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Court of Appeals  
Division II  
State of Washington  
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NO. 33685-4-II

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

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STATE OF WASHINGTON,

Respondent,

v.

ROBERT LANE

Appellant.

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

The Honorable Randall Krog, Judge

OPENING BRIEF OF APPELLANT

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**A. ASSIGNMENTS OF ERROR**

1. The evidence was insufficient to convict appellant Robert Lane of attempted first degree assault, Count 1 of the Amended Information, relating to Sergeant Garique Clifford.

2. The trial court erred when it imposed a sentence outside the maximum statutory term for Count 1.

3. The interest accrual provision in the judgment and sentence should be stricken pursuant to the Supreme Court's decision in *State v. Ramirez*<sup>1</sup> and after enactment of House Bill 1783.

**B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

1. Robert Lane was charged with attempted first degree assault, based on a display of a firearm that Sergeant Clifford testified was pointed at him in the hallway of Mr. Lane's residence after law enforcement broke down a door of Mr. Lane's house and the sergeant entered. Did the State present sufficient evidence of Mr. Lane's "intent to inflict great bodily harm" on Sergeant Clifford? Assignment of Error 1.

2. Did the trial court err when it imposed a sentence 36 months in excess of the statutory maximum for Count 1? Assignment of Error 2.

3. Under the Supreme Court's decision in *Ramirez*, and after enactment of House Bill 1783, should the interest accrual provision be stricken? Assignment Error 3.

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<sup>1</sup>191 Wn.2d 732, 426 P.3d 714 (2018).

## **C. STATEMENT OF THE CASE**

### **1. Procedural facts**

Robert Lane was charged by information filed on March 4, 2019 in Skamania County Superior Court with three counts of attempted first degree assault against three police officers, including Sergeant Clifford in Count 1, pursuant to RCW 9A.36.011(1)(a). Clerk's Papers (CP) 1-3. Mr. Lane was also charged in Count 4 with second degree unlawful possession of a firearm under RCW 9A.41.040. CP 3. The State filed an amended information on May 8, 2019, adding three counts of second degree assault regarding the three officers, pursuant to RCW 9A.36.021(1)(c). CP 71-75.

### **2. Trial testimony**

The case came on for trial on May 13 and May 14, 2019, the Honorable Randall Krog presiding. 1Report of Proceedings<sup>2</sup> (RP) (5/13/19) at 80-200, 2RP (5/13/19) and (5/14/19) at 201-400, and 3RP (5/14/19) at 405-508. The State presented the testimony of seven witnesses.

Robert Lane was wanted on two warrants issued for his arrest. 2RP at 232. On the morning of February 28, 2019, Garique Clifford, a sergeant for the Skamania County Sheriff's Office, and Deputy Sheriff Vejar went

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<sup>2</sup>The record of proceedings consists of the following transcribed volumes: 1RP – March 4, 2019, March 14, 2019, March 28, 2019, April 11, 2019, May 2, 2019, May 8, 2019, May 13, 2019 (jury trial, day 1); 2RP – May 13, 2019 (jury trial, day 1, May 14, 2019 (jury trial day 2); and 3RP – May 14, 2019 (jury trial, day 2); and RP (June 13, 2019 (sentencing).

to Mr. Lane's house in North Bonneville, Washington to arrest him on the warrants. 2RP at 232. The officers, both of whom knew Mr. Lane and had had contact with him over the years, went to his house and knocked on the door but did receive a response. 2RP at 233. The officers left the house. 2RP at 233.

During the afternoon, police dispatch received a call from John Terry, an attorney in Skamania County, who called dispatch regarding calls he had received from Mr. Lane. 2RP at 234. Sergeant Clifford called Mr. Terry, who identified himself as Mr. Lane's attorney and reported that Mr. Lane said that he had a firearm, that he was suicidal, and that the police had surrounded his house. 2RP at 235. Sergeant Clifford told Mr. Terry that police had not surrounded Mr. Lane's house and asked for Mr. Lane's telephone number in order to call him. 2RP at 235. During a subsequent call, Mr. Terry told the sergeant that Mr. Lane was in his house, that he had a shotgun, that Mr. Lane was suicidal, and that he could hear a dog barking in the background when he talked with Mr. Lane. 2RP at 235, 349-50. Sergeant Clifford called Mr. Lane and identified himself, but the call ended. 2RP at 236. He called Mr. Lane back but was not able to reestablish contact with Mr. Lane. 2RP at 236.

Sergeant Clifford, Deputy Vejar, Chief Deputy David Waymire, Undersheriff Pat Bond, and Deputy Will Helton assembled at a parking lot in view of Mr. Lane's house. 2RP at 236. Chief Deputy Waymire, who

knew Mr. Lane, initiated contact with him. 2RP at 236, 267. Chief Deputy Waymire communicated via telephone calls and texts with Mr. Lane in an effort to have him out of the house. 2RP at 267. Text messages by Chief Deputy Waymire and Mr. Lane during this negotiation were entered as Exhibit 2. 2RP at 269-74.

Mr. Lane later stopped communication and law enforcement decided to break down a door but not enter the house in order to establish verbal contact with him. 2RP at 237. Video from Sergeant Clifford's body camera was played to the jury. Exhibit 1. 2RP at 238-241. A dog can be heard barking in the house and Sgt. Clifford stated that they would kick the door in, which was then kicked in by Chief Deputy Waymire. 2RP at 238-40. Mr. Lane shouted, "there's only one way this ends m-----f-----s." 2RP at 239. Sgt. Clifford said "oh s---t, he's got a gun." 2RP at 240. Another officer shouted "gun, gun" and Mr. Lane shouted "f--- you, Dave." 2RP at 240, 275, 289. Sgt. Clifford stated that "[h]e has a long gun in there." 2RP at 240.

Sgt. Clifford testified that after the door was kicked in, he saw Mr. Lane inside the house standing about 20 feet away in a hallway holding a long firearm. 2RP at 243. Sgt. Clifford stated that the lights in the house were off but he was able to see a gun in the ambient light from the door and windows. 2RP at 244. He stated that the gun was pointed in the direction of police down the hallway, and that he was in fear that Mr. Lane could shoot

him. 2RP at 245, 262. He stated that Mr. Lane said “don’t make me do something f----- stupid.” 2RP at 246.

Sergeant Clifford left the house and Undersheriff Bond called for a SWAT team, which subsequently arrived with an armored vehicle. 2RP at 251, 252, 292, 301.

Approximately an hour after they broke in the door, police heard a gunshot from inside the house 2RP at 251, 252, 253. Chief Deputy Waymire testified that he was talking by phone with Mr. Lane at the time of the gunshot. 2RP at 278. He stated that after the shot, Mr. Lane yelled that it was an accident and that the gun had a “hair trigger” and that it went off near his head. 2RP at 279. Waymire said that Mr. Lane told him that he had put the gun together the day before and that it had a “hair trigger.” 2RP at 279.

About two hours after the shot, Mr. Lane emerged from the house and was taken into custody. 2RP at 254. After obtaining a warrant police searched the house. 2RP at 315. Inside the attached garage, police found a ladder that had been knocked over, positioned below an access opening to attic space over the garage. 2RP at 321, 328. In the attic police found a stock and trigger assembly for a shotgun, and also found a 12-gauge shotgun barrel on the back of a couch in the living room of the house. 2RP at 324, 328. Exhibits 14, 16, 24, 34, 35. Police found a hole in the ceiling near the couch. 2RP at 327. Exhibits 33, 36.

Detective Jeremy Schultz testified that when assembled, the parts would be an operable shotgun, although police did not locate a pump for the shotgun. 2RP at 332. Detective Schultz testified that without the pump, each shell would have to be manually inserted as it was shot. 2RP at 332.

A disassembled .22 rifle barrel and a 10 gauge shotgun barrel and 12 gauge shotgun ammunition were also found in the house. 2RP at 333-34. Exhibits 19, 28. Detective Shultz stated that 12-gauge “slug” ammunition found in the house would make a hole similar to that found in the ceiling above the couch. 2RP at 336. A spent 12-gauge shotgun shell cased was found in the house. 2RP at 337. Exhibit 30.

Robert Lane testified that he was feeling suicidal in the days leading up to February 28, 2019. 2RP at 371. He stated that on February 28, 2019, he called his attorney John Terry and told him that he had “a feasibility option” which was to shoot himself with an old shotgun he had in the house. 2RP at 371. Mr. Lane testified that on February 28 he was tired and was sleeping on and off while watching a movie using earbuds and did not hear Sergeant Clifford and Deputy Vejar knocking on the door. 2RP at 372-73. Later in the day he woke up when he heard “a big boom” and the “door blew open.” 2RP at 373. Mr. Lane testified that he said “f—ing Dave” due to his frustration at having the door broken in rather than as a threat to the officers. 2RP at 376. Mr. Lane stated that as he was yelling he assembled the shotgun, which had been disassembled into separate parts and was stored

with his camping gear. 2RP at 377. Mr. Lane testified that when he assembled the gun, he intended only to hurt himself and that he told police that he was not going to hurt them. 2RP at 378. Mr. Lane testified that his father had been a deputy sheriff and he knew most of the officers who had arrived at the house following Mr. Terry's call. RP at 378. He stated that he assembled the shotgun from "four pieces of miscellaneous parts" and so that he could commit suicide but did not know if it would fire. 2RP at 379. He said that he loaded it with a shotgun "slug" shell and that the gun accidentally discharged when he was talked to Chief Deputy Waymire on the phone. 2RP at 379. He stated that he had the gun on his chest and decided "that wasn't a good idea because I was still in the family room I didn't want to make a mess," and that he went to the garage and put down a tarp. 2RP at 379-80. He returned from the garage to the family room, and while on the couch he slammed the shotgun down, causing it to fire a slug into the ceiling. 2RP at 380-81. He told Chief Deputy Waymire that it was an "accidental discharge." 2RP at 381.

Mr. Lane testified that he did not want the gun near him when SWAT came into the house and he "didn't want anybody else to end my life." 2RP at 381. He stated that at that point "I decided maybe I wanted to live[.]" and that "[m]aybe this isn't such a good idea." 2RP at 381. He testified that he disassembled the shotgun and put the parts in two different places in the house and then went out of the house and surrendered to

SWAT. 2RP at 381, 382. Mr. Lane told police where his dog was located in the house and not to shoot his dog and told them where the shotgun parts were located. 2RP at 382. He stated that he had knocked over the ladder when he was moving the tarp in the garage in preparation for killing himself. 2RP at 382. He denied that he had a gun when Sgt. Clifford entered the house, denied that he intended to hurt Sergeant Clifford or the other officers. 2RP at 384.

**3. Verdict and sentencing:**

The jury requested to see the body cam video (Exhibit 1), and it was played in the courtroom to the jurors. 3RP at 473-75.

The jury found Mr. Lane guilty of attempted first-degree assault against Sergeant Clifford (Count 1), second degree unlawful possession of a firearm, (Count 4), and guilty of second degree assault against Sergeant Clifford (Count 5). 3RP at 487; CP 241, 246, 248. The court found that he was armed with a firearm at the time of the offenses. CP 247, 249. The jury was unable to reach a verdict in Counts 2, 3, 6, and 7 and the court declared a mistrial as to those counts. 3RP at 496.

Mr. Lane was sentenced for Counts 1 and 4 on June 13, 2019.<sup>3</sup> 3RP at 500-508; CP 258-270. Based on an offender score of “2,” the court sentenced Mr. Lane within the standard range to 84 months, and a 36 month

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<sup>3</sup>Although not contained in this record, Count 5 evidently was merged with Count 1.

firearm enhancement for Count 1, and 12 months for Count 4, to be served concurrently, for a total of 120 months, followed by 36 months of community custody. 3RP at 504; CP 260, 262, 263.

The court imposed a \$500.00 crime victim assessment and \$100.00 DNA collection fee. 3RP at 505; CP 264, 265. The judgment and sentence also stated that “[t]he 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 266.

Timely notice of appeal was filed June 13, 2019. CP 276. This appeal follows.

#### **D. ARGUMENT**

##### **I. THE EVIDENCE WAS INSUFFICIENT TO SUPPORT THE CONVICTION FOR ATTEMPTED FIRST DEGREE ASSAULT**

The State charged Mr. Lane with attempted first degree assault with a firearm enhancement under subsection (a) of RCW 9A.36.011. CP 71.

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). 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).

Mere possibility, suspicion, speculation, conjecture, or even a scintilla of evidence, is not substantial evidence, and does not meet the minimum requirements of due process. *State v. Moore*, 7 Wn. App. 1, 499 P.2d 16 (1972). As a result, any conviction not supported by substantial evidence may be attacked for the first time on appeal as a due process violation. *Id.* “Substantial evidence” in the context of a criminal case, means evidence sufficient to persuade “an unprejudiced thinking mind of the truth of the fact to which the evidence is directed.” *State v. Taplin*, 9 Wn. App. 545, 513 P.2d 549 (1973) (quoting *State v. Collins*, 2 Wn. App. 757, 759, 470 P.2d 227, 228 (1970)).

In determining the sufficiency of the evidence, the test is “whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *State v. Salinas*, 119 Wn.2d 192, 201, 829

P.2d 1068 (1992) (citing *Green*, 94 Wn.2d at 220-22). “When the sufficiency of the evidence is challenged in a criminal case, all reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant.” *Salinas*, 119 Wn.2d at 201, 829 P.2d 1068 (citing *State v. Partin*, 88 Wn.2d 899, 906-07, 567 P.2d 1136 (1977)). “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, 829 P.2d 1068 (citing *State v. Theroff*, 25 Wn. App. 590, 593, 608 P.2d 1254, *affd*, 95 Wn.2d 385, 622 P.2d 1240 (1980)). While circumstantial evidence is no less reliable than direct evidence, *State v. Myers*, 133 Wn.2d 26, 38, 941 P.2d 1102 (1997), evidence is insufficient if the inferences drawn from it do not establish the requisite facts beyond a reasonable doubt. *State v. Baeza*, 100 Wn.2d 487, 491, 670 P.2d 646 (1983). Specific criminal intent may be inferred from circumstances as a matter of logical probability.” *State v. Zamora*, 63 Wn. App. 220, 223, 817 P.2d 880 (1991). Both direct and indirect evidence may support the jury's verdict. *State v. Brooks*, 45 Wn.App. 824, 826, 727 P.2d 988 (1986).

Assault in the first degree is defined by statute, in relevant part: “A person is guilty of assault in the first degree if he or she, with intent to

inflict great bodily harm ... (a) Assaults another with a firearm or any deadly weapon or by any force or means likely to produce great bodily harm or death....” RCW 9A.36.011(1)(a).

The term “assault” is not defined in the criminal code, and thus Washington courts have turned to the common law for its definition. *State v. Aumick*, 73 Wn.App. 379, 382, 869 P.2d 421 (1994). In this case, in addition to being given the instruction on attempted first degree assault, the jury was instructed on two forms of “assault” recognized in Washington: (1) an act done with intent to inflict bodily injury on another but failing to do so (attempted battery); and (2) an act done with intent to put another in apprehension of harm whether or not the actor intends to inflict or is capable of inflicting that harm (frequently referred to as “common law” assault). CP 219 (Jury Instruction 13).

Assault by attempting to inflict bodily injury (attempted battery) requires the specific intent to cause bodily injury, and assault by placing a person in reasonable apprehension of harm (“common law” assault) requires the specific intent to create apprehension of harm. The term “specific intent” means the intent to produce a result in addition to the intent to do the physical act which the crime requires. *State v. Esters*, 84 Wn. App. 180, 184, 927 P.2d 1140 (1996).

A specific criminal intent “may be inferred from the conduct [of the accused] if it is plainly indicated as a matter of logical probability.” *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). However, in this case, there is no evidence that Mr. Lane possessed a specific intent to cause bodily injury, or to create apprehension of harm in Sergeant Clifford. The record shows that Mr. Lane consistently indicated that his intent was to kill himself, not to harm police officers. He told Mr. Terry that he was suicidal and that he had a shotgun. 2RP at 349. Mr. Terry testified that he believed that Mr. Lane was suicidal and that he reported this information to law enforcement. 2RP at 350.

After Sergeant Clifford learned from Mr. Terry that Mr. Lane “was home, he was armed with a firearm—an old shotgun, and he was suicidal and [Mr. Terry] heard a barking dog in the background,” the sergeant spoke briefly to Mr. Lane but the phone connection was not good, “the phone hung up” and he was unable to contact him again. 2RP at 235-36. Chief Deputy Waymire, who knew Mr. Lane and some of his family members, contacted Mr. Lane and negotiated at length with him to not kill himself and to come out of the house. 2RP at 236.

After law enforcement assembled in the parking lot, Chief Deputy Waymire watched Mr. Lane’s residence to make sure no one left, and then

went with other officers to the front of the house to try to make contact with Mr. Lane. 2RP at 267. Prior the time Chief Deputy Waymire kicked the door open and Sergeant Clifford went into the house, Chief Deputy Waymire was communicating with Mr. Lane by phone and text in an effort to have him come out of the house. 2RP at 267. Chief Deputy Waymire stated that Mr. Lane “was making suicidal statement for sure about having a weapon and using the weapon on himself.” 2RP at 268. He identified a series of text messages he exchanged with Mr. Lane. 2RP at 268. The texts between Mr. Lane and Chief Deputy Waymire showed that Mr. Lane intended to kill himself, and in fact he took every opportunity to repeatedly tell Chief Deputy Waymire that he was not a threat to the officers. A long series of text messages are contained in Exhibit 2, including the flowing exchanges:

<b>Text from Mr. Lane</b>	<b>Text from Chief Deputy Waymire</b>
I promise im no threat to anyone	
	I know
Me, myself and i maybe	
	I really don't want anything to happen to you
I know you dont	

	Is there anything I can do to get you to come out?
	You ok with a call?
Chill	
It will be over soon.	

The text exchange continued:

Please don't have swat do anything, i dont want suicide by cop	
Not at all	
I know if they make entry and im still holding this shottie, thats exactly what will happen	
You know this	
	we don't want that
	Keep talking with me so we can keep that from happening

Later Mr. Lane texted "There's no scenario where i make it through this." Exhibit 2.

The State failed to prove that Mr. Lane's act of holding a gun, as described by Sgt. Clifford when he entered the house, was done with the intent to cause great bodily harm. Mr. Lane's actions and statements to the police throughout the incident show that his goal was not to hurt them, but

to commit suicide. The State failed to present sufficient evidence of the required mental state of specific intent to cause apprehension in Sergeant Clifford or any of the law enforcement officers present, and the conviction for attempted first degree assault, and the firearm enhancement based on the conviction, must be dismissed. See *State v. Smith*, 155 Wn.2d 496, 505, 120 P.3d 559 (2005)(retrial following reversal for insufficient evidence is prohibited; dismissal is the remedy).

**2. THE TRIAL COURT ERRED WHEN IT SENTENCED MR. LANE OUTSIDE THE STATUTORY MAXIMUM**

Mr. Lane was sentenced to terms of confinement and community custody that together exceeded the 120-month statutory maximum for the offense. Questions involving a sentencing court's authority are reviewed de novo. *State v. Mann*, 146 Wn. App. 349, 357, 189 P.3d 843 (2008).

The trial court may not impose a sentence of confinement and community custody that, when combined, exceeds the statutory maximum for the offense. *State v. Boyd*, 174 Wn.2d 470, 472, 275 P.3d 321 (2012). Under RCW 9.94A.505(5), "Except as [otherwise] provided a court may not impose a sentence providing for a term of confinement or community custody that exceeds the statutory maximum for the crimes as provided in chapter 9A.20 RCW." The terms of community custody must be reduced by the court whenever the standard range term of confinement in combination

with the terms of community custody exceed the statutory maximum for the crime as provided in RCW 9A.20.011. RCW 9.94A.701(9).<sup>4</sup>

RCW 9.94A.533(3)(g) provides:

If the standard sentence range under this section exceeds the statutory maximum sentence for the offense, the statutory maximum sentence shall be the presumptive sentence unless the offender is a persistent offender. If the addition of a firearm enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced.

Under Washington statutes, a sentence, including enhancements and community custody, may not exceed the statutory maximum for the crime. If the total sentence exceeds the maximum sentence provided for in RCW 9A.20.021(1), then the underlying sentence, not the enhancement, must be reduced. *State v. DeSantiago*, 149 Wn.2d 402, 416, 68 P.3d 1065 (2003).

Mr. Lane's standard sentence range for attempted first degree assault was 83.25 to 110.25 months. CP 260. The trial court sentenced him to a standard range sentence of 84 months of confinement for the attempted first degree assault as the base sentence, and a concurrent 12 months for second degree possession of a firearm. 3RP at 504; CP 262. The firearm enhancement of 36 months in Count 1 brought the total to the statutory maximum of 120 months. RCW 9A.20.021(b). CP 262.

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<sup>4</sup> RCW 9.94A.701(9) provides, "The term of community custody specified by this section shall be reduced by the court whenever an offender's standard range term of confinement in combination with the term of community custody exceeds the statutory maximum for the crime as

In addition to these prison terms, Mr. Lane is subject to a three-year term of community custody for his offenses. RCW 9.94A.701(1). The court added an additional 36 months of community custody, bringing the total period of confinement to 156 months. This is 36 months over the statutory maximum for a Class B felony.

As noted above, the Sentencing Reform Act prohibits trial courts from imposing a term of community custody that would, in combination with a defendant's term of confinement, exceed the statutory maximum for the crime. RCW 9.94A.505(5). As argued above, trial courts are required to "reduce [ ]" a term of community custody that, in combination with the term of confinement, may exceed the statutory maximum for the crime. RCW 9.94A.701(9). Because in the case the total sentence of 156 months exceeds the maximum term of 10 years (120 months), the sentence violates RCW 9.94A.505(5).

Remand for sentencing under RCW 9.94A.701(9) is required when a total sentence of confinement and community custody exceeds the statutory maximum. *Boyd*, 174 Wn.2d at 473. The matter should be remanded for resentencing with instructions to decrease either the community custody or the base sentence. *State v. Zavala-Reynoso*, 127 Wn.App. 119, 124, 110 P.3d 827 (2005).

**3. THIS COURT SHOULD STRIKE THE INTEREST ACCRUAL PROVISION FOLLOWING RAMIREZ AND HOUSE BILL 1783**

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 has 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.

House Bill 1783 amended “the discretionary LFO statute, former RCW 10.01.160, to prohibit courts from imposing discretionary costs on a defendant who is indigent at the time of sentencing as defined in RCW 10.101.010(3)(a) through (c).” *Ramirez*, 191 Wn.2d at 746 (citing Laws of 2018, ch. 269, § 6(3)); see also RCW 10.64.015 (“The court shall not order a defendant to pay costs, as described in RCW 10.01.160, if the court finds that the person at the time of sentencing is indigent as defined in RCW 10.101.010(3)(a) through (c).”). HB 1783 establishes that the \$200 criminal filing fee is no longer mandatory if the defendant is indigent. The Supreme

Court in *Ramirez* concluded the trial court impermissibly imposed discretionary LFOs and a \$200 criminal filing fee and remanded for the trial court to amend the judgment and sentence to strike the improperly imposed LFOs. *Ramirez*, 191 Wn.2d at 750.

In this case, the court imposed a \$500 crime victim fund assessment and \$100 DNA collection fee. 3RP at 505; CP 264, 265. The trial court found Mr. Lane indigent at sentencing. 3RP at 505; CP 274.

Mr. Lane challenges the interest accrual on non-restitution LFOs assessed in Section 4.3 of the judgment and sentence. CP 266. The 2018 legislation eliminated the accrual of interest on non-restitution LFOs. The judgment and sentence states that financial obligations imposed by it shall bear interest from the date of the judgment until payment in full at the rate applicable to civil judgments. CP 266. The 2018 legislation states that as of its effective date “penalties, fines, bail forfeitures, fees, and costs imposed against a defendant in a criminal proceeding shall not accrue interest.” As amended, RCW 10.82.090 now provides:

(1) Except as provided in subsection (2) of this section, restitution imposed in a judgment shall bear interest from the date of the judgment until payment, at the rate applicable to civil judgments. As of the effective date of this section [June 7, 2018], no interest shall accrue on non-restitution legal financial obligations.

See Laws of 2018, ch. 269.

Under RCW 10.82.090(1) and (2)(a) the interest accrual provision in the judgment and sentence pertaining to non-restitution LFOs must be

stricken.

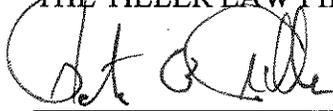
**E. CONCLUSION**

The reasons stated, Mr. Lane respectfully asks the Court to reverse his convictions and grant him a new trial,

In the alternative, Mr. Lane requests the court to remand the matter for resentencing to correct the unauthorized imposition of a sentence outside the statutory maximum and to strike the interest accrual provision to the extent it applies to non-restitution LFOs.

DATED: December 23, 2019.

Respectfully submitted,  
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CERTIFICATE OF SERVICE

The undersigned certifies that on December 23, 2019, that this Appellant's Corrected 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, a copy was emailed to Joseph Jackson Prosecuting Attorney 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 December 23, 2019.



PETER B. TILLER

**THE TILLER LAW FIRM**

**December 23, 2019 - 2:07 PM**

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