NO. 45694-0-II

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

STATE OF WASHINGTON, Respondent

v.

SHAWN ERIC CHRISTOPHER, Appellant

FROM THE SUPERIOR COURT FOR CLARK COUNTY
CLARK COUNTY SUPERIOR COURT CAUSE NO.13-1-01577-3

BRIEF OF RESPONDENT

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B. STATEMENT OF THE CASE

I. Procedural History

Shawn Christopher was charged by an amended information with Assault in the Second Degree for an incident that happened on or about August 22, 2013 and Domestic Violence Court Order Violation and Tampering with a Witness for a series of incidents between September 24, 2013 and September 27, 2013. CP 1-2. Each offense was also charged as a domestic violence offense. CP 1-2. The case proceeded to trial before The Honorable Robert Lewis, which commenced on November 12, 2013 and concluded on November 14, 2013 with the jury's verdict. RP 10-433.

The jury found Mr. Christopher guilty as charged and the trial court sentenced him to a standard range sentence of 26 months. RP 451; CP 90-103. Mr. Christopher filed a timely notice of appeal. CP 115.

II. Statement of Facts

In 2013, Mr. Christopher met Christina Gutierrez at Pacific Nutritional where they both worked. RP 105-06, 320. The relationship soon became romantic and they moved in together. RP 107-08, 320. A good friend of Mr. Christopher's, Amos, also lived with the couple. RP 108, 320. On August 22, 2013, Ms. Gutierrez, a swing shift worker, left work early because she was not feeling well; she got home around 3 p.m.

RP 108-110, 325. Later that night, Mr. Christopher arrived home with Amos and Amos's friend Bobby. RP 110. The three men began drinking alcoholic beverages. RP 110-11, 324, 344.

At first everything was fine, but Mr. Christopher began to get jealous of Ms. Gutierrez and accused of her of staring at Amos and Bobby. RP 110-11, 333. By this time, Mr. Christopher was intoxicated. RP 111-14. Ms. Gutierrez grabbed her headphones, went outside, and sat down, and while her stomach was feeling upset she was okay just sitting there. RP 116-17. Next, Mr. Christopher came outside and tried to sit on her lap, but Ms. Gutierrez put her foot up to stop him. RP 117-18, 185. This angered Mr. Christopher because he believed she kicked him. RP 118, 327-28.

As a result, Mr. Christopher went to leave and Ms. Gutierrez followed after him as she did not want him leaving with a beer in his hand. RP 118-19. The two struggled over the beer and began arguing about whether Mr. Christopher got kicked when he decided to back up and kick Ms. Gutierrez hard in the thigh. RP 119-120, 328-330, 342-43. The kick hurt Ms. Gutierrez and she retreated inside to her room and Mr. Christopher followed. RP 120, 330. Eventually, the two made it back out to the balcony where the others were having fun talking, but Mr.

Christopher once again became jealous and another argument ensued. RP 120-21.

Once back inside of the bedroom the two shared, Mr. Christopher began trying to erase a picture that Ms. Gutierrez and her, at the time, 2-year-old daughter drew on the closet doors. RP 121, 186, 331. This picture had special significance to Ms. Gutierrez and Mr. Christopher knew it. RP 121-22. As a result, Ms. Gutierrez ran over and two-hand shoved Mr. Christopher away from the closet doors and into the wall; she was very angry. RP 123-24, 186. Mr. Christopher then moved to the bed and the two continued to argue about Mr. Christopher's jealousy issues as he kept accusing Ms. Gutierrez of always staring at and flirting with other guys. RP 124-25.

During this argument, Mr. Christopher jumped up, came at Ms. Gutierrez, and put his hands around her throat. RP 125. While his hands were around Ms. Gutierrez's throat, he began to squeeze, and she could see an angry look on his face and smell the beer on his person. RP 127-28. Mr. Gutierrez testified that while Mr. Christopher's hands were around her throat she tried to yell, but that for a minute she was unable. RP 128. She was unable to yell because he was squeezing her neck tightly and at the start she could not breathe. RP 129-130, 151-53, 195.

Eventually, Mr. Christopher let her go. RP 131. Her neck felt sore afterwards. RP 144.

Once Ms. Gutierrez was free, she grabbed the phone, went to the balcony, and started to call the police. RP 131, 224. Mr. Christopher yelled at Ms. Gutierrez "are you calling the cops?" and when Ms. Gutierrez nodded yes, he started running back and forth with Amos collecting his clothes. RP 131-32. After Mr. Christopher got his clothes on, Ms. Gutierrez saw him run. RP 132-33. The jury got the hear the 911 call that Ms. Gutierrez placed, in which she indicated that Mr. Christopher put his hands around her neck and that he had also kicked her. RP 133-39. At trial, Ms. Gutierrez identified a number of pictures taken of her both the morning of the incident and afterwards depicting her neck and what she described as handprints, marks from his hands around her neck, a hickey, and in the later pictures bruising. RP 142-49, 191-92, 226-28. She also pointed out to the jury where the red marks appeared on her neck and testified that those areas hurt at the time. RP 146-47, 153. Mr. Christopher denied that he strangled Ms. Gutierrez and claimed that "[s]he – she was the aggressor the whole night. I tried to – I did everything right. I walked away, I apologized, I tried to stop it. I did everything right." RP 337.

While Mr. Christopher was in custody, Ms. Gutierrez received a call from a number she did not recognize. RP 155. She answered the call and the person on the other end of the line said her name and said that he was a friend of Mr. Christopher's from jail. RP 156-57. That person, a male voice, told Ms. Gutierrez that he wanted to read her a letter from Mr. Christopher because Mr. Christopher had asked him to. RP 157-58. The caller asked Ms. Gutierrez to go to the police and tell them that she was lying so that Mr. Christopher could be set free. RP 158-160. The caller also informed Ms. Gutierrez that Mr. Christopher was looking at a second strike, which meant that he could go to prison for a long time, and that he loved her and wanted to be with her. RP 159.

When Ms. Gutierrez confronted the caller and asked him if he knew what Mr. Christopher had done and that he (Mr. Christopher) had strangled her, the caller responded by saying "[t]hat's neither here nor there." RP 161. The call stressed out Ms. Gutierrez. RP 162. Later, Ms. Gutierrez received text messages from that same number, which referenced the previous call and were in code but communicated to Ms. Gutierrez that she was supposed to change her story. RP 166-68. The jury received pictures taken of Ms. Gutierrez's phone with the text messages displayed. RP 167. Following those texts, Mr. Gutierrez called the police. RP 167.

Additional witnesses at trial included Officer Therman Bibens. Ofc. Bibens testified that when he arrived at the scene of the incident in response to the 911 call he saw Mr. Christopher and ordered him to stop, but that Mr. Christopher ran away from him. RP 239-241. Instead of continuing the chase, Ofc. Bibens went and made contact with Ms. Gutierrez and asked her to describe what happened. RP 259. He testified that she was real soft spoken as she told him what had happened and that she would begin to cry. RP 259. He also testified that she did not appear intoxicated and complained that her neck was sore. RP 259-260.

Regarding his contact with Mr. Christopher once he was apprehended, Ofc. Bibens explained that Mr. Christopher appeared intoxicated as his eyes were watery, he smelled of alcohol, and his words were slurred. RP 266. When asked why he ran, Mr. Christopher said that his boy told him that cops were coming. RP 267.

The State also called Jacinto Hausinger as a witness. RP 275. Mr. Hausinger testified that he knew Mr. Christopher because he had spent time in August, 2013 in the Clark County jail with him. RP 276. In fact, the two were cellmates. RP 277. Though he testified haltingly, Mr. Hausinger admitted that Mr. Christopher told him to read a letter he (Mr. Christopher) had written to Ms. Gutierrez. RP 278-79. Mr. Hausinger

stated that he called Ms. Gutierrez by phone and sent text messages to her from the same number. RP 280.

Finally, the State called foundational witnesses to explain the process by which a DV no contact order is created and to admit the DV no contact order that protected Ms. Gutierrez and restrained Mr. Christopher into evidence. RP 292-307. Following the State's witnesses the Court read a stipulation to the jury. RP 308. That stipulation said "Shawn Eric Christopher had knowledge on August 23, 2013, the Clark County Superior Court issued a valid no-contact order pursuant to Chapter 10.99 RCW, in Cause Number 13-1-01577-3. Shawn Eric Christopher knew of the no-contact orders contents, including the protected party, the restraint provisions and the expiration date. The no-contact order is Exhibit 23." RP 308.

C. ARGUMENT

I. MR. CHRISTOPHER WAIVED HIS CHALLENGE TO THE CONSTITUTIONALITY OF THE STATUTE UNDER WHICH HE WAS CONVICTED BY FAILING TO CHALLENGE THE STATUTE AT THE TRIAL LEVEL AND FAILING TO SHOW HOW HIS CHALLENGE IS APPROPRIATE UNDER RAP 2.5(A)(3).

a. Manifest Error

Because at the trial court level Mr. Christopher did not challenge the legality of the statute under which he was charged, he waived the right to challenge the statute on this ground for the first time on appeal. The general rule is that an issue, theory, or argument not presented at trial will not be considered on appeal. RAP 2.5(a); *State v. Hayes*, 165 Wn.App. 507, 514, 265 P.3d 982 (2011) (citing *State v. McFarland*, 127 Wn.2d 322, 332–33, 899 P.2d 1251 (1995)). This "rule reflects a policy of encouraging the efficient use of judicial resources. The appellate courts will not sanction a party's failure to point out at trial an error which the trial court, if given the opportunity, might have been able to correct to avoid an appeal and a consequent new trial." *State v. Scott*, 110 Wn.2d 682, 685, 757 P.2d 492 (1998) (citation omitted).

An exception to the rule exists, however, for manifest errors affecting a defendant's constitutional rights. RAP 2.5(a)(3); *Hayes*, 165 Wn.App. at 514. To determine whether the exception applies, a reviewing

court employs a two-part test. *State v. Kronich*, 160 Wn.2d 893, 899, 161 P.3d 982) (2007) (citing *State v. Lynn*, 67 Wn.App. 339, 345, 835 P.2d 251 (1992) (overruled on other grounds by *State v. Jasper*, 174 Wn.2d 96, 271 P.3d 876 (2012)). "First, the court determines whether the alleged error is truly constitutional. Second, the court determines whether the alleged error is 'manifest.'" *Id.*

To be manifest, the alleged error must have had "practical and identifiable consequences in the trial of the case." *Kronich*, 160 Wn.2d at 899 (citing *State v. Stein*, 144 Wn.2d 236, 240, 27 P.3d 184 (2001)). In other words, the defendant must show, in the context of the trial, actual prejudice as it is this "prejudice that makes the error 'manifest,' allowing appellate review." *McFarland*, 127 Wn.2d at 333 (citing *Scott*, 110 Wn.2d at 688). Consequently, a "purely formalistic error will not be deemed manifest," nor will an error that is not "unmistakable, evident, or indisputable." *Kronich*, 160 Wn.2d at 899,; *State v. Burke*, 163 Wn.2d 204, 224, 181 P.3d 1 (2008) (citation omitted). Because "permitting every possible constitutional error to be raised for the first time on appeal undermines the trial process, generates unnecessary appeals, creates undesirable re-trials and is wasteful of the limited resources of prosecutors, public defenders and courts," courts must not give the term

"manifest" an expansive reading. *Lynn*, 67 Wn.App. 343-44; *McFarland*, 127 Wn.2d at 333.

Here, Mr. Christopher cites to RAP 2.5(a)(3) and *State v. Kirwin* for the proposition that "[a] manifest error affecting a constitutional right may be raised for the first time on review. Br. of App. at 5; 165 Wn.2d 818, 823, 203 P.3d 1044 (2009)[1]. Mr. Christopher fails, however, to provide any argument or citation for authority that the error he alleges is manifest. *See* Br. of App. Arguments must be supported by citation to authority and if none is cited reviewing courts may "may presume that counsel after diligent search, has found none." *Oregon Mut. Ins. Co. v. Barton*, 109 Wn.App 405, 418, 36 P.3d 1065 (2001) (internal quotation omitted) (citing *Roberts v. Atlantic Richfield Co.*, 88 Wn.2d 887, 895, 568 P.2d 764 (1977)); *State v. Logan*, 102 Wn.App. 907, 911 FN 1, 10 P.3d 504 (2000); RAP 10.3(a)(6).

According to Mr. Christopher, the Assault in the Second Degree statute was amended to 1) create and define a new means of committing Assault in the Second Degree; 2) make technical corrections, to include a spelling correction and moving a misplaced conjunction; and 3) to add a new wash-out period for repetitive domestic violence offenses. Br. of

[1] Worth noting is that *Kirwin* declares that a defendant "*must* identify a constitutional error *and* show how, in the context of the trial, the alleged error actually affected his rights." (emphasis added)

App. at 8. Even if these changes to the statute were unlawful, Mr. Christopher cannot show how these changes had "practical and identifiable consequences in the trial of the case." *Kronich*, 160 Wn.2d at 899. Rather, because Mr. Christopher was convicted of Assault in the Second Degree by strangulation,[2] not suffocation, the legal error complained of, even if true, is a "purely formalistic error" and did not actually prejudice Mr. Christopher at trial. *Id.* at 899.

b. The Amending Statute

The constitutionality of a statute is reviewed de novo. *City of Spokane v. Neff*, 152 Wn.2d 85, 88, 93 P.3d 158 (2004). In addition, a statute is "presumed constitutional, and the parties challenging it must prove it violates the Constitution beyond a reasonable doubt." *City of Seattle v. Montana*, 129 Wn.2d 583, 589 (1996) (citations omitted). Moreover, a reviewing court "will make every presumption in favor of constitutionality where the statute's purpose is to promote safety and welfare, and the statute bears a reasonable and substantial relationship to that purpose." *State v. Glas*, 147 Wn.2d 410, 422, 54 P.3d 147 (2002); *State v. Lee*, 135 Wn.2d 369, 390, 957 P.2d 741 (1998).

[2] The Jury was instructed that in order to convict Mr. Christopher of Assault in the Second Degree it had to find beyond a reasonable doubt that Mr. Christopher "assaulted Christina Gutierrez by strangulation." Court's Instructions to the Jury #7 (CP 61). The jury received additional instructions defining Assault in the Second Degree as assault by strangulation and defining strangulation, but received no instructions regarding suffocation. CP 60, 64; See Court's Instructions to the Jury.

Article II, section 19 of the Washington Constitution "contains two prohibitions: (1) no bill shall embrace more than one subject (single subject rule), and (2) that the bill's title shall express the bill's subject (subject-in-title rule)." State v. *Stannard*, 134 Wn.App. 828, 834, 142 P.3d 641 (2006). A violation of either rule, however, does not require the invalidation of the entire statute. *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 227-28, 11 P.3d 762 (2000) ("The next question is whether, due to unconstitutionality under the subject-in-title clause of art. II, § 19, [the enactment] is unconstitutional in its entirety"); *Patrice v. Murphy*, 136 Wn.2d 845, 855, 966 P.2d 1271 (1998) (citing *Power, Inc. v. Huntley*, 39 Wn.2d 191, 200, 235 P.2d 173 (1951) ("The Constitution does provide that if only one subject is embraced in the title, then any subject not expressed in the title that is embraced in the body of the act, may be rejected, and the part that is expressed in the title be allowed to stand."). Instead, a severability analysis takes place where "those provisions not encompassed within the title are invalid but the remainder is constitutional if: (1) the objectionable portions may be severed such that a court can presume the enacting body would have enacted the valid portion without the invalid portion; and (2) elimination of the invalid part would not render the remainder of the act incapable of accomplishing the legislative

purpose." *State v. Thomas*, 103 Wn.App 800, 813, 14 P.3d 854 (2000) (citing *State v. Broadaway*, 133 Wn.2d 118, 128, 942 P.2d 363 (1997)).

Here, the Assault in the Second Degree statute was amended in 2011 in order to include assault by suffocation under its purview. Laws, 2011, Ch. 166 Sec. 1. The amending legislation was titled "AN ACT Relating to crimes against persons involving suffocation or domestic violence . . .". Laws, 2011, Ch. 166. Assuming *arguendo* that the amending legislation violates the single subject rule or subject-in-title rule by making "technical corrections" and adding "language allowing prior convictions for a repetitive domestic violence offense to wash out of a person's offender score," Mr. Christopher does not argue, nor can he, that the remaining portion of the amending legislation, i.e., the portion adding suffocation as a means of committing Assault in the Second Degree, is not within the bill's title. Brief of Appellant at 7-8. In fact, Mr. Christopher fails to undertake any severability analysis. *See* Br. of App..

Moreover, Mr. Christopher was convicted of Assault in the Second Degree by strangulation—not suffocation—as the jury was instructed that in order to convict Mr. Christopher of Assault in the Second Degree it had to find beyond a reasonable doubt that Mr. Christopher "assaulted Christina Gutierrez by strangulation." Court's Instructions to the Jury #7 (CP 61). The jury received additional instructions defining Assault in the

Second Degree as assault by strangulation and defining strangulation, but received no instructions regarding suffocation. CP 60, 64; *See* Court's Instructions to the Jury. Consequently, even if Mr. Christopher did not waive his right to challenge the Assault in the Second Degree statute, his claim still fails because any possible offending portions of the amending legislation are severable leaving the suffocation portions intact and because his conviction did not involve any new portion of the amending legislation since he was convicted of Assault in the Second Degree by strangulation.

II. MR. CHRISTOPHER'S TRIAL COMPORTED WITH DUE PROCESS AS HIS OBJECTION TO DISPUTED EVIDENCE WAS SUSTAINED AND THE PROPER INSTRUCTIONS WERE GIVEN BY THE COURT.

If the defendant can establish that prosecutorial misconduct occurred, then "the defendant must show that the prosecutor's misconduct resulted in prejudice that had a substantial likelihood of affecting the jury's verdict. *State v. Emery*, 174 Wn.2d 741, 759-60, 278 P.3d 653 (2012) *Emery*, 174 Wn.2d at 760. "Juries are presumed to follow jury instructions absent evidence to contrary. *State v. Kirkman*, 159 Wn.2d 918, 928, 155 P.3d 125 (2007) (citing *State v. Davenport*, 100 Wn.2d 757, 763, 675 P.2d 1213 (1984)).

Reviewing courts apply an abuse of discretion standard when assessing the trial court's denial of a mistrial. *State v. Rodriquez*, 146 Wn.2d 260, 269, 45 P.3d 541 (2002). The same standard applies to a trial court's decision to deny a motion for a new trial. *State v. Perez-Valdez*, 172 Wn.2d 808, 818, 265 P.3d 853 (2011). A trial court abuses its discretion when "no reasonable judge would have reached the same conclusion." *Rodriquez*, 146 Wn.2d at 269. Moreover, a trial court's denial of a motion for mistrial "will only be overturned when there is a "substantial likelihood that the error prompting" the motion for a "mistrial affected the jury's verdict." *Id.* at 269-70.

Here, the misconduct did not have a substantial likelihood of affecting the jury's verdict. The State asked Ofc. Bibens "Do you know – did you know Shawn Christopher?" to which the officer responded "I've met Shawn before on some previous calls at the same location." RP 234. While this answer was improper, Mr. Christopher's attorney immediately objected, the trial court sustained the objection, and then instructed the jury to "disregard the last remarks." RP 234. As the State explained, this was an attempt to have the officer identify the man who ran from him at

the scene. RP 236. Contemporaneous to the comment, Mr. Christopher moved for a mistrial. RP 237.[3]

Nonetheless, while the jury would hear no more about prior contacts between Mr. Christopher and the police from the State for the rest of the trial, Mr. Christopher or his attorney brought up the subject during his testimony multiple times. Mr. Christopher mentioned that Ms. Gutierrez threatened to call the cops on him before "and it's not that big of a deal because you – it's always her hitting me." RP 332.[4] Immediately afterwards the following exchange took place:

> Q: Okay. The other incident had nothing to do with any assault, right?
>
> A: What was that?
>
> Q: The other time she called had nothing to do with any assaults, right?
>
> A: No.
>
> Q: Okay. But she had called before? And so, what did she –
>
> A: She said, I --

[3] Also, while Mr. Christopher now complains about Ofc. Bibens's use of Mr. Christopher's and Ms. Gutierrez's first names as an exacerbating factor, the court ordered the officer to "[r]efer to people by their names" after he used the term "victim." RP 247.
[4] This comment was objected to by the State, and sustained by the Court which also granted the State's motion to strike.

RP 333. Moreover, in explaining what he (Mr. Christopher) and Mr. Hausinger discussed while in jail, Mr. Christopher said "We talked about – talked about everything, like what we were in for, what we've done before." RP 341. Additionally, when asked whether he saw Ofc. Bibens outside the apartment Mr. Christopher said "Yes I seen – I don't – I – I didn't recognize him at the time" and after admitting he recognized the person outside as a police officer claimed that he "realized that she actually did call him because she's threatened me before." RP 345. Finally, Mr. Christopher introduced the idea that he ran from the officer because of a warrant for unpaid fines, which he noted "I get it sometimes if I don't pay." RP 347.

Importantly, the jury was instructed by the court prior to any arguments or the introduction of evidence that it "will disregard any evidence, which either is not admitted or which may be stricken by me." RP 101. The jury was also instructed prior to closing arguments that "[i]f evidence was not admitted or was stricken from the record then you are not consider it in reaching your verdict" and that if the court ruled "that any evidence is inadmissible, or if I have asked you to disregard any evidence, then you must not discuss that evidence during your deliberations or consider it in reach your verdict." Courts Instructions the Jury #1, CP 53-54.

Here, the evidence was stacked too strongly against Mr. Christopher to believe that the passing comment by Ofc. Bibens had a substantial likelihood of affecting the verdict. The case was a not mere credibility contest, rather Mr. Christopher's flight from the scene, intoxication level, the photographs of Ms. Gutierrez's injuries, and the testimony of Mr. Hausinger combined with the introduction and content of the phone call and test messages to Ms. Gutierrez, i.e., telling Ms. Gutierrez to change her story, not instructing her to tell the truth, built the foundation for a strong case. Adding into the equation 1) that the jury was instructed prior to trial, before closing, and immediately after the comment to not consider evidence it had been told to disregard; and 2) Mr. Christopher's and his attorney's continued introduction of his possible past police contact or criminal history, and the notion that the singular comment by Ofc. Bibens affected the verdict becomes even more strained. Consequently, the court did not abuse its discretion when it refused to declare a mistrial and when it refused to grant a new trial.

III. MR. CHRISTOPHER WAIVED HIS RIGHT TO CONTEST THE IMPOSITION OF LFOS BY NOT OBJECTING AT THE TRIAL COURT LEVEL.

The trial court has broad discretion to impose costs, fines, and fees. *See State v. Curry*, 118 Wn.2d 911, 917, 829 P.2d 166 (1992) (stating a trial court's imposition of LFOs is reviewed for abuse of discretion).

RCW 9.94A.760 entitled "Legal financial obligations" allows the superior court to order a person who is convicted of a crime to pay a legal financial obligation as part of his or her sentence. RCW 9.94A.760(1). Pursuant to RCW 9.94A.030(30), "legal financial obligation" means

> a sum of money that is ordered by a superior court of the state of Washington for legal financial obligations which may include restitution to the victim, statutorily imposed crime victims' compensation fees as assessed pursuant to RCW 7.68.035, court costs, county or interlocal drug funds, *court-appointed attorneys' fees*, and *costs of defense*, *fines*, and any *other financial obligation that is assessed to the offender as a result of a felony conviction.*

RCW 9.94A.030(30)(emphasis added). In addition, the trial court is not required to enter factual findings on a defendant's ability to pay LFOs. *Curry*, 118 Wn.2d at 916.

The imposition of LFOs is a product of statute and is not an issue of constitutional magnitude. *State v. Phillips*, 65 Wn.App. 239, 243-44, 828 P.2d 42 (1992). Consequently, RAP 2.5(a)(3) does not apply to issues regarding the imposition of LFOs. *Phillips*, 65 Wn.App. at 243-44. Therefore, a defendant forfeits any challenges to the imposition of LFOs on appeal if he does not object to their imposition at the time of sentencing. *State v. Duncan*, 180 Wn.App. 245, 253-55, 327 P.3d 699 (2014); *State v. Blazina*, 174 Wn.App. 906, 911, 301 P.3d 492 (2013) *review granted* 178 Wn.2d 1010, 311 P.3d 27 (2013); *State v. Calvin*, ---

Wn. App. ---, 316 P.3d 496, 507-08 (2013). This analysis does not change when the LFOs in question are related to the cost of court-appointed counsel. *See State v. Blank*, 131 Wn.2d 230, 930 P.2d 1213 (1997); *Curry*, 118 Wn.2d at 916.

Because Mr. Christopher's arguments concerning the imposition of LFOS are foreclosed by case law and waived, this Court should decline to review them.

D. CONCLUSION

For the reasons argued above, Mr. Christopher's convictions should be affirmed.

DATED this 9 day of September, 2014.

Respectfully submitted:

ANTHONY F. GOLIK
Prosecuting Attorney
Clark County, Washington

By: _____
AARON T. BARTLETT, WSBA #39710
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CLARK COUNTY PROSECUTOR

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