

FILED
Sep 07, 2016
Court of Appeals
Division III
State of Washington

NO. 34006-6-III
COURT OF APPEALS
STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,

Plaintiff/Respondent,

V.

JAY TREVOR POWERS,

Defendant/Appellant.

BRIEF OF APPELLANT

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ASSIGNMENTS OF ERROR

1. The trial court impermissibly delegated its authority to impose certain court costs to the Benton County Superior Court Clerk without determining the nature of those costs.

2. The prosecuting attorney did not comply with RCW 36.27.020(7).

ISSUES RELATING TO ASSIGNMENTS OF ERROR

1. Does a court clerk have any authority to impose legal financial obligations (LFOs) on a criminal defendant?

2. May non-specific LFOs be imposed on a criminal defendant when the prosecuting attorney has not approved the Cost Bill?

STATEMENT OF THE CASE

Matthew Mahan and Alyssa Aitoro were trespassing at the Canyon Del Sol Winery on March 15, 2015. (Adams RP 27, ll. 13-14; ll. 17-19; RP 30, ll. 10-12)

Mr. Mahan and Ms. Aitoro were trying to sort out their relationship. They were in his pickup (PU) with the lights off parked near one of the buildings. They were having sex in the rear of the PU when they saw a blinker and headlights approaching. (Adams RP 31, l. 21 to RP 32, l. 8)

The car which arrived directed its headlights at the PU and pulled in front of it. Mr. Powers was the passenger in the car. He is a caretaker at the winery and resides there. (King RP 6, ll. 6-9; Adams RP 34, ll. 6-14; RP 162, ll. 3-23)

When Mr. Mahan turned on the PU headlights the car moved approximately five (5) to ten (10) yards away and Mr. Powers got out. He moved to the back of the car. He had one hand in the air and the other behind his back. (Adams RP 34, l. 22 to RP 35, l. 1; RP 36, ll. 9-11; ll. 24-25; RP 37, ll. 14-18).

Mr. Mahan observed a firearm in Mr. Powers' hand. He floored the PU and made a hard right-hand turn. He initially heard one (1) shot and then multiple gunshots. (Adams RP 38, ll. 11-13; ll. 18-25; RP 40, ll. 19-21)

Ms. Aitoro also saw Mr. Powers with the firearm. She heard the shots being fired. According to her the PU did not swerve toward Mr. Powers. (Adams RP 74, ll. 11-12; RP 75, ll. 3-5; RP 81, ll. 4-8)

When interviewed by the law enforcement officers Mr. Powers advised them that he felt that he was in danger because the PU came close to him. The PU tires were spinning and it fishtailed spewing gravel in his direction. (King RP 30, ll. 1-3; RP 38, ll. 10-19; Adams RP 62, ll. 6-17)

Corporal Thompson of the Benton County Sheriff's Office later observed Mr. Mahan's PU. It had eleven (11) bullet holes in various locations. One (1) bullet was recovered. The cost of the repairs to the PU was \$7,184.56. (Adams RP 82, ll. 20-24; RP 85, ll. 17-21; RP 91, ll. 1-19; RP 121, ll. 2-3)

An Information was filed on March 20, 2015 charging Mr. Powers with two (2) counts of second degree assault. A firearm enhancement was added to each count. (CP 1)

An Amended Information was filed on April 29, 2015 adding a count of first degree malicious mischief. (CP 8)

Several time-for-trial waivers were entered. Trial eventually commenced on December 7, 2015. (CP 15; CP 16; CP 17)

A jury determined that Mr. Powers was guilty of each offense. The jury also answered the special verdict forms in the affirmative that he was armed with a firearm. (CP 83; CP 84; CP 85; CP 86; CP 87)

Judgment and Sentence was entered on December 14, 2015. Mr. Powers was sentenced to thirteen (13) months on each count of second de-

gree assault to run concurrently. The nine (9) months on the malicious mischief first degree was also run concurrent with the assault charges. Two (2) thirty-six (36) month firearm enhancements were imposed for a total of eighty-five (85) months in prison. (CP 97)

Restitution in the amount of \$8,520.90 was agreed. The trial court conducted the following inquiry as to Mr. Powers' ability to pay LFOs:

THE COURT: I would impose, then, the restitution as indicated; the \$500.00 crime victim assessment; \$100.00 felony DNA collection fee.

Mr. Powers, you were working at the time of this incident. Is there any reason that you are not capable of working?

DEFENDANT POWERS: Not at this time, no, Ma'am.

THE COURT: I would impose, then, the court costs, attorney fees, jury fee.

Costs and fees in the sum of \$4,550.50; plus the restitution. ...

(Adams RP 244, l. 14 to RP 245, l. 4)

Mr. Powers filed his Notice of Appeal on January 15, 2016. (CP 111)

SUMMARY OF ARGUMENT

The imposition of certain LFOs on Mr. Powers is invalid. A Superior Court Clerk has no authority to impose LFOs. The trial court violated its statutory duty by delegating that authority to the Clerk.

The prosecuting attorney did not examine and approve the Cost Bill as statutorily required.

ARGUMENT

Even though the trial court enunciated the total of the LFOs being imposed, it did not specifically identify each and every cost.

The restitution figures were agreed. (CP 99; Appendix "A")

The Court directed payment of the CVC (\$500.00); jury demand fee (\$250.00); attorney fees (\$700.00); and filing fee (\$200.00).

The Cost Bill prepared and filed by the Superior Court Clerk indicates special cost reimbursement in the amount of \$2,742.50. There are

unidentifiable notations of: DR \$2,000.00 and INV \$742.50. (CP 107; Appendix “B”)

RCW 9.94A.760(1) provides, in part:

... the court must on either the judgment and sentence or on a subsequent order to pay, designate the total amount of the legal financial obligation **and segregate this amount among the separate assessments made for restitution, costs, fines, and other assessments required by law.** ...

(Emphasis supplied.)

Mr. Powers claims that the trial court failed to comply with its statutory obligation by delegating authority to the Court Clerk to impose additional costs not individually addressed at the sentencing hearing.

RCW 2.32.050 defines the powers and duties of court clerks. The ten (10) subdivisions of that statute do not place any authority in the Clerk to impose costs on a convicted defendant.

RCW 10.01.160(1) states, in part: “The court may require a defendant to pay costs.”

RCW 10.01.160(2) provides, in part:

Costs shall be limited to expenses specially incurred by the state in prosecuting the defendant They cannot include expenses inherent in providing a constitutionally guaranteed jury trial or expenditures in connection with the maintenance and operation of government agencies that must be made

by the public irrespective of specific violations of law.

There is no way to determine from the record whether or not the special cost reimbursement falls within the prohibitions of RCW 10.01.160(2).

The trial court did not assess special costs. Thus, it would appear that the special costs are imposed strictly by the Court Clerk.

Moreover, there is nothing in the record to indicate that the prosecuting attorney complied with his/her statutory duties under RCW 36.27.020(7) which states:

Carefully tax all cost bills in criminal cases and take care that no useless witness fees are taxed as part of the costs and that the officers authorized to execute process tax no other or greater fees than the fees allowed by law.

CONCLUSION

A Court Clerk has no authority to impose court costs, including special costs of reimbursement pursuant to RCW 10.01.160(2).

The trial court has the statutory duty of imposing costs. It did not identify the nature of any special reimbursement costs in Mr. Powers' case.

The prosecuting attorney has the statutory duty to determine that cost bills are accurate. The prosecuting attorney did not do that in Mr. Powers' case.

Mr. Powers asserts that the proper remedy is to strike the \$2,742.50 from his LFOs.

DATED this 6th day of September, 2016.

Respectfully submitted,

s/ Dennis W. Morgan

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APPENDIX “A”

2.5 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS. The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change.

- The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753
- The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753):
- The defendant has the present means to pay costs of incarceration. RCW 9.94A.760.

2.6 [x] FELONY FIREARM OFFENDER REGISTRATION. The defendant committed a felony firearm offense as defined in RCW 9.41.010.

The court considered the following factors:

- the defendant's criminal history.
- whether the defendant has previously been found not guilty by reason of insanity of any offense in this state or elsewhere.
- evidence of the defendant's propensity for violence that would likely endanger persons.
- Other: _____

The court decided the defendant should should not register as a felony firearm offender.

III. JUDGMENT

- 3.1 The defendant is GUILTY of the Counts and Charges listed in Paragraph 2.1.
- 3.2 The Court DISMISSES Counts _____ in the charging documents.
- 3.3 The Defendant is found NOT GUILTY of Counts _____ in the charging documents.

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court:

JASS CODE

RTN/RJN Restitution to: MATTHEW E MAHAN (private)	.....	\$800.00
ALYSSA T AITORO (private)	.....	\$636.34
FARMERS INSURANCE C/O STUART-LIPPMAN -CL#3002926213 #5447 E 5TH ST #100 TUCSON, AZ 85711-2345	.....	\$7084.56
TOTAL ORDERED:	.....	\$8520.90

(Name and Address--Address May Be Withheld And Provided Confidentially To Clerk's Office).

PCV	\$ 500	Victim assessment	RCW 7.68.035
CRC	\$ See Attached Cost Bill	Court costs, including (Transportation costs on FTA Warrants in this case will be assessed at the current legal rate.	RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190

APPENDIX “B”

SUPERIOR COURT OF WASHINGTON FOR BENTON COUNTY

STATE OF WASHINGTON,)	
Plaintiff,	)	NO. 15-1-00296-5
)	
vs.	)	COST BILL
)	
JAY TREVOR FOWERS)	
Defendant.)	

The following court costs have been incurred by the county in the above-entitled matter and are owing:

		<u>ORD</u>	<u>ASS'D</u>
FILING FEE	\$ 200.00	_____	_____
CLERK'S FEE FOR FTA WARRANTS	\$ _____	_____	_____
_____ \$ _____	\$ _____	_____	_____
_____ \$ _____	\$ _____	_____	_____
SHERRIFF'S SERVICE FEE	\$ 60	_____	_____
3-23-15 \$ 60	\$ _____	_____	_____
_____ \$ _____	\$ _____	_____	_____
JURY DEMAND FEE 12/9/15	\$ 250	_____	_____
WITNESS FEES	\$ _____	_____	_____
ATTORNEY'S FEES	\$ 700	_____	_____
SPECIAL COST REIMBURSEMENT	\$ 2742 ⁵⁰	_____	_____
EXTRADITION COSTS	\$ _____	_____	_____
OTHER:	\$ _____	_____	_____
TOTAL ORDERED AND/OR ASSESSED	\$ 3952 ⁵⁰	_____	_____

DATED:

Dec 14th, 2015

JOSIE DELVIN,
SUPERIOR COURT CLERK

By:

Amey K. Hauer

Deputy

DR \$2,000
INV \$742⁵⁰

NO. 34006-6-III

COURT OF APPEALS

DIVISION III

STATE OF WASHINGTON

STATE OF WASHINGTON,)	
	)	BENTON COUNTY
Plaintiff,	)	NO. 15 1 00296 5
Respondent,)	
)	
v.	)	CERTIFICATE OF SERVICE
)	
JAY TREVOR POWERS,)	
)	
Defendant,)	
Appellant.)	
)	

I certify under penalty of perjury under the laws of the State of Washington that on this 6th day of September, 2016, I caused a true and correct copy of the *BRIEF OF APPELLANT* and to be served on:

COURT OF APPEALS, DIVISION III
Attn: Renee Townsley, Clerk
500 N Cedar St
Spokane, WA 99201

E-FILE

BENTON COUNTY PROSECUTOR'S OFFICE

Attn: Andrew Kelvin Miller

prosecuting@co.benton.wa.us

E-FILE

JAY TREVOR POWERS #387674

Monroe Correctional Complex

Twin Rivers Unit

PO Box 888 - B602

Monroe, WA 98272

U.S. MAIL

s/ Dennis W. Morgan

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