

NO. 52320-5-II

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COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent,

v.

ERIC NICHOLAS MAYER, Appellant.

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Appeal from the Superior Court of Pierce County  
The Honorable Judge Frank E. Cuthbertson  
No. 18-1-00029-9

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BRIEF OF RESPONDENT

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## **I. IDENTITY OF RESPONDENT**

The State of Washington, represented by the Pierce County Prosecutor, is the Respondent herein.

## **II. RELIEF REQUESTED**

Respondent asserts no error occurred in the trial and conviction of the Appellant.

## **III. ISSUES**

1. The assailants arrived separately at a remote location and then wordlessly joined in beating the victim over the head repeatedly with a heavy Maglite flashlight in furtherance of taking all her property including the clothing from her person, \$100 cash in her purse, and several bags of personal items. They then jointly expressed that they were punishing her for stealing \$100 before departing with the property in two separate vehicles. Does this provide sufficient evidence of a plan to rob?
2. When they arrived at the remote trailhead, the Defendant displayed his flashlight before furtively passing it to Mr. Lewis. Mr. Lewis then cracked the victim on the back of her head with

the weapon before passing it to the Defendant who delivered another blow to the front of her head. Does this provide sufficient evidence of an agreement to use the flashlight in the robbery?

3. Assailants struck the victim's head with the heavy, metal, Maglite flashlight, opening up deep wounds in two places, concussing her, causing her to lose vision and consciousness, and producing permanent trauma to her brain. Left at a remote trailhead in the middle of the autumn night, the victim was fortunate to find assistance before she passed out. Was the weapon used in a manner that may readily produce death?
4. In the absence of any finding that the Defendant is indigent as defined in RCW 10.101.010(3)(a), (b), or (c), is the imposition of \$400 in costs authorized?

#### **IV. STATEMENT OF THE CASE**

The Defendant has been convicted by a jury of the second-degree assault, first-degree robbery, and conspiracy to commit first-degree robbery of Kindra McMillan – each with domestic violence and deadly weapon enhancements. CP 39-45, 153-68. Two of the counts

merged for sentencing. CP 157, 161.

On October 3, 2016, Defendant/Appellant Eric Mayer and his girlfriend Kindra McMillan were hanging out. RP (6/27/2018) at 15-16, 47, 71. They had known each other a couple months and dated “for about two days.” *Id.* at 14-15, 40-41, 72, 102. When they took a ride in Christian Blair’s truck, Ms. McMillan, who was couch surfing, brought all her belongings (three or four bags of clothes, shoes, paperwork, birth certificates for herself and her daughter, her purse with \$100 in cash, and various personal items). *Id.* at 17, 30, 84, 123, 127, 134; RP (6/28/2018) at 145-46. Before falling asleep in the backseat, Ms. McMillan asked if she could charge her almost dead cell phone. RP (6/27/2018) at 18, 45-46, 48-49. The Defendant told her that the charger was not available to her. *Id.* at 48.

When she woke, her phone was missing. *Id.* at 30 (ll. 4-6). They had stopped at the remote northeast trailhead of a county bike trail where she was introduced to the Defendant’s friends Robert Lewis and Alexis Kilger who had arrived in their own vehicle. *Id.* at 18, 53, 67, 124, 136, 142; RP (6/28/2018) at 34-35. It was getting dark and cold, and they huddled behind a sign to avoid the wind while sharing a cigarette. RP (6/27/2018) at 16, 18-19. The Defendant was

playing with a large Maglite flashlight. *Id.* at 20-21, 74; RP (07/02/18) at 34. When Ms. McMillan turned to flick the cigarette, Mr. Lewis hit her on the back of the head from behind with the flashlight, knocking her to her knees and blurring her vision. RP (6/27/2018) at 22-23, 50-52, 57, 97, 124-25, 142, 144. Ms. McMillan reached out to the Defendant, asking “why?,” but he hit her in the face with his flashlight, knocking her back. *Id.* at 23, 34, 142. Ms. Kilger kicked the victim while she was on the ground. *Id.* at 58, 125. When the victim tried to stand, Ms. Kilger tased her on the neck. *Id.* at 23-24, 62, 125.

No one in the group interfered to prevent the attack or offered Ms. McMillan any assistance. *Id.* at 28. She did not try to get up, afraid someone in the group would attack her again. *Id.* at 24, 29, 99 (“I didn’t know if it was going to keep going”). They then took the shoes and sweater she was wearing. *Id.* at 24-25, 125. Ms. Kilger told Ms. McMillan not to steal from her again. *Id.* at 98. And the Defendant said, “This is what you get for stealing from my family.” *Id.* at 26, 28, 98. The attackers then drove off in the two vehicles with all of the victim’s belongings, which were never returned to her. *Id.* at 25, 29, 31, 37, 65, 125-27.

Ms. McMillan was slowly losing consciousness. *Id.* at 29, 32.

She forced herself to her feet and then, barefoot and bleeding, sought medical assistance at three different houses. *Id.* at 29-32. The Paynes opened their door to the bloody victim, administered aid, called police, and photographed her injuries. RP (6/28/2018) at 30-32, 39-43.

Ms. McMillan went in and out of consciousness in the ambulance. RP (6/27/2018) at 61. Her neck was stabilized and an X-ray and CT scan were administered. *Id.* at 35; RP (6/28/2018) at 73-74. The doctor was concerned there may have been skull fractures, brain bleeding, brain swelling, concussion, or other brain trauma. RP (6/28/2018) at 74-75. He diagnosed a concussion. *Id.* at 76-77. The doctor performed a neurological exam to see if Ms. McMillan had lost the ability to move her face, eyes, and extremities and to check her coordination. *Id.* at 75. It took four staples to close the laceration on the back of her head and five stitches to close the gash on her face. RP (6/27/2018) at 35. RP (6/28/2018) at 77-78.

As a result of the attack, Ms. McMillan suffers migraines and short-term memory loss that affects her ability to remember customers' orders at her waitressing job. RP (6/27/2018) at 35-36.

Ms. McMillan would learn later that her assailants blamed her

for a \$100 theft from a third party's wallet. *Id.* at 28, 92, 100 (the defendant said this third party “was like a sister to him”). She would also learn that the Defendant was engaged to be married at the time that she had been led to believe he was romantically interested in her. *Id.* at 87; RP 6/28/18 at 99-100.

At sentencing, the court made inquiries into the Defendant's ability to pay legal financial obligations (LFO's). RP (8/20/2018) at 35. The Defendant advised that he owned three vehicles, two of which were operational. *Id.* at 35-36. He was being supported by his mother. RP (6/28/2018) at 95. And he had been able to post a \$15,000 pretrial bond. CP 176-77.

The court found the Defendant had “a reduced ability to pay.” CP 157. The court imposed \$900 in LFO's (\$500 crime victim assessment, \$200 attorney fees, and \$200 criminal filing fee), which it ordered the Defendant to pay at no less than \$30/mo beginning 90 days after release from incarceration. CP 158-59.

## **V. ARGUMENT**

### **A. THERE IS SUFFICIENT EVIDENCE FOR THE JURY'S VERDICT.**

The Defendant makes various challenges to the sufficiency of

the evidence. The standard of review guards the jury's verdict.

"A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom." *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). "[A]ll reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant." *Id.* A reviewing court defers to the trier of fact on issues of conflicting testimony, witness credibility, and persuasiveness of the evidence. *State v. Thomas*, 150 Wn.2d 821, 874–75, 83 P.3d 970 (2004). After viewing the evidence in the light most favorable to the State, interpreting all inferences in favor of the State and most strongly against the Defendant, the Court must determine whether any rational trier of fact could have found the essential elements beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); *State v. Salinas*, 119 Wn.2d at 201.

1. There is sufficient evidence to show that the Defendant conspired with others in the robbery.

The Defendant challenges the sufficiency of the evidence to show that he conspired with others to rob Ms. McMillan. A conspiracy is shown by an agreement with others plus a substantial step. RCW

9A.28.040(1). In this case, there was more than a substantial step; there was a completed robbery. RCW 9A.56.190; RCW 9A.56.200(1)(a) (the taking of personal property from another by force or threatened force while armed with a deadly weapon or inflicting bodily injury). The Defendant's challenge is to the evidence of agreement. He acknowledges agreement may be demonstrated by concerted action designed to accomplish a common purpose. BOA at 8 (citing *State v. Barnes*, 85 Wn. App. 638, 664, 932 P.2d 669 (1997)).

The Defendant concedes that there is evidence to show a plan to assault Ms. McMillan. Opening Brief of Appellant (BOA) at 8-9. He challenges whether there is sufficient evidence of an agreement to take Ms. McMillan's property. *Id.* In other words, the Defendant challenges whether the agreement was to rob or just to assault. This argument was made prior to sentencing.

What if there was just an agreement to commit an assault? [...] It could have been an agreement to commit an assault to teach a lesson or whatever else, and then somebody takes advantage of that by taking back property, I guess.

RP (8/20/2018) at 9.

The trial court was not persuaded.

... I have to view the evidence in a light most favorable to the State, the nonmoving party. I have to honor the jury's verdict as finders of fact. And unless I can find that there is no substantial evidence that supports the jury's verdict, I have to deny your motion.

I think there is evidence that would support the jury's verdict. As I reiterated earlier, there was a meeting in a remote location at a time and place that was -- I either have to believe it was coincidental, which I don't believe, or it was planned, which I do believe.

And whether there was simply an agreement to assault or an agreement to rob, it is clear that there were statements related to robbery, "This will teach you to steal from my family."

There was sufficient evidence, in my view, to provide a basis for the jury's verdict. I do not believe this is a case where this is such an outlier that the Court should disturb the trier of facts conclusions. I'm going to deny your motion.

*Id.* at 12-13.

The Defendant's argument disregards the standard of review. The question is not what was possible or what could have happened. The question is, interpreting every inference most strongly for the state and against the defendant, is there sufficient evidence from which a rational trier of fact could have found proof beyond a reasonable doubt.

The Defendant's argument is illogical. He concedes there was sufficient evidence of conspiracy to assault. The conspiracy, as the Defendant acknowledges, is proven by the fact that the parties met in

a remote location late at night and exhibited no surprise or resistance to the course of events. BOA at 9 (referencing the prosecutor's argument at RP (8/20/2018) at 10)). By conceding sufficient evidence of conspiracy to assault, he necessarily concedes sufficient evidence of conspiracy to rob. The course of events was a single, continuing course of conduct to teach the victim a lesson about her alleged stealing.

The Defendant had a dear friend Ashley whom he considered to be a sister. RP (6/27/18) at 28, 100. She believed the victim had stolen \$100 from her, and she was furious. *Id.* at 28, 92 (threatening to hold a gun on Ms. McMillan). The Defendant, who was recently engaged and living with his fiancé (RP 6/28/18 at 99-101, 109), feigned a romantic interest in the victim in order to lure her to a remote location. The victim's cell phone disappeared shortly before they arrived. She could not call for help or inform anyone of her location. Other friends suddenly appeared. The Defendant took out a heavy flashlight, displaying it prominently. The group stood outside in the cold wind as it grew dark. They shared a cigarette as if to steady themselves. Then they set upon her in concert, beating her, and removing her clothing. After explaining that this course of events was

her comeuppance for stealing from their friend, they drove off with all her property. Among the property that was taken was the victim's purse with exactly \$100 inside: the same amount of money she was accused of taking from Ashley. RP (6/27/18) at 84, 123, 127.

As trial counsel acknowledged, the most persuasive evidence of conspiracy "is the acting in concert" for the benefit of "the family." RP (8/20/2018) at 7. The course of events was an assault *to facilitate* or *further* a robbery. CP 82-83 (Defendant arguing the assault "facilitate[d]" the robbery, that the assault was committed "in furtherance of" the robbery (citing *State v. Freeman*, 153 Wn.2d 765, 108 P.3d 753 (2005))).

More than one assailant expressed that the crimes intended to teach the victim a lesson *about stealing*. More than one person then took items from the victim's person. Ms. Kilger removed a sweater; and the Defendant removed her shoes. RP (6/27/2018) at 24-25. They drove off leaving her apparently unconscious with almost all of her worldly possessions in tow. Mr. Blair drove his truck away. *Id.* at 17 ("That was Christian's truck."). He would have known that her property was still in his truck, as it was a significant amount of property. There were 3-4 bags of property plus her purse and cell

phone. But he did not stop to remove it before leaving. And although she approached the family about the items in the car (*Id.* at 31, 37), no one ever returned her property. The clear inference is that the taking of property was not inadvertent or opportunistic. This was a theft for a theft.

There is sufficient evidence of a conspiracy to rob.

2. There is sufficient evidence to show the Defendant was armed with the flashlight during the conspiracy.

The Defendant challenges the evidence that he was armed with the flashlight during the conspiracy. BOA at 10. Where the testimony was that the Defendant struck the victim with the flashlight and then took her property, he does not challenge the nexus between the flashlight and the completed robbery. Rather he challenges whether the evidence shows he was armed “when and where he agreed to a plan to rob McMillan.” BOA at 12.

As explained above, a conspiracy is a continuing course of conduct. *State v. Jensen*, 164 Wn.2d 943, 956-57, 195 P.3d 512 (2008). “[C]onspiracy is not just an agreement—it’s an agreement to commit a crime plus ‘a substantial step in pursuance of such agreement.’” *State v. Houston-Sconiers*, 188 Wn.2d 1, 16, 391 P.3d

409, 417 (2017). The agreement can continue and evolve throughout its course.

In *Houston-Sconiers*, the court required proof that the defendant was within proximity of the weapon at the relevant time. *Id.* at 17 (citing *State v. Gurske*, 155 Wn.2d 134, 141-42, 118 P.3d 333 (2005)). The court was satisfied this nexus had been established where the defendants picked up the gun, left together, and then committed robberies. *Id.*

In the instant case, the Defendant was charged with having conspired on the same day he committed the robbery. CP 4-6. As far as Ms. McMillan knew, the plan for the evening was just to drive around and hang out with the Defendant and Mr. Blair. RP (6/27/18) at 48. She had been up for two days cleaning out a neighbor's garage after using methamphetamine, and she was "starting to get tired and crash." *Id.* at 46-48. They stopped briefly at a Mr. Lewis' house before continuing on. *Id.* at 77-78. The three returned to the truck where Ms. McMillan fell asleep. When she woke, the plan had changed.

The inference is that the group had met, either when they stopped briefly at Mr. Lewis' house or while she was asleep, and

come up with this new plan, which they set upon very quickly. *Id.* at 50 (the group was at the trailhead for no more than ten minutes). They chose a remote location for the robbery where the only light came from houses down the road and from the flashlight. *Id.* at 59. The flashlight did not just happen to be there fortuitously. The Defendant carried it in his pocket. *Id.* at 20. Because there is no evidence that *after* a conspiracy was hatched he stopped somewhere to collect the flashlight, he must have had it with him during the agreement which took place either at Mr. Lewis' house or while Ms. McMillan was sleeping. When he exited the truck, he took it out and prominently displayed it as everyone was "kind of chuckling." *Id.* at 20, 53. Ms. McMillan thought the Defendant put the flashlight away. *Id.* at 21. But Mr. Lewis suddenly hit her with it from behind. *Id.* at 22-23, 50-52 ("exactly the same"). The Defendant then hit her in the face with the flashlight. *Id.* at 23.

To all reasonable appearances, the flashlight was a key part of the agreement or understanding between the parties. No one appeared surprised when Mr. Lewis used it. No one withdrew from the attack. On the contrary, they took turns using the flashlight. This demonstrated both coordination and "tacit agreement" that the crime

should continue in this manner. *State v. Israel*, 113 Wn. App. 243, 286-87, 54 P.3d 1218, 1243 (2002) (the court was satisfied with the nexus where the defendant knew a co-conspirator used weapons in robberies and did not withdraw from the conspiracy). It is evidence of concerted action showing the parties “working understandingly, with a single design for the accomplishment of a common purpose” to use the flashlight to accomplish the robbery. *State v. Embry*, 171 Wn. App. 714, 743, 287 P.3d 648, 663 (2012).

Accepting all inferences that most favor the State’s case and interpreting all inferences most strongly against the Defendant, the jury reasonably could have found that Ms. McMillan’s cell phone disappeared while she was asleep because the assailants took it to prevent her from calling for help or informing others of her location. After the attack, without any further consultation amongst themselves, the assailants abandoned Ms. McMillan, taking her property. They took physical evidence which would connect them to the offense – Ms. Kilger’s sweater and the Defendant’s mother’s shoes. The jury could reasonably infer that the assailants planned to use the flashlight in a way that the victim would not survive her injuries and thus would have no further need of her property and would not be able to identify

them to police.

There is sufficient evidence of nexus between the flashlight and the conspiracy.

3. There is sufficient evidence to show that the flashlight was used in a way that may readily result in death.

The Defendant challenges the sufficiency of the evidence for the deadly weapon enhancement, arguing that there was no verbal expression of an intent to kill. BOA at 13. While this is not exactly true,<sup>1</sup> it is also not the State's burden to prove. The State did not charge the Defendant with attempted murder. RCW 9A.32.011(1)(a); RCW 9A.32.050(1)(a) (includes an element of intent to cause death). The State is only required to show that the flashlight was used in such a manner that was "likely to produce or may easily and readily produce death." CP 80; RCW 9.94A.825. There is more than sufficient evidence to show that the flashlight was used in a manner that could have easily resulted in Ms. McMillan's death.

The Defendant notes that evidence of intent can be a relevant factor in interpreting an *attempt* or *threat* to use the weapon under

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<sup>1</sup> The assailants had been acting on behalf of their friend Ashley. And she expressed such an intent after Ms. McMillan survived. RP (6/27/18) at 92 ("You're lucky I don't have a gun pointed at your head right now.").

RCW 9A.04.110(6). BOA at 14, (citing *State v. Shilling*, 77 Wn. App. 166, 171-72, 889 P.2d 948 (1995); *State v. Barragan*, 102 Wn. App. 754, 9 P.3d 942 (2000)). However, the evidence in our case was of actual use.

The Defendant claims he should receive credit for only hitting her twice. BOA at 14. He did. He was not charged with attempted murder. He did, however, use the weapon in deadly fashion. As the victim described it, the only reason the group stopped striking her is because she lay still. RP (6/27/2018) at 29 (“I didn’t know if I tried to get up if they were going to try to do more or not, so I laid there until they left”), 62 (she stopped trying to get back up when she learned that she would only be assaulted again).

Factors relevant to the actual facts of our case would be the area of the victim’s body targeted (the skull), the degree of force used (sufficient to cause brain injury), and the injuries actually inflicted (splitting the scalp deeply and resulting in permanent brain damage resulting in migraines and memory loss).

Ms. McMillan was a 20-year-old female suffering from Crohn’s disease, drug addiction, and exhaustion. RP (6/27/18) at 12. She was set upon by three assailants. The two who wielded the flashlight

were young men. RP (6/27/18) at 129; RP (6/28/18) at 141. They used a large, black, metal flashlight, the type that police officers use that can focus or diffuse its beam. RP (6/27/18) at 20-21, 51-52. The prosecutor explained that the length the victim demonstrated with her hands was for a large Maglite. RP (07/02/18) at 34. A large Maglite holds 4 D batteries, somewhat smaller and heavier than a bat. They did not hit her about the extremities, but directly on her skull. The flashlight split her scalp and face deeply with each blow. She was incapable of defending herself due to surprise. The blows were capable of causing a concussion, brain bleeding, brain swelling, or other neurological damage or brain trauma. RP (6/28/2018) at 74-77.

They took her shoes, leaving her barefoot and bleeding in a field of large gravel by a trailhead on an October night. RP (6/27/18) at 32, 62, 64. Ms. McMillan was blacking out, losing her vision off and on, and beginning to lose consciousness. Fortunately, Ms. McMillan was able to reach the Paynes before she passed out. They were able to get her medical care immediately. Under different circumstances, if she had lain in the parking lot all night, her outcome might have been quite different.

There is sufficient evidence for the deadly weapons

enhancement.

**B. THE COURT DID NOT ABUSE ITS DISCRETION IN IMPOSING \$400 IN COSTS.**

The Defendant challenges the imposition of the \$200 criminal filing fee as being unauthorized<sup>2</sup> by HB 1783. Under the amended provision, a criminal defendant “shall be liable” for the criminal filing fee unless he is found indigent as defined in RCW 10.101.010(3) (a) through (c). RCW 36.18.020(2)(h). If the court has not found the Defendant indigent, it must impose the fee.

The Defendant claims he was found indigent at CP 148-49, 158. BOA at 17. The cited record does not support the allegation.

CP 148-49 is the Order of Indigency for purposes of appeal. It does not include any findings. It is most likely that the order was entered with a finding under subsection (d). RCW 10.101.010(3)(d) (unable to pay the cost of counsel). If this is the basis for the order, it is not relevant to the imposition of the criminal filing fee.

CP 158 is page 5 of the judgment and sentence. It does not show a finding of indigency.

Absent a finding under subsection (a), (b), or (c), the criminal

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<sup>2</sup> The Defendant had not challenged the court’s finding of a reduced ability to pay as being unsupported by sufficient individualized inquiry, thereby waiving the challenge.

filing fee is mandatory. There is no error in its imposition.

The Defendant challenges the imposition of \$200 in attorney fees as being unauthorized under Laws of 2018, ch. 269, § 6(3). BOA at 16. Under the amended law, the court shall not impose costs upon a defendant found indigent under RCW 10.101.010(3) (a) through (c). RCW 10.01.160(3). Attorney fees are a cost. RCW 10.01.160(2). But the Defendant was not found indigent under (a), (b), or (c).

The Defendant argues that the court found he “should not pay any nonmandatory legal financial obligations.” BOA at 15 (citing CP 158). There is no such finding on CP 158. However, the court checked a box on CP 157 before indicating that the Defendant has a “reduced ability to pay.”

#### 2.5 ABILITY TO PAY FINANCIAL OBLIGATIONS.

The court has considered the total amount owing, the defendant’s past, present and future ability to pay legal financial obligations, including the defendant’s financial resources and the likelihood that the defendant’s status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753.

The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753):

The following extraordinary circumstances exist that make payment of nonmandatory legal financial obligations appropriate:

Defendant has a reduced ability to pay

CP 157. The printed form language is inconsistent with the handwritten sentence. The Defendant asks this Court to find that the Honorable Judge Rumbaugh meant the Defendant had no ability to pay, rather than what he actually wrote, that the Defendant has a reduced ability to pay.

Because the court imposed a reduced attorney fee of only \$200, the better interpretation is that the judge intended what he wrote. And the record supports a finding that the Defendant has the ability to pay \$400 in costs at \$30/mo. He is a young, healthy man. Because he is supported by his mother, he has no expenses. And he has sufficient discretionary income to maintain two operational cars. He was able to come up with sufficient cash up front (usually 10%) to be released on a \$15,000 bond.

The Defendant challenges "a boilerplate provision" in the judgment form (BOA at 16) which reads:

**INTEREST** The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090.

CP 159. The Defendant notes that this is outdated. But the statutory reference is not. That statute states that "As of June 7, 2018, no

interest shall accrue on nonrestitution legal financial obligations.”

RCW 10.82.090(1). The County’s form has been updated to advise of the current law:

**INTEREST** The restitution obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. *No interest shall accrue on non-restitution obligations imposed in this judgment.* RCW 10.82.090.

Regardless of the use of the older form, the Defendant is not at any risk of accruing interest. The calculation of all interest in Washington state courts is through JIS. This software has been modified to reflect the current law. No non-restitution interest can accrue in JIS in any case in Washington.

As the Defendant notes, this language is “boilerplate” or form language. Its purpose is not to impose an obligation so much as to advise the defendant of the law. In this case, the advisement had not yet been updated to reflect the amended law, but the Defendant demonstrates he is aware of the change.

It is not a good use of public resources to remand this (and any other old form J&S) for correction where the Defendant understands the new law and where there is no risk that non-restitution interest will

accrue.

There is no error in the court's order of legal financial obligations.

**VI. CONCLUSION**

Based upon the forgoing, the State respectfully requests this Court affirm the Appellant's conviction.

DATED: June 21, 2019.

MARY E. ROBNETT  
Pierce County Prosecuting Attorney



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Teresa Chen  
Deputy Prosecuting Attorney  
WSB # 31762

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.

6-21-19 Teresa Chen  
Date Signature

**PIERCE COUNTY PROSECUTING ATTORNEY**

**June 21, 2019 - 3:49 PM**

**Transmittal Information**

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