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MAY 15, 2014

Court of Appeals
Division III
State of Washington

No. 314995

IN THE COURT OF THE APPEALS
OF THE STATE OF WASHINGTON

DIVISION III

THE STATE OF WASHINGTON, Respondent

v.

ADRIENNA M. MOSIER, Appellant.

BRIEF OF RESPONDENT

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PREFACE

The Appellant's version of the "Facts" of this case, with at least one notable error, is for the most part accurate, though rather lacking on some of the most pertinent areas as to the appeal herein. To correct the error and demonstrate the full extent of the matter the Respondent respectfully submits the following additional facts drawn from the record.

I. STATEMENT OF THE CASE

On the morning of July 5, 2012 employees of the Riverview Animal Clinic in Asotin County Washington arrived for work around 8:00 a.m. and found that over the Fourth of July holiday someone had entered the business and stole a moneybag. Report of Proceedings (hereinafter RP) page 72. The employees noted that there was no evidence that the Clinic had been "broken into" - nothing indicating a forced entry of the building - nor any evidence that the lockbox which had held the moneybag had been forced open. RP 122. The stolen moneybag contained more than \$1,400.00 in cash, as well as checks. RP 74. Tara Cunningham, testified that on the third of July, when she had closed up, she had placed the money in the lockbox, and locked it. RP 52. The lock box was hidden in a back room and the key to the lockbox kept in a different room, hidden in a prescription bottle inside of a refrigerator. RP 52. These were standard security measures at the Clinic. RP 16. After the theft, the perpetrator had returned the lock box to its hiding place and placed the key back in the prescription bottle and placed it back in the refrigerator. RP 122. Ms Cunningham testified at trial that, based on the circumstances, she believed the Appellant was involved in the Burglary. RP 52.

On the morning of the 5th, Karen Bolen, the Clinic employee who opened the Clinic for the day, retrieved the key from its hiding place and the lockbox from its hiding place, and opened it to find the

moneybag missing. RP 68. She immediately began her own investigation and noted that a chair in the office was out of place and someone had gone through a folder where receipts were kept had been gone through. RP 69. She also noted that desk drawers had been opened and the contents rifled through. RP 20. She spoke with various other employees and then called law enforcement. RP 70. On the morning that the Burglary was discovered the Appellant was late for work, arriving as the other employees were investigating. RP 72. Dr. Kathy Ponzoso, one of the veterinarians at the Clinic, confronted the Appellant and noted that she looked upset, her eyes were red, and it appeared she had been crying. RP 105. When Dr. Ponzoso asked the Appellant if she knew anything about the missing moneybag the Appellant looked down at the floor, then at the doctor, and said that she did not. RP 106. Throughout the day Dr. Ponzoso observed the Appellant “seemed more quiet than normal.” *Id.*

The Detective who investigated the burglary and theft contacted and interviewed almost every single Clinic employee. RP 33.¹ Five persons were identified as known to have been at the Clinic

¹ In an apparent effort to denigrate the depth of the investigation in this matter the Appellant asserts that the Detective “only interviewed those three or four people she’d been told may have been at the clinic during the time frame of the incident.” Brief of Appellant, page 5. This is incorrect, in fact the Detective testified she had interviewed almost every employee except Dr. Keith Eggert, Dr. Ponzoso and possibly “other kennel people.” RP 33. Clearly, based upon the actual record in this case, the investigation

during the time frame of the Burglary/Theft. RP 22. Dr. William Meyers, the owner of the clinic, was there briefly on the morning of the 4th of July. RP 86. While he was there that morning Andrew Frary, and Amber Egge, a husband and wife team that works at the Clinic were also there. *Id.* During the course of the investigation it was determined that Mr. Frary and Ms Egge, unlike all of the other persons identified, did not have any knowledge of the location of the key used to open the lockbox which contained the missing moneybag. Amanda Clark, another employee, indicated that she was at the clinic briefly around 6:00 p.m. on the 4th of July. RP 91.

During the course of the investigation Detective Nichols interviewed several of the Clinic employees. Almost every single witness indicated that, in light of the circumstances surrounding the Burglary, it appeared to have been committed by someone with “inside knowledge” - and testified to that effect at trial (Tara Cunningham at RP 55; Kellee Whipple at RP 62; Karen Bolen at RP 75 - 76; Dr. Meyers at RP 88; Amanda Clark at RP 93; Dr. Ponzozzo at 111). At trial, upon the subject having been broached by Defense Counsel, Detective Nichols testified that most of the persons she had spoken to said they suspected the Appellant, or the Appellant and her

was comprehensive.

boyfriend, or the Appellant's boyfriend had committed the Burglary.
RP 46 - 47.

As part of the investigation Detective Nichols contacted the Appellant, Adrienna M. Mosier, an employee at the Riverview Animal Clinic and interviewed her as well. RP 22. When the Detective asked her about her actions on the 4th of July, she told the Detective she "didn't do much that day." RP 24. She said her children had gone down to the High School to watch the fireworks. RP 23. She said that the children were supposed to be at the beach but when she went to pick them up they weren't there. *Id.* The Appellant told the Detective she figured her children may have gone to the fireworks show at the Clarkston High School and so decided to wait until after the fireworks to try and find her children. The Detective noted that the firework show did not begin until 10:00 p.m.. RP 23 - 24.

She also told the Detective she had been in the Clinic on the evening of July fourth. RP 22. She said she had driven her white Pontiac (the only car that she and her boyfriend, Brent Glass, had - RP 25) to the Clinic around 9:30 p.m. to pick up boxes. RP 24. She told the Detective that she was getting the boxes because she and her boyfriend were moving to Pullman. *Id.* She said Mr. Glass was at their home when she went to the Clinic. RP 25.

She told the Detective that when she arrived at the Clinic she used her key to enter through the back door and had retrieved the key

to the outdoor storage shed (behind the Clinic). *Id.* She claimed that she had retrieved the boxes and then went back into the Clinic and put the key to the shed back, and then drove home. *Id.* (At trial the employee responsible for the taking care of the boxes testified that no boxes were taken during the period in question. RP 63). Detective Nichols testified at trial that she noted that when the Appellant was talking about being at the clinic on the night of the Burglary she became “nervous, became shaky, her voice changed, talked more rapidly, her mouth seemed dry, the signs of nervousness.” RP 30.

The Appellant told the Detective that when she arrived home, she and her boyfriend had packed boxes and then went to bed. RP 31. The Appellant adamantly insisted that she, her boyfriend, and their vehicle had all remained at the house throughout the night. RP 31 - 32.

During the course of her investigation, Detective Nichols learned that Mr. Glass and the Appellant were holders of “casino cards²” at the nearby Clearwater River Casino. RP 34. According to records at the casino the Appellant’s card was used twice on the night of the 4th of July - the first time from 3:39 p.m. to 6:09 p.m., and then again between 12:03 a.m. and 12:25 a.m. *Id.* The casino also made surveillance tapes available to the Detective for the night in question.

² The Clearwater River casino issues players cards that can be used to gamble and track time and usage at the casino. RP 34.

RP 35. On the tapes, Detective Nichols testified that she observed the Appellant and her boyfriend arrive at the casino, driving the white Pontiac, just after midnight on the night of the Burglary. *Id.* The tapes also showed the couple in the casino gambling on various machines during the time when the Appellant had insisted that she and Mr. Glass had been home, in bed. RP 35 - 36.

One of the other employees at the Clinic, Carrolene "Kassy" K. Klein who worked with the Appellant testified the Appellant considered Ms Klein to be her "closest" friend at the Clinic. RP 115. Ms Klein said that around 4:00 a.m. in the early morning hours of July the 5th she received a phone call. RP 114. It was the Appellant and she was very upset and crying. *Id.* She said her boyfriend, Brent Glass had left during the night and that she would need a ride if he did not return before she had to be at work. *Id.*

Ms Klein testified that later that day, around lunch time the Appellant called to ask about borrowing a truck to help her move. RP 115. This was the first time the Appellant had made concrete remarks about moving and Ms Klein said that it surprised her as it seemed to be a "spur of the moment" move. RP 116. While Ms Klein was talking on the phone with the Appellant, she received a second call. *Id.* This call was from a co-worker at the Clinic who called to tell her about the Burglary and Theft. *Id.* This information came as a surprise to Ms Klein and she said that she found it odd that the

Appellant had not said anything about the incident despite the fact that she had specifically asked if “everything was fine that morning.” RP 117. Ms Klein also testified that the Appellant had told her she had “run out of morning” and was “broke” by the 4th of July, despite having been paid just two days prior on the second of July. RP 117 - 118.

Following the evidentiary phase of the trial the Judge read the Jury Instructions to the jury. RP 132 - 142. Among these instructions was WPIC 10.51 defining accomplice liability. RP 137 - 138. The Court also gave the jury an instruction based on WPIC 70.06 setting forth the elements of Theft in the Second Degree which specifically included language relevant to accomplice liability. RP 140.

During closing argument the Prosecutor told the jury “The case turns on accomplice liability. RP 147. In fact, throughout his argument the Prosecutor returned to the theme of “accomplice liability” over and over again. RP 147 three times; RP 150 three times; RP 151.

The jury returned a guilty verdict as to both counts. RP 171 - 172.

At sentencing when the issue of legal financial obligations came up Defense Counsel questioned the propriety of assessing a “bench warrant fee” but upon satisfaction that a bench warrant had been issued in the matter, the objection was overruled. RP 189 - 190.

The Appellant stipulated to restitution in the amount established at trial and waived a contested hearing on the matter. RP 191. The Judge then asked the Appellant: "Ms Mosier, are you fairly confident that you can afford \$50 or more a month beginning 60 days after you get out of jail?" *Id.* The Appellant responded that she could (the record indicates that her response was "inaudible" but from the record it is obvious that her response was that she could afford the relatively modest assessment). RP 191. Only after being given this assurance from the Appellant herself did the Judge impose the legal financial obligations.³ RP 192.

A final, and very significant fact is omitted from the Appellant's version of the facts. The Appellant's boyfriend, Brent Glass, was charged with the same crimes as the Appellant herein. This can be found in the record now before the Court. In the words of the Appellant's own Defense Council at a pre-trial hearing: "They're co-defendants. Mosier and Glass. Same witnesses in the Glass case would be the same witnesses in the Mosier case." RP 6. If this does not suffice, the Respondent would ask leave of the Court to supplement the record here on appeal by providing the charging documents in Mr. Glass' case.

³ While the Appellant's actual words may not appear in the record, the Sentencing Judge's reaction to her affirmation of her ability to make the payments is: "very good. That will be the order of the court." RP 192.

II. ISSUES

- A. WAS THE EVIDENCE SUBMITTED TO THE JURY LEGALLY SUFFICIENT TO SUPPORT THEIR VERDICT OF GUILTY AS TO THE BURGLARY CHARGE?
- B. WAS THE EVIDENCE SUBMITTED TO THE JURY FACTUALLY SUFFICIENT TO SUPPORT THEIR VERDICT OF GUILTY AS TO THE THEFT CHARGE?
- C. WERE THE COSTS AND FEES PROPERLY ASSESSED AGAINST THE DEFENDANT?

III. ARGUMENT

- A. THE "LEGALLY SUFFICIENT" CHALLENGE TO THE BURGLARY CONVICTION FAILS IN THE FACE OF THE PROSECUTION'S ASSERTED ACCOMPLICE LIABILITY.
- B. THE "FACTUALLY SUFFICIENT" CHALLENGE TO THE THEFT CONVICTION IS CLEARLY CONTRARY TO THE BODY OF EVIDENCE PRESENTED.
- C. THE COURT ENGAGED IN THE REQUIRED INQUIRY PRIOR TO ASSESSING THE COST AND FEES AND THE ISSUE IS FORECLOSED AS NOT PRESERVED BELOW.

DISCUSSION

- A. THE "LEGALLY SUFFICIENT" CHALLENGE TO THE BURGLARY CONVICTION FAILS IN THE FACE OF THE PROSECUTION'S ASSERTED ACCOMPLICE LIABILITY.

The Appellant's first assignment of error is a challenge to the "legal sufficiency" of the Burglary charge. Specifically, the Appellant argues that she had a key to the building and that her license to enter

or remain was in no way limited. Brief of Appellant, page 13. As a beginning point it must be noted that:

The standard of review for a challenge to the sufficiency of the evidence 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. Robinson, 73 Wn.App. 851, 855, 872 P.2d 43 (Div. I, 1994).

And: "A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom." State v. Spruell, 57 Wn.App. 383, 385, 788 P.2d 21 (Div. I, 1990).

In the present case, the State's theory of the case was that Brent Glass, the Appellant's boyfriend had entered the clinic after business hours and had committed the Burglary. The Appellant was guilty of the Burglary charge, not as a principal, but as an accomplice. The standard for conviction based upon a theory of accomplice liability is not the stringent standard that the Appellant attempts to impose, but rather, the State need only show general knowledge by the accomplice of the principal's substantive crime. State v. Rice, 102 Wn.2d 120, 125, 683 P.2d 199 (1984). Further, as our Supreme Court has noted:

The legislature has said that anyone who participates in the commission of a crime is guilty of the crime and should be charged as a principal, regardless of the degree or nature of his participation.

State v. Carothers, 84 Wn.2d 256, 264, 525 P.2d 731 (1974). This is a very low threshold.

The basis of the case in accomplice liability is obvious from every point of the case from investigation, charging, opening argument, evidence presented, jury instructions, and closing. Mr. Glass's involvement in the case was not an "alternative theory,"⁴ it is the very core of the State's case.

Not once, either at trial or here on appeal, has anyone offered any evidence that Mr. Glass was licensed or permitted to enter the Clinic after hours or when it was not otherwise open to the public. Absolutely no evidence was ever provided that he was allowed to enter or remain in the areas of the Clinic which were not open to the public. The State's case was that Brent Glass entered the Clinic, after hours on the Fourth of July holiday. The State argued that he did so with the specific intent to steal the money from the lock box. This is the very definition of Burglary as charged in this case. RCW 9A.52.030, WPIC 60.03 (given at RP 138 - 139). No "legal sufficiency" argument can possibly be made to these allegations.

The Appellant then tries to "bootstrap" the legal sufficiency argument by asserting that the evidence does not support the theory that Mr. Glass committed the Burglary with the Appellant's assistance.

⁴ Appellant's Brief, page 14.

Brief of Appellant, page 14. She argues that the evidence of her involvement is “weak” does not “flow” from the proven facts of the case. *Id.* at 15. Nothing could be further from the truth, briefly summarizing just some of the pertinent facts proven at trial and applying the appropriate standard:

1. It is absolutely undisputed that there was NO forced entry at Clinic related to the Burglary. Every witness agreed that it appeared that the Clinic had been accessed by someone with a key to the door.
2. It was absolutely undisputed that the key to the lock box was kept in a prescription bottle, in a refrigerator in the back area of the Clinic.
3. It was absolutely undisputed that the lock box itself was hidden in another area of the back of the clinic.
4. There was absolutely no evidence that the lock box was forced open. Every witness agreed that the box was most likely opened with the key.
5. It is absolutely undisputed that the money bag was removed from the lock box, and then the lock box was placed back in its hiding place, and the key was placed back in its hiding place.
6. It was absolutely undisputed that the Appellant had a key to the Clinic, knew where the key, lock box, and money were kept.
7. Absolutely no evidence was ever offered that Mr. Glass had access to any key to the Clinic other than through the Appellant.
8. Absolutely no evidence was ever produced that Mr. Glass would have any independent knowledge, other than through the Appellant, as to where the key, lock box or money were kept at the Clinic.

9. Every single witness, from trained investigator through the lowliest employee that learned of the circumstances of the Burglary came to the conclusion that it was an "inside" job - that only someone who was provided with specific "inside" information could have committed the crime.⁵

10. The Appellant provided Mr. Glass with an alibi for the night in question when she was questioned during the investigation.

11. This alibi was exposed as false by the records and tapes from the nearby casino.

12. The Appellant and Mr. Glass were seen, together, at the casino after midnight, following the Burglary - despite the fact that she had told a friend that they were "broke" prior to the Burglary.

This is hardly "weak" evidence. It is substantial and compelling evidence. All of these facts were proven at trial. No credible evidence was ever produced at trial to counter them.

Any objection to the legal sufficiency of the evidence in this case, whether couched in terms of the Appellant's assertion of her own license to enter, ergo no "illegal entry," or legally insufficient linkage between the Burglar, Mr. Glass, and herself, cannot stand.

B. THE EVIDENCE WAS FACTUALLY SUFFICIENT TO SUPPORT THE VERDICT AS TO THE THEFT CHARGE.

⁵ It is interesting to note that support for "an outsider" like Mr. Glass, guided by "an insider" like Ms Mosier can be found in the fact that along with the carefully guided pilfering of the hidden lock box - the product of information from an inside source, someone had "rifled through" some drawers in the office and had gone through receipts in an envelope. RP 20, and RP 69. An outsider would not have known that no money would be found here.

The Appellant's next argument is that the evidence was "factually insufficient" to support her conviction on the Theft charge. The Appellant does not, and indeed cannot argue that no theft occurred. It is absolutely undisputed that it did. Her assertion rather, is that there was no evidence that she was the thief. Again, the law requires that when an appellant claims insufficiency of the evidence, they admit the truth of all of the State's evidence and recognize that all reasonable inferences will be interpreted in the State's favor. State v. Myers, 133 Wn.2d 26, 37, 941 P.2d 1102 (1997). Rather than accepting this burden, the Appellant glosses over or completely misstates the evidence that was produced at trial. While arguing here on appeal, that "all 13 to 14 employees" had access to the Clinic and the same knowledge as to the hidden key, lock box, and money - and so could just as likely have "masterminded" the Burglary (Brief of Appellant, page 18) - the Appellant offers absolutely no evidence to support an alternate offender theory. No such evidence can be found in the record, because no such evidence exists. In fact, this theory of the defense was not even proffered below, nor would have been allowed at trial. It is a well-established rule that before a defendant can introduce evidence connecting another person with the crime charged, a proper foundation must be laid. State v. Jones, 26 Wn.App. 551, 555, 614 P.2d 190 (Div. I, 1980). Under this rule, before such evidence can be admitted, "there must be such proof of

connection with the crime, such a train of facts or circumstances as tend to clearly point out someone besides the accused as the guilty party.” State v. Mak, 105 Wn.2d 692, 716, 718 P.2d 407 (1986). It seems incongruous that the Appellant would not be allowed to argue this “alternate offender” theory below, where the burdens must be borne by the prosecution but now tries to argue just such a theory on appeal in her challenge to the sufficiency of evidence. The Court should not allow this.

In passing, the Court should note that the Appellant asserts, as fact, that she was at the Clinic on the night of the Burglary but argues that “the State offered no proof that she did not in fact pick up boxes.” Brief of Appellant, page 18. This is patently wrong. Other than her own self-serving statement to the Detective that, if anyone had seen her vehicle at the Clinic on the night in question, she was only there to get boxes, there is absolutely no evidence to support this claim. In fact, at trial, the Clinic employee responsible for the boxes, Kellee Whipple, specifically testified that the Appellant had not asked about boxes around the time of the Burglary and that NO boxes were taken from the Clinic over the 4th of July holiday. RP 63.

Similarly, so much of the Appellant’s account of the events July 4 - 5 were proven at trial to be either contrary to the evidence, unsupported by the evidence, or seriously lacking in credibility. Her claim that she went to the Clinic at 9:30 p.m. on the night of the 4th

and then went home and did not leave until the next morning (RP 25) is directly contradicted by her own statement that she was out looking for her children around the time of the “fireworks show” - a half an hour later at 10:00 p.m. RP 25 - 26. Her statement that she, Mr. Glass, and the white Pontiac were all at home throughout the night of the Fourth was thoroughly refuted by the evidence including the surveillance tapes from the casino showing them all together at the casino after midnight. This claim is further refuted by her own statement to Ms Klein that Mr. Glass had left sometime during the night and left her without a vehicle.

In the face of the following undisputed facts which are clearly supported by the actual testimony and evidence produced at trial:

1. The failed alibi proffered for herself and Mr. Glass;
2. The false statements the Appellant made about her activities on the night of the Burglary;
3. Her access and knowledge about all of the security measures at the Clinic;
4. Her motive for the Burglary as established by the evidence produced at trial;
5. The Appellant’s “spur of the moment” decision to move out of the area immediately after the Burglary;
6. Mr. Glass’ and her visit to the casino at midnight after the Burglary to gamble despite her statement to a close friend that she was broke before the Burglary;
7. Her failure to mention anything to this same close friend about the Burglary that morning - saying everything was “fine” when asked about work;

8. And her deceptive behavior when questioned about the Burglary - first by her co-workers, and then by the Detective; the challenge to the “factual sufficiency” of the charge is overwhelmed.

C. THE COURT ENGAGED IN THE REQUIRED INQUIRY PRIOR TO ASSESSING THE COST AND FEES AND THE ISSUE IS FORECLOSED AS NOT PRESERVED BELOW.

The Appellant argues that the Sentencing Judge did not inquire as to the Appellant’s ability to pay prior to assessing legal financial obligations. Having never challenged the finding that she had the financial ability to pay below, for the first time on appeal she now challenges the assessment of what she labels as “discretionary costs” totaling \$3,822.96. Brief of Appellant, page 9. These costs apparently represent \$2,022.96 in restitution; \$500.00 Crime Victims Assessment; \$200.00 filing fee; \$1,000.00 fine; and \$100.00 DNA fee. She also questions the imposition of what she labels as “mandatory costs” totaling \$1,425.00. Id. These costs apparently are made up of \$675.00 in Sheriff Service fees and \$750.00 court appointed attorney’s fees.

Without questioning how it is that the Appellant can consider restitution to be a “discretionary cost” when imposition of restitution is mandated by law (RCW 9.94A.753(5)); or the Crime Victims Assessment to be discretionary when it is mandatory as a matter of

law (RCW 7.68.035); the Filing Fee is similarly mandatory (RCW 36.18.020(2)(h)); the DNA fee is also mandated by law (RCW 7.68.035(1)(a)), the case law does not support her position. In State v. Lundy, 176 Wn.App. 96, 308 P.3d 755 (Div. II, 2013) the Court specifically held that:

the legislature has divested courts of the discretion to consider a defendant's ability to pay when imposing these obligations. For victim restitution, victim assessments, DNA fees, and criminal filing fees, the legislature has directed expressly that a defendant's ability to pay should not be taken into account.

at 102. This places these assessments outside of any challenge in the present case. What is more, as a factual matter, the Appellant stipulated to the assessment and the amount of restitution. RP 191.

Division III of the Court of Appeals has clearly stated that failure to raise the issue of financial ability at the trial court level will preclude the issue on appeal. State v. Duncan, ___ Wn.App. ___, ___ P.3d ___, 2014 WL 1225910 (Div. III, March 25, 2014). The Appellant does not even try to argue that the issue was preserved, and admits that she did not make the argument below. Brief of Appellant, page 19. She asserts that case law does not preclude her from raising the issue for the first time herein and cites to various cases - none of which is directly on point or dispositive of the issue. *Id.* at 19 - 20. All of the cases cited can be distinguished from the present case and none can be seen as providing contravening

precedential value sufficient to overcome this Court's Decision in Duncan.

Even if for some reason, the Appellant could escape the clear legal bar, then the facts would similarly doom her argument. It cannot be denied that the Sentencing Judge specifically asked the Appellant about her financial ability to pay all of the assessments prior to imposing any costs. RP 191. Had the Appellant not assured the Judge that she could pay the \$50.00 per month assessment her claim here might stand on more solid grounds. But she did not, although the record indicates that her response was "inaudible" it is obvious from the record that she asserted that she could make the modest payments. RP 191.

The Appellant's reliance on State v. Bertrand, 165 Wn.App. 393, 267 P.3d 511 (Div. II, 2011) is misplaced. The appellant in Bertrand preserved her challenge at the trial court level. *Id.* at 398. Since the issue was not preserved below in the present case the rule that a challenge to the imposition of legal financial obligations is ripe for review only when the government seeks to collect the obligation applies. State v. Valencia, 169 Wn.2d 782, 239 P.3d 1059 (2010). In the present case Ms Mosier neither preserved the issue nor is the matter before the Court on the State's attempt to collect.

Moreover, the Appellant cites to State v. Curry, 118 Wn.2d 911, 829 P.3d 166 (1992) no less than three times as a basis for her

claim that failure to consider her financial abilities mandates vacation of costs assessed. The Respondent would cite to State v. Baldwin, 63 Wn.App. 303, 308, 818 P.2d 1116 (Div. I, 1991) which provides the following guidance:

In light of State v. Eisenman, State v. Suttle and State v. Curry, Earls and Hayes can no longer be held to mandate findings of fact in every case imposing financial obligations. In each, financial obligations were upheld in the absence of formal findings of fact.

(citations omitted). Further, contrary to the Appellant's assertion the language of Curry is not as tight or dispositive she would have you believe. The real holding of Curry is that the STATUTE which allows for assessment of fees (RCW 10.01.160) must contain a variety of safeguards, and since it does, it is constitutionally sound. Curry, at 915 - 916. Curry goes on to state that since the statute is sound, and since there are safeguards in the law, the sentencing judge is not required to "provide added protections" of the very type which the Appellant calls for herein.

The long and short of it is that the Judge DID inquire of the Appellant's financial ability before imposing ANY costs, and she HERSELF assured him that she could pay the \$50.00 a month.

IV. CONCLUSION

The Appellant challenges the sufficiency of the evidence produced at trial to support her convictions. Her assault on the

Burglary conviction appears to be a “legal” challenge - but the law is contrary to her position. Her claim that she was “permitted” to enter the Clinic and so cannot be found guilty is eviscerated by the State’s evidence showing that she acted as an accomplice to a person not “licensed” or “permitted” to enter. Reviewing the pleadings, the pre-trial proceedings and the transcripts of the trial it is clear that this theory was advanced - and indeed proven beyond a reasonable doubt.

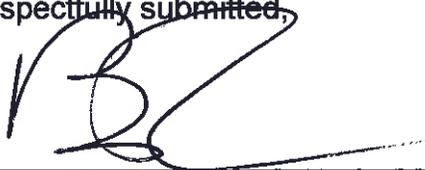
The Appellant’s challenge to the Theft conviction sounds in an alleged “factual” insufficiency. However, the facts, as proven at trial and as presented here on appeal, meet the required standard and clearly demonstrate that any rational trier of fact could have found the essential elements, and in fact the jury did so find. The Appellant cannot demonstrate any significant failure of the evidence despite her efforts to do so by omitting, ignoring, or misstating the facts presented to the jury.

Finally, the Sentencing Court engaged in the level of inquiry required before imposing financial obligations. These obligations for the most part, were required by law and so the inquiry was not necessary, but it was only after the Appellant personally and through counsel stipulated to restitution, and assured the court that she had the financial ability to make the \$50.00 a month payments, were those costs imposed. This cannot be error.

Based upon the foregoing the Court should reject all of the Appellant's claims and affirm the jury's verdict and the Judgment and Sentence entered in this matter.

Dated this 15th day of May, 2014.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'BN', written over a horizontal line.

BENJAMIN C. NICHOLS, WSBA #23006
Attorney for Respondent
Prosecuting Attorney for Asotin County
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**COURT OF APPEALS OF THE STATE OF
WASHINGTON - DIVISION III**

THE STATE OF WASHINGTON,
Respondent,

v.

ADRIENNA M. MOSIER,
Appellant.

Court of Appeals No: 314995

DECLARATION OF SERVICE

DECLARATION

On May 15, 2014 I electronically mailed, with prior approval from Ms. Gasch, a copy of the BRIEF OF RESPONDENT in this matter to:

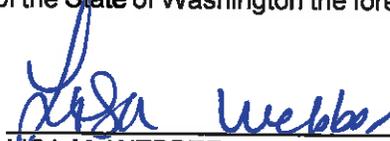
Susan M. Gasch
gaschlaw@msn.com

I further declare that On May 15, 2014 I deposited in the mail of the United States a properly stamped, and addressed envelope directed to the party listed below a copy of the BRIEF OF RESPONDENT in this matter:

Adrienna M. Mosier
4485 Lincoln Street #15
Clayton, WA 99110

I declare under penalty of perjury under the laws of the State of Washington the foregoing statement is true and correct.

Signed at Asotin, Washington on May 15, 2014.



LISA M. WEBBER
Office Manager