

No. 47152-3-II

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

vs.

**Sarah Olivas,**

Appellant.

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Mason County Superior Court Cause No. 14-1-00318-8

The Honorable Judge Toni Sheldon

**Appellant's Opening Brief**

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## **ISSUES AND ASSIGNMENTS OF ERROR**

1. Ms. Olivas's guilty plea violated her Fourteenth Amendment right to due process.
2. The record does not affirmatively establish that Ms. Olivas entered a knowing, intelligent, and voluntary guilty plea.
3. The trial court erred by accepting Ms. Olivas's guilty plea without ensuring that she understood the law, the facts, and the relationship between the two.
4. The record of the plea hearing does not prove Ms. Olivas understood the state's non-statutory obligation to prove the absence of self-defense in order to obtain a conviction for first-degree murder.

**ISSUE 1:** The record of a plea hearing must affirmatively establish the defendant's understanding of the law, the facts, and the relationship between the two. Must Ms. Olivas be allowed to withdraw her guilty plea to murder, because the record does not affirmatively establish that she understood the state was required to disprove her self-defense claim?

5. The court lacked an adequate factual basis for Ms. Olivas's guilty plea.
6. The record of the plea hearing does not include facts disproving self-defense.

**ISSUE 2:** A guilty plea is invalid if the record of the plea hearing fails to set forth a sufficient factual basis for the charge. Must the murder charge be dismissed with prejudice because the record does not include evidence showing that Ms. Olivas's use of force was unlawful?

7. The court erred by ordering Ms. Olivas to pay \$2,387 in legal financial obligations absent any inquiry into her present ability to pay.
8. The court erred by entering finding of fact 2.5. CP 6.

**ISSUE 3:** A court may not order a person with significant mental health problems to pay legal financial obligations (LFOs) without conducting an individualized inquiry into her means to do so. Did the court err by ordering Ms. Olivas to pay \$2,387 in LFOs without analyzing whether she had the money

to pay given her lack of income and resources, the lengthy period of incarceration imposed, and her significant mental health problems?

## **STATEMENT OF FACTS AND PRIOR PROCEEDINGS**

Sarah Olivas had mental health issues, including post-traumatic stress disorder. At some point, she discontinued use of anti-psychotic medication. RP 40, 44.

Ms. Olivas did some work for Patrick Frender at his house. She stayed there some nights. RP 44.

Ms. Olivas felt increasingly uncomfortable in the house. She thought that Frender and his family participated in cult-like practices and sexually assaulted her. RP 44.

On July 2, 2014, Ms. Olivas felt afraid for her life. She believed that Frender would harm her. RP 44. After a struggle, she went into another room, got Frender's shotgun, and shot him. Affidavit of Probable Cause, Supp. CP; RP 44. Frender's son and a friend were in the living room and saw the shooting. Affidavit of Probable Cause, Supp. CP.

Ms. Olivas ran to the house next door and remained there until police came. Affidavit of Probable Cause, Supp. CP. When they did arrive, she told them "I know I did it. I'm sorry. I did it. I'm sorry." RP 6.

She was charged with murder in the first degree, with a firearm enhancement. Information, Supp. CP. The court found that she was "in need of psychiatric examination" to determine competency. Order for

Initial Evaluation, Supp. CP. The court directed that Western State Hospital conduct an evaluation. Order for Initial Evaluation, Supp. CP.

After she was found competent to proceed, Ms. Olivas entered into a plea agreement with the prosecution. The state agreed to drop the firearm enhancement in exchange for the plea. RP 19. The state also agreed not to charge unlawful possession of a firearm. RP 20.

On January 5, 2015, Ms. Olivas's attorney submitted a "Statement of Defendant of Plea of Guilty". CP 20-24. The written plea form lists the elements of first-degree murder as "intentionally causing the death of another with premeditated intent." CP 20. It also includes Ms. Olivas's statement outlining the crime: "I premeditated and intentionally shot and killed Patrick Frender." CP 24.

Ms. Olivas told the judge that she understood the elements. RP 19. Neither the written plea form nor the transcript of her colloquy with the judge mentions the state's burden to disprove self-defense. CP 20-24; RP 18-25.

The judge accepted the plea and entered a finding of guilt. RP 25-27. The court sentenced Ms. Olivas to 361 months. CP 7. The judge did not ask her about her financial resources, her income, or her ability to pay legal financial obligations. RP 46-56. Nor did the court inquire into her mental health problems. RP 46-56. The court found that she had the



present or likely future ability to pay LFOs. CP 6. It imposed financial penalties totaling \$2,387. CP 9.

Ms. Olivas timely appealed. CP 4.

### **ARGUMENT**

**I. MS. OLIVAS’S GUILTY PLEA VIOLATED DUE PROCESS, BECAUSE THE RECORD OF THE PLEA HEARING DOES NOT AFFIRMATIVELY ESTABLISH ITS VALIDITY.**

Where there is “some” evidence of self-defense, the state bears the burden of disproving self-defense. *State v. McCreven*, 170 Wn. App. 444, 462, 284 P.3d 793 (2012). Sarah Olivas said she was afraid for her life on the day she shot Frender. He had tied her up in the house that day. On another occasion, she’d gone to the hospital after he raped her.

This amounted to “some” evidence of self-defense. *Id.* Accordingly, had the case gone to trial, the state would have had the burden of disproving self-defense beyond a reasonable doubt. *Id.*

Due process requires an affirmative showing that an accused person’s guilty plea is knowing, intelligent, and voluntary. U.S. Const. Amend. XIV; *Boykin v. Alabama*, 395 U.S. 238, 23 L.Ed.2d 274, 89 S.Ct. 1709 (1969); *In re Isadore*, 151 Wn.2d 294, 88 P.3d 390 (2004). The record here does not include such a showing. Accordingly, Ms. Olivas must be allowed to withdraw her plea.

- A. The record of the plea hearing does not affirmatively show that Ms. Olivas understood the law, the facts, and the relationship between the two.

The record of a plea hearing must prove that the accused person understood the law, the facts, and the relationship between the two. *State v. R.L.D.*, 132 Wn. App. 699, 706, 133 P.3d 505 (2006). Here, Ms. Olivas lacked an understanding of the elements of first-degree murder in a self-defense case.

Her written statement on plea of guilty makes no mention of the absence of self-defense as an element of murder. CP 20-24. On the first page, the document purports to list the elements as “[i]ntentionally causing the death of another with premeditated intent...” CP 20. It does not list the absence of self-defense as an element.

Similarly, her statement outlining the offense “in [her] own words” makes no mention of self-defense. CP 24. It says only “I premeditated and intentionally shot and killed Patrick Frender.” CP 24.

Nor did the court point out that the absence of self-defense is an element of first-degree murder when there is some evidence of self-defense. RP 18-25. The court made no mention of self-defense or justifiable force in its colloquy with Ms. Olivas. RP 18-25.

Nothing in the record affirmatively shows that Ms. Olivas understood the state’s burden to prove the absence of self-defense. The

record does not establish that she understood the law, the facts, and the relationship between the two. Ms. Olivas's guilty plea was involuntary and violated her Fourteenth Amendment right to due process. *R.L.D.*, 132 Wn. App. at 706. Her case must be remanded to the trial court with instructions to allow her to withdraw her plea. *Id.*

B. The record does not set forth a sufficient factual basis for Ms. Olivas's guilty plea.

The factual basis for a guilty plea must be developed on the record at the time the plea is taken. *Id.*, at 706 n. 8; *State v. S.M.*, 100 Wn. App. 401, 415, 996 P.2d 1111 (2000). The factual basis for a plea is insufficient if it fails to satisfy all the elements of the offense. *R.L.D.*, 132 Wn. App. at 706.

Here, the record does not provide a factual basis for first-degree murder because it does not establish the absence of self-defense. Neither Ms. Olivas's written statement nor her oral colloquy with the judge shows that she was not acting in self-defense.

She did not "orally acknowledge[]" any factual statement by the prosecutor establishing the absence of self-defense. *See S.M.* 100 Wn. App. at 414 (internal quotation marks and citation omitted). The judge did not "orally interrogate[ ] the defendant concerning [her] conduct" to establish the absence of self-defense. *Id.*

Failure to develop sufficient facts on the record at the time of a guilty plea requires vacation of the conviction and dismissal of the charge. *R.L.D.*, 132 Wn. App. at 706. The court in this case failed to develop sufficient facts on the record to show the absence of self-defense. Because of this, the conviction for murder must be vacated and the charge set aside. *Id.*

**II. THE COURT SHOULD NOT HAVE ORDERED MS. OLIVAS TO PAY \$2,387 IN LEGAL FINANCIAL OBLIGATIONS.**

Ms. Olivas was found indigent at the end of trial. CP 2-3. She has no income from any source. Motion and Declaration for an Order to Proceed Informa [sic] Pauperis, Supp. CP. She will spend between 20 and 30 years in prison. CP 7. She has PTSD and other mental health conditions. RP 40, 44. Even though Ms. Olivas has no hope of ever paying any amount, the court imposed fines, costs, and fees totaling \$2,387. CP 9.

A. Ms. Olivas's mental health condition prohibits imposition of financial penalties because the sentencing court did not find that she has the *current* means to pay.

The legislature has imposed obligations upon a trial court before it can order a person with a mental health condition to pay LFOs:

Before imposing any legal financial obligations upon a defendant who suffers from a mental health condition, other than restitution or the victim penalty assessment under RCW 7.68.035, a judge

must first determine that the defendant, under the terms of this section, has the means to pay such additional sums.

RCW 9.94A.777(1).<sup>1</sup>

This language stands in contrast to that of other statutes permitting the imposition of LFOs upon anyone who has the present ability to pay *or* will be able to pay *in the future*. See e.g. RCW 10.01.160(3). In cases involving offender with mental health conditions, the court must find that s/he has the ability to pay at the time of sentencing. RCW 9.94A.777(1).

Under the statute, a judge “must first determine” that the offender has the ability to pay. This imposes a more concrete duty than RCW 10.01.160(3), which only requires the court to *consider* whether the person can pay. RCW 9.94A.777(1).

Here, the court knew that Ms. Olivas suffered from significant mental health conditions. RP 40, 44; Order for Initial Evaluation, Supp. CP. Despite this, the court did not explicitly find that she has the current ability to pay LFOs. Instead, without inquiry, the sentencing judge adopted boilerplate language finding hat she “has the ability or likely future ability to pay...” CP 6.

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<sup>1</sup> For purposes of the statute, “mental health condition” is defined as: “a mental disorder that prevents the defendant from participating in gainful employment, as evidenced by a determination of mental disability as the basis for the defendant's enrollment in a public assistance program, a record of involuntary hospitalization, or by competent expert evaluation.” RCW 9.94A.777(2).

This finding is inadequate to support imposition of LFOs. The court's order exceeded its authority under RCW 9.94A.777. The order imposing financial penalties must be vacated and the case remanded for a new sentencing hearing.

B. The court failed to make any particularized inquiry into Ms. Olivas's present or future ability to pay LFOs.

The court did not conduct any particularized inquiry into Ms. Olivas's financial situation at sentencing or at any other time. Instead, the court adopted boilerplate language indicating that it "ha[d] considered" her present and future ability to pay, including her resources and the likelihood that her status will change. CP 6. The court also adopted a boilerplate finding that she "has the ability or likely future ability to pay." CP 6.

Nothing in the record supports this finding. Nor is there anything in the record suggesting the court actually considered the factors indicated. The court erred by ordering Ms. Olivas to pay LFOs absent any evidence that she will ever have the means to do so.

The legislature has mandated that "[t]he court *shall not* order a defendant to pay costs unless the defendant is or will be able to pay them." RCW 10.01.160(3); *State v. Blazina*, --- Wn.2d ---, 344 P.3d 680, 685 (March 12, 2015) (emphasis added by court).

This imperative language prohibits a trial court from ordering LFOs absent an individualized inquiry into the person's ability to pay. *Id.* Boilerplate language in the Judgment and Sentence is inadequate because it does not demonstrate that the court engaged in an individualized analysis. *Id.* Furthermore, the court must consider personal factors such as incarceration and the person's other debts, including restitution. *Id.*

Here, the court failed to conduct any inquiry into Ms. Olivas's ability to pay LFOs. RP 46-56. The court did not consider her financial status in any way. Indeed, the court also found Ms. Olivas indigent shortly after imposing \$2,387 in LFOs. CP 2-3.

Had the court considered the factors mandated by the Supreme Court in *Blazina*, Ms. Olivas's mental health condition, her lack of income, and her 20-30 year incarceration would have weighed heavily against a finding that she had the ability to pay LFOs. In fact, the *Blazina* court suggested that an indigent person would likely never be able to pay LFOs. *Id.* (“[I]f someone does meet the GR 34 standard for indigency, courts should seriously question that person's ability to pay LFOs”).

C. The Court of Appeals should review the erroneous imposition of financial penalties and vacate that portion of the judgment and sentence.

RAP 2.5(a) permits an appellate court to review errors even when they are not raised in the trial court. RAP 2.5(a); *Blazina*, --- Wn.2d ---,

344 P.3d at 683. The *Blazina* court found that “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.” *Id.*<sup>2</sup> This court should follow the Supreme Court’s lead and consider the merits of Ms. Olivas’s LFO claim even though it was not raised below.

The court erred by ordering Ms. Olivas to pay \$2,387 in LFOs absent any showing that she had the means to do so. *Blazina*, --- Wn.2d ---, 344 P.3d at 685. Furthermore, the imposition of LFOs is inappropriate, given Ms. Olivas’s significant mental health condition. RCW 9.94A.777.

The order must be vacated and the case remanded for a new sentencing hearing. *Id.*

### **CONCLUSION**

Ms. Olivas’s guilty plea violated her Fourteenth Amendment right to due process. She did not make her plea knowingly, intelligently, and voluntarily. The case must be remanded to allow her withdraw her plea, because the record of the plea hearing does not affirmatively demonstrate that she understood the law, the facts, and the relationship between the two.

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<sup>2</sup> The Supreme Court noted the significant disparities both nationally and in Washington in the administration of LFOs and the significant barriers they place to reentry of society. *Id.* at 683-85.

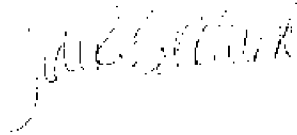


In the alternative, the conviction must be vacated and the charge dismissed. The record of the plea hearing does not set forth a sufficient factual basis for the plea.

If the Court of Appeals leaves her plea intact, it should review the sentencing court's improper imposition of financial penalties. The court should vacate that portion of the judgment and sentence and remand for a new sentencing hearing to determine if Ms. Olivas has the current ability to pay LFOs.

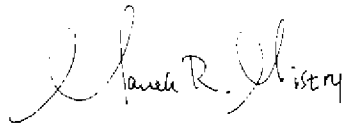
Respectfully submitted on June 9, 2015,

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CERTIFICATE OF SERVICE

I certify that on today's date:

I mailed a copy of Appellant's Opening Brief, postage prepaid, to:

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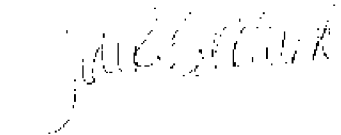
With the permission of the recipient(s), I delivered an electronic version of the brief, using the Court's filing portal, to:

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I filed the Appellant's Opening Brief electronically with the Court of Appeals, Division II, through the Court's online filing system.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Olympia, Washington on June 9, 2015.



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## BACKLUND & MISTRY

June 09, 2015 - 2:37 PM

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