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No. 36070-9-III

THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION III

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STATE OF WASHINGTON,

Respondent,

v.

CALEB JOEL STANLEY,

Appellant.

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**BRIEF OF RESPONDENT**

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## I. STATEMENT OF THE CASE

Respondent is the State of Washington (hereinafter the “State”). Appellant is Caleb Joel Stanley (hereinafter “Mr. Stanley”).

On September 15, 2017, Jacob Level (hereinafter “Mr. Level”) was cooking dinner for himself and his godson, Nikia Gabriel (hereinafter “Mr. Gabriel”). RP 173-74. While Mr. Level was cooking dinner, he sent Mr. Gabriel to the local gas station, so that Mr. Level’s vehicle would be ready for his brother to work on it the next morning. RP 174.

When Mr. Gabriel got to the gas station, he was approached by Mr. Stanley. RP 143. As Mr. Gabriel was speaking to a friend, Mr. Stanley started admiring Mr. Level’s vehicle, a Cadillac Escalade. RP 143. Mr. Stanley stated he wanted a ride and went back into the gas station. RP 143. When Mr. Stanley came out of the gas station, he opened the passenger door and started to move items off the passenger seat. RP 143. Mr. Gabriel demanded to know what Mr. Stanley was doing and started to protest. RP 143-44. Mr. Stanley’s response was to grab a blue wrench, pick it up, and say “[w]ell, if you don’t give me a ride I’m going to take your ride.” RP 144, lines 6-9. Mr. Gabriel was “pretty freaked out,” as he put it, took Mr. Stanley’s threat seriously, and didn’t know if he was about to be attacked. RP 144, lines 10-12; 155. Mr. Gabriel testified that at that point, he wasn’t

about to tell Mr. Stanley, who was now armed with the blue wrench, that he wasn't going to give him a ride. RP 144, 146, lines 2-16. Mr. Gabriel then announced he was going back home. RP 144. Mr. Stanley didn't seem to respond and didn't give a location to which Mr. Gabriel should take him. RP 144. When Mr. Gabriel and Mr. Stanley arrived at Mr. Level's, Mr. Gabriel informed Mr. Stanley that he was going to go get Mr. Level. RP 145. Mr. Stanley's response was "[o]h, I'm not scared," and Mr. Stanley refused to get out. RP 145, line 5.

Mr. Level was in his home cooking dinner, when suddenly, Mr. Gabriel came back into Mr. Level's home and advised that someone was trying to steal Mr. Level's Escalade. RP 174. Mr. Gabriel exclaimed, "[s]omebody's trying to steal your truck." RP 174. Mr. Level thought he had left the keys in his Escalade. RP 185, lines 19-20. The thief, Mr. Stanley, was known to Mr. Level. RP 174. Mr. Gabriel continued by telling Mr. Level, "Caleb Stanley is in your truck, he's not getting out." RP 174. Mr. Level, clad only in basketball shorts and a tank top, rushed outside and saw Mr. Stanley in the Escalade. RP 175. Except in passing, Mr. Level hadn't seen Mr. Stanley in "...probably six, seven years." RP 175. Mr. Stanley was seated in Mr. Level's vehicle, rummaging around in it. RP 175. When Mr. Level told Mr. Stanley to get out of his Escalade, Mr. Stanley refused. RP 175. Mr. Level noticed that Mr. Stanley had Mr. Level's

prescription pill bottle in his hand. RP 175. Mr. Level demanded yet again that Mr. Stanley get out of his Escalade and to leave his prescription alone. RP 175-76. Mr. Stanley responded, “[t]his is mine, bitch,” and proceeded to grab Mr. Level by the hair and spray him with bear mace. RP 147, 175.

Mr. Gabriel rushed to Mr. Level’s aid, but it was too late, Mr. Level had been sprayed heavily by Mr. Stanley’s can of bear mace. RP 176. Mr. Stanley then hit Mr. Gabriel with the can of bear mace. RP 177, 181. Mr. Gabriel and Mr. Level then retreated to the house, where Mr. Gabriel dialed 9-1-1. RP 177, 181.

It wasn’t until Mr. Stanley’s trial that Mr. Level learned that the keys were not in the Escalade, as he had believed. RP 185, lines 19-23. Mr. Stanley was able to get away from the scene, without Mr. Level’s Escalade. RP 148. Mr. Stanley was later arrested by officers from Colville Police Department. RP 224. Mr. Stanley resisted arrest. RP 224-26.

Mr. Stanley was charged with one count of extortion in the first degree, two counts of assault in the second degree, and one count of resisting arrest. CP 1-3. One count of assault in the second degree was for Mr. Stanley’s assault on Mr. Gabriel and one count of assault in the second degree was for Mr. Stanley’s assault on Mr. Level. CP 2-3. In each of the two counts of assault, the State alleged two alternative means. CP 2-3. One alternative means was the administration of a noxious substance. CP 2-3.

The other alternative means was with intent to commit a felony.

Mr. Gabriel and Mr. Level testified at trial. RP 141, 172. After deliberation, the jury returned a verdict of not guilty on the count of extortion in the first degree, guilty on the count of assault in the second degree on Mr. Gabriel, guilty on the count of assault in the second degree on Mr. Level, and guilty on the count of resisting arrest. CP 50, 51, 53, 55; RP 320.

The Stevens County Superior Court (hereinafter “Superior Court”) held sentencing on May 1, 2018. RP 324. The Superior Court found Mr. Stanley had work skills, was in good health, was young and strong, and that there was nothing preventing him in the foreseeable future, from being able to work. RP 341, lines 1-7. The Superior Court found Mr. Stanley was not indigent and imposed certain legal financial obligations. RP 341, lines 8-13. The Superior Court admonished Mr. Stanley to “keep [his] hands busy, [his] mind busy, and stay out of trouble.” RP 341, lines 19-20. This appeal followed Mr. Stanley’s convictions and sentencing.

## II. STANDARDS OF REVIEW

1. In a challenge to a charge involving alternative means, a court reviews the record for substantial evidence to support each of the alternative means. State v. Woodlyn, 188 Wash.2d 157, 162, 392 P.3d 1062 (2017). “Evidence is sufficient if, viewing the evidence in a 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. Owens, 180 Wash. 2d 90, 99, 323 P.3d 1030 (2014).

2. Normally, the standard of review for whether the Superior Court engaged in an adequate inquiry prior to imposing discretionary LFOs, is *de novo*. State v. Ramirez, 191 Wash.2d 732, 426 P.3d 714 (2018). However, Mr. Stanley argues that the Superior Court erred by imposing discretionary LFOs after finding Mr. Stanley indigent. Opening Brief of Appellant at pages 13-14. The Superior Court did not impose discretionary legal financial obligations on an indigent defendant. Mr. Stanley was found to be not indigent at the time of sentencing. RP 341, lines 1-7; CP 65. Therefore, Mr. Stanley’s argument in his Opening Brief is rendered meaningless and there is no applicable standard of review because he argues using a finding that was never made.

### III. SUMMARY OF THE ARGUMENT

Each of the two alternative means by which the State alleged Mr. Stanley committed two counts of assault in the second degree are supported by substantial evidence, thereby preserving jury unanimity. A review of the record produced by the trial court shows that substantial evidence supports the alternative means of intent to commit a felony. Mr. Stanley stipulates to the other alternative means, administration of a noxious substance. With Mr. Stanley’s stipulation and a review of the record, a rational jury could find Mr. Stanley guilty beyond a reasonable doubt of each of the alternative means on both counts of assault in the second degree. Finally, Mr. Stanley was not found to be indigent at the time of sentencing. Therefore, Mr. Stanley’s argument regarding imposition of discretionary legal financial obligations, should fail.

### IV. ARGUMENT

1. **The Record on Appeal Contains Substantial Evidence of the Alternative Means by Which Mr. Stanley Committed Assault in the Second Degree.**

The State alleged two alternative means by which Mr. Stanley committed his felony assaults on Mr. Level and Mr. Gabriel: “with intent to inflict bodily harm, administers to or causes to be taken by another, poison or any other destructive or noxious substance,” or “with intent to commit a felony, assaults another.” CP 25, 27. Assault in the second degree is an alternative means crime. RCW 9A.36.021(1)(d) and (e); State v. Smith, 159 Wash.2d 778, 790, 154 P.3d 873 (2007). “An alternative means crime is one where the legislature has provided that the State may prove the proscribed criminal conduct in a variety of ways.” State v. Armstrong, 188 Wash.2d 333, 340, 394 P.3d 373, 377 (2017).

“[I]n alternative means cases, where substantial evidence supports both alternative means submitted to the jury, unanimity as to the means is not required.” Armstrong, 188 Wash.2d at 340 (citing State v. Sandholm, 184 Wash.2d 726, 732, 364 P.3d 87 (2015)). A specific statement of jury unanimity is not necessary if each charged alternative is supported by substantial evidence. State v. Whitney, 108 Wash.2d 506, 507, 739 P.2d 1150 (1987). In other words, in cases where substantial evidence supports both alternatives submitted to the jury, jury unanimity as to the means is not required. State v. Armstrong, 188 Wash.2d 333, 335, 394 P.3d 373 (2017). “Sufficient evidence is that which justifies a rational trier of fact finding guilt beyond a reasonable doubt.” Armstrong, 188 Wash.2d at 341.

“Evidence is sufficient if, viewing the evidence in a 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. Owens, 180 Wash. 2d 90, 99, 323 P.3d 1030, 1035 (2014). “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 Wash.2d 192, 201, 829 P.2d 1068 (1992). “A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom.” Id. “For more than 75 years, we have upheld unanimous jury verdicts based on alternative means where the jury did not specify which alternative provided the basis for the verdict.” Armstrong, 188 Wash.2d at 340.

There are two reasons this Court should uphold Mr. Stanley's two convictions for assault in the second degree. First, all the jury had to find was that Mr. Stanley had the **intent** to commit extortion or the **intent** to commit theft of a motor vehicle. Mr. Stanley argues that because the jury found him not guilty of the accomplished crime of extortion, the State failed to support one of the second alternative means theory. Opening Brief of Appellant at 9.

Mr. Stanley's premise is incorrect. The jury found that Mr. Stanley

did not **accomplish** the crime of extortion. CP 50. The jury did not find that he lacked the **intent** to commit the crime. The second of the alternative means does not require that the defendant accomplish the felony, only that the defendant have the intent to commit the felony. The jury was instructed that Mr. Stanley acted "...with intent or intentionally when **acting with the objective or purpose** to accomplish a result that constitutes a crime." CP 30 (emphasis added).

Second, substantial evidence supports both of the alternative means. Mr. Stanley stipulates to the first means, administration of a noxious substance. Opening Brief of Appellant at 7, footnote 5.

As to the second means, intent to commit a felony, there was substantial evidence that Mr. Stanley intended to commit the felonies of extortion and/or theft of a motor vehicle. The State was not required to prove that Mr. Stanley accomplished the crime of extortion or accomplished the crime of theft of a motor vehicle. Instead, the State was only required to show that Mr. Stanley intended to commit either of these crimes.

**A. Substantial Evidence Supports a Conclusion that Mr. Stanley Intended to Commit the Felony of Extortion in the First Degree.**

Extortion in the first degree, is a felony. See RCW 9A.56.110, 120; CP 1. The jury was instructed on the definition of extortion. CP 24. The

elements of extortion in the first degree in this case were: 1. that Mr. Stanley obtained or attempted to obtain property or services of another by threat, 2. that the threat communicated an intent to cause bodily injury, and 3. that the acts occurred in the State of Washington. CP 24. The threat could be direct or indirect. CP 24. To satisfy the alternative means requirement of assault in the second degree, the State had to prove only intent to commit extortion in the first degree.

Substantial evidence for intent to commit the crime of extortion is abundant. During his direct examination, Mr. Gabriel expressed his fear and shock at having Mr. Stanley approach him and tell him that Mr. Gabriel was either going to give him a ride or he was going to give him his vehicle. RP 143, lines 17-24; 144, lines 8-9, 10-12. Mr. Stanley backed up this ultimatum by picking up a wrench. RP 144, lines 6-9; 146, lines 9-12. Instead of giving him the vehicle, Mr. Gabriel opted to give Mr. Stanley a ride. RP 144, lines 20-23. From Mr. Gabriel's point of view, Mr. Stanley didn't seem to care where they went, so long as he got what he wanted. RP 144, 22-23. Mr. Gabriel testified that he drove back to Mr. Level's house, all the while Mr. Stanley had the wrench, and then Mr. Stanley refused to get out. RP 146, lines 13-16, 21-24.

Substantial evidence exists for any jury to conclude that by picking up the wrench and demanding either services, a ride, or property, the

Escalade, Mr. Stanley intended to intimidate Mr. Gabriel into giving him what he wanted. Mr. Stanley either wanted a ride somewhere, which he got, or wanted Mr. Level's escalade, which he didn't get. He showed his intent by threatening Mr. Gabriel and assaulting both Mr. Gabriel and Mr. Level. Luckily, if it was the Escalade he wanted, he didn't get it because Mr. Gabriel and Mr. Level were able to fight him off. Thus, regardless of his accomplishment or failure, Mr. Stanley showed his intent and evidence of his intent is throughout the record.

**B. Substantial Evidence Supports a Conclusion that Mr. Stanley Intended to Commit the Crime of Theft of a Motor Vehicle.**

Substantial evidence for intent to commit theft of a motor vehicle is contained throughout the Report of Proceedings. Much of the evidence that supports a finding of substantial evidence of intent to commit extortion is also supportive of a finding of substantial evidence of intent to commit theft of a motor vehicle.

Theft of a motor vehicle is a class B felony. See RCW 9A.56.065; CP 37. Theft, as the jury was instructed, "...means to wrongfully obtain or exert unauthorized control over the property or services of another...with intent to deprive that person of such property or services." CP 40. Mr. Stanley was prevented from completing his theft of Mr. Level's vehicle. But that fact has little to do with the sufficiency of the

evidence standard to be applied here because there was sufficient evidence that he **intended** to steal Mr. Level's Escalade.

Mr. Gabriel testified that Mr. Stanley grabbed a wrench and stated, "[I]ook, you're going to give me a ride or I'm going to take your ride." RP 146, lines 10-11. Such an expression of intent is not only potential evidence of extortion because of the threat Mr. Stanley impliedly made, but it is also an expression of intent to deprive Mr. Level of his Escalade. Mr. Gabriel also testified that Mr. Stanley, while sitting in Mr. Level's Escalade, said "'[o]h, -- it's my vehicle,' or something like that, or some sort of remark." RP 147, lines 6-7. After Mr. Stanley evidenced his intent to make the Escalade his, is when Mr. Stanley assaulted Mr. Level.

When cross-examined, Mr. Level provided more evidence of Mr. Stanley's intent. Question by Mr. Stanley's attorney: "All right. First, -- the very first sentence, that -- your -- your godson, [Mr. Gabriel], 'came running in the 3 door scared and said, 'Someone is trying to steal your 4 Escalade.'" RP 185, lines 2-5. Mr. Level answered, "[y]eah. I couldn't understand who he said it was." RP 185, line 6. When asked if he knew that Mr. Gabriel had the keys to the Escalade, Mr. Level was adamant, "[n]o, I was not aware of that. I thought they were in the car." RP 185, lines 17-20. Discussion of Mr. Stanley's intent to steal the Escalade continued:

Question: --you believe that before he could get away you were able to come down and stop him getting—

Answer: I believe that he was searching for the keys, is what he was searching for. That's what I was thinking that he was looking for at the time so that he could take the car and be out.

RP 187, lines 18-23. Mr. Stanley's attorney tried to corner Mr. Level by asking, "[i]n fact, nobody was trying to steal your car; you thought that and that's why you told him to get out. Correct?" RP 187, lines 6-8. "I don't believe that at all. I believe he was trying—because of what my son gold [sic] me, that he threatened him with a wrench and he said that he was not getting out of the vehicle and he was taking it," answered Mr. Level. RP 187, lines 9-12.

It wasn't just the information Mr. Gabriel relayed to Mr. Level that made Mr. Level think he was just about to lose his vehicle; it was Mr. Stanley's reputation and what Mr. Level knew of him. RP 188, lines 3-6. On cross-examination, Mr. Level elaborated on what Mr. Stanley said to him:

Question: Is that the first thing you observed? The prescription pills in his hand?

Answer: First thing I observed, no. The first thing I observed was through the window -- was him rifling through what looked like the center console, or the passenger -- or the driver's side -- with his head down right (inaudible). That was the first thing I observed.

Question: Okay. And then what?

Answer: And then I opened the door and I said, “Caleb, get out of my vehicle, dude.” And he said, “Fuck you, bitch; **it’s mine.**”

RP 188, lines 11-21(emphasis added). Cross-examination of Mr. Level  
continued:

Question: Well I think what your testimony is saying, that -- you thought -- number one, he’s stealing your car,--

Answer: Uh-huh.

Question: --which he didn’t steal, correct? Number two—

Answer: Well, (inaudible) that’s--

Question: --(inaudible)—

Answer: I don’t know. I look at it as he did steal it when he told my godson (inaudible) that he wasn’t getting -- threatened him with a wrench that he wasn’t getting out of the vehicle, and that he was going to give him a ride and he was taking the vehicle. At that point to my understanding that is a theft of a motor vehicle and a kidnapping, to best of my knowledge. Once you get in somebody’s vehicle, or somebody’s property, and you refuse to leave their property and you threaten them with a weapon -- that’s a theft right there. And then when I asked him to get out—

RP 189, lines 15-25; 190, lines 1-6. Counsel for Mr. Stanley took another  
run at Mr. Level:

Question: --approached him in the vehicle, and opened the door and said “get the F out of my car,” what happened?

Answer: He grabbed me by my hair and bear maced me in my face. I’ve -- And -- you’ve asked that -- answered it many times.

Question: From -- from inside the car?

Answer: Yes, from inside the car. He was sitting inside the

car, pulled me in, told me it was his car, “Fuck you, bitch; **it’s my car**,” and he grabbed me by my hair and bear maced me in my face. I don’t know how many more times—

RP 191, lines 16-19, 20-24 (emphasis added). On re-direct, Mr. Level confirmed that at no time had he given Mr. Stanley permission to be in his vehicle or take anything out of his vehicle. RP 192, lines 15-17, 18-21. In fact, Mr. Level testified, “I specifically asked him to not be in my car,” and “I did not give him permission to take anything out of my car.” RP 192, lines 17, 20-21.

The jury was instructed on the definitions of theft, theft of a motor vehicle, intent, knowledge, property, and the jury was instructed that extortion and theft of a motor vehicle are felonies. CP 39, 40, 30, 31, 33-35, & 37. The jury was instructed in both counts of assault in the second degree, that the jury need to be unanimous in its verdict, not in the manner in which Mr. Stanley committed the crime. CP 25, 27. Finally, the jury was instructed in Instruction No. 7, on the difference between direct and circumstantial evidence. CP 22. In that instruction, the jury was told that they could reasonably infer certain matters. Certainly, with the direct evidence they were given of Mr. Stanley’s stated intent to commit a felony, the jury could have inferred even more from the circumstantial evidence each witness presented.

Given that the alternative means are supported by substantial evidence, such that the jury could find Mr. Stanley guilty beyond a reasonable doubt, it is incorrect to conclude that there is any possibility that the verdicts were anything other than unanimous.

**2. The Court Properly Exercised its Discretion When it Imposed the Legal Financial Obligations Because the Superior Court Found Mr. Stanley was Not Indigent.**

Mr. Stanley was sentenced on May 1, 2018. RP 324. The Superior Court engaged in a colloquy with Mr. Stanley, regarding Mr. Stanley's work history and fitness to perform work in the future. RP 334-42. Pursuant to RCW 9.94A.760, the Superior Court was required to determine whether the defendant, at the time of sentencing, is indigent. "The court may not order an offender to pay costs as described in RCW 10.01.160 if the court finds that the offender **at the time of sentencing** is indigent as defined in RCW 10.101.010(3) (a) through (c)." RCW 9.94A.760(1)(emphasis added). After a lengthy colloquy, the Superior Court found Mr. Stanley, at the time of sentencing, was not indigent. RP 341. Without a finding of indigence, the Superior Court was free to impose legal financial obligations (hereinafter "LFOs").

Mr. Stanley argues that because the Superior Court found him indigent, it was impermissible to assess the \$200 criminal filing fee, \$100 DNA fee, \$300 discretionary court costs, \$50 booking fee, and \$250 court-

appointed counsel fee. Brief of Appellant at 13-14. However, Mr. Stanley was not found to be indigent. RP 341. The Superior Court engaged in a lengthy discussion with Mr. Stanley and concluded that Mr. Stanley was not indigent. RP 334-42. Mr. Stanley talked about his employment history, including his job at Columbia Cedar. RP 337. The Superior Court's conclusion at sentencing, after a colloquy with Mr. Stanley, was:

I'm going to impose, I guess, the legal/financial obligations **when I find that you're not indigent** -- I mean, I recognize right now you're indigent 'cause you're going to prison. However, you have work skills, you've worked in the past, you're in good health, you're young, you're strong, there's nothing that should prevent you in the foreseeable future from being able to work.

RP 341, Lines 1-7 (emphasis added). The Superior Court imposed the LFOs and ordered that, "[a]ll payments shall be made in accordance with the policies of the clerk of the court and on a schedule established by DOC or the clerk of the court, commencing immediately, unless the court specifically sets forth the rate here...." CP 65. The Superior Court could not and would not order such a payment had it found Mr. Stanley to be indigent at the time of sentencing.

The Superior Court permissibly imposed LFOs on Mr. Stanley because the Superior Court engaged in the appropriate colloquy with Mr. Stanley and the Superior Court found Mr. Stanley was not indigent at the time of sentencing.

#### IV. CONCLUSION

For the reasons stated above, this Court should affirm the jury's conviction of Mr. Stanley and uphold the Superior Court's imposition of legal financial obligations.

Dated this 25th day of February, 2019.



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#### CERTIFICATE OF SERVICE

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Will Ferguson

**CERTIFICATE OF SERVICE**

I certify under penalty of perjury under the laws of the State of Washington, that I electronically filed a true and correct copy of the Brief of Respondent to the Court of Appeals, Division III on February 25, 2019.



Michele Lembcke, Legal Assistant  
for Will Ferguson

**STEVENS COUNTY PROSECUTOR'S OFFICE**

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