

FILED  
Court of Appeals  
Division II  
State of Washington  
11/29/2018 8:00 AM

NO. 51998-4-II

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

---

---

STATE OF WASHINGTON,

Respondent,

v.

DANIKA LIGHTLE,

Appellant.

---

---

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

The Honorable Andrew J. Toynbee, Judge

---

---

BRIEF OF APPELLANT

---

---

CATHERINE E. GLINSKI  
Attorney for Appellant

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

## **TABLE OF CONTENTS**

A.	ASSIGNMENTS OF ERROR.....	1
	Issues pertaining to assignments of error.....	1
B.	STATEMENT OF THE CASE.....	1
C.	ARGUMENT.....	4
	1. THE EVIDENCE FAILED TO ESTABLISH THIRD DEGREE ASSAULT, AND LIGHTLE’S CONVICTION MUST BE DISMISSED. ....	4
	2. STATUTORY AMENDMENTS PROHIBITING IMPOSITION OF CERTAIN LEGAL FINANCIAL OBLIGATIONS APPLY TO LIGHTLE’S CASE, AND THOSE LFOS MUST BE STRICKEN.6	6
D.	CONCLUSION.....	8

## TABLE OF AUTHORITIES

### Washington Cases

<i>State v. Chapin</i> , 118 Wn.2d 681, 826 P.2d 194 (1992) .....	4
<i>State v. Green</i> , 94 Wn. 2d 216, 616 P.2d 628 (1980).....	4
<i>State v. Hardesty</i> , 129 Wn.2d 303, 915 P.2d 1080 (1996) .....	4
<i>State v. Hickman</i> , 135 Wn.2d 97, 954 P.2d 900 (1998).....	4
<i>State v. Jarvis</i> , 160 Wn. App. 111, 246 P.3d 1280, <i>review denied</i> , 171 Wn.2d 1029 (2011).....	5
<i>State v. Ramirez</i> , ___ Wn.2d ___, 426 P.3d 714 (2018).....	7
<i>State v. Stevens</i> , 158 Wn.2d 304, 143 P.3d 817 (2006).....	5
<i>State v. Walden</i> , 67 Wn. App. 891, 841 P.2d 81 (1992).....	5
<i>State v. Williams</i> , 159 Wn. App. 298, 244 P.3d 1018, <i>review denied</i> , 171 Wn.2d 1025 (2011).....	5, 6

### Federal Cases

<i>In re Winship</i> , 397 U.S. 358, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970) .....	4
--	---

### Statutes

Engrossed Second Substitute House Bill 1783, 65th Leg., Reg. Sess. (Wash. 2018).....	6
RCW 10.01.160(3).....	7
RCW 36.18.202(2)(h) .....	7
RCW 9A.36.031(1)(g) .....	4

### Constitutional Provisions

Const. art. I, § 3.....	4
U.S. Const. amend. XIV .....	4

A. ASSIGNMENTS OF ERROR

1. The evidence was insufficient to establish that appellant committed third degree assault.

2. Legal financial obligations for the criminal filing fee and court appointed attorney fees were improperly imposed and must be stricken.

Issues pertaining to assignments of error

1. Appellant Danika Lightle was convicted of third degree assault based on allegations that she intentionally shoved a law enforcement officer while he was performing his official duties. Where the evidence does not establish she acted with intent to cause bodily harm, must her conviction be reversed?

2. Since Lightle was indigent at the time of sentencing, must the legal financial obligations for the criminal filing fee and court appointed attorney fees be stricken?

B. STATEMENT OF THE CASE

Shortly after midnight on March 24, 2018, Centralia Police Officers responded to investigate a trespass complaint at the Harrison Village Apartments. RP 41-42. They spoke to several people and made one arrest and were preparing to leave the scene, when Danika Lightle told

them she wanted to go to jail as well. RP 20, 23, 44. The officers told Lightle, who was intoxicated, that she should return to her apartment, but Lightle insisted that she wanted to go to jail so her friend would not be alone. RP 25, 44.

Lightle then walked to one of the patrol cars, opened the rear door, and started to get inside. RP 25, 44. Officer Steven Summers grabbed her arm and guided her out of the car. RP 26, 45. At that point, Lightle turned to face Summers and shoved him in the chest with her right arm as he held onto her left. RP 26, 45. Lightle's action caused Summers to turn, but he did not lose his balance. RP 27, 45. Lightle was arrested and charged with third degree assault. RP 28, 46; CP 1-2.

Lightle waived her right to a jury, and the case proceeded to trial before the Honorable Andrew Toynbee. CP 3. At trial, Summers testified that he felt he had been assaulted, because Lightle's action was inappropriate. RP 46. He was not offended by the shove, but the expectation is that citizens should not put their hands on officers who are performing their duties. RP 51, 53.

Lightle did not dispute that she had pushed Summers in the chest. She testified that she told Summers she wanted to go to jail so that her friend would not be alone. RP 57. When Summers declined to take her to jail, she asked what she would need to do to go to jail. Summers replied

that if she touched him she would be arrested, so she touched him in the chest. RP 59. She did that so she would spend the night in jail with her friend, but she was not intending to hurt the officer. RP 60, 62. Summers denied having a conversation with Lightle about what she needed to do to go to jail. RP 63.

The court found Lightle intentionally pushed or shoved Summers while he was performing his official duties, and a reasonable officer would find this was an offensive touching without consent or lawful purpose. RP 72-73. It concluded the State had proven the elements of third degree assault beyond a reasonable doubt. RP 72. The court entered findings of fact and conclusions of law consistent with its decision. CP 5-7.

The court applied the first time offender waiver and sentenced Lightle to five days in jail. CP 10. Although Lightle was indigent and represented by appointed counsel, the court determined she had the ability to pay legal financial obligations. RP 84, 87; CP 12, 17-18. In addition to the \$500 victim assessment and \$100 DNA fee, the court imposed the \$200 criminal filing fee and \$50 for court appointed attorney fees. CP 11-12.

C. ARGUMENT

1. THE EVIDENCE FAILED TO ESTABLISH THIRD DEGREE ASSAULT, AND LIGHTLE'S CONVICTION MUST BE DISMISSED.

The burden of proving the essential elements of a crime unequivocally rests on the prosecution. *In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970); U.S. Const. amend. XIV; Const. art. I, § 3. Proof beyond a reasonable doubt of all essential elements is an “indispensable” threshold of evidence the State must establish to garner a conviction. *Winship*, 397 U.S. at 364. Therefore, as a matter of state and federal constitutional law, a reviewing court must reverse a conviction and dismiss the prosecution for insufficient evidence where no rational trier of fact could find that all elements of the crime were proven beyond a reasonable doubt. *State v. Hickman*, 135 Wn.2d 97, 103, 954 P.2d 900 (1998); *State v. Hardesty*, 129 Wn.2d 303, 309, 915 P.2d 1080 (1996); *State v. Chapin*, 118 Wn.2d 681, 826 P.2d 194 (1992); *State v. Green*, 94 Wn. 2d 216, 616 P.2d 628 (1980).

Lightle was convicted of third degree assault, which required the State to prove she assaulted a law enforcement officer who was performing his official duties at the time of the assault. RCW 9A.36.031(1)(g). Because the term “assault” is not defined by statute, courts apply common law definitions. *State v. Stevens*, 158 Wn.2d 304,

310-11, 143 P.3d 817 (2006). The common law definition of assault includes “an unlawful touching with criminal intent.” *State v. Jarvis*, 160 Wn. App. 111, 117, 246 P.3d 1280, *review denied*, 171 Wn.2d 1029 (2011) (citing *State v. Walden*, 67 Wn. App. 891, 893-94, 841 P.2d 81 (1992)). “A touching may be unlawful because it was neither legally consented to nor otherwise privileged, and was either harmful or offensive.” *Jarvis*, 160 Wn. App. at 118 (citations omitted).

“In order to commit assault, a person must have specific intent to cause bodily harm or to create an apprehension of bodily harm.” *State v. Williams*, 159 Wn. App. 298, 307, 244 P.3d 1018, *review denied*, 171 Wn.2d 1025 (2011) (citing *State v. Byrd*, 125 Wn.2d 707, 713, 887 P.2d 396 (1995)). In *Williams*, the Court of Appeals rejected a claim that there was insufficient evidence to convict appellant of third degree assault where appellant looked toward the officers who were approaching him and then repeatedly stabbed one of the officers in the leg with some scissors he was holding. He then attempted to conceal the weapon, and he was aggressive even after arrested. This evidence was sufficient to establish the specific intent necessary to prove assault. *Williams*, 159 Wn. App. at 307-08.

Here, on the other hand, there was no evidence that Lightle intended to cause bodily harm when she shoved Summers in the chest with

one arm as he held her other arm. Lightle testified that she was not trying to harm the officer in any way. RP 62. She touched him because she wanted to go to jail, and he had told her that if she touched him she would be arrested. RP 58, 62. Although Summers denied that conversation occurred, the circumstances do not support an inference of any other intent. RP 63. Lightle was not being unfriendly before the contact, and she only became upset when she learned her friend was going to jail. RP 49. Lightle did not even use enough force to cause Summers to lose his balance. RP 45.

Summers testified that he thought he had been assaulted, but he explained that he did not find the contact personally offensive, he just believed that citizens should not put their hands on officers. RP 46, 51, 53. While there was proof Lightle intentionally shoved the officer, there was no proof her intent was to cause bodily harm. Without such intent, the contact does constitute assault. *See Williams*, 159 Wn. App. at 307.

2. STATUTORY AMENDMENTS PROHIBITING IMPOSITION OF CERTAIN LEGAL FINANCIAL OBLIGATIONS APPLY TO LIGHTLE'S CASE, AND THOSE LFOS MUST BE STRICKEN.

In March 2018, the Legislature enacted Engrossed Second Substitute House Bill 1783, 65th Leg., Reg. Sess. (Wash. 2018), modifying Washington's system for imposing and collecting LFOS.

Under this bill, statutory amendments prohibit the imposition of costs if the defendant is indigent at the time of sentencing<sup>1</sup> and prohibit imposition of the \$200 criminal filing fee on an indigent defendant.<sup>2</sup> Laws of 2018, ch. 269 § § 6, 17, 18. These amendments went into effect on June 7, 2018. *Id.*

Lightle was sentenced on June 11, 2018, and thus the statutory amendments apply in her case. Lightle was indigent and represented by appointed counsel at the time of sentencing, and she remains so on appeal. RP 84; CP 17-18. Despite her indigency, the court ordered her to pay the \$200 criminal filing fee and \$50 for court appointed attorney fees. CP 11. Because the statutory amendments expressly prohibit courts from imposing discretionary costs and the criminal filing fee on indigent defendants, both the discretionary attorney fees and the filing fee must be stricken from Lightle's judgment and sentence. See *State v. Ramirez*, \_\_\_ Wn.2d \_\_\_, 426 P.3d 714, 723 (2018) (remedy is to remand for trial court to strike improperly imposed LFOs).

---

<sup>1</sup> "The court shall not order a defendant to pay costs if the defendant at the time of sentencing is indigent as defined in RCW 10.101.010(3) (a) through (c). In determining the amount and method of payment of costs for defendants who are not indigent as defined in RCW 10.101.010(3) (a) through (c), the court shall take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose." RCW 10.01.160(3).

<sup>2</sup> "Upon conviction or plea of guilty, upon failure to prosecute an appeal from a court of limited jurisdiction as provided by law, or upon affirmance of a conviction by a court of limited jurisdiction, an adult defendant in a criminal case shall be liable for a fee of two hundred dollars, except this fee shall not be imposed on a defendant who is indigent as defined in RCW 10.101.010(3) (a) through (c)." RCW 36.18.202(2)(h).

D. CONCLUSION

The evidence is insufficient to establish third degree assault, and Lightle's conviction must be reversed. In addition, the improperly imposed legal financial obligations must be stricken.

DATED November 28, 2018.

Respectfully submitted,



---

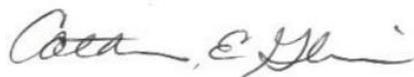
CATHERINE E. GLINSKI  
WSBA No. 20260  
Attorney for Appellant

Certification of Service by Mail

Today I caused to be mailed copies of the Brief of Appellant in  
*State v. Danika Lightle*, Cause No. 51998-4-II as follows:

Danika Lightle  
336 Laurel Street  
Mossyrock, WA 98564

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



---

Catherine E. Glinski  
Done in Manchester, WA  
November 28, 2018

**GLINSKI LAW FIRM PLLC**

**November 28, 2018 - 5:08 PM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 51998-4  
**Appellate Court Case Title:** State of Washington, Respondent v. Danika Lightle, Appellant  
**Superior Court Case Number:** 18-1-00226-0

**The following documents have been uploaded:**

- 519984\_Briefs\_20181128170739D2502610\_2641.pdf  
This File Contains:  
Briefs - Appellants  
*The Original File Name was 51998-4 State v Lightle Brief of Appellant.pdf*

**A copy of the uploaded files will be sent to:**

- appeals@lewiscountywa.gov
- sara.beigh@lewiscountywa.gov
- teri.bryant@lewiscountywa.gov

**Comments:**

---

Sender Name: Catherine Glinski - Email: glinskilaw@wavecable.com  
Address:  
PO BOX 761  
MANCHESTER, WA, 98353-0761  
Phone: 360-876-2736

**Note: The Filing Id is 20181128170739D2502610**