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Court of Appeals
Division II
State of Washington
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NO. 53024-4-II

IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

ROBERT SHAW,

Appellant.

ON APPEAL FROM THE
SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR GRAYS HARBOR COUNTY

The Honorable Stephen Brown, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The State did not prove that appellant Robert Shaw committed second degree assault beyond a reasonable doubt.

2. To the extent it is a finding of fact and if it can be read to support a conclusion that Mr. Shaw intended to assault Mr. Gibson by attempting to inflict bodily injury, unlawfully touching him with criminal intent; or by specifically causing fear and apprehension of bodily harm, the trial court erred in entering Finding of Fact (FOF) 4. Clerk's Papers (CP) 98.¹

3. To the extent it is a finding of fact and if it can be read to support a conclusion that Mr. Shaw intended to assault Mr. Gibson by attempting to inflict bodily injury, unlawfully touching him with criminal intent; or by specifically causing fear and apprehension of bodily harm, the trial court erred in entering Finding of Fact (FOF) 5 that he "shifted into reverse and accelerated with the intention of ramming Mr. Gibson's vehicle." CP 98-99.

4. The trial court erred in concluding that "[t]he Defendant intentionally assaulted John Gibson with his motor vehicle." (Conclusion of Law (CL) 4); CP 100.

5. The trial court erred in concluding that Mr. Shaw is guilty of assault in the second degree. (CL 7); CP 100.

¹A copy of the Findings of Fact and Conclusions of Law on is attached hereto as an appendix and can also be found at CP 97-100.

6. The sentencing court erred by imposing legal financial obligations (LFO) of a Department of Corrections (DOC) community supervision fee in the judgment and sentence following the Supreme Court's decision in *State v. Ramirez* and after enactment of *House Bill 1783*. CP 105.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. To convict a defendant of second degree assault with a deadly weapon as charged, the State was required to prove beyond a reasonable doubt that Mr. Shaw attempted to inflict bodily injury, unlawfully touched him with criminal intent, or specifically caused fear and apprehension of bodily harm in Mr. Gibson when he hit Mr. Gibson's car with the truck. Did the State fail to prove the required elements required for second degree assault? Assignments of Error 1-5.

2. Do recent statutory amendments affecting discretionary LFOs require remand to strike the imposition of a DOC community supervision fee? Assignment of Error 6.

C. STATEMENT OF THE CASE

Attorney John Gibson was driving his 2014 Subaru Crosstrek to his job as a public defender in the Quinault Tribal Court in Taholah, Washington on the morning of March 20, 2018. Report of Proceedings² (RP) at 41.

²The record of proceedings consists of the following transcribed hearings: April 23, 2018; June 4, 2018 (omnibus hearing), July 16, 2018, October 1,

While travelling westbound in the passing lane on U.S. Route 12 in Grays Harbor County, a Dodge Dakota pickup truck driven by Robert Shaw approached the rear of Mr. Gibson's Subaru and closely followed his vehicle. RP at 42. Mr. Gibson stated that it was a "big frigging truck" and it was "right on my bumper, and it scared the hell out of me." RP at 42-43. Mr. Gibson stated that he slowed down and wanted to get out of the way of the truck, but was not able to move into the slow lane. RP at 44-45. He stated that he tapped his brakes, illuminating his brake lights. RP at 57. Mr. Shaw's truck made contact with the back of Mr. Gibson's car three times, and on the third time the two vehicles became briefly interlocked and then separated. RP at 45. Mr. Gibson stated during the third hit, "my car started going a little sideways." RP at 45, 46.

Mr. Gibson stated that when the truck was behind him, he "may have put my brakes on," and that he intended to get out of the lane, and the truck then "started hitting my car." RP at 57. Mr. Gibson said that the third hit to his car was harder than the first hit, and that after that hit his car "started going to the side" and a trunk-mounted bicycle rack was knocked from the back of the Subaru during the contact. RP at 45.

Mr. Gibson pulled off onto the left shoulder and Mr. Shaw initially drove his truck onto the right shoulder, and he then crossed the highway to the

left shoulder and stopped in front of Mr. Gibson's car. RP at 47.

Motorist Danielle Hooper testified that the pickup truck "rear-ended" the Subaru and that she "saw pieces of the SUV kind of fly off into the ground." RP at 28. She said that before the impact, the truck was "inches away" from the Subaru. RP at 30. She stated that after the impact, the SUV pulled off to the side almost immediately and that the truck "kind of swerved." RP at 31.

Mr. Gibson pulled over to the left side shoulder and stated that he was in shock after being hit from behind. RP at 46. The truck pulled over to the right shoulder, then drove across the two lane highway, stopped, pulled in front of him and Mr. Gibson thought that he would be able to get the license number. RP at 47. He stated that the pickup truck driver then reversed and slammed into the front of his Subaru. RP at 48. He stated that it happened quickly, and he did not remember seeing backup lights and did not remember hearing squealing tires, stating that he was "basically in shock." RP at 49. After being hit from the front, the airbags in his car deployed, and the impact "hurt way more than the other ones did." RP at 49.

Motorist Kristopher Kay saw the Subaru on the left side median of the highway as he passed, and "saw the pickup truck pull over in front of the Subaru and put his vehicle into reverse and struck the other vehicle." RP at 35. He stated that he saw driver of the Subaru as he drove past and that he

“looked like he was dazed.” RP at 36, 37. He said that the pickup truck driver got out of his vehicle and was “walking towards the Subaru very aggressively[,]” and that he was concerned for the safety of the driver of the Subaru. RP at 37, 38. He stated that when the truck backed up it was “[a]ccelerating” and “did not slow down.” RP at 38.

Mr. Gibson stated that the driver of the truck got out and testified that Mr. Shaw said that Mr. Gibson was going too slow in the fast lane. RP at 50. He said that Ms. Shaw also got out of the truck and that she was “angry.” RP at 50. He stated that “it was like they were in complete denial.” RP at 50.

Mr. Gibson said that he felt pain in his neck, shoulders and back, and that he is still receiving treatment following the incident. RP at 52. He stated that he was a lifelong golfer and that he is unable to swing a golf club because of injury to his left shoulder. RP at 52, 53.

Mr. Gibson, who had a court calendar in Quinault Tribal Court that morning, was taken to Montesano by police where he rented a car to get to court, and then went to Grays Harbor Community Hospital after completing his calendar. RP at 54. The Subaru, which was valued at was approximately \$21,000, was totaled and the balance of \$16,000 was paid by insurance and he received a check for \$5000. RP at 55.

Washington State Patrol Trooper Patrick Mariakis was dispatched to the scene of the incident, and observed that the Dodge Dakota and the Subaru were still “attached,” and that the front of the Subaru was pushed underneath

the back of the truck. RP at 63. He said that he knew the Subaru was going to be “a total” and that there was antifreeze leaking onto the ground, the radiator was pushed in, the frame was exposed and bent, and there was a hole in the hood from the truck’s trailer hitch. RP at 64.

Mr. Shaw told Trooper Mariakis that he had a dashcam in his pocket that had recorded the incident. RP at 67-68.

Trooper Mariakis gave Mr. Gibson a ride to a rental car company in Montesano so that he could proceed to work, and then went to the hospital where Mr. Shaw and his wife Diana Shaw had been taken. RP at 68-69. At the hospital the Trooper saw the dashcam “on the top of the purse” owned by Ms. Shaw and seized the dashcam “after a short struggle.” RP at 70. Police later obtained a search warrant to view the contents of the dashcam. RP at 71. The dashcam video of the incident was admitted as Exhibit 1 and played to the court. RP at 74.

Mr. Shaw testified that prior to hitting Mr. Gibson’s car, traffic was slowing down and Mr. Gibson’s vehicle was not getting out of the passing lane and that Mr. Gibson “hit his brakes.” RP at 85. He said that he did not hit the car intentionally, and Mr. Gibson’s car had slowed down to 45 miles per hour in the passing lane and that he “was not making any effort to get out of the passing lane.” RP at 85.

Mr. Shaw was charged in Grays Harbor County Superior Court with second degree assault, contrary to RCW 9A.36.021(1)(c), and first degree

malicious mischief, contrary to RCW 9A.48.070(1)(a), on March 22, 2018. CP 1-3. In Count I, the State alleged that on or about March 20, 2018, Mr. Shaw initially assaulted John Gibson “with a deadly weapon, to wit: an automobile.” CP 1-2. The State alleged in Count 2 that the offense of malicious mischief was “based on a series of acts connected together with Count 1,” and that he knowingly and maliciously caused physical damage in excess of \$5000 to a 2014 Subaru Crosstrek owned by Mr. Gibson. CP 1-2.

Mr. Shaw waived his right to a jury trial and proceeded to bench trial on October 18, 2018, before the Honorable Stephen Brown. RP (10/18/18) at 17-150; CP 80.

After hearing testimony from five witnesses, the trial court found Mr. Shaw guilty of the offenses as charged. RP at 139, 146; CP 97-100.

The court found that the counts encompassed the same criminal conduct. CP 102. The court imposed a standard range sentence of 4 months for Count 1, and 90 days for Count 2, to be served concurrently, followed by 12 months of community custody. RP (12/3/18) at 24; CP 103, 104.

The judgment and sentence provides that while on community custody, the Mr. Shaw is required to “pay supervision fees as determined by DOC[.]” CP 105.

The court found that that Mr. Shaw is indigent and waived legal financial obligations, but imposed a \$500.00 crime victim assessment and \$100.00 felony DNA fee. RP (12/3/18) at 25; CP 105-06.

Mr. Shaw filed timely notice of appeal on December 3, 2018. CP 123.

D. ARGUMENT

1. THE STATE DID NOT PROVE SECOND DEGREE ASSAULT AS CHARGED IN BECAUSE THE STATE DID NOT PROVE MR. SHAW SPECIFICALLY INTENDED TO ASSAULT MR. GIBSON

a. The State bears the burden to prove every element of the offense beyond a reasonable doubt

The State did not establish that Mr. Shaw intended to commit assault and therefore was insufficient to convict to convict him of second degree assault with a deadly weapon.

In every criminal prosecution, the State must prove all elements of a charged crime beyond a reasonable doubt. U.S. Const, amend. 14; Const, art. 1, § 3; *In re Winship*, 397 U.S. 358, 25 L. Ed. 2d 368, 90 S. Ct. 1068 (1970); *State v. Crediford*, 130 Wn.2d 747, 759, 927 P.2d 1129 (1996). Challenged findings are reviewed for substantial evidence, meaning evidence sufficient to persuade a fair-minded person of the truth of the asserted premise. *State v. Homan*, 181 Wn.2d 102, 105-06, 330 P.3d 182 (2014). 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).

b. To prove second degree assault, the State had to prove that Mr. Shaw had the specific intent causing bodily injury or of causing fear and apprehension of bodily injury through the use of a deadly weapon

To convict Mr. Shaw of the second degree assault, the State had to establish beyond a reasonable doubt that he, under circumstances not amounting to assault in the first degree, assaulted Mr. Gibson with a deadly weapon.³ RCW 9A.36.021(1)(c). Under RCW 9A.36.021(1)(c) a person commits second degree assault by assaulting another with a deadly weapon. The term ‘assault’ is not statutorily defined, so courts apply the common law definition to the crime. *State v. Aumick*, 126 Wash.2d 422, 426 n. 12, 894 P.2d 1325 (1995). Based on the common law, there are three definitions of “assault”: “(1) an unlawful touching (actual battery); (2) an attempt with unlawful force to inflict bodily injury upon another, tending but failing to accomplish it (attempted battery); and (3) putting another in apprehension of harm.” *State v. Abuan*, 161 Wn. App. 135, 154, 257 P.3d 1 (2011) (quoting *State v. Elmi*, 166 Wn.2d 209, 215, 207 P.3d 439 (2009)). The State elected

³ Mr. Shaw concedes that in this case the truck qualifies as a deadly weapon as defined in RCW 9A.04.110(6).

to rely on the third definition of assault during closing argument, arguing that for assault:

we use the common law definition, there are three, there is putting a person in apprehension and fear of bodily injury, and whether or not any bodily injury was inflicted. And I would agree to the Court that when the defendant put his vehicle in reverse and hit the gas, that brake light—or the reverse come one, and the vehicle comes towards Mr. Gibson, that that is assault, because it created in Mr. Gibson an apprehension of fear[.]

RP at 105-06.

The court found that Mr. Shaw committed assault under all three common law definitions of “assault.” RP at 142.

As charged in the information, the State had to prove that Mr. Shaw formed the specific intent to either: (1) cause Mr. Gibson bodily injury; or (2) create in him an apprehension and fear of bodily injury. (CP 1-3) See *State v. Wilson*, 125 Wn.2d 212, 218, 883 P.2d 320 (1994); *State v. Byrd*, 125 Wn.2d 707, 713, 887 P.2d 396 (1995).

Specific intent is an essential element of all forms of assault. *State v. Eastmond*, 129 Wn.2d 497, 500, 504, 919 P.2d 577 (1996). “Specific intent” means “intent to produce a specific result, as opposed to intent to do the physical act that produces the result.” *Elmi*, 166 Wn.2d at 215. To commit assault, a person must have intended to cause bodily harm or to create an

apprehension of bodily harm. *State v. Williams*, 159 Wn. App. 298, 307, 244 P.3d 1018 (2011) (citing *Byrd*, 125 Wn.2d at 713). Specific intent cannot be presumed, but may be inferred as a logical probability from the surrounding facts and circumstances. *State v. Pierre*, 108 Wn. App. 378, 386, 31 P.3d 1207 (2001). The trier of fact ascertains “intent” by determining whether a person acts with the “objective or purpose to accomplish a result which constitutes a crime.” RCW 9A.08.010(1)(a); *Wilson*, 125 Wn.2d at 217.

The facts here and the inferences drawn by the court from those facts do not support the court's conclusions that Mr. Shaw intentionally assaulted Mr. Gibson with the truck. As noted above, assault by attempt to cause fear and apprehension of injury requires proof that the defendant had specific intent to create reasonable fear and apprehension of injury in the charged victim. *State v. Eastmond*, 129 Wn.2d 497, 500, 919 P.2d 577 (1996); *Abuan*, 161 Wn. App. at 158; *Byrd*, 125 Wn.2d at 713.

c. The evidence did not prove that Mr. Shaw had the specific intent to cause injury or that he intended to cause fear and apprehension of bodily injury

The State bore the burden of proving that Mr. Shaw had the specific intent to create reasonable fear and apprehension of bodily injury in Mr. Gibson.

In *State v. Baker*, the defendant accelerated directly toward one police

officer's occupied patrol car and toward another officer as he sat on his motorcycle. 136 Wn. App. 878, 881-82, 151 P.3d 237 (2007). Baker also “flipped off” one officer, laughed, and then sped off. 136 Wn. App. at 882. Both the trial court and the appellate court found these circumstances sufficient to show Baker's intent to assault the two officers. 136 Wn. App. at 882-83.

The evidence here shows no similar specific intent. Concerning the direct evidence of Mr. Shaw’s intent, Mr. Shaw explained that his foot was “underneath the brake pedal” and the he could not hit the brake. RP at 89. He testified that he did not purposefully ram the truck into the back of the Subaru while travelling on the highway, that he was “blown away “ that “someone in the passing lane was slowing everything down to a stop[,]” and that he did not purposely reverse his truck into the front of the parked Subaru. RP at 86, 87, 89.

The court found that he committed second degree assault under all three definitions. RP at 142. This finding, however, is speculative based on the evidence presented. Driving the truck into the rear of the Subaru and driving the truck backward into the car does not inevitably mean that the driver intended to cause injury or cause fear and apprehension of great bodily harm in the driver of the car. For instance, the facts presented apply equally to reckless

driving. RCW 46.61.500.⁴ Moreover, it is equally plausible that Mr. Shaw's intention by backing his truck into the Subaru was not to assault Mr. Gibson or create apprehension of bodily harm, but to get away from the scene and to avoid arrest by hitting the car to deploy the airbag to prevent Mr. Gibson from following the truck, but then subsequently changed his mind about leaving the scene. Mr. Shaw may have acted criminally, negligently, or recklessly out of frustration when he hit the car, but no reasonable finder of fact could have concluded that he specifically intended to assault Mr. Gibson or create an apprehension of bodily injury under the facts of this case.

Driving the truck into the Subaru, by itself, is patently equivocal. Because the evidence was equivocal, State failed to prove beyond a reasonable doubt that Mr. Shaw intended to cause fear and apprehension. See *State v. Vasquez*, 178 Wn.2d 1, 14-16, 309 P.3d 318 (2013) (patently equivocal evidence that defendant possessed forged documents did not prove intent to injure or defraud).

The reviewing court should reverse a conviction and dismiss the prosecution for insufficient evidence where no rational trier of fact could find

⁴RCW 46.61.500 (1) provides:

Any person who drives any vehicle in willful or wanton disregard for the safety of persons or property is guilty of reckless driving. Violation of the provisions of this section is a gross misdemeanor punishable by imprisonment for up to three hundred sixty-four days and by a fine of not

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). Accordingly, the conviction for second degree assault should be reversed and dismissed.

2. THE COURT ERRED IN IMPOSING A COMMUNITY SUPERVISION FEE

A court may order a defendant to pay legal financial obligations (LFOs), including costs incurred by the State in prosecuting the defendant. RCW 9.94A.760(1); RCW 10.01.160(1), (2). The legislature recently amended former RCW 36.18.020(2)(h) in Engrossed Second Substitute House Bill 1783, 65th Leg., Reg. Sess. (Wash. 2018) (HB 1783) and as of June 7, 2018, trial courts are prohibited from imposing the \$200 criminal filing fee, former RCW 36.18.020(2)(h), on defendants who are indigent at the time of sentencing. Laws of 2018, ch. 269, § 17; *State v. Ramirez*, 191 Wn.2d 732, 426 P.3d 714 (2018). The amendment applies prospectively and is applicable to cases pending on direct review and not final when the amendment was enacted. *Ramirez*, 191 Wn.2d at 739, 746-50.

The sentencing court must conduct on the record an individualized inquiry into the defendant's present and future ability to pay before imposing discretionary costs. *State v. Blazina*, 182 Wn.2d 827, 838, 344 P.3d 680 (2015). This inquiry requires the court to consider factors such as incarceration and a defendant's other

debts, including restitution, when determining his ability to pay. *Id.*

In the judgment and sentence the court directed Mr. Shaw to pay a community supervision assessment to the Department of Corrections. CP 105. Although the judgment and sentence cites no authority for these costs, a statute allows them as a discretionary community custody condition. RCW 9.94A.703(2)(d).

The court did not question Mr. Shaw about his financial situation, debts, and present and future ability to pay LFOs. RP (12/3/18) at 22-25. The court waived all non-mandatory LFOs. RP (12/3/18) at 25. Shortly after sentencing the court found Mr. Shaw was unable to contribute to the costs of his appeal while ordering the appeal to proceed solely at public expense. CP 120-122. Thus, the record indicates that Mr. Shaw was indigent under RCW 10.101.010(3) at the time of sentencing.

RCW 10.01.160 is mandatory: “it creates a duty rather than confers discretion.” *Blazina*, 182 Wn.2d at 838 (citing *State v. Bartholomew*, 104 Wn.2d 844, 848, 710 P.2d 196 (1985)). “Practically speaking ... the court must do more than sign a judgment and sentence with boilerplate language stating that it engaged in the required inquiry. The record must reflect that the trial court made an individualized inquiry into the defendant's current and future ability to pay.” *Id.* “Within this inquiry, the court must also consider important factors ... such as incarceration and a defendant's other debts ... when determining a defendant's ability to pay.” *Id.*

Last, this Court recently made it clear these costs are discretionary. *State v. Lundstrom*, 6 Wn.App.2d 388, 396 n.3, 429 P.3d 1116, 1121 (2018). Because community supervision fees are discretionary, this Court should remand to strike the DOC community supervision fee.

E. CONCLUSION

For the reasons stated above, Mr. Shaw respectfully requests this Court reverse this conviction for second degree assault for insufficient evidence and dismiss the charge. In the alternative, he requests that this case be remanded for resentencing with instructions to strike the community supervision fee.

DATED: July 5, 2019.

Respectfully submitted,
THE TILLER LAW FIRM



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CERTIFICATE OF SERVICE

The undersigned certifies that on July 5, 2019, that this Appellant's Opening Brief was sent by the JIS link to Mr. Derek M. Byrne, Clerk of the Court, Court of Appeals, Division II, 950 Broadway, Ste. 300, Tacoma, WA 98402, and to Jason Walker, Grays Harbor County Prosecutor's Office and copies were mailed by U.S. mail, postage prepaid, to the following:

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This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Centralia, Washington on July 5, 2019.



PETER B. TILLER

APPENDIX A

FILED

18 DEC -3 P2:30

18-1-00153-14
FNFLC 52
Findings of Fact and Conclusions of Law
4364402



GRAYS HARBOR CO.
C. BROWN CLERK

SUPERIOR COURT OF WASHINGTON FOR GRAYS HARBOR COUNTY

STATE OF WASHINGTON,

Plaintiff,

No.: 18-1-153-14

v.

FINDINGS OF FACT &
CONCLUSIONS OF LAW

ROBERT LEWIS SHAW,

Defendant.

THIS MATTER having come on before the undersigned judge of the above-entitled court on October 24, 2018, the Defendant appearing in person and with his attorney, David P. Arcuri, the State appearing through Jason F. Walker, Chief Criminal Deputy, and the Court having considered the evidence presented enters the following:

FINDINGS OF FACT

1.

On March 20, 2018 John Gibson was driving his automobile westbound on SR 12. The automobile was a 2015 Subaru Crosstrek that Mr. Gibson bought in 2015 for \$25,000 to \$26,000. The Defendant was following Mr. Gibson in a 2004 Dodge Dakota pickup truck at approximately two to four car lengths. There were many cars on the road, and the weather was foggy.

2.

The Defendant was angry at the slow pace of traffic. The Defendant was verbally expressing his frustration at traffic, which escalated over six to seven minutes while he was following behind

1 Mr. Gibson's car. After a truck, travelling ahead of Mr. Gibson, moved to the right hand lane, the
2 Defendant closed the distance between his vehicle and John Gibson's vehicle. Mr. Gibson's speed
3 did not change, as he was still behind a white car that did not speed up.

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4.

Mr. Gibson tapped his brakes when the Defendant's truck neared his rear bumper, as
evidenced by the illumination of his brake lights. However, this action did not cause a collision. In
response to Mr. Gibson's brake lights, the Defendant stated that his intent was to hit Mr. Gibson's
car. The Defendant then accelerated, and intentionally came into contact with the back of Mr.
Gibson's vehicle. When the Defendant's car hit Mr. Gibson's car, the Defendant continued to
accelerate to keep on Mr. Gibson's bumper. This contact caused major damage to Mr. Gibson's back
bumper, and caused pieces to fall off the car, as observed by motorists Danielle Hooper and
Christopher Kay.

Mr. Gibson reports feeling the Defendant's vehicle pushing his own three times, which is
consistent with the video. Mr. Gibson felt like he was going to lose control of his vehicle due to the
impact.

5.

Mr. Gibson was able to separate his car from the Defendant's. Mr. Gibson then moved his
damaged vehicle to the left hand shoulder. The Defendant moved to the right hand shoulder, then
crossed two lanes of traffic to enter the left hand shoulder. The Defendant then shifted into reverse
and accelerated with the intention of ramming Mr. Gibson's vehicle. The Defendant did ram Mr.
Gibson's vehicle intentionally and maliciously, causing more damage to Mr. Gibson's vehicle.

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6.

After the collision, the Defendant called Mr. Gibson names, and said under his breath that Mr. Gibson hit him, and accused Mr. Gibson of hitting his vehicle. However, it is clear that the Defendant hit Mr. Gibson's vehicle.

7.

Mr. Gibson suffered soft tissue injuries to his back, shoulder, and neck as a result of the collision.

8.

An insurance company paid Mr. Gibson approximately \$5,000, paid off his car loan of approximately \$16,000, and took possession of the vehicle as it was "totaled" as a result of the Defendant's actions.

9.

The Court's oral findings of October 18, 2018 are incorporated by reference.

Based upon the foregoing findings of fact, the court enters the following:

CONCLUSIONS OF LAW

1.

The court has jurisdiction over the parties and subject matter herein.

2.

The Defendant acted intentionally and maliciously in backing into John Gibson's car.

3.

The value of John Gibson's Crosstrek was approximately \$21,000.

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4.

The Defendant intentionally assaulted John Gibson with his motor vehicle.

5.

The Defendant's motor vehicle was a deadly weapon, given the manner in which it was used.

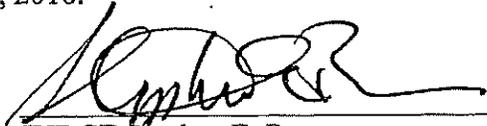
6.

The Defendant is guilty of Malicious Mischief in the First Degree.

7.

The Defendant is guilty of Assault in the Second Degree.

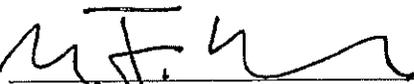
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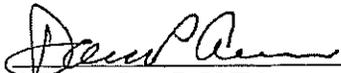
JUDGE Stephen E. Brown

Presented by:

Approved (for entry)(as to form)



JASON F. WALKER
Chief Criminal Deputy
WSBA #44358



DAVID P. ARCURI
Attorney for Defendant
WSBA #15557

THE TILLER LAW FIRM

July 05, 2019 - 2:59 PM

Transmittal Information

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Appellate Court Case Number: 53024-4
Appellate Court Case Title: State of Washington, Respondent v. Robert Lewis Shaw, Appellant
Superior Court Case Number: 18-1-00153-9

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