A.505, .510, .520, .525; *State v. Ford*, 137 Wn.2d 472, 479, 973 P.2d 452 (1999). The offender score is the sum of points accrued as a result of prior convictions. RCW 9.94A.525. This Court reviews de novo the sentencing court’s calculation of the offender score. *State v. Rivers*, 130 Wn. App. 689, 699, 128 P.3d 608 (2005).

“Out-of-state convictions for offenses shall be classified according to the comparable offense definitions and sentences provided by Washington law.” RCW 9.94A.525(3). An out-of-state conviction for a crime that is *not* comparable to a Washington felony may not be included in the offender score. *State v. Thomas*, 135 Wn. App. 474, 477, 144 P.3d 1178 (2006); *see also In re the Personal Restraint of Lavery*, 154 Wn.2d 249, 258, 111 P.3d 837 (2005) (conviction for foreign crime that is

broader than analogous Washington statute may not be counted as a “strike” for purposes of sentencing).

The State bears the burden of proving criminal history, including comparability of out-of-state convictions, as a matter of due process. U.S. Const. amend. XIV; *State v. Hunley*, 175 Wn. 2d 901, 917, 287 P.3d 584 (2012). Furthermore, “fundamental principles of due process prohibit a criminal defendant from being sentenced on the basis of information which is false, lacks a minimum indicia of reliability, or is unsupported in the record.” *Ford*, 137 Wn.2d at 481.

To determine whether a prior out-of-state conviction may be included in a defendant’s offender score, the sentencing court must compare the elements of the foreign crime with the elements of the similar Washington crime. If the elements are the same, or if the foreign crime is narrower than the Washington felony, the foreign conviction may be included in the offender score. *Lavery*, 154 Wn.2d at 255.

But if the out-of-state statute prohibits a broader swath of conduct than the relevant Washington felony statute, the prior foreign conviction may not be counted as a felony in the defendant’s offender score. A sentencing court may not consider the underlying facts of a prior conviction to determine whether the defendant *could have* been convicted under the narrower Washington statute. *Descamps v. United States*, 570

U.S. 254, 133 S. Ct. 2276, 2281-82, 186 L. Ed. 2d (2013); *Lavery*, 154 Wn.2d at 256-57; *State v. Ortega*, 120 Wn. App. 165, 174, 84 P.3d 935 (2004). This type of “factual comparability” violates a defendant’s Sixth Amendment right to a jury trial. U.S. Const. amend. VI; *Descamps*, 133 S. Ct. at 2288; *Lavery*, 154 Wn.2d at 256-57.

- b. The sentencing court concluded a prior Oregon conviction was not legally comparable to a Washington crime, but erroneously included it in the offender score anyway based on “factual comparability”.

Here, the sentencing court counted in the offender score Mr. Howard’s prior Oregon conviction for “attempted robbery 1.” CP 201, 210. The court did so *despite* concluding that the Oregon crime is broader than Washington’s attempted first-degree robbery. RP 1392-95. The court noted the crimes are “not legally comparable” because (1) Oregon’s robbery statute encompasses attempted theft in addition to completed theft; (2) Oregon’s robbery statute does not require the taking of property “from the person or his presence;” and (3) Oregon’s attempt statute requires only general intent while Washington’s requires specific intent. RP 1392-95.

But the court stated it would include the conviction in the offender score anyway because the crimes were “factually comparable” given

“what Mr. Howard admitted in his plea document.” RP 1394-95. This was error.

In *Lavery*, for example, the petitioner challenged a life sentence based on a federal bank robbery conviction the trial court had counted as a third “strike.” *Lavery*, 154 Wn.2d at 252. The Supreme Court determined that federal bank robbery is a general intent crime, while Washington robbery is a specific intent crime. *Id.* at 255-56. The State asked the Court to remand to the trial court to examine whether the underlying facts of the federal crime would have constituted robbery in Washington, but the Court rejected that request. *Id.* at 257. It explained, “Where the foreign statute is broader than Washington’s, that examination may not be possible because there may have been no incentive for the accused to have attempted to prove that he did not commit the narrower offense.” *Id.* The Court concluded, “Where the statutory elements of a foreign conviction are broader than those under a similar Washington statute, the foreign conviction cannot truly be said to be comparable.” *Lavery*, 154 Wn.2d at 258.

Similarly in *Descamps*, the Court held a prior California burglary conviction could not be used to increase a defendant’s sentence because the California burglary statute is broader than generic burglary: it does not require breaking and entering. *Descamps*, 133 S. Ct. at 2293. The Court

emphasized, “[w]hether Descamps *did* break and enter makes no difference.” *Id.* at 2286. “A defendant, after all, often has little incentive to contest facts that are not elements of the charged offense.” *Id.* at 2289. Thus, *Descamps* makes clear that the only “factual” analysis that may be conducted is a determination of the elements of the prior crime of conviction.

This Court recently applied *Descamps* and *Lavery* in *State v. Davis*, 3 Wn. App. 2d 763, 418 P.3d 199 (2018). This Court held the sentencing judge improperly included five prior California burglary convictions in the defendant’s offender score. *Id.* at 769. California burglary is broader than Washington burglary, because California’s statute does not require proof of “unlawful” entry and is not limited to buildings. *Id.* at 776.

The State claimed the convictions should be counted anyway based on “factual comparability.” It noted when the defendant pleaded guilty in California, he admitted to committing the crimes as charged, and the charging documents alleged the defendant “unlawfully entered” buildings. *Davis*, 3 Wn. App. 2d at 779-81.

This Court rejected the argument. *Id.* at 781. This Court explained that a sentencing court may *not* rely facts admitted by the defendant unless those facts constituted *elements* of the crime in the other jurisdiction. *Id.* at

781-82. “[F]acts in a charging document that are untethered to the elements of a crime are outside the proper scope of what courts may consider in the factual prong of analysis.” *Id.* at 782. Furthermore, “allowing the use of such facts is also inappropriate because a defendant charged with a broader foreign offense may not have an incentive to prove that he is guilty of narrower conduct covered by a Washington statute.” *Id.*

Here, as in *Lavery*, *Descamps*, and *Davis*, the prior foreign conviction may not be used to increase Mr. Howard’s sentence because the Oregon crime is broader than the relevant Washington crime. RP 1392-95. The court correctly concluded the Oregon crime was broader, but erred in counting the conviction based on “what Mr. Howard admitted in his plea document.” RP 1395; *see Descamps*, 133 S. Ct. at 2286; *Lavery*, 154 Wn.2d at 258; *Davis*, 3 Wn. App. 2d at 781-82.

c. The remedy is reversal of the sentence and remand for resentencing.

If the elements of the prior out-of-state crime are broader than those of the relevant Washington crime, “the inquiry is over.” *Descamps*, 133 S. Ct. at 2286. “[W]hen a defendant pleads guilty to a crime, he waives his right to a jury determination of only that offense’s elements; whatever he says, or fails to say, about superfluous facts cannot license a later sentencing court to impose extra punishment.” *Id.* at 2288.

The trial court here erred in imposing extra punishment based on a prior conviction for an Oregon crime whose elements are broader than the relevant Washington crime. The remedy for the error is reversal of the sentence and remand for resentencing. *Lavery*, 154 Wn.2d at 262; *Davis*, 3 Wn. App. 2d at 793.

3. The criminal filing fee should be stricken.

The judgment must also be corrected to delete the \$200 criminal filing fee. CP 204.

RCW 36.18.020(h) prohibits imposition of a filing fee upon indigent criminal defendants. Although this provision went into effect after Mr. Howard's sentencing, it applies retroactively to all cases still pending on direct appeal. *State v. Ramirez*, 191 Wn.2d 732, 748-49, 426 P.3d 714 (2018). Thus, this Court should remand with instructions to strike the filing fee.²

² The preprinted form used here and presumably used in other cases should also be amended to reflect current statutes and caselaw. The checkboxes in subsection 2.5 appear to presume current and/or future ability to pay, contrary to the law and to the reality of the vast majority of defendants. CP 202; *see Ramirez*, 191 Wn.2d at 746 (discussing House Bill 1783); *State v. Blazina*, 182 Wn.2d 827, 835-37, 344 P.3d 680 (2015).

F. CONCLUSION

Because the State failed to prove premeditation, Mr. Howard asks this Court to reverse his convictions for first-degree murder and remand for entry of convictions for the lesser crime of second-degree murder, and for resentencing. Mr. Howard also asks this Court to vacate the sentence and remand for resentencing because the sentencing court erred in including a prior Oregon conviction for first-degree attempted robbery in the offender score. Finally, this Court should remand with instructions to strike the criminal filing fee from the judgment.

DATED this 24th day of January, 2019.

Respectfully submitted,



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