

35004-5-III

COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

ELIJAH MANSON,

Appellant.

DIRECT APPEAL
FROM THE SUPERIOR COURT
OF WALLA WALLA COUNTY

RESPONDENT'S BRIEF

Respectfully submitted:



by: Teresa Chen, WSBA 31762
Deputy Prosecuting Attorney

P.O. Box 5889
Pasco, Washington 99302
(509) 545-3561

TABLE OF CONTENTS

Page No.

I. **IDENTITY OF RESPONDENT**1

II. **RELIEF REQUESTED**1

III. **ISSUES**.....1

IV. **STATEMENT OF THE CASE**.....2

V. **ARGUMENT**7

 A. The Prosecutor Offered No Evidence
Of The Amount Of Cash On The Defendant’s Person7

 B. The Defendant Received Effective Assistance
Of Counsel8

 1. Counsel’s performance was not deficient
for failing to object to admissible evidence
that the officers were familiar
with the Defendant and had knowledge
of his warrant9

 2. Counsel’s performance was not deficient
for failing to request a limiting instruction14

 C. The Jury Instruction Was Not A Comment
On The Evidence.....16

 D. There was No Cumulative Error17

 E. If the State Substantially Prevails On Appeal,
Appellate Costs Would Be Appropriate
To This Defendant’s Circumstances18

VI. **CONCLUSION**21

TABLE OF AUTHORITIES

State Cases

	Page No.
<i>In re Crace</i> , 174 Wn.2d 835, 280 P.3d 1102 (2012).....	8
<i>State v. Berrysmith</i> , 87 Wn. App. 268, 944 P.2d 397 (1997).....	15
<i>State v. Elliot</i> , 114 Wn.2d 6, 785 P.2d 440 (1990).....	15
<i>State v. Grier</i> , 168 Wn. App. 635, 278 P.3d 225 (2012).....	9
<i>State v. Hughes</i> , 106 Wn.2d 176, 721 P.2d 902 (1986).....	17
<i>State v. Humphries</i> , 181 Wn. 2d 708, 336 P. 3d 1121 (2014).....	15
<i>State v. Kyllo</i> , 166 Wn.2d 856, 215 P.3d 177 (2009).....	8
<i>State v. McFarland</i> , 127 Wn.2d 322, 899 P.2d 1251 (1995).....	8, 13
<i>State v. Newbern</i> , 95 Wn. App. 277, 975 P.2d 1041.....	17
<i>State v. Price</i> , 126 Wn. App. 617, 109 P. 3d 27 (2005).....	15
<i>State v. Reichenbach</i> , 153 Wn.2d 126, 101 P.3d 80 (2004).....	9
<i>State v. Russell</i> , 125 Wn.2d 24, 882 P.2d 747 (1994).....	17
<i>State v. Young</i> , 89 Wn.2d 613, 574 P.2d 1171 (1978).....	15

United States Supreme Court Cases

Page No.

Fuller v. Oregon,
417 U.S. 40, 94 S.Ct. 2116, 40 L.Ed.2d 642 (1974)..... 19

Strickland v. Washington,
466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)..... 8, 9

Court Rules

ER 401 9

ER 403 10

RAP 14.2..... 19

WPIC 50.03..... 16, 17

Secondary Authority

ABA Criminal Justice Standard 21-2.3, *ABA Standards for Criminal Justice: Prosecution and Defense Function*, 3d ed. (1993)..... 20

I. IDENTITY OF RESPONDENT

The State of Washington, represented by the Walla Walla County Prosecutor, is the Respondent herein.

II. RELIEF REQUESTED

Respondent asserts no error occurred in the trial and conviction of the Appellant.

III. ISSUES

1. Does the record support the Defendant's claim that the amount of cash he was carrying at the time of his arrest was offered into evidence?
2. Was counsel's assistance ineffective for failing to object to admissible evidence and where the entire record demonstrates highly competent counsel?
3. Is the court's use of the WPIC defining possession a comment on the evidence where the definition was an accurate statement of law and helpful to the jury in interpreting all the evidence under the State's theory of the case?
4. If the State substantially prevails on appeal, should costs be awarded where the lower court's imposition of LFO's and finding

of ability to pay is unchallenged in this appeal, where the Defendant has a job waiting for him, and where the Defendant has acknowledged an ability to pay?

IV. STATEMENT OF THE CASE

The Defendant Elijah Manson appeals from his jury conviction for possessing heroin. CP 59-60; 73-74.

On October 5, 2016, WWPD Officer Jeremy Maiuri recognized the Defendant driving along the street and knew there was an outstanding DOC warrant for the Defendant's arrest. RP 282-84. The officer rolled down his window and instructed the Defendant, whom he knew from previous contacts as Eli, to pull over. RP 284-85. The Defendant pulled over and the officer contacted him at his window. RP 285. Learning that he was about to be arrested on a warrant, the Defendant began to reach toward his right out of view of the officer. RP 285. Ofc. Maiuri asked the Defendant to step out of the car and put his hands behind his back. RP 286. Instead, as the Defendant exited, he threw his hands on the top of his car in an exaggerated motion. RP 286-89. His back was to the officer, and his hands were still out of the officer's view. RP 287, 290-91. It was almost 7 p.m. in October and getting dark. RP 284, 403.

Ofc. Maiuri cuffed the Defendant and began to search him, asking whether there was anything sharp in the Defendant's pockets that might poke or stab him. RP 291. The Defendant said he had a "pokey," which he explained was a needle or syringe, in the pocket of a spare pair of pants that was inside the car. RP 291.

When Ofc. Kevin Huxoll arrived, Ofc. Maiuri advised him about the Defendant's furtive movements just prior to the arrest and the "pokey" in the car. RP 292-93, 415-18. Ofc. Huxoll was familiar with the Defendant from previous narcotics contacts. RP 417. He requested consent to search the car. RP 292-93, 415-18. The Defendant said they were not going to find anything so it was fine. RP 418. He also said that it was not his car, so he was not technically responsible for anything inside it. RP 418.

Ofc. Huxoll stepped around to the passenger side of the car, careful of his footing onto the curb. RP 296, 420. Using a flashlight to assist him in the dark, Ofc. Huxoll observed something black inside a clear baggie on the grass in the planting strip beside the Defendant's car. RP 297-98, 420. Without the flashlight, the object would not have been visible. RP 420-21. Officer Huxoll told Officer Maiuri that he had found something. RP 421. Before they could pick it up or identify what was inside, the Defendant

began to yell at the top of his lungs, “it’s not mine” and that he would fight it in court, because it had not been found inside the car. RP 296-97, 421, 440. From his position in the patrol car behind the divider, the Defendant would not have been able to see what the police were looking at on the ground. RP 421-23.

The baggie held a large rock of black tar heroin with a street value of \$720, too addictive and too valuable to leave lying on a curb. RP 300, 312, 340-42, 356, 425, 437-38. Black tar heroin is consumed by melting it on a heated spoon and then injecting it with a syringe into a vein. RP 429. During the search of the Ford Aspire, police located the syringe in the spare pants. RP 294-95. Underneath the pants was a pair of work boots. RP 295. There was a spoon and sock inside one boot, and scales inside a sock in the other. RP 295-96, 305, 419.

Pretrial Motion:

The first trial resulted in a hung jury. RP 267-71. In the first trial, defense asked whether the State intended to offer testimony that “equated” large sums of money in the Defendant’s wallet with “drug dealing.” RP 41-42. The prosecutor replied, “We are not offering that testimony, Your Honor.” RP 42. The court made no ruling. RP 42. And in fact, the prosecutor only asked “how much cash was in the wallet,” soliciting no

testimony regarding drug dealing. RP 146.

Shortly before closing argument in the first trial, defense asked the court to “prohibit the State from arguing that because the Defendant had possession of some \$600, that that is evidence that he was in possession of the heroin.” RP 217.

THE COURT: I don’t think that argument is being made.

MR. MCCOOL: Well, it hasn’t been yet made, but I would anticipate that the State would make that argument and --

THE COURT: Counsel?

MR. MCCOOL: -- that’s the reason we made the motion in limine about the officer being able to testify to that. So the jury would have that in a vacuum.

MR. ACOSTA: The State is not going to argue that the money is a result of the heroin or vice versa. It’s just part of the evidence.

THE COURT: Correct.

RP 217. The Defendant was not charged with delivery or intent to deliver (CP 6-7); and the prosecutor did not argue that the money suggested a greater crime than was charged. RP 233-36, 254-55.

In the second trial, defense counsel expanded on his previous motion.

Your Honor, we are at this time also moving in limine to prohibit the State from making any reference to the cash that was found on my client following his arrest and from

the State showing any pictures of any cash found following his arrest.

My client is only charged with possession, not with possession with intent to deliver. There's no particular showing for or any reason there would be any relevance to anything found after his arrest to the charge in this case.

RP 280. The prosecutor said he would not offer photographs of money, but he would seek to admit the bag of heroin on the ground, the syringe in the pocket, and the spoon and scales in the boots. RP 280.

MR. MCCOOL: But I haven't heard counsel say anything about the cash.

MR. ACOSTA: I said I am not offering the cash.

MR. MCCOOL: Okay. And no testimony about the cash that was found then as well; correct?

MR. ACOSTA: That's what I said as well.

MR. MCCOOL: Well, all right. Fine.

THE COURT: So I think that takes care of that.

RP 281. The court made no ruling.

At trial, no photographs of cash were offered. PE 6, 7, 8, 10, 11. There was no testimony as to the amount of cash in the Defendant's possession. The wallet which was offered into evidence did not contain the cash, but only identification. RP 305-06, 501; PE 5. It was in a sealed bag such that the jury could not and did not open the wallet. PE 5.

The court's instructions to the jury included WPIC 50.03, which defines possession. CP 52. In closing argument, the prosecutor explained

the difference between actual and constructive possession in the evidence, i.e. that the Defendant actually possessed the heroin and threw it to the curb and the Defendant constructively possessed the syringe and spoon found in his car. RP 468-69.

V. ARGUMENT

A. THE PROSECUTOR OFFERED NO EVIDENCE OF THE AMOUNT OF CASH ON THE DEFENDANT'S PERSON.

The Defendant claims that the prosecutor committed error by offering into evidence of the large amount of cash which the Defendant was carrying. BOA at 10. In a related claim, the Defendant argues that defense counsel's performance was deficient for failing to object to evidence of Defendant's cash. BOA at 11.

Both claims fail for the same reason. No such evidence was offered or admitted.

The Defendant does not claim that the prosecutor admitted any photographs of the cash or elicited any testimony about the cash. He did not. The Defendant only claims that through the admission of the wallet into evidence as Exhibit 5, the jury would have learned that he was carrying \$600. The necessary presumption is that the cash was in the exhibit. It was not. PE 5.

There is no factual basis for the Defendant's claim.

B. THE DEFENDANT RECEIVED EFFECTIVE ASSISTANCE OF COUNSEL.

In order to show ineffective assistance of counsel, the Defendant has the burden of showing both (1) that his attorney's performance was deficient and (2) that this deficiency prejudiced him. *State v. McFarland*, 127 Wn.2d 322, 334-35, 899 P.2d 1251 (1995); *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984).

Deficient performance is that which falls "below an objective standard of reasonableness based on consideration of all the circumstances." *State v. McFarland*, 127 Wn.2d at 334-35.

To demonstrate prejudice, the Defendant must show a reasonable probability that but for the deficient performance, the outcome of the trial would have been different. *In re Crace*, 174 Wn.2d 835, 843, 280 P.3d 1102 (2012). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694.

The analysis of any claim of ineffective performance begins with a "strong presumption that counsel's performance was reasonable." *State v. Kylo*, 166 Wn.2d 856, 862, 215 P.3d 177 (2009). The Defendant bears the burden of proving that "there is no conceivable legitimate tactic

explaining counsel's performance." *State v. Reichenbach*, 153 Wn.2d 126, 130, 101 P.3d 80 (2004). "A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." *Strickland*, 406 U.S. at 689 (1984).

1. Counsel's performance was not deficient for failing to object to admissible evidence that the officers were familiar with the Defendant and had knowledge of his warrant.

The Defendant claims his attorney should have objected to evidence of his prior contact with officers and evidence of his DOC warrant. BOA at 13. He argues that the evidence was irrelevant. *Id.*

In fact, the evidence was relevant and admissible as *res gestae* to set the scene and explain the officers' actions. *Res gestae* evidence is relevant under ER 401 as it completes the story of the crime on trial by proving its immediate context of happenings in time and place and so depicts a complete picture for the jury. *State v. Grier*, 168 Wn. App. 635, 647, 278 P.3d 225 (2012). *Res gestae* includes all circumstances surrounding and connected with a happening. And the officers' familiarity with the Defendant "made several consequential facts 'more probable.'" *Id.*

The officers' credibility is also highly relevant to the case. It was the crux of the case. This information demonstrated that their actions in arresting and searching were not arbitrary but reasonable.

Officer Maiuri testified he rolled down his window and told the Defendant to pull over, because he knew who the Defendant was and knew he had a warrant. The traffic stop was warranted, not arbitrary. It was not the result of any animus. The officer did not turn on his lights and sirens. The traffic stop was cordial and low risk, and the Defendant was cooperative.

Officer Huxoll testified that he requested consent to search the car for a number of reasons. He knew that the Defendant had been making these furtive and suspicious movements inside the car and then outside the car. He knew that the Defendant had acknowledged a syringe inside the car. And he knew the Defendant personally from his time working undercover narcotics. Again, this information shows Ofc. Huxoll's request to search to be reasonable and not arbitrary.

The Defendant argues that the testimony was prejudicial. BOA at 14. The test is whether the evidence's probative value was "substantially outweighed" by the danger of "unfair prejudice." ER 403. Here the officers' behavior and credibility was highly probative and not

significantly prejudicial.

A DOC warrant may be for something as insignificant as fines or failure to report. From the way Ofc. Maiuri contacted the Defendant, by rolling down his window at an intersection while headed in the opposite direction, the warrant clearly was not a serious matter. He was not a dangerous person or a flight risk. A DOC warrant does not suggest that a person is likely to possess nine grams of heroin. The testimony was not prejudicial.

The fact that Ofc. Maiuri recognized the Defendant was not prejudicial. It is part and parcel with the Defendant having a warrant. Patrol officers will review warrant lists daily to learn the names of the people they should be looking for. And Walla Walla is a small town.

The Defendant claims the “most concerning testimony” was that Ofc. Huxoll said he knew the Defendant “from previous contacts.” BOA at 14. Ofc. Huxoll knew him from his work as an undercover narcotics detective. RP 417. Again, the fact that the Defendant was known to police in a small town is not prejudicial. Police contact victims, witnesses, other law enforcement professionals, etc.. Ofc. Huxoll may have known the Defendant as a witness or complainant. There was no testimony that the Defendant was known to have used heroin in the past.

Defense attorneys must pick their battles. As counsel said, you work with what you have. RP 482. Not only was the evidence admissible, but the jury could see and assess the Defendant for themselves. CP 78. He was a person who did not have his own car, who played games with police while being arrested, who was in possession of a syringe (with no suggestion that it was possessed for a proper medical purpose), who kept a spoon and a digital scale hidden in his work boots, and who called out from a patrol car that whatever they were looking at on the curb was not his and could not be pinned on him for the technical reason that it was outside the car.

The State's case was strong, and the only available defense was reasonable doubt. The Defendant was witnessed making a bizarre gesture in defiance of the officer's directive to put his hand behind his back. The trajectory of his gesture ended in a baggie of heroin. Before the police could identify the object, the Defendant began to throw a fit. From his seat in the patrol car, he could not have seen what they had found, but he knew. It could have been anything at all – from road kill to a diamond ring. The Defendant could only have known it was evidence of a crime, because he himself had thrown it. And he had paraphernalia in his vehicle used in ingesting heroin.

Defense counsel's competence is not judged by a single decision, but on the entire trial record. *State v. McFarland*, 127 Wn.2d at 335. Here defense counsel made a vigorous defense. On a strong state case, counsel succeeded in getting one count dismissed (RP 211-16) and in obtaining a hung jury in the first trial. The closing argument and the theory of defense was methodical and powerful.

Defense counsel argued that, because the heroin was not found on the Defendant's person, there was no evidence of actual possession. RP 475. The baggie was on the opposite side of the car that the Defendant exited from. RP 485. Counsel argued that it was light enough at the time of the arrest that Ofc. Maiuri could see the Defendant's hands. RP 485. He would necessarily have seen if the Defendant had thrown the heroin across the top of the car onto the grass strip. RP 474, 477, 484-85, 491 ("if the legislature deems it safe for you to drive with your headlights off from a thousand feet away, you would suspect somebody would be able to see a baggie flying through the air from five or six feet away within the legal twilight.").

Defense counsel argued that his client had been proven to be a truth teller. RP 486. The Defendant acknowledged the syringe in the spare pair of pants, explained that there would be nothing in the car, and

admitted that he did not own the car. *Id.* He had been cooperative, agreeing to a search. *Id.*

Counsel argued that the investigation had been sloppy – no fingerprint testing, no DNA testing, no dash cam video, and no interview with the car’s true owner. RP 484, 486-89. And he uncovered and then repeatedly underscored the officers’ demonstrably unreliable memories. RP 473, 474, 476-78.

In this case, when you don’t have fingerprints, when you don’t have DNA, when you don’t see an object flying through the air when you could have because you saw his hands seconds before, when you don’t have any of the kind of quality of evidence to prove that Eli ever even touched that item, then you certainly, ladies and gentlemen, do not have actual possession.

When Eli Manson walked in this courtroom yesterday morning, he walked in with a very precious gift. And it isn’t just mumbo-jumbo. It is the presumption of innocence.

RP 493. This was the work of highly competent counsel.

2. Counsel’s performance was not deficient for failing to request a limiting instruction.

The Defendant claims his attorney should have asked for a limiting instruction of this evidence. BOA at 15. However, he notes that the failure to request a limiting instruction is generally presumed to be a tactical decision to avoid drawing the jury’s attention to the information.

BOA at 15, (citing *State v. Humphries*, 181 Wn. 2d 708, 720, 336 P. 3d 1121 (2014); *State v. Price*, 126 Wn. App. 617, 649, 109 P. 3d 27 (2005)). And that is precisely the case here. The evidence was not discussed in closing by either counsel. A limiting instruction would only have served to draw attention to the admissible information. This would have been a poor tactic.

The Defendant argues that the choice cannot be considered a valid tactic, because counsel should have objected to the evidence in the first place. This argument lacks authority. Where a party fails to cite to authority, the court is not required to search authority on behalf of the party, but may assume that counsel has found none. *State v. Young*, 89 Wn.2d 613, 625, 574 P.2d 1171 (1978). The court has no obligation to consider a claim that is insufficiently argued and unsupported by authority. *State v. Elliot*, 114 Wn.2d 6, 15, 785 P.2d 440 (1990); *State v. Berrysmith*, 87 Wn. App. 268, 279, 944 P.2d 397, 402 (1997).

The argument also piggybacks on the previous claim that failing to object to admissible evidence was ineffective assistance. As discussed *supra*, it was not.

C. THE JURY INSTRUCTION WAS NOT A COMMENT ON THE EVIDENCE.

The jury instructions included WPIC 50.03, which defines possession. CP 52. The Note on Use suggests that if the case involves actual possession, then the instruction “may” need to include only the first sentence. However, the Note does not prohibit the use of the full instruction, and in this case the instruction was not abridged.

The Defendant complains that, because the prosecutor did not argue constructive possession of the heroin, then the instruction would have indicated to the jury that the judge thought there was some evidence of constructive possession. BOA at 18. The closing arguments make abundantly clear that the jury would have had no such indication.

In closing, the prosecutor argued that the Defendant had been in actual possession of the heroin (which he had tossed over the top of the car onto the grass strip). RP 468-69. And the prosecutor noted the Defendant had been in constructive possession of the items used in injecting the drug, i.e. the syringe and spoon. *Id.* While both definitions were helpful to the jury, the prosecutor clarified, that for purposes of the to-convict elements, the theory of the State’s case was actual possession of the heroin. *Id.*

Defense counsel’s remark in closing argument further clarified that

the instruction was not a judicial comment.

The State to some extent surprised me in indicating that they weren't even remotely suggesting constructive possession.

RP 500. This made quite clear that it was the prosecutor's choice, and not the judge's idea, to include that instruction.

An instruction does not constitute an impermissible comment on the evidence when there is sufficient evidence in the record to support it and when the instruction is an accurate statement of the law

State v. Hughes, 106 Wn.2d 176, 193, 721 P.2d 902, 911 (1986). The Defendant does not complain that the WPIC 50.03 inaccurately states the law. CP 52. There was evidence on the record to support its utility insofar as the definition of constructive possession was useful and helpful to the jury in interpreting the link between the Defendant and the items found inside the car. There was no comment and no error.

D. THERE WAS NO CUMULATIVE ERROR.

The Defendant claims cumulative error requires reversal. Because the State denies any error, the State also rejects the claim of cumulative error. A review of the various challenges does not demonstrate a manifest miscarriage of justice materially affecting the outcome of trial. *State v. Russell*, 125 Wn.2d 24, 93, 882 P.2d 747 (1994); *State v. Newbern*, 95

Wn. App. 277, 297, 975 P.2d 1041, *review denied*, 138 Wn.2d 1018, 989 P.2d 1142 (1999).

E. IF THE STATE SUBSTANTIALLY PREVAILS ON APPEAL, APPELLATE COSTS WOULD BE APPROPRIATE TO THIS DEFENDANT'S CIRCUMSTANCES.

The Defendant requests that, if the State substantially prevails in this appeal, appellate costs not be imposed against him. Motion on Appellate Costs. This request should be denied.

The Defendant is able to pay his LFO's including appellate costs. The sentencing court found him able to pay and imposed significant discretionary LFO's which Mr. Manson did not see fit to challenge on appeal. CP 61-62. In his Continued Indigency Report, the Defendant acknowledges an ability to pay.

Mr. Manson was able to post a \$5000 bond in this case. RP 80. Although the Motion (at 8) claims the Defendant has no work history or job skills, this is contradicted in the record. The Defendant has a full time job available to him at his family's landscaping business. RP 81. In failing to provide this information, the Defendant comes to the Court with unclean hands and in violation of the June 10, 2016 General Order:

If inability to pay is a factor alleged to support the request, then the offender should include in the record on appeal the

clerk's papers, exhibits, and the report of proceedings relating to the trial court's determination of indigency and the offender's current or likely ability to pay discretionary financial obligations.

The Defendant has also failed to provide the record relating to the superior court's original determination of indigency.

That the Defendant qualified for criminal counsel is unremarkable. And no authority, including RAP 14.2, has held this fact to be determinative of imposition of appellate costs. Under RAP 14.2, where the losing party is a criminal defendant, the standard for awarding costs is "ability to pay," not indigency for purposes of appointment of counsel. Immediate inability to come up with a significant retainer necessary to safeguard the constitutional rights to counsel and appeal is not equivalent to future inability to make small payments toward LFO's.

The Defendant argues that the imposition of attorney costs causes a conflict of interest. This is not true. The United States Supreme Court has upheld awards of attorney and investigator fees against indigent criminal defendants. *Fuller v. Oregon*, 417 U.S. 40, 94 S.Ct. 2116, 40 L.Ed.2d 642 (1974). Both public and private attorneys must always consider and encourage their clients to consider financial risk. Attorney costs are a consequence regardless of the client's financial circumstances. And the

attorney's interest is aligned with the client's in that a win results in the State paying the costs of appeal.

In fact, there is less of a conflict for public attorneys than private attorneys. Regardless of whether the client pays the debt, the OPD will receive funding. Therefore, under a scheme where there is no risk of costs on appeal, criminal defendants have no incentive not to file frivolous appeals.

This is exactly the concern that the ABA considered in coming up with its standard. ABA Criminal Justice Standard 21-2.3, *ABA Standards for Criminal Justice: Prosecution and Defense Function*, 3d ed. (1993).

Standard 21-2.3. Unacceptable inducements and deterrents to taking appeals

(a) Administration of a system of elective appeals presupposes that the parties with the right to appeal will choose to do so only when they, with advice of counsel, have identified grounds on which substantial argument can be made for favorable action by the appellate court. The system should not contain factors that induce or deter appeals for other reasons.

(b) Examples of unacceptable inducements for defendants to appeal are:

(i) absence of any risk that a financial obligation may be imposed on an appellant who pursues a frivolous appeal;

...

In this case, the record supports an ability to pay. The Defendant

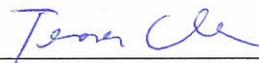
acknowledges in his Continued Indigency Report that he has an ability to pay \$25/mo toward his LFO's in this case. Walla Walla County does not collect interest on LFO's.

VI. CONCLUSION

Based upon the forgoing, the State respectfully requests this Court affirm the Appellant's conviction.

DATED: July 24, 2017.

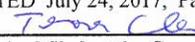
Respectfully submitted:



Teresa Chen, WSBA#31762
Deputy Prosecuting Attorney

Kevin March
<MarchK@nwattorney.net>

A copy of this brief was sent via U.S. Mail or via this Court's e-service by prior agreement under GR 30(b)(4), as noted at left. I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.
DATED July 24, 2017, Pasco, WA


Original filed at the Court of Appeals, 500 N.
Cedar Street, Spokane, WA 99201

July 24, 2017 - 10:12 AM

Transmittal Information

Filed with Court: Court of Appeals Division III
Appellate Court Case Number: 35004-5
Appellate Court Case Title: State of Washington v. Elijah Dean Manson
Superior Court Case Number: 15-1-00327-2

The following documents have been uploaded:

- 350045_Briefs_20170724101116D3768193_5590.pdf
This File Contains:
Briefs - Respondents
The Original File Name was 350045 BOR.pdf
- 350045_Designation_of_Clerks_Papers_20170724101116D3768193_0807.pdf
This File Contains:
Designation of Clerks Papers - Modifier: Supplemental
The Original File Name was 350045 Supp Des Clerks Papers.pdf

A copy of the uploaded files will be sent to:

- MarchK@nwattorney.net
- Sloanej@nwattorney.net
- jnagle@co.walla-walla.wa.us
- nielsene@nwattorney.net

Comments:

Sender Name: Teresa Chen - Email: tchen@co.franklin.wa.us
Address:
PO BOX 5889
PASCO, WA, 99302-5801
Phone: 509-545-3543

Note: The Filing Id is 20170724101116D3768193