

FILED  
Court of Appeals  
Division III  
State of Washington  
10/17/2018 9:21 AM

No. 35561-6-III

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

---

STATE OF WASHINGTON,

Respondent,

v.

ANDREW SPRINT,

Appellant.

---

ON APPEAL FROM THE SUPERIOR COURT OF WASHINGTON  
FOR THE COUNTY OF DOUGLAS

---

REPLY BRIEF OF APPELLANT

---

KATE BENWARD  
Attorney for Appellant

WASHINGTON APPELLATE PROJECT  
1511 Third Avenue, Suite 610  
Seattle, Washington 98101  
(206) 587-271

TABLE OF CONTENTS

**A. ARGUMENT IN REPLY** .....1

1. The State presented insufficient evidence of a physical touching from which to infer Mr. Sprint’s mental state for assault in the fourth degree ..... 1

2. This Court should strike the entirety of Mr. Sprint’s non-discretionary legal financial obligations based on the court finding him indigent. .... 3

3. If this Court does not find the record adequately establishes that Mr. Sprint is indigent, reversal and remand for resentencing is required because the trial court failed to make an adequate inquiry into Mr. Sprint’s ability to pay legal financial obligations. .... 4

**B. CONCLUSION**.....5

TABLE OF AUTHORITIES

**WASHINGTON STATE SUPREME COURT CASES**

*State v. Blazina*, 182 Wn.2d 827, 344 P.3d 680 (2015)..... 3, 4

*State v. Cardenas-Flores*, 189 Wn.2d 243, 401 P.3d 19 (2017)..... 2

*State v. Ramirez*, No. 95249-3 slip op. (September 20, 2018)..... 3, 4

**STATUTES**

LAWS OF 2018, ch. 269, § 17(2)(h) ..... 3

LAWS OF 2018, ch. 269, § 6(3)..... 3

## **A. ARGUMENT IN REPLY**

### **1. The State presented insufficient evidence of a physical touching from which to infer Mr. Sprint's mental state for assault in the fourth degree**

Without evidence of a physical act, there was insufficient evidence to convict Mr. Sprint of assault in the fourth degree.

The State was required to prove beyond a reasonable doubt that a harmful touching occurred. CP 5; Opening Brief of Appellant, p.16-12 (citing to common law definition of assault, which in Mr. Sprint's case was an allegation of unlawful touching). The trial court convicted Mr. Sprint of assault in the fourth degree based on a medical expert's speculation that the baby's injury was the result of abusive head trauma rather than a spontaneous event attributable to a pre-existing medical condition. RP 667-690. But the State did not produce evidence that Mr. Sprint harmfully touched his child as required for conviction of assault in the fourth degree.

Absent evidence that Mr. Sprint harmfully touched his child, the court turned to circumstantial evidence about his parenting style and panicked responses after he called 911. Refuted medical testimony and ambiguous statements by a distraught parent, absent evidence of a physical touching, is insufficient evidence for an assault conviction. In

*State v. Cardenas-Flores*, circumstantial evidence, in conjunction with the defendant's admission of an act—that “she had pushed her son's leg down and out to straighten it,” and that she knew this act had caused the child's injury, was properly corroborated by her inculpatory statements. *State v. Cardenas-Flores*, 189 Wn.2d 243, 266, 401 P.3d 19 (2017). This was sufficient “evidence of assault by actual battery” to sustain the assault conviction. *Id.* at 267. By contrast, here there was insufficient evidence that Mr. Sprint harmfully touched his child that would have enabled the court to infer he acted negligently.

The issue in Mr. Sprint's case is not, as claimed by the State, a question of the court's oral ruling not supporting the court's written findings. Brief of Respondent at 11. Rather the court's oral ruling elucidates the logical flaw in the court's conclusion of law. Without evidence of “what happened,” the court cannot infer a mental state of negligence for assault in the fourth degree any more than it could for assault in the first, second, or third degree, for which there was insufficient evidence to convict Mr. Sprint. RP 1444-45. The same lack of evidence must apply to the assault in the fourth degree conviction, requiring reversal of Mr. Sprint's conviction.

**2. This Court should strike the entirety of Mr. Sprint's non-discretionary legal financial obligations based on the court finding him indigent.**

During the pendency of Mr. Sprint's appeal, the legislature enacted legislation that prohibits a court from imposing discretionary costs on indigent persons, including the criminal filing fee. LAWS OF 2018, ch. 269, § 6(3); LAWS OF 2018, ch. 269, § 17(2)(h); *State v. Ramirez*, No. 95249-3 slip op. at 17, 20 (September 20, 2018). *Ramirez* applies this legislation prospectively to cases pending on direct review when the amendments were enacted, which is true of Mr. Sprint's case. *Id.* at 18-19.

The *Ramirez* court found that the "financial statement" section of Ramirez's motion for indigency provided a "reliable framework" for an individualized inquiry as required by *State v. Blazina*<sup>1</sup> and RCW 10.01.160(3). *Ramirez*, slip op. at 14. Here, the trial court found Mr. Sprint to be indigent prior to trial. CP 62. After being convicted and sentenced to a term of imprisonment, Mr. Sprint informed the court that there had been no change in his financial status since that finding by the court. CP 62. The trial court again found Mr. Sprint indigent when it determined that he had right to pursue his appeal at public expense. CP 67.

---

<sup>1</sup> *State v. Blazina*, 182 Wn.2d 827, 344 P.3d 680 (2015).

Under *Ramirez*, this Court should strike the discretionary legal financial obligations imposed in Mr. Sprint's case on the basis of the court finding him indigent, including the court appointed attorney fee of \$400; the \$5,000 fine with \$4,740 suspended (\$250 imposed), and the \$100 probation fee. CP 48; *Ramirez*, slip op. at 20.

**3. If this Court does not find the record adequately establishes that Mr. Sprint is indigent, reversal and remand for resentencing is required because the trial court failed to make an adequate inquiry into Mr. Sprint's ability to pay legal financial obligations.**

The record in Mr. Sprint's case reflects that he is indigent, which requires that discretionary legal fees be stricken. However, should this court disagree, remand for the court to determine Mr. Sprint's ability to pay legal financial obligations is required.

*Ramirez* requires the court to specifically inquire into whether an individual has the current or future ability to pay discretionary costs. *Ramirez*, slip op. at 7-11. This must be more than a "boiler plate" inquiry. *Id.* at 11 (citing *Blazina*, 182 Wn.2d at 838). Under *Blazina*, the court is required to consider "important factors," including the defendant's other debts. *Ramirez*, slip op. at 12-13. Here, like in *Ramirez*, the trial court made an inadequate inquiry into Mr. Sprint's debt, which was over \$30,000 as a result of his conviction. *Id.* at 13. Similarly, like in *Ramirez*, the trial court in Mr. Sprint's case failed to consider the other "important

factors” including other financial assets, and monthly living expenses. *Id.*  
The trial court conducted an inadequate “boiler plate” inquiry that requires reversal and remand for resentencing for the trial court to assess Mr. Sprint’s ability to pay discretionary costs.

## **B. CONCLUSION**

The crime of the assault in the fourth degree requires evidence of a harmful touching that was simply not established by sufficient evidence in Mr. Sprint’s case. This requires reversal of his conviction for assault in the fourth degree. Because the trial court found Mr. Sprint to be indigent, the \$750,000 discretionary costs should be stricken. In the alternative, Mr. Sprint is entitled to reversal and remand for the court to make an adequate inquiry into his ability to pay legal financial obligations.

DATED this 16th day of October, 2018.

Respectfully submitted,

s/ Kate Benward  
Washington State Bar Number 43651  
Washington Appellate Project  
1511 Third Ave, Suite 610  
Seattle, WA 98101  
Telephone: (206) 587-2711  
Fax: (206) 587-2711  
E-mail: [katebenward@washapp.org](mailto:katebenward@washapp.org)



# WASHINGTON APPELLATE PROJECT

October 17, 2018 - 9:21 AM

## Transmittal Information

**Filed with Court:** Court of Appeals Division III  
**Appellate Court Case Number:** 35561-6  
**Appellate Court Case Title:** State of Washington v. Andrew John Sprint  
**Superior Court Case Number:** 14-1-00073-5

### The following documents have been uploaded:

- 355616\_Briefs\_20181017091910D3993273\_3723.pdf  
This File Contains:  
Briefs - Appellants Reply  
*The Original File Name was washapp.101618-02.pdf*

### A copy of the uploaded files will be sent to:

- gedgar@co.douglas.wa.us
- greg@washapp.org
- sclem@co.douglas.wa.us

### Comments:

\*\*\*We were unable to file this pleading yesterday due to a portal error.

---

Sender Name: MARIA RILEY - Email: maria@washapp.org

**Filing on Behalf of:** Kate Benward - Email: katebenward@washapp.org (Alternate Email: wapofficemail@washapp.org)

Address:  
1511 3RD AVE STE 701  
SEATTLE, WA, 98101  
Phone: (206) 587-2711

**Note: The Filing Id is 20181017091910D3993273**