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Division III  
State of Washington  
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NO. 35536-5-III

COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION THREE

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STATE OF WASHINGTON,

Respondent,

v.

JOSEPH JONES,

Appellant.

---

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

---

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The court erroneously ordered restitution despite insufficient evidence that the amount of alleged losses were causally connected to the incident as required by statute.

2. The imposition of attorney's fees for Mr. Jones's public defender was an improper imposition of fees for expenses inherent in providing a constitutionally guaranteed jury trial or expenditures in connection with the maintenance and operation of government agencies, in violation of RCW 10.01.160(2).

3. The sentencing court failed to make an adequate inquiry into whether Mr. Jones had a present or future ability to pay legal financial obligations (LFOs).

4. The imposition of LFOs where Mr. Jones was only able to pay \$50 a month towards the principal was unjustly punitive, considering the burdensome restitution.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Restitution must be based on a causal connection between the crime and the victim's damages. If the defendant disputes the amount of restitution requested in a criminal case, the State must present substantial evidence that is reliable and refutable, in order to

prove the victim's actual damages. Where the State presented insufficient evidence to prove the losses claimed by the complainant, was restitution awarded in violation of the statute, as well as in violation of constitutional due process?

2. LFOs 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. Must attorney's fees designed to compensate the public defender's office for representation of an indigent defendant entering a guilty plea be stricken for violating this statutory restriction?

3. Before LFOs may be imposed, the court must make an individualized assessment of a defendant's current and future ability to pay the fines and fees imposed. Where the court fails to make an adequate finding, remand is required in order for the sentencing court to determine whether the defendant has the current or future ability to pay the imposed amounts. Did the sentencing court fail to adequately inquire into Mr. Jones's ability to pay LFOs, where the only inquiry revealed that Mr. Jones has worked as a piecemeal laborer and that he is a non-smoker?

4. It is unjustly punitive to impose payments of LFOs that will only cause such LFOs to increase. Because of the 12% interest rate imposed on LFOs, payments below \$50 a month cause the amount owed to increase and makes repayment impossible. Where the court found Mr. Jones only had the ability to pay \$50 a month towards his LFOs, was imposition of the discretionary fines and fees, including attorney fees, unjustly punitive, in light of the significant restitution owed?

C. STATEMENT OF THE CASE

Joseph Jones was charged with burglary in the second degree, theft in the first degree, and related charges, for breaking and entering into the trailer of a wholesale marijuana growing operation located in Okanogan County. CP 84-86. Mr. Jones was one of three co-defendants who pled guilty to several counts, including burglary and malicious mischief. 7/26/16 RP 72-74.<sup>1</sup> Mr. Jones and his co-

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<sup>1</sup> Mr. Jones entered a plea pursuant to North Carolina v. Alford. 400 U.S. 25, 91 S.Ct 160, 27 L.Ed.2d 162 (1970). The State conceded that due to an unlawful search, a motion to suppress at least half of the stolen marijuana, as well as Mr. Jones's cellular phone, would likely have been granted. 7/26/16 RP 88-89. Mr. Jones entered an Alford plea on the counts the State could proceed on without the suppressed evidence, and the State agreed to a 17-month sentence, which was at the low end of the standard range. Id.

defendants were held joint and severally liable for the restitution, the amount of which was determined at a contested hearing. RP 89.

Mr. Jones was sentenced to 17 months' incarceration. 7/26/16 RP 91-93; CP 19-29. The court also imposed \$1260.50 in legal financial obligations. 7/26/16 RP 92-93; CP 25.

At sentencing, the court questioned Mr. Jones about his ability to pay legal financial obligations, considering his order to pay a \$76,670 restitution award. 7/26/16 RP 92; CP 7, 13-18. The court asked:

COURT: You're -- what do you normally do for work?

MR. JONES: A wide variety of things. Drywalling, framing, fencing --

THE COURT: Okay. So if you're making prevailing wage as a carpenter you're doing pretty well. --

MR. JONES: (inaudible) got prevailing wage, but --

THE COURT: Oh. Okay. You've got to find the right employer, then.

MR. JONES: Yeah.

THE COURT: Certainly work is difficult in the Methow in the construction industry; it's feast or famine. Maybe if you go somewhere else the hope would be that you can find employment as -- as a carpenter --

MR. JONES: Yes.

\* \* \*

THE COURT: Yeah. Do you smoke?

MR. JONES: No, your Honor.

THE COURT: And you're not disabled, are you?

THE COURT: No.

7/26/16 RP 92.

The court made a finding based on this record, alone, that Mr. Jones had the ability to pay legal financial obligations at the rate of \$50 per month. 7/26/16 RP 92-93; CP 25.

The court imposed a total of \$1260.50 in LFOs. 7/26/16 RP 95; CP 25. This included the \$500 crime victim assessment, \$220.50 in court costs, \$400 in attorney's fees, a \$100 DNA fee, and a \$40 booking fee. CP 25. No objection was made to the imposition of these fees, although Mr. Jones objected to the \$76,670 in restitution. CP 13-18.

A few months later, a contested restitution hearing was conducted, at which the owner of the burglarized marijuana nursery testified. 4/23/17 RP 41-73 (testimony of Edward Rhinehart). Mr. Rhinehart testified to his losses as a result of the burglary, stating that he estimated his loss of product at \$37,080, plus an additional \$14,033

for the marijuana damaged in the theft. 4/23/17 RP 45-48. Rhinehart calculated his total losses at \$51,113. 4/23/17 RP 48.<sup>2</sup> Rhinehart informed the court that since the marijuana business is government regulated, the nursery had undergone a thorough audit by the Liquor and Cannabis Control Board, following the burglary, which had closed the business during the audit. 4/23/17 RP 45. However, the State did not provide the audit paperwork for the court, and despite defense counsel's request, the court denied a continuance to provide the paperwork from the audit. 4/23/17 RP 45, 67-68, 76-77, 80.

At the conclusion of the restitution hearing, the trial court entered a restitution order of \$76,670, increasing the loss, *sua sponte*, by 50%. 4/23/17 RP 84-86, CP 13.

Mr. Jones appeals the order of restitution and the judgment and sentence, as to his legal financial obligations.

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<sup>2</sup> Rhinehart stated that he estimated his losses based upon the market price of marijuana at the time, which was \$3.00/gram, since the market was falling. 4/23/17 RP 15.

#### D. ARGUMENT

**1. The court violated the SRA and due process by ordering restitution without requiring the State to prove by sufficient evidence the connection between the victim's losses and Mr. Jones's actions, and the amount of restitution owed.**

When a defendant disputes the amount of restitution requested by the State, the court must require the State to present substantial evidence to prove its allegations. Due process requires the evidence be reliable and refutable; not only must the court rely on the State's representations, but the accused has relied on the facts stipulated to in the police reports, before entering a plea and agreeing to pay restitution. 7/26/16 RP 73. Here, Mr. Jones disputed the restitution award requested by the State, as well as the increase of 50% ordered by the court. Because the restitution award rests on insufficient evidence, it must be reversed.

*a. The SRA required the State to prove the damages that resulted from Mr. Jones's criminal act.*

The court's authority to impose restitution is statutory, and is found in the Sentencing Reform Act. State v. Tobin, 161 Wn.2d 517, 524, 166 P.3d 1167 (2007); RCW 9.94A.753. Restitution is meant to be both punitive and compensatory. State v. Cosgaya-Alvarez, 172

Wn. App. 785, 790-91, 291 P.3d 939 (2013); State v. Kinneman, 155 Wn.2d 272, 279-80, 119 P.3d 350 (2005).

Restitution is a criminal sanction that is “strongly punitive” in its purpose. Kinneman, 155 Wn.2d at 280. It is part of the sentence that may not be imposed absent affording the accused the fundamental right to due process of law. State v. Hotrum, 125 Wn. App. 681, 683, 87 P.3d 766 (2004).

Determining the accurate sentence to impose, including restitution, may not be based on mere assertions or unproved allegations. See State v. Hunley, 175 Wn.2d 901, 910, 287 P.3d 584 (2012). Because restitution is part of the “quantum of punishment,” the same due process rights attach as to other contested parts of punishment, including being proven to the correct legal standard. State v. Schultz, 138 Wn.2d 638, 643-44, 980 P.2d 1265 (1999); State v. Serio, 97 Wn. App. 586, 987 P.2d 133 (1999).

Here, Mr. Jones disputed the causation between the amount in damages that the State sought to collect on behalf of Mr. Rhinehart, and the burglary committed by Mr. Jones. Thus, the State was required to prove that amount by a preponderance of the evidence. Tobin, 161 Wn.2d at 524.

*b. The sentencing statute and constitutional due process required the State to present reliable, refutable evidence to prove the actual amount of Mr. Rhinehart's loss.*

Setting the restitution amount is an integral part of the sentencing proceeding that must be performed with the same care and deliberation as other aspects of the sentencing decision. State v. Pollard, 66 Wn. App. 779, 784-85, 834 P.2d 51 (1992). Evidence admitted at a sentencing hearing must meet due process requirements, such as providing the defendant an opportunity to refute the evidence presented; the evidence must also be reliable. State v. Strauss, 119 Wn.2d 401, 418-19, 832 P.2d 78 (1992) (citing Townsend v. Burke, 334 U.S. 736, 741, 68 S.Ct. 1252, 92 L.Ed. 1690 (1948)); see also Hunley, 175 Wn.2d at 910.

The amount of restitution awarded must be based upon sufficient evidence. State v. Dedonado, 99 Wn. App. 251, 256, 991 P.2d 1216 (2000). While the claimed loss need not be established with specific accuracy, evidence is sufficient if it affords a reasonable basis for estimating loss. Id. “Although the Rules of Evidence do not apply at restitution hearings, the evidence presented to the trial judge must

nevertheless be sufficient to support a finding of restitution in the amount ordered.” Pollard, 66 Wn. App. at 784.

In addition, restitution proceedings must comply with principles of constitutional due process. Pollard, 66 Wn. App. 779, 784-85; Const. art. I, § 3; U.S. Const. amend. XIV. The Due Process Clause places the burden on the State to ensure that the record before the court is adequate to support a court’s sentencing decision. State v. Mendoza, 165 Wn.2d 913, 920, 205 P.3d 113 (2009). Due process requires that the court’s decision be based upon information bearing “some minimal indicium of reliability *beyond mere allegation*.” Id. (internal quotation marks and citations omitted). A defendant may not be sentenced on the basis of information that is false, lacks minimum indicia of reliability, or is unsupported by the record. State v. Ford, 137 Wn.2d 472, 481, 973 P.2d 452 (1999). Any action taken by the sentencing judge that fails to comport with due process requirements is constitutionally impermissible. Id.

The Due Process Clause requires the court’s restitution award be based upon evidence that is reliable and refutable. Pollard, 66 Wn. App. at 784-85. If the State relies upon hearsay statements, the record must be adequate to provide the defendant with a sufficient basis to

rebut the State's evidence. State v. Kisor, 68 Wn. App. 610, 620, 844 P.2d 1038 (1993). By the same token, "the record must permit a reviewing court to determine exactly what figure is established by the evidence." Pollard, 66 Wn. App. at 785. These basic principles of fairness were violated in this case because the State did not present sufficient reliable and refutable evidence to prove the actual amount of loss.

*c. The State did not present sufficient evidence to support the restitution amount.*

According to the above well-established principles, the State was required to present sufficient reliable evidence to prove the amount of restitution.

Here, at best, the State's evidence failed to support the court's order of \$76,670 in restitution. At worst, the State's evidence completely undermined the court's order. Mr. Rhinehart testified to his losses, explaining the product he lost to theft and to damage, including his calculations, based upon market value. 4/23/17 RP 45-46 (estimating \$3/gram). Mr. Rhinehart calculated a different rate for the product the police salvaged after Mr. Jones and the other suspects were arrested, due to the damaged state of the marijuana, leading Rhinehart

to sell the damaged merchandise at a lower rate. Id. at 47-48, 55 (estimating \$2/gram for damaged product – a 25% reduction).

Although Mr. Rhinehart seemed precise in his calculations, the trial court disregarded the testimony and chose to increase the amount of losses by 50%, concluding Rhinehart was “extremely conservative” in his estimation of losses. Id. at 84.<sup>3</sup> The court denied Mr. Jones’s request that the court base the restitution award on actual damages, which could be found in the audit records, which the State failed to produce. Id. at 76-81.

It is the State’s burden to prove the amount of restitution, and that it was causally related to the defendant’s actions. E.g., Dedonado, 99 Wn. App. at 256; Tobin, 161 Wn.2d at 524; RCW 9.94A.753. For a court to impose restitution without requiring the State to present sufficient evidence to support the allegations, or offering the defense sufficient opportunity to confront them, is a violation of constitutional due process. Mendoza, 165 Wn.2d at 920; Ford, 137 Wn.2d at 481; Pollard, 66 Wn. App. at 784-85; Kisor, 68 Wn. App. at 620;

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<sup>3</sup> The court also relied on its own “common experience” with contractors regarding Rhinehart’s claim of damage to his door, despite the fact that the State presented no receipts for the inflated amount. 4/23/17 RP at 84.

Dedonado, 99 Wn. App. at 256-57 (also holding the State must show the insurer did not pay for items of greater or lesser value, but must show the actual loss).

In Dedonado, this Court reversed, where a crime victim submitted proof of expenditures for replacement, noting: “[s]uch expenditures may be for items of substantially greater or lesser value than the actual loss.” 99 Wn. App. at 257. This Court should hold, as it did in Dedonado, that the evidence was insufficient to prove causation, or amount of loss.

*d. The restitution order should be vacated.*

When the record is inadequate to support a restitution award, the Court must vacate the restitution order. Dedonado, 99 Wn. App. at 257; State v. Dennis, 101 Wn. App. 223, 229, 6 P.3d 1173 (2000) (if the State fails to produce evidence to support a restitution award within the 180-day time period after sentencing, crime victims may pursue civil remedies against offenders). In Dennis, this Court noted, “the State must not be given a further opportunity to carry its burden of proof after it fails to do so following a specific objection.” 101 Wn. App. at 229.

Because the record is inadequate to sustain the restitution award, the order should be vacated.

**2. The imposition of attorney’s fees and court costs was an improper imposition of fees expended in connection with the operation of government agencies.**

Pursuant to RCW 10.01.160(2), legal financial obligations (LFOs) 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.”

RCW 9.94A.030(31) defines attorney fees as a legal financial obligation. RCW 10.01.160 states, however, that such fees cannot include expenses inherent in providing a constitutionally guaranteed jury trial. See State v. Diaz-Farias, 191 Wn. App. 512, 514, 362 P.3d 322 (2015). Review of this type of error is appropriate even when not raised at trial “because the error, if permitted to stand, would create inconsistent sentences for the same crime ... and some defendants would receive unjust punishment simply because his or her attorney failed to object.” Diaz-Farias, 191 Wn. App. at 520 (quoting State v. Blazina, 182 Wn.2d 827, 834, 344 P.3d 680 (2015)).

In Diaz-Farias, this Court addressed the question of whether fees may be imposed based on the decision of a defendant to go to trial. 191 Wn. App. at 521. Mr. Diaz-Farias pled guilty as his trial was beginning, and the court imposed jury costs, court reporter costs, and interpreter costs. Id. at 516. This Court held that RCW 10.01.160(2) forbade the imposition of expenses “relating to a defendant’s jury trial itself.” Id. at 525.

Similarly to the situation in Diaz-Farias, the court imposed attorney fees here, despite the fact that Mr. Jones ultimately did not exercise his right to challenge the evidence against him at a jury trial. The imposition of this type of attorney’s fee should be prohibited by RCW 10.01.160(2), as an expenditure made “in connection with the maintenance and operation of government agencies,” specifically, the office of the public defender. Here, Mr. Jones challenged the constitutionality of the State’s warrantless search, and the State ultimately conceded the motion to suppress would have been granted. CP 49-58; 7/26/16 RP 88-89. The trial court even complimented Mr. Jones on advocating for himself regarding the suppression issue.

7/26/16 RP 91 (“I appreciate the job you did for yourself, standing up for your rights, getting [defense counsel] to understand them...”).

This Court should strike the attorney’s fees and court costs, as costs expended in connection with the operation of the office of public defense and the court, itself. RCW 10.01.160(2).

**3. The sentencing court failed to make an adequate inquiry into whether Mr. Jones had a present or future ability to pay legal financial obligations.**

The sentencing court made a finding that Mr. Jones had the current and future ability to pay only \$50 a month in court fees.

7/26/16 RP 93. There is insufficient evidence to support this finding.

When the court inquired into Mr. Jones’s work history, finding Mr. Jones had only worked sporadically in the last several years, and that, interestingly, he was a non-smoker, it had no basis to find that Mr.

Jones had a current or future ability to pay legal financial obligations.

7/26/16 RP 92-93. This Court should remand this matter for a hearing where the court can make a meaningful inquiry into Mr. Jones’s current and future ability to pay legal financial obligations, considering his extremely high restitution obligation.

Legal financial obligations may only be imposed where the court has found the defendant has a current and future ability to pay the

costs. Fuller v. Oregon, 417 U.S. 40, 47-48, 94 S.Ct. 2116, 40 L.Ed.2d 642 (1974); RCW 10.01.160(3); RCW 9.94A.760(2). Under RCW 10.01.160(3), the sentencing judge must consider the defendant's individual financial circumstances and make an individualized inquiry into the defendant's current and future ability to pay. Blazina, 182 Wn.2d at 837-38. As the Blazina Court held, "[b]y statute, 'the court shall not order a defendant to pay costs unless the defendant is or will be able to pay them.'" Id. at 838, quoting RCW 10.01.160(3) (emphasis added in Blazina).

Even where the question of whether legal financial obligations is not raised below, reviewing courts will consider whether the fees were properly imposed. Blazina, 182 Wn.2d at 835 ("National and local cries for reform of broken LFO systems demand that this court exercise its RAP 2.5(a) discretion and reach the merits of this case.") Reversal and remand is necessary where the sentencing court fails to make an adequate individualized inquiry into the defendant's ability to pay legal financial obligations. Id. at 830.

Our Supreme Court addressed the dire consequences of imposing legal financial obligations on persons who cannot afford to pay them in City of Richland v. Wakefield, 186 Wn.2d 596, 607, 380

P.3d 459 (2016). In reversing the Court of Appeals' decision on whether Ms. Wakefield was entitled to remittance of her legal financial obligations, the Wakefield Court recognized "the particularly punitive consequences of LFOs" for indigent individuals: "[O]n average, a person who pays \$25 per month toward their LFOs will owe the State more 10 years after conviction than they did when the LFOs were initially assessed." Id. (quoting Blazina, 182 Wn.2d at 836). The imposition of costs against indigent defendants raises problems that are well documented and include "increased difficulty in reentering society, the doubtful recoupment of money by the government, and inequities in administration." Blazina, 182 Wn.2d at 839.

To determine a person's ability to pay costs, "the court shall take account the financial resources of the defendant and the nature of the burden that payment of costs will impose." Blazina, 182 Wn.2d at 838. (emphasis added in Blazina). However, in making its determination that Mr. Jones had the ability to pay legal financial obligations, the court did not make this inquiry. The only inquiry the court made into Mr. Jones's present or future ability to pay legal financial obligations was into Mr. Jones's work history and whether he

smoked. 7/26/16 RP 92.<sup>4</sup> The only work Mr. Jones could point to was periodic carpentry work in the Methow Valley, which he implied was not at the prevailing wage. *Id.* at 92. Mr. Jones did not appear to have steady employment in the past few years, as he could not point to any specific work experience or employers when asked by the court. *Id.* at 92-93.

The only other information regarding Mr. Jones's ability to pay financial obligations was the fact that he was indigent and unable to pay for representation. CP 1-2 (Order of Indigency waived filing fees, appointed counsel, and authorized transcription of record at public expense). The court lacked information regarding Mr. Jones's financial circumstances, including questions of whether he was financially responsible for other persons in his family, whether there were any persons who supported him, whether he had any assets, and what other debts he had accrued. Further, the court made no inquiry into whether Mr. Jones depended on public assistance programs or whether his household income fell below 125 percent of the federal poverty line.

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<sup>4</sup> The court also asked whether Mr. Jones had children; the court did not ask whether he supported other family members, or whether he received support, or any other questions. 7/26/16 RP 92-93.

Wakefield, 186 Wn.2d at 607. Lastly, given that Mr. Jones has previous Washington felony convictions, it is likely he has incurred other court debt. CP 21.

The court's inquiry was insufficient. This Court should remand this matter for a hearing to determine whether Mr. Jones has the current or future ability to pay the LFOs imposed.

**4. The imposition of legal financial obligations, where Mr. Jones has the limited ability to pay \$50 a month in addition to restitution, was unjustly punitive.**

The trial court determined Mr. Jones could pay only \$50 a month towards his legal financial obligations, in addition to payments toward the restitution, which exceeded \$76,600. 4/23/17 RP 91; CP 19-29. With an interest rate of 12 percent, Mr. Jones will never be able to pay off this debt. RCW 10.82.090 (financial obligations imposed on a judgment shall bear interest at a rate applicable to a civil judgment). This Court should find that the imposition of the LFOs where there is no likelihood the defendant will be able to complete payment on the schedule imposed is unjustly punitive. This Court should strike the discretionary fines and fees, including the attorney fees. See Wakefield, 186 Wn.2d at 465.

When the Supreme Court’s Minority and Justice Commission studied LFOs, it discovered that the fines and fees imposed by sentencing courts could not be paid off within a reasonable time, unless payments of at least \$50 a month were imposed. Katherine Beckett and Alexes Harris, The Assessment and Consequences of Legal Financial Obligations in Washington State, Washington State Minority and Justice Commission, 17 (2008). The chart below was created by Dr. Beckett to demonstrate how it was impossible for poor people who could not pay at least \$50 a month to ever extinguish their debt. Id.; see also Wakefield, 186 Wn.2d at 607.

Note: The average (mean) LFO amount assessed by the Washington Superior Courts in 2004 was \$2,540. The calculations assume the current interest rate of 12%.

<b>Average Amount Owed by Monthly Payment in 5, 10, 15 and 30 Years for Average LFO</b>				
	\$10 Payment	\$25 Payment	\$50 Payment	\$100 Payment
Debt: 5 Years	\$3,798	\$2,073	\$531	Paid: 30 Months
Debt: 10 Years	\$6,083	\$2,623	Paid: 72 Months	0
Debt: 15 Years	\$10,234	\$2,740	0	0
Debt: 30 Years	\$56,362	\$3,938	0	0

Notably, the above chart was created without consideration of the payment of significant restitution owed by Mr. Jones. With the restitution owed – Mr. Jones, with his co-defendants, is liable for \$76,670 – and the requirement is to pay restitution first, he will likely never be able to pay off his debt or make his \$50/month LFO payments.

The trial court set Mr. Jones’s LFO payment schedule to begin 60 days after imposition of the sentence and required him to pay \$50 a month. CP 25; 7/26/16 RP 93. With interest, this means that Mr. Jones will owe more money at the end of each year. Blazina, 182 Wn.2d at 839. If Mr. Jones makes less than the minimum \$50/month payment on the LFOs, in an attempt to keep up with the restitution payments, he will begin to accumulate debt on the LFOs at the rate of 12 percent, not including the restitution owed. RCW 10.82.090. Mr. Jones will accrue additional LFO debt, with no possibility of it ever ending.

In Wakefield, the Supreme Court emphasized the punitive nature of imposing legal financial obligations on poor people. 186 Wn.2d at 465; see also Blazina, 182 Wn.2d at 836. The Court held that “low payments should be generally ordered only for short term situations.” Wakefield, 186 Wn.2d at 607-08. In ordering remittance,

the Court recognized that it was unjustly punitive to impose payments that will only cause legal financial obligations to increase. Id.

Under RCW 10.01.160(3), the “ability to pay” means the ability “to actually pay off” all LFOs. Wakefield, 186 Wn.2d at 607. If a person lacks this actual ability, it is not appropriate for a court to impose any discretionary costs. Id. When the sentencing court found Mr. Jones could only pay \$50 a month towards his fines and fees, it did exactly what Wakefield forbids. If this Court affirms the finding Mr. Jones had a limited ability to pay legal financial obligations, it should also hold the imposition of legal financial obligations imposed by the sentencing court was unjustly punitive. By imposing fines and fees Mr. Jones can never pay, the court put Mr. Jones into the financial straits that Wakefield holds are unjustly punitive. Id.

Accordingly, this Court should order Mr. Jones’s discretionary legal financial obligations, including the imposed attorney fees, stricken.

#### E. CONCLUSION

Mr. Jones asks this Court to find that the State did not produce sufficient evidence to support the restitution order.

Mr. Jones asks this Court to hold that expenses inherent in the constitutionally guaranteed right to trial and right to protect an individual from unconstitutional searches, as here, includes attorney's fees imposed for the work by the public defender's office.

Accordingly, the attorney's fees imposed should be stricken.

In addition, Mr. Jones asks this Court to hold that the sentencing court failed to adequately inquire into Mr. Jones's ability to pay legal financial obligations imposed by the court.

Lastly, Mr. Jones asks this Court to hold that where the sentencing court finds that defendants are only able to pay a small amount towards their legal financial obligations, discretionary fees, including attorney's fees, should not be imposed.

DATED this 12th day of March, 2018.

Respectfully submitted,

s/ Jan Trasen

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**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION THREE**

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STATE OF WASHINGTON,	)	
	)	
Respondent,	)	
	)	NO. 35536-5-III
v.	)	
	)	
JOSEPH JONES,	)	
	)	
Appellant.	)	

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