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Division II  
State of Washington  
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No. 52316-7-II

COURT OF APPEALS, DIVISION II  
STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

vs.

JUSTIN RICHARD LESLIE,

Appellant.

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On Appeal from the Pierce County Superior Court  
Cause No. 18-1-02086-9  
The Honorable Frank Cuthbertson, Judge

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OPENING BRIEF OF APPELLANT

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## **I. ASSIGNMENTS OF ERROR**

1. The State failed to meet its burden of proving beyond a reasonable doubt every element of the crime of violating a protection order.
2. Justin Leslie's Judgment and Sentence contains a cost provision that is no longer authorized by the legal financial obligation statutes.

## **II. ISSUES PERTAINING TO THE ASSIGNMENTS OF ERROR**

1. The State failed to prove that Justin Leslie *knowingly* violated a valid protection order because the evidence did not establish that he was aware it was still in effect. (Assignment of Error 1)
2. Should Justin Leslie's case be remanded to the trial court to amend the Judgment and Sentence by striking an interest accrual provision that violates a recent amendment to the legal financial obligation statutes? (Assignment of Error 2)

## **III. STATEMENT OF THE CASE**

### **A. PROCEDURAL HISTORY**

The State charged Justin Richard Leslie in Pierce County Superior Court with one felony count of violation of a domestic violence protection order pursuant to RCW 26.50.110(1) and (5).

(CP 3) The State alleged that the protection order violation was a felony because Leslie had two prior convictions for violating a domestic violence protection order (RCW 10.99.020). (CP 3) The State also alleged that the offense was a domestic violence incident. (CP 3)

The jury convicted Leslie as charged. (RP3 289; CP 166-67)<sup>1</sup> The trial court imposed a term of 24 months, an exceptional sentence below the standard range, based on the judge's finding that "the goals of the Sentencing Reform Act, the interest of justice and the use of public resources are best served by an exceptional sentence" and a finding that the protected party "was a willing participant." (RP4 314-15; CP 192, 195, 204-06) Leslie filed a timely Notice of Appeal. (CP 178)

#### B. SUBSTANTIVE FACTS

Justin Leslie and Lauren Peterson have been in a dating relationship for about 10 years, and have two young children together. (RP2 192-93) But in 2017 Peterson obtained a protection order prohibiting Leslie from contacting her. (Exh. P4; RP2 194, 250; CP 120)

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<sup>1</sup> Reference to the transcripts from trial, labeled volumes 1 thru 4, will be to the volume number (RP#). Reference to the remaining transcripts from the pretrial hearings will be to the date of the proceeding (DATE RP).

This order was still in effect as of May 28, 2018. (RP2 193, 236; CP 120) Peterson testified that she called Leslie that day, and they went for a drive together so they could discuss their children. (RP2 194, 204) Peterson told Leslie that she filed a motion to drop the protection order and that it had been dropped. (RP2 194-95) This was a process that she had successfully used in the past to have protection orders dropped. (RP2 195) But in this instance, she lied to Leslie because she had not actually filed the motion as of that date. (RP2 195-96)

That evening, Lakewood Police Officer Jordan Feldman initiated a traffic stop on Peterson's vehicle due to an equipment infraction.<sup>2</sup> (RP2 194, 235-36) Leslie was driving and Peterson was in the passenger seat. (RP2 194, 236) Officer Feldman ran a records check on the vehicle and on Leslie, and discovered the existing protection order. (RP2 236)

Officer Feldman questioned Leslie and Peterson about the order. Officer Feldman could not recall whether they said they were confident it had been dropped, or whether they said they were planning to get it dropped. (RP2 238, 242) But he testified that

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<sup>2</sup> Additional facts pertaining to this traffic stop were elicited at a pretrial hearing on Leslie's motion to suppress. (07/13/18 RP 6-27) However, the facts described in this brief reflect those presented to the jury during trial.

Leslie said he was aware of the order and thought it had been taken care of. (RP2 236-37) And, according to Officer Feldman's report, Peterson told him that she "represented to [Leslie] that there were no longer any active no contact orders." (RP2 204)

#### **IV. ARGUMENT & AUTHORITIES**

##### **A. THE STATE FAILED TO MEET ITS BURDEN OF PRESENTING EVIDENCE TO PROVE EVERY ELEMENT OF THE CRIME BEYOND A REASONABLE DOUBT.**

The State failed to prove that Leslie *knowingly* violated the protection order because the evidence did not establish that he was aware it was still in effect.

The State charged Leslie with one felony count of Domestic Violence Court Order Violation, pursuant to RCW 26.50.110. (CP 3) The statute provides, in relevant part, that a person is guilty of a felony violation of a court order if (1) there is a valid domestic violence court order in place prohibiting contact between the defendant and another person, (2) the defendant knows about that court order, (3) the defendant knowingly violates the provisions of the court order, and (4) the defendant has at least two prior convictions for violation of that or similar domestic violence court orders. RCW 26.50.110(1) and (5).

"Due process requires that the State provide sufficient

evidence to prove each element of its criminal case beyond a reasonable doubt.” City of Tacoma v. Luvone, 118 Wn.2d 826, 849, 827 P.2d 1374 (1992) (citing In re Winship, 397 U.S. 358, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970)); U.S. Const. amend. 14. Evidence is sufficient to support a conviction only if, viewed in the light most favorable to the prosecution, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). “A claim of insufficiency admits the truth of the State’s evidence and all inferences that reasonably can be drawn therefrom.” Salinas, 119 Wn.2d at 201.

Leslie stipulated to knowing of the existence of a court order prohibiting him from contacting Peterson, and stipulated that he had twice been previously convicted of violating a domestic violence court order. (CP 118, 120; 2RP 248) But the State still had the burden to prove that Leslie *knowingly* violated the order. See RCW 26.50.110. A person acts knowingly if “he or she is aware of a fact, facts, or circumstances or result described by a statute defining an offense.” RCW 9A.08.010(1)(b)(i).

The evidence at trial from the State’s two witnesses established that Peterson told Leslie that the protection order had

been dropped. (RP2 194, 204, 236-37) These were the facts and circumstances that Leslie was “aware of.” The State failed to present sufficient evidence to prove that Leslie knew the order was still in effect and therefore knew he was violating the order by having contact with Peterson.

The reviewing court should 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. Hardesty, 129 Wn.2d 303, 309, 915 P.2d 1080 (1996); State v. Hickman, 135 Wn.2d 97, 103, 954 P.2d 900 (1998). The evidence showed that Leslie knew a protection order had been previously entered and that he willfully had contact with Peterson. But no rational jury could have concluded that Leslie knew he was violating a valid and effective protection order when he had contact with Peterson. Leslie’s conviction must therefore be reversed.

**B. LESLIE’S JUDGMENT AND SENTENCE CONTAINS AN INTEREST ACCRUAL PROVISION THAT IS NO LONGER AUTHORIZED BY THE LEGAL FINANCIAL OBLIGATION STATUTES.**

Leslie was sentenced on August 17, 2018. The trial court found that Leslie did not have the financial resources to pay discretionary fees. (RP4 316; CP 193) So the trial court imposed

only the mandatory \$500.00 crime victim assessment fee. (4RP 316; CP 193) The Judgment and Sentence also includes a boilerplate provision stating that “[t]he financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full[.]” (CP 194)

Engrossed Second Substitute House Bill 1783, 65th Leg., Reg. Sess. (Wash. 2018) (House Bill 1783) amended the legal financial obligation (LFO) system in Washington State. As part of those amendments, House Bill 1783 eliminated interest accrual on the nonrestitution portions of LFOs. Laws of 2018, ch. 269, § 1; State v. Ramirez, 191 Wn.2d 732, 747, 426 P.3d 714 (2018). House Bill 1783’s amendments were effective as of June 7, 2018.

The portion of the amendments pertaining to interest accrual amended RCW 10.82.090. That statute now provides, in relevant part, that “[a]s of June 7, 2018, no interest shall accrue on nonrestitution legal financial obligations.” RCW 10.82.090(1). Leslie was sentenced after June 7, 2018, but the trial court failed to strike the improper interest accrual language. (CP 193) Leslie’s case should therefore be remanded to the trial court to amend the Judgment and Sentence so the interest accrual provision can be stricken.

**V. CONCLUSION**

The State failed to prove that Justin Leslie *knowingly* violated a protection order because the evidence did not establish that he knew it was still in effect, so Leslie's conviction should be reversed and dismissed. Alternatively, Leslie's case should be remanded so the trial court can amend the Judgment and Sentence.

DATED: December 31, 2018



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**CERTIFICATE OF MAILING**

I certify that on 12/31/2018, I caused to be placed in the mails of the United States, first class postage pre-paid, a copy of this document addressed to: Justin R. Leslie, DOC# 406870, Washington State Penitentiary, 1313 N 13th Ave., Walla Walla, WA 99362.



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**Transmittal Information**

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