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Court of Appeals  
Division III  
State of Washington  
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NO. 36147-1-III

COURT OF APPEALS

STATE OF WASHINGTON

DIVISION III

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**STATE OF WASHINGTON,**

Plaintiff/Respondent,

V.

**FREEDOM T.J. MORGANFLASH,**

Defendant/Appellant.

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**REPLY BRIEF**

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## ARGUMENT

The State argues that T.J. Freedom Morganflash committed invited error in connection with the issue involving jury instructions. It is accurate that defense counsel failed to object to Instruction 5. Instruction 5 omitted the word “unlawful” in the second paragraph.

Due process of law requires that the State prove all the facts necessary to support the elements of the charged crime. *State v. Redwine*, 72 Wn. App. 625, 629, 865 P.2d 550 (1994). ... [The] challenge implicates a constitutional right, so we must pass on it. RAP 2.5 (a)(3); *Strand* [*State v. Strand*, 20 Wn. App. 768, 582 P.2d 874 (1978)] at 770-71; *Redwine*, 72 Wn. App. At 629.

*State v. Brooks*, 142 Wn. App. 842, 847, 176 P.3d 549 (2008).

The State in fn.1, p.5 of its brief relies upon local custom in support of its argument concerning invited error. There is no existing caselaw that supports the State’s argument.

As far as can be determined there is no requirement that defense counsel submit any proposed jury instructions. The normal procedure is for the Superior Court Judge to have the State prepare the jury instructions. Defense counsel has the option of submitting additional jury instructions.

The State also argues that the word “unlawful” was not necessary in the second paragraph due to Mr. Morganflash’s original brief where he indicates he intentionally grabbed the officer’s collar. What the State ignores is that the intentional grabbing of the

collar was due to Mr. Morganflash's testimony that he tripped on a rock. Whether the grabbing of the collar was intentional or accidental does not obviate the need for the word "unlawful" in paragraph two of the Instruction 5.

Moreover, the State's position that Mr. Morganflash inflicted an injury on the officer is unfounded. The injury occurred when the two officers forced Mr. Morganflash to the ground.

Mr. Morganflash agrees with the State that whether or not he accidentally tripped on a rock was an issue of credibility for the jury. However, in the absence of the word "unlawful" in the second paragraph of Instruction 5 the jury did not get to consider this argument. Accident and unlawful force are not incompatible concepts. Therefore the word "unlawful" was required to be included in the instruction. See: *State v. Henderson*, 192 Wn.2d 508, 513-14 (2018).

The State also asserts that the Court should not consider Mr. Morganflash's argument in reference to legal-financial obligations (LFOs) with the exception of the filing fee and DNA fee.

The State cites to a lack of sufficient argument to support Mr. Morganflash's position.

Mr. Morganflash relies upon *State v. Ramirez*, 191 Wn.2d 732 (2018). The *Ramirez* case relied upon *State v. Blazina*, 182 Wn.2d 827, 344 P.3d 630 (2015). The *Blazina* case directs sentencing courts to conduct sufficient inquiry into a convicted person's ability to pay LFOs. It did not occur in Mr. Morganflash's case.

The State cites to *Christian v. Tohmeh*, 191 Wn. App. 709, 728, 366 P.3d 16 (2015)

which held:

To enforce this rule [RAP 10.3], this court does not review issues not argued, briefed, or supported with citation to authority. [Citations omitted.] We do not consider conclusory arguments [Citations omitted.] Passing treatment of an issue or lack of reasoned argument is insufficient to merit appellate review. [Citations omitted.]

Mr. Morganflash, on the other hand, refers the court to *Forbes v. American Building Maintenance Co. West*, 148 Wn. App. 273, 291, 198 P.3d 1042 (2009) where it was found by the Court that

This court will, in appropriate cases, waive technical violations of RP 10.3 (g) when the opening brief makes the nature of the challenge clear. *Harris v. Urell*, 133 Wn. App. 130, 137, 135 P.3d 530 (2006) review denied, 160 Wn.2d 1012 (2007). Moreover, technical violations of the rules will not bar review when justice is to be served. *Daughtry v. Jet Aeration Co.*, 91 Wn.2d 704, 710 592 P.2d 631 (1979).

Mr. Morganflash clearly set out in his original brief the assignment of error as to LFOs and the issues relating to that assignment of error. The assignments and issues specifically address discretionary LFOs. The Court should consider those discretionary LFOs under the facts and circumstances of this case.

Mr. Morganflash otherwise relies on the argument contained in his original brief.

DATED this 11th day of March, 2019.

Respectfully submitted,

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**NO. 36147-1-III**  
**COURT OF APPEALS**  
**DIVISION III**  
**STATE OF WASHINGTON**

STATE OF WASHINGTON,	)	
	)	ASOTIN COUNTY
Plaintiff,	)	NO. 18 1 00024 8
Respondent,	)	
	)	
v.	)	<b>CERTIFICATE OF SERVICE</b>
	)	
FREEDOM T.J. MORGANFLASH,	)	
	)	
Defendant,	)	
Appellant.	)	
_____	)	

I certify under penalty of perjury under the laws of the State of Washington that on this 11th day of March, 2019, I caused a true and correct copy of the *REPLY BRIEF* and to be served on:

COURT OF APPEALS, DIVISION III  
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E-FILE

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**Transmittal Information**

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