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COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By.....

NO. 34054-6-III  
IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION III

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STATE OF WASHINGTON,

RESPONDENT,

V.

SETH EDEN ASH

APPELLANT.

---

BRIEF OF RESPONDENT

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**STATUTE**

RCW 9A.36.021(1)(c)

RCW 9A.46.020

RCW 10.01.160(4)

A. APPELLANT'S ASSIGNMENTS OF ERROR

1. The State presented insufficient evidence to support a finding that Defendant committed the crime of felony harassment by making death threats.
2. The Trial Court failed to conduct the requisite inquiry into Defendant's ability to pay legal financial obligations before imposing legal financial obligations as part of Defendant's sentence.
3. The Court of Appeals should decline to impose appellate costs should the State substantially prevail and request such costs.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Whether sufficient evidence was presented that the victim reasonably thought he would be killed or had fear of death.
2. Whether sufficient evidence was presented that a reasonable person in the defendant's position would believe that his statements would be interpreted as a serious expression of intent to kill the victim.
3. Whether the Trial Court's inquiry at the time of sentencing satisfies the requirements of *Blazina*.
4. Whether the Court of Appeals should impose appellate costs should the State prevail on appeal.

## C. STATEMENT OF THE CASE

### 1. Facts Presented at Trial

The Defendant was tried by jury on January 4-5, 2016 on one count of Assault in the Second Degree (Deadly Weapon) and one count of Felony Harassment (Threats to Kill). RP 1, 7, 231.

Witnesses called by the State were Ferry County Sheriff's Deputy Darin Odegaard (RP 135-161, 175-178, 386), Defendant's step-father, David Wolff (RP 180-190, 198-200, 378-379, 381-385), and the victim Michael Mize (RP 202-221, 241-263, 290-297, 300-301).

Witnesses called by the Defense were Defendant Seth Ash (RP 303-315), Defendant's mother, Ann Ash (RP 334-338, 349), and Defendant's step-father, David Wolff (RP 376-383). The facts presented at trial are as follows.

In January of 2016, Mike Mize resided in a motor home that was located on the property of Defendant's mother, Ann Ash. RP 202. Mr. Mize had Ms. Ash's permission to reside there and paid her rent. RP 182, 203. Mr. Mize had been on Ms. Ash's property about four months and considered her to be a landlord. Id. Mr. Mize's motor home was located an estimated 70 yards away from the Ash residence. RP 209.

As of September 27, 2015, Mr. Mize had been residing on

Ms. Ash's property to about month. RP 212. At that time, Ms. Ash, her husband, and her two sons resided at the Ash residence also located on the Ash property. Id. Defendant Seth Ash is one of Ms. Ash's sons and was residing with her at that time. Id. Mr. Mize had never had any issues with Ann Ash or her husband, David Wolff. RP 212-13. Mr. Mize tried to be pleasant to Defendant Seth Ash, even offering to take the Defendant fishing on one occasion. RP 296. Mr. Mize and Defendant got along "most of the time" but had had a few problematic incidents in the days prior to September 27, 2015. RP 213-14.

On one occasion, Mr. Mize was peacefully sitting and talking with Ms. Ash and Mr. Wolff on the porch of the Ash residence, after having been invited to do so by Ms. Ash. RP 215-16. At some point, with no provocation, Defendant Seth Ash came violently darting out of the residence at Mr. Mize, as if he were going to push him over. Id, RP 339-40. Mr. Wolff, the Defendant's step-father, had to grab the Defendant and push him back into the house. RP 216-17. Mr. Mize felt threatened, as if he were going to get beat up or pushed over. RP 216-17. Afterwards, Mr. Mize left because he did not want to start a problem on Ms. Ash's porch. RP 218.

On a second occasion, which occurred a day or two after the

incident on the porch, the Defendant approached Mr. Mize at his home to ask him why he [Mize] had parked his vehicle on the neighbor's property. RP 218. Defendant confronted Mr. Mize in the alley by his motor home and told him that he was "dumb" for parking at the neighbor's, that he should never park there again, and that he [Defendant] was going to "come back and do something about it." RP 219. Although Mr. Mize acknowledged that Defendant's mother was the manager of the property and Defendant "kind of" had a right to ask him to move his car, Mr. Mize felt that Defendant's manner was "off the wall" and "over-mad". RP 219-20. Defendant was angry and he said that he was going to "come back," which alarmed Mr. Mize. RP 219-20. Defendant was irate and got into Mr. Mize's face and told him that he was "dumb" and "didn't know anything". RP 220. Mr. Mize feared that there was going to be a fight or an argument when Defendant returned and he was scared because Defendant is bigger and taller than him. RP 220.

A few days later, on September 27, 2015, Mr. Mize drove his motorcycle from his motor home up to Ms. Ash's residence to find out where the garbage was located, as Ms. Ash had asked him to use the garbage up by the house. RP 243. After Mr. Mize

returned, he parked his motorcycle in front of his motor home, still sitting on the motorcycle. RP 247. Subsequently, Defendant came walking down the driveway looking irate and “wrongly mad”, accusing Mr. Mize of being “reckless” and a nuisance. RP 247, 249. Mr. Mize was afraid he was going to be punched. RP 248. And indeed, Defendant got within touching distance of Mr. Mize and began pushing and intimidating him. RP 247-48. Mr. Mize felt that the Defendant was trying to pull him off the motorcycle to get him to throw a punch. RP 248. As Defendant tried to hit Mr. Mize, Mize – still sitting on the motorcycle – drew his knees back so that he could protect himself. RP 248-48. Mr. Mize felt that there was perhaps an open spot for a punch or a kick, but he did not punch or kick the Defendant because he did not want to hurt him or make him “more mad”. RP 249. Mr. Mize did not feel that he could get off of the motorcycle to leave. RP 261.

Mr. Mize saw Defendant reach into his right pocket and pull out a knife. RP 249. Defendant began making slashing and stab-marks at Mr. Mize’s chest and arms. RP 249. Although he did not get cut, Mr. Mize thought that he would get cut, and the knife did come into contact with his clothes. RP 250. Mr. Mize told Defendant that if he did not stop, he was going to break his nose.

RP 249. Mr. Mize stated that he wanted to kick Defendant, but did not do so because he likes things to be “peaceful”. RP 295-96. In response, Defendant punched Mr. Mize on the forehead, told him that he better not report this to the police, and that he was going to come back and kill him [Mize]. RP 249, 251.

When Defendant started to leave, Mr. Mize got closer to his truck because he felt safer there, in case he needed to escape. RP 252. Defendant stopped, came back within an arm’s reach, and told Mr. Mize not to make a report to the police and that he was going to “murder” him. RP 252-53. Mr. Mize was afraid, stating that he was worried for his physical safety, in part due to the previous incidents with the Defendant. RP 253-54. Mr. Mize got into his truck, intending to go to town to use his cousin’s phone to call the police. RP 254. However, on the way to town, Mr. Mize saw an officer parked alongside the road and immediately pulled over to report what had happened and to provide a statement, indicating that his life had been threatened. RP 254-56. Even though Mr. Mize had not reported the prior incidents with Defendant, he reported this incident because he felt his life was in danger because Defendant had said that he was going to kill him [Mize]. RP 297.

## 2. Procedural Facts

On September 30, 2015, Mr. Ash was charged in Ferry County Superior Court by an information alleging one count of Assault in the Second Degree (Deadly Weapon), contrary to RCW 9A.36.021(1)(c), and one count of Felony Harassment (Threats to Kill), contrary to RCW 9A.46.020 for the incident involving victim Mike Mize, a tenant on Defendant's mother's property. CP 1. Prior to trial, the State moved to admit evidence of prior incidents between the Defendant and the victim Mike Mize, to establish the reasonableness of Mr. Mize's fear and as evidence of defendant's intent, motive, and malice, which motion was granted. RP 131-32. The Defendant was tried by jury on January 4-5, 2016. RP 1, 7, 231. After deliberating for about three hours, the jury found the Defendant guilty of Felony Harassment (Threats to Kill). CP 55, RP 475. The jury, however, was unable to come to a unanimous verdict on the Assault in the Second Degree charge, and found the Defendant guilty of the lesser included charge of Assault in the Fourth Degree. CP 54. A sentencing hearing was held on January 22, 2016, at which Mr. Ash was sentenced to 22 months on the Felony Harassment charge and 364 days on the Assault 4 charge (with 364 days of that sentence

suspended on conditions that Defendant comply with the terms of his probation). CP 60. Defendant was given credit for any time that he had already served on the sentence while awaiting trial. CP 60.

At the sentencing hearing, Defense presented that the Defendant had six other cases with pending LFOs, that Defendant had not earned any significant money recently and that it was questionable as to whether the Defendant was employable. RP 472. Defendant was assessed \$800 in legal financial obligations, which consisted of a \$500 victim assessment, a \$200 criminal filing fee, a \$50 bench warrant fee, and a \$50 booking fee. CP 60. In consideration of Defendant's pre-existing "substantial" financial obligations, the Court did not impose a fine, or attorney's fees, or the \$100 DNA collection fee that had been requested by the State. RP 479.

#### D. ARGUMENT

I. THE EVIDENCE PRESENTED AT TRIAL WAS SUFFICIENT TO ESTABLISH A FINDING OF GUILT FOR THE CRIME OF FELONY HARASSMENT (THREATS TO KILL).

##### A. Standard of Review on Appeal

The standard of review requires an appellate court to determine 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. Joy*, 121 Wash.2d 333, 339, 851 P.2d 654, 657 (1993); *State v. Luther*, 157 Wash. 2d 63, 77-78, 134 P.3d 205 (2006) [citing *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980); *State v. Aver*, 109 Wn.2d 103, 310-311, 745 P.2d 479 (1987)]. “[I]n determining whether the necessary quantum of evidence exists, it is unnecessary for the reviewing court to be satisfied of guilt beyond a reasonable doubt. It is only necessary for it [the reviewing court] to be satisfied that there is substantial evidence to support the State’s case or the particular element in question. *State v. Green*, 94 Wash.2d at 220 [citing *State v. Green*, 91 Wn.2d 431, 588 P.2d 1370 (1979); *State v. Randecker*, 79 Wn.2d 512, 487 P.2d 1295 (1971)]; *State v. Bencivenga*, 137 Wn.2d 703, 706, 974 P.2d 832 (1999).

“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.” *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). When raising an insufficiency claim, the appellant “admits the truth of the State’s evidence and all inferences that can *reasonably* be drawn from it.” *State v. Tilton*, 149 Wn.2d 775, 785, 72 P.3d 735,

740 (2003) [citing *State v. Salinas*, 119 Wn.2d at 201]; *State v. Alvarez*, 105 Wn.App. 215, 222, 19 P.3d 485 (Div. III, 2001).

An appellate court also defers to the trier of fact regarding the credibility of witnesses and any conflicting testimony, and credibility determinations are not subject to review. *State v. Mann*, 157 Wn.App. 428, 438-39, P.3d 966 (2010) [citing *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990)].

The appellant argues that, even considering the evidence in the light most favorable to the State, the State failed to prove that Mr. Mize's belief that he would be killed by the Defendant was objectively reasonable or that a reasonable person in Defendant's position would believe that his statements would be interpreted as a serious expression of intent to kill. Respondent disagrees, as there was ample evidence that Mr. Mize's fear of being killed by Defendant was reasonable, and a reasonable person in Defendant's position would believe that his statements could be interpreted as a "true threat".

B. There was Sufficient Evidence presented to demonstrate that Mr. Mize's fear that Defendant would kill him was reasonable.

A person is guilty of harassment if without lawful authority the person knowingly threatens to cause bodily injury immediately or in the future to the person and the person by words or conduct places

the person threatened in reasonable fear that the threat will be carried out. RCW 9A.46.020. Harassment becomes a felony when the person harasses another by threatening to kill the person threatened and the fear from the threat is a fear that a reasonable criminal justice participant would have under all the circumstances. Id. Threatening words do not constitute harassment if it is apparent to the criminal justice participant that the person does not have the present and future ability to carry out the threat. Id.

Appellant contends that Mr. Mize did not offer details as to why Defendant's threats to kill him were believable and further contends that the evidence admitted at trial "provides no basis for an objectively reasonable fear on Mr. Mize's part that Defendant would actually kill him based on the threat. This is a gross misstatement of the evidence and testimony presented at trial.

Mr. Mize testified about two prior incidents involving the defendant Seth Ash. Specifically, Mr. Mize detailed an incident in which he had been invited by the Defendant's mother to sit on her porch with her and her husband, David Wolff. For no apparent reason, Defendant became "very upset" and darted out of the house at Mr. Mize. "I did not know why my son became angry" stated Ms. Ash. RP 339. David Wolff, Defendant's stepfather, stated

"[It] was almost like I could feel – like a rage or an anger gripping him. He comes out, and he just started yelling at Mike... I don't remember the exact threats, because I just kind of blocked them out, but I remember that they were threats about violence – physical – physical harm that he was going to do to Mike if Mike didn't do what Seth wanted him to do. And I – I think that was get off the property by a certain amount – period of time. Seth was upset that Mike was there, and was really letting him know how upset he was."

RP 187. Mr. Wolff felt that he needed to get between Mr. Mize and the Defendant because he didn't know if Seth was going to "go off" and he wanted to prevent physical violence. RP 188. "The main thing that concerned me were the – threats of physical violence that Seth was making. And – I didn't want that to happen at that moment." RP 188-89. It is clear from the record that what transpired on the porch that day made a lasting impression on Mr. Mize and the others who witnessed it. A peaceful encounter "sitting on the front porch, in the flowers" with friends was suddenly interrupted when "it all turned violent. I was threatened." RP 216. Mr. Mize did state that he was "mentally threatened", but went on to clarify what he meant, stating that the Defendant's actions scared him because the incident was unprovoked ("I did nothing."). RP 216-17. Mr. Mize feared that he was going to be "beat up, or pushed over". RP 217. "It's just that when somebody's coming at you you know that when they're – they're going to attack you. You can sense – I could sense that I was

going to be pushed.” RP 217. It is clear from the testimony from Mr. Mize, Ms. Ash, and Mr. Wolff that there was a very real concern for all the parties that things could have turned violent had Mr. Wolff not stepped in.

In addition to the incident on the porch, Mr. Mize detailed a second incident in which the Defendant overreacted to a seemingly minor issue and “got in his face,” told him he was dumb, and said that he was going to “come back” in such a manner that Mr. Mize feared that there would be an ensuing fight. RP 220.

These incidents in and of themselves would likely not be sufficient to cause a reasonable person to fear being killed versus simply fearing physical harm. However, the events immediately prior to the harassing comments on September 27, 2015, in conjunction with the prior incidents, are certainly sufficient to establish that Mr. Mize’s fear of being killed was reasonable. Regarding the incident on September 27, 2015, Mr. Mize testified about an assault that involved the Defendant pushing him, pulling him, slashing at him and making stabbing gestures with a knife, and punching Mr. Mize in the head. The Defendant – still in possession of a knife – subsequently told Mr. Mize that he would “murder him” and warned him not to report anything.

Defense relies heavily on *State v. C.G.*, 144 Wn.App. 101, 55 P.3d 1204 (2002). However, C.G. merely stands for the proposition that where the defendant is charged with harassment based on threats to kill, it is not sufficient that the victim merely have a fear of physical harm – rather, the victim must fear that the threat to kill will be carried out. In C.G., the victim, a school vice-principal, testified that that he was concerned that the defendant C.G. might try to harm him or someone else after the defendant stated “I’ll kill you, Mr. Haney. I’ll kill you.” The Court reversed C.G.’s conviction because there was no evidence presented at trial that Mr. Haney was placed in reasonable fear that C.G. would actually kill him, versus merely cause him harm.

In *State v. Mills*, 154 Wn.2d 1, 12-13, 109 P.3d 415 (2005), the Washington Supreme Court found ample evidence that a victim was placed in reasonable fear from a threat to kill where there were several explicit threats to kill the victim, where the victim was aware of the defendant’s prior assaultive history, and where the victim testified at trial that she was “very scared” and believed that the defendant was “capable of doing what she threatened to do.” *Id.* at 12.

Here, as in *Mills*, Defendant made explicit threats to kill Mr. Mize, Mr. Mize knew of Mr. Ash’s assaultive propensities through

prior encounters, and Mr. Mize testified that he was scared of being killed and thought the Defendant could carry out the threat to kill.

Taking the facts in the light most favorable to the State, sufficient evidence was presented to establish that Mr. Mize's fear of getting killed by Mr. Ash was reasonable. Mr. Ash had initiated confrontations with no provocation on at least two prior occasions, and on one of those occasions, Defendant's step-father had to intervene to prevent him from getting violent. Furthermore, immediately prior to being threatened, Defendant – who is bigger and taller than Mr. Mize – had assaulted Mr. Mize. Mr. Mize, who had refrained from reporting the prior incidents, was so fearful for his life on this occasion that he finally determined to contact the police.

Q: Okay. Now, there'd been – you told us yesterday about a couple of other instances. Did you report those ones?

A: No.

Q: Okay. What was different about this one?

A: My life.

Q: Okay. When you say "my life" what do you mean?

A: My life was going to end – in the yard.

RP 258. The jury evidently agreed with Mr. Mize, finding that the combination of the assault, the prior threatening behavior, and the

Defendant's threats were sufficient to cause an objectively reasonable fear in Mr. Mize that the Defendant might carry out his threats. The fact that Defendant had never threatened to kill Mr. Mize before or physically harmed Mr. Mize before September 27, 2015 is not persuasive where he did harm Mr. Mize on that date, and where Mr. Mize perceived that he would have harmed him on a prior occasion had Mr. Wolff not intervened. Neither statute nor case law require that a victim actually sustain an injury or a prior threat on his life in order to believe a present threat.

- C. There was sufficient evidence presented to allow a jury to infer that Defendant could have reasonably foreseen that Mr. Mize would interpret his threats as "true threats".

A "true threat" for purposes of harassment is a statement made in a context or under such circumstances wherein a reasonable person would foresee that the statement would be interpreted as a serious expression of intention to inflict bodily harm upon or take the life of another individual. *State v. Allen*, 176 Wn.2d 611, 626, 294 P.3d 679 (2013). Although RCW 9A.46.020 does require a "mental element" because that statute states that the defendant knowingly threatens, it does not require that the State prove that the speaker intended to actually carry out the threat. *Id.* at 711. "The requirement

is that the words express the intent to inflict harm, not a requirement that the speaker actually intends to carry out the threat.” *State v. Kilburn*, 151 Wn.2d 36, 46, 84 P.3d 1215 (2003).

In addition, it is not necessary that the perpetrator know or intend that the person threatened be placed in reasonable fear that the threat will be carried out based on words or conduct of the perpetrator. *State v. Kilburn*, 151 Wn.2d at 46; *State v. J.M.*, 101 Wn.App. 716, 730, 6 P.3d 607 (2000), *aff’d State v. J.M.*, 144 Wn.2d 472, 28 P.3d 720 (2001). While a communication must be a serious threat, and not just idle talk, joking, or puffery, this does not mean that just because the speaker subjectively intends a joke that no true threat is made. *State v. Kilburn, Id.* at 46. “Whether a statement is a true threat or a joke is determined in light of the entire context, and the relevant question is whether a reasonable person in the defendant’s place would foresee that in the context the listener would interpret the statement as a serious threat or a joke.” *Id.*

In *Kilburn*, the defendant, a juvenile, was convicted of felony harassment after making statements to another student that he planned to bring a gun to school and shoot everyone in the class, starting with the student that he made the comment to, K.J.. *Id.* at 39. The Washington Supreme Court reversed Kilburn’s conviction,

finding that there was insufficient evidence of a true threat where K.J. was not sure if Kilburn was joking or not, where Kilburn and K.J. had been talking about a book that Kilburn was reading that had military men and guns on it, where Kilburn made the comments while smiling and giggling, where Kilburn acted like he was joking, where K.J. did not feel scared when Kilburn spoke, where K.J. and Kilburn had never had a fight or disagreement and Kilburn always treated her nicely, and where Kilburn had made jokes on other occasions and K.J. and other students laughed at them. *Id.* at 53-53. The Court held that a reasonable person in Kilburn's position would not foresee that his comments would be interpreted seriously, based on his past history and relationship with K.J., his treatment of her in the past, the regularity of Kilburn joking with her and others, and his giggling and laughter as he made the comments. *Id.* at 53.

The facts in the present case are starkly different from those in *Kilburn*. Whereas Kilburn and K.J. had never had a disagreement or argument, the Defendant in this case had had altercations with the victim Mike Mize on at least two other occasions, within days of making the threat to kill. Whereas Kilburn and K.J. had a congenial, joking relationship and were laughing at the time the comments were made, the Defendant had just assaulted Mr. Mize when he

threatened to kill him. There was no evidence to suggest that the Defendant made the threats in a joking manner or was laughing or giggling, as in *Kilburn*. Unlike the facts in *Kilburn*, these facts all support that a reasonable person in Defendant's position would foresee that his comments would be interpreted seriously, even if he did not actually intend to harm or kill Mr. Mize.

When taken in the light most favorable to the State, the evidence presented was more than sufficient to establish both that Mr. Mize's fear that Defendant intended to kill him was reasonable, and that Defendant could have reasonably foreseen that his comments could be interpreted as a serious expression of an intent to kill, given the history between the two and the context of the interaction. Therefore, the State respectfully requests that the Court deny Defendant's motion to vacate the conviction for felony harassment.

II. THE TRIAL COURT DID NOT ERR WHEN IT IMPOSED LEGAL FINANCIAL OBLIGATIONS ON MR. ASH.

A. Defendant's presentation to the Court about his ability to pay was a sufficient inquiry under the law.

"Legal financial obligations" (LFOs) can refer to court costs, fines, restitution, and the interest accrued on all of the above as

well as other assessments that the court may make. RCW 10.01.160(4). Some of these legal financial obligations have been designated by statute and case law to be modified, remitted, or enforced. In *State v. Curry*, the court specifically found that neither the constitution nor any other statutes require the entry of formal findings regarding the defendant's ability to pay the court costs. The imposition of fines and costs is within the court's discretion. *State v. Curry*, 118 Wn.2d 911, 829 P.2d 166 (1992).

*State v. Blazina* is a recent interpretation of RCW 10.01.160's requirements. It holds that a sentencing judge must consider a defendant's current and future ability to pay before imposing legal financial obligations. *State v. Blazina*, 182 Wn.2d 827, 839, 344 P.3d 680 (2015). This requires the court to consider important factors, such as incarceration and a defendant's other debts, including restitution, when determining the defendant's ability to pay. *Id.*

In *Blazina*, the trial court made absolutely no attempt to satisfy these obligations. By contrast, the Court in the present case allowed the Defense to present considerable information regarding Defendant's ability to pay. RP 471-72. Defense presented the following information: Defendant has at least six other cases where

he has LFOs; Defendant has never made a payment on those LFOs; Defendant has not earned any significant amount of money recently; Defendant may not be employable; Defendant suffers from a brain injury; Defendant tends to self-medicate and overdose; Defendant suffers from anxiety; and Defendant will be in custody for 17-22 months. RP 471-72. Defense also asked the Court to only impose the mandatory LFOs. RP 471.

After considering this information, the Court declined to impose some of the LFOs requested by the State, including the \$100 DNA fee, and a \$250 court-appointed counsel contribution, and did not impose any fine. The Court did impose a \$500 victim assessment, a \$200 criminal filing fee, a \$50 bench warrant fee, and a \$50 booking fee. Therefore, the Court properly considered the factors set forth in *Blazina*, namely, the Defendant's other cases with LFO's, Defendant's incarceration, and Defendant's health and employment history, prior to imposing any LFOs.

B. The only LFOs which may be modified or terminated are the \$50 booking fee and the \$50 bench warrant fee.

RCW 10.01.160's requirement is only required for discretionary LFOs. *State v. Lundy*, 176 Wn. App. 96, 102, 308 P.3d 755 (2013) (mandatory fees, which include victim restitution,

victim assessments, DNA fees, and criminal filing fees, operate without the court's discretion by legislative design); *State v. Kuster*, 175 Wn. App. 420, 424, 306 P.3d 1022 (2013) (victim assessment and DNA collection fee are mandatory and not discretionary and are not to be addressed under the ability to pay requirement of RCW 10.01.160.).

Here, the only discretionary LFOs that were imposed were the \$50 booking fee and the \$50 bench warrant fee. The \$500 victim assessment and the \$200 criminal filing fee are non-discretionary and operate by legislative design.

E. CONCLUSION

Sufficient evidence was presented at trial by which a jury could and did find that the victim's fear that the Defendant would carry out the threat to kill was reasonable. Furthermore, sufficient evidence was presented a trial by which a jury could and did find that the Defendant should have known that the victim would interpret his threats seriously. For the reasons stated above, the State respectfully requests that the Court deny Defendant's motion to vacate the conviction for felony harassment.

In addition, Judge Nielson properly considered Defendant's ability to pay before imposing LFOs and indeed, only imposed \$100

of discretionary fines. The other \$700 worth of fines were mandatory in nature. For the reasons stated above, the State respectfully requests that the Court deny Defendant's motion to remand back to the trial court for a new sentencing hearing.

The State has no intention of seeking appellate costs and therefore declines to address Defendant's third issue on appeal.

Dated this 12 day of October, 2016

Respectfully Submitted by:

  
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