

NO. 48354-8-II

COURT OF APPEALS OF THE STATE OF WASHINGTON,

DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

JEREMY KEITH,

Appellant.

BRIEF OF APPELLANT

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ASSIGNMENT OF ERROR

Assignment of Error

1. Substantial evidence does not support the defendant's conviction for robbery because neither the defendant nor an accomplice took personal property from the person or presence of another.

2. Trial counsel's stipulation that the defendant could pay legal financial obligations constituted ineffective assistance.

3. This court should not impose costs on appeal if the state prevails.

Issues Pertaining to Assignment of Error

1. Does substantial evidence support the defendant's conviction for robbery when the evidence presented at trial reveals that either the defendant or an accomplice took personal property from a place over which the victim did not have the legal right to enter?

2. Does a trial counsel's stipulation that a defendant can pay legal financial obligations constituted ineffective assistance when this stipulation is not supported by the fact?

3. Should the court of appeal impose costs on appeal if the state prevails when the defendant is indigent and incapable of paying?

STATEMENT OF THE CASE

Factual History

In August of 2015 long time friends Jacob Wise and Trevor Muir were living together in a two bedroom apartment on East Pioneer Avenue in Montesano with each of them occupying separate bedrooms. RP 5, 18-19, 69. The two of them had been best friends growing up and had gone to highschool together. RP 18-19, 69. Prior to August Jacob had his girlfriend McKenzie Pierce living with him and sharing his bedroom. RP 18-19, 69. However, by the beginning of August their relationship had begun to sour and a few days before August fifth Jacob and Trevor told McKenzie to leave, which she did. In fact, Trevor wanted her out because he was convinced that she was coming into his bedroom without permission in order to steal his possessions. RP 18-19, 71-72. He even went to the point of putting a latch and padlock on his bedroom door in order to keep her out. RP 30-31, 71-72.

McKenzie later arranged with Jacob to come back to the Apartment on the afternoon of August 5th with two friends to retrieve her possessions. RP 20-22. After she made these arrangements Jacob boxed up the majority of her possessions put them by the front door. *Id.* At the appointed time McKenzie returned to the apartment complex with Aaron Fisher and the defendant Jeremy Keith. *Id.* Jacob, who was alone in the apartment at the time, let them all in to help with the move. *Id.* Although Jacob was not

friends with either Aaron or the defendant, he was acquainted with them. *Id.* After McKenzie, Aaron and the defendant moved the boxes out to the defendant's car, they looked around the apartment to see if they had missed any of McKenzie's possessions. *Id.*

According to Jacob, while the four of them were looking to see if they had found all of McKenzie's possessions, the defendant walked up and stunned Jacob with a taser that had been sitting on the kitchen counter. RP 22. After doing this Aaron and the defendant put him into the bathroom and shut the door. RP 23-24. When Jacob tried to get out Aaron held the door shut and threatened to "sock" him in the face if he came out. *Id.* After hearing that Jacob decided to stay in the bathroom. *Id.* Over the next minute or so he believed he heard noises coming from Trevor's bedroom. RP 26-27. A few minutes later the noises stopped. *Id.* Jacob then heard the apartment manager calling into him and asking if there was a problem. RP 28-29. At this point Jacob exited the bathroom, noticing both that the door to Trevor's bedroom was not open as was the front door. *Id.* Upon looking into Trevor's bedroom through the now open door he noticed that Trevor's closet was open and his small safe was gone. *Id.* Trevor later verified that the safe had been there when he left that morning and that he had not given anyone permission to enter his bedroom, get into his closet or take his safe. RP 77.

Later that day the police found and arrested both the defendant as well

as Elizabeth. RP 89-90. At the time of her arrest Elizabeth had Trevor's taser in her purse. RP 141-142. During an interview following his arrest the defendant admitted that he had been at Jacob and Trevor's apartment earlier in the day to help move Elizabeth's possessions but he denied that he had assaulted Jacob, gone into Trevor's bedroom or taken Trevor's safe. RP 137-138.

Procedural History

By information filed August 26, 2015, the Grays Harbor County Prosecutor charged the defendant Jeremy Keith with one count of first degree robbery. CP 1-2. As of the date of filing the defendant was 26-years-old, married and the father of three children who lived with him and his wife. CP 3-4. His only possession was a 1997 Honda Accord. *Id.* At the time he was working as a "handyman painter" making from \$80.00 to \$100.00 a week. *Id.* Apart from "routine living expenses such as rent, utilities, food, etc." the defendant pays "\$300.00 a month for court-ordered fines." CP 2. He was also receiving food stamps. *Id.* Based upon this financial information the Grays Harbor Superior Court appointed an attorney to represent him solely at state expense. CP 4.

This case later went to trial before a jury with the state calling nine witnesses, including Jacob Wise, Trevor Muir, the apartment manager and the investigating officers among others. RP 5-148. These witnesses testified

to the facts contained in the preceding factual history. *See* Factual History, *supra*. Following their testimony the state rested its case. RP 148. The defense then rested without calling any witnesses. *Id.* After argument from counsel, the jury deliberated and eventually returned a verdict of guilty to first degree robbery. RP 149-174; CP 79.

On December 4, 2015, the court held a sentencing hearing in this case during which the defendant stipulated to his criminal history, which included four prior felonies and eleven misdemeanors. CP 92-93. The court then imposed 60 months in prison on a range of 51 to 68 months along with 18 months community custody. CP 91-102. During that sentencing hearing the following exchange took place between defense counsel and the court concerning the defendant's ability to pay legal-financial obligations:

My client, you know, he does work. He can pay the financial obligations. He is working as a painter, and there was testimony to that effect when the police went to make contact with him. He is married and has a new child, and other children as well.

RP 178.

The court's response on legal-financial obligations was the following:

I will impose the legal financial obligations recommended, or requested by the state in its statement.

RP 179.

These legal financial obligations included discretionary costs of \$1,725.00 in court appointed attorney fees. CP 97. Following imposition of

sentence the defendant filed a notice of appeal, after which the court entered an order of indigency finding that the defendant was indigent for the purposes of appeal and was entitled to the appointment of counsel and all costs necessary for the preparation of the record on appeal. CP 106-107. This order of indigency was based in part upon the “Motion for Indigency” trial counsel filed indicating that the defendant’s financial condition had not changed. CP 108-109. In it the defendant stated that he has no assets, no employment and no source of income. *Id.*

ARGUMENT

I. SUBSTANTIAL EVIDENCE DOES NOT SUPPORT THE DEFENDANT'S CONVICTION FOR ROBBERY BECAUSE NEITHER THE DEFENDANT NOR AN ACCOMPLICE TOOK PERSONAL PROPERTY FROM THE PERSON OR PRESENCE OF ANOTHER.

As a part of the due process rights guaranteed under both the Washington Constitution, Article 1, § 3 and United States Constitution, Fourteenth Amendment, the state must prove every element of a crime charged beyond a reasonable doubt. *State v. Baeza*, 100 Wn.2d 487, 488, 670 P.2d 646 (1983); *In re Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068, 1073, 25 L.Ed.2d 368 (1970). As the United States Supreme Court explained in *Winship*: “[The] use of the reasonable-doubt standard is indispensable to command the respect and confidence of the community in applications of the criminal law.” *In re Winship*, 397 U.S. at 364.

Mere possibility, suspicion, speculation, conjecture, or even a scintilla of evidence, is not substantial evidence, and does not meet the minimum requirements of due process. *State v. Moore*, 7 Wn.App. 1, 499 P.2d 16 (1972). As a result, any conviction not supported by substantial evidence may be attacked for the first time on appeal as a due process violation. *Id.*

“Substantial evidence” in the context of a criminal case, means evidence sufficient to persuade “an unprejudiced thinking mind of the truth of the fact to which the evidence is directed.” *State v. Taplin*, 9 Wn.App.

545, 513 P.2d 549 (1973) (quoting *State v. Collins*, 2 Wn.App. 757, 759, 470 P.2d 227, 228 (1970)). This includes the requirement that the state present substantial evidence “that the defendant was the one who perpetrated the crime.” *State v. Johnson*, 12 Wn.App. 40, 527 P.2d 1324 (1974). The test for determining the sufficiency of the evidence is whether, “after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Jackson v. Virginia*, 443 U.S. 307, 334, 99 S.Ct. 2781, 2797, 61 L.Ed.2d 560 (1979); *State v. Green*, 94 Wn.2d 216, 616 P.2d 628 (1980).

In the case at bar, the state charged the defendant with first degree robbery under RCW 9A.56.200(1)(a)(iii). This provisions states:

(1) A person is guilty of robbery in the first degree if:

(a) In the commission of a robbery or of immediate flight therefrom, he or she:

(i) Is armed with a deadly weapon; or

(ii) Displays what appears to be a firearm or other deadly weapon; or

(iii) Inflicts bodily injury;

RCW 9A.56.200(1).

The legislature has defined the term “robbery” as used in this statute as follows:

A person commits robbery when he or she unlawfully takes personal property from the person of another or in his or her presence against his or her will by the use or threatened use of immediate force, violence, or fear of injury to that person or his or her property or the person or property of anyone. Such force or fear must be used to obtain or retain possession of the property, or to prevent or overcome resistance to the taking; in either of which cases the degree of force is immaterial. Such taking constitutes robbery whenever it appears that, although the taking was fully completed without the knowledge of the person from whom taken, such knowledge was prevented by the use of force or fear.

RCW 9A.56.190.

For the purposes of RCW 9A.56.200(1)(a)(iii), as charged in this case, the term “bodily injury” is defined as part of RCW 9A.04.110(4). Section (4)(a) of this statute states:

(4)(a) “Bodily injury, physical injury, or bodily harm means physical pain or injury, illness, or an impairment of physical condition;

RCW 9A.04.110(4)(a).

In this case the defense stipulates that the use of a taser as well as the physical contact necessary to force someone into a bathroom would constitute “bodily injury” as defined in RCW 9A.04.110(4). Thus, Jacob’s Wise’s testimony constitutes substantial evidence on this element of the crime. However, substantial evidence does not support the conclusion that the defendant “took personal property from the person of another or in his or her presence.” The decision in *State v. Stearns*, 61 Wn.App. 224, 810 P.2d 41

(1991) addresses what it means to take personal property from the person or another or in his or her presence.”

In *Stearns*, the state convicted the defendant with attempted rape and first degree robbery out of an incident in which he grabbed a woman from behind as she was walking home at night, drug her to a secluded location a few blocks away and attempted to rape her. As he drug her along she dropped her briefcase and then her purse, although the defendant paid no attention to them. In fact, the victim told the defendant that she had dropped her purse and briefcase and he had ignored her. At no point did he demand money or property from her.

After getting the victim to the secluded location a third part intervened and the defendant left the area. The victim then ran to a store and called the police, who arrived in a few minutes, found the defendant and arrested him. During a search incident to arrest, the police found a few items from the victim’s purse and briefcase in the defendant’s possession. Apparently he had gone back to the locations where the briefcase and purse had fallen and took items out of them. Following his conviction the defendant appealed, arguing that substantial evidence did not support the first degree robbery charge. Specifically, the defendant argued in part that no evidence presented at trial supported the conclusion that he had “taken

personal property from the person of another or in his or her presence” as is required under the first degree robbery statute.

The Court of Appeals disagree with this argument under the facts as presented, finding as follows:

A trier of fact certainly could have agreed with Stearns that the evidence did not show the use of force in connection with an intent to rob. However, that is not our standard of review. Viewing the evidence most favorably toward the prosecution, a rational trier of fact could have found that the force Stearns was using caused his victim to abandon her property and to leave the vicinity of her abandoned property. A logical inference from the evidence is that immediately upon the thwarting of his criminal plan to sexually assault his victim, Stearns returned to the abandoned belongings and rifled through them, taking possession of the business card case and address book. The speed with which he accomplished this—the arrest procedure began 4 minutes after the emergency call—provides circumstantial evidence from which it can logically be inferred that although his primary intent was rape, he had formed a secondary intent to take property from her at some point before the assault terminated.

Viewing the facts in this manner, a rational trier of fact could have found beyond a reasonable doubt that the taking occurred “in the presence” of Ms. Hoyt, since she had been removed and prevented from approaching the place of the taking by the force and fear imposed by Stearns; that Stearns had an intent to permanently deprive her of her property at the time he used force against her; and that one of his purposes in using the force was to obtain her property.

State v. Stearns, 61 Wn.App. 229-230.

The critical facts in *Stearns* were that (1) the property had originally been in the victim’s possession, (2) the defendant’s use of force had cause her to abandon the property, and (3) the defendant’s conduct prevented her for

going back and retrieving her property. By contrast, Trevor Muir's safe was not in Jacob Wise's actual possession either before or after the incident. Rather, it was in Trevor Muir's bedroom in the closet. Neither was Trevor Muir's safe in Jacob Wise's presence either before or after the incident. Rather, the safe was located in an area over which Trevor Muir exercised exclusive control, an area when Mr. Wise could only enter with Mr. Muir's permission. Thus, in this case, although there is substantial evidence of an assault, a burglary and a theft, the fact that the safe was never in Mr. Wise's possession or presence precludes a conviction for robbery. As a result, this court should reverse the defendant's conviction for robbery and remand for dismissal of that charge with prejudice.

II. TRIAL COUNSEL'S STIPULATION THAT THE DEFENDANT COULD PAY LEGAL FINANCIAL OBLIGATIONS CONSTITUTED INEFFECTIVE ASSISTANCE.

Under both United States Constitution, Sixth Amendment, and Washington Constitution, Article 1, § 22, the defendant in any criminal prosecution is entitled to effective assistance of counsel. The standard for judging claims of ineffective assistance of counsel under the Sixth Amendment is whether counsel's conduct so undermined the proper functioning of the adversary process that the trial cannot be relied on as having produced a just result. *Strickland v. Washington*, 466 U.S. 668, 686,

80 L.Ed.2d 674, 104 S.Ct. 2052 (1984). In determining whether counsel's assistance has met this standard, the Supreme Court has set a two part test.

First, a convicted defendant must show that trial counsel's performance fell below that required of a reasonably competent defense attorney. Second, the convicted defendant must then go on to show that counsel's conduct caused prejudice. *Strickland*, 466 U.S. at 687, 80 L.Ed.2d at 693, 104 S.Ct. at 2064-65. The test for prejudice is whether there is a reasonable probability that, but for counsel's errors, the result in the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome. *Church v. Kinchelse*, 767 F.2d 639, 643 (9th Cir. 1985) (citing *Strickland*, 466 U.S. at 694, 80 L.Ed.2d at 698, 104 S.Ct. at 2068). In essence, the standard under the Washington Constitution is identical. *State v. Cobb*, 22 Wn.App. 221, 589 P.2d 297 (1978) (counsel must have failed to act as a reasonably prudent attorney); *State v. Johnson*, 29 Wn.App. 807, 631 P.2d 413 (1981) (counsel's ineffective assistance must have caused prejudice to client).

In the case at bar, the defendant claims ineffective assistance based upon trial counsel's stipulation that the defendant has sufficient resources to pay any discretionary legal-financial obligations. The following addresses this argument.

A trial court's authority to impose legal financial obligations as part of a judgment and sentence in the State of Washington is limited by RCW 10.01.160. Section three of this statute states as follows:

(3) The court shall not sentence a defendant to pay costs unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose.

RCW 10.01.160(3).

Although the court need not enter written findings and conclusions in regards to a defendant's current or future ability to pay costs, the court must consider this issue and find either a current or future ability before it has authority to impose costs. *State v. Eisenman*, 62 Wn.App. 640, 810 P.2d 55, 817 P.2d 867 (1991). In addition, in order to pass constitutional muster, the imposition of legal financial obligations and any punishment for willful failure to pay must meet the following requirements:

1. Repayment must not be mandatory;
2. Repayment may be imposed only on convicted defendants;
3. Repayments may only be ordered if the defendant is or will be able to pay;
4. The financial resources of the defendant must be taken into account;
5. A repayment obligation may not be imposed if it appears there is no likelihood the defendant's indigency will end;

6. The convicted person must be permitted to petition the court for remission of the payment of costs or any unpaid portion; and

7. The convicted person cannot be held in contempt for failure to repay if the default was not attributable to an intentional refusal to obey the court order or a failure to make a good faith effort to make repayment.

State v. Curry, 118 Wn.2d 911, 915-16, 829 P.2d 166 (1992).

The imposition of costs under a scheme that does not meet with these requirements, or the imposition of a penalty for a failure to pay absent proof that the defendant had the ability to pay, violates the defendant's right to equal protection under Washington Constitution, Article 1, § 12, and United States Constitution, Fourteenth Amendment. *Fuller v. Oregon*, 417 U.S. 40, 40 L.Ed.2d 642, 94 S.Ct. 2116 (1974).

In the case at bar the facts reveal that the defendant is a 26-year-old felon with a 60 months sentence to serve. He is married and the father of three children who lived with him and his wife at the time of his arrest. His only possession was a 1997 Honda Accord. At the time of his arrest he was working as a "handyman painter" making from \$80.00 to \$100.00 a week. Apart from "routine living expenses such as rent, utilities, food, etc." the defendant was paying "\$300.00 a month for court-ordered fines." He was also receiving food stamps. Under these circumstances there was no basis upon which to believe that he had the current or future ability to pay legal financial obligations.

In spite of the facts just outlined, trial counsel stipulated that the defendant could pay his legal financial obligations. There was no tactical reason to take this position under circumstances in which the defendant had no present or future ability to pay. Thus, trial counsel's failure to object fell below the standard of a reasonably prudent attorney. In addition, had counsel objected, then under the law as outlined above the court would have been compelled to refrain from imposing discretionary costs. Thus, trial counsel's failure also caused prejudice and thereby constituted ineffective assistance of counsel. As a result, this court should vacate the trial court's imposition of discretionary legal financial obligations and remand to the trial court for a hearing on this issue.

III. THIS COURT SHOULD NOT IMPOSE COSTS ON APPEAL IF THE STATE PREVAILS.

The appellate courts of this state have discretion to refrain from awarding appellate costs even if the State substantially prevails on appeal. RCW 10.73.160(1); *State v. Nolan*, 141 Wn.2d 620, 626, 8 P.3d 300 (2000); *State v. Sinclair*, 192 Wn. App. 380, 382, 367 P.3d 612, 613 (2016). A defendant's inability to pay appellate costs is an important consideration to take into account when deciding whether or not to impose costs on appeal. *State v. Sinclair, supra*. In the case at bar the trial court found the defendant indigent and entitled to the appointment of counsel at both the trial and

appellate level. In the same matter this Court should exercise its discretion and disallow trial and appellate costs should the State substantially prevail.

Under RAP 14.2 the State may request that the court order the defendant to pay appellate costs if the state substantially prevails. This rule states that a commissioner or clerk of the appellate court will award costs to the party that substantially prevails on review, unless the appellate court directs otherwise in its decision terminating review. RAP 14.2. In *State v. Nolan, supra*, the Washington Supreme Court held that while this rule does not grant court clerks or commissioners the discretion to decline the imposition of appellate costs, it does grant this discretion to the appellate court itself. The Supreme Court noted:

Once it is determined the State is the substantially prevailing party, RAP 14.2 affords the appellate court latitude in determining if costs should be allowed; use of the word will in the first sentence appears to remove any discretion from the operation of RAP 14.2 with respect to the commissioner or clerk, but that rule allows for the appellate court to direct otherwise in its decision.

State v. Nolan, 141 Wn. 2d at 626.

Likewise, in RCW 10.73.160 the Washington Legislature has also granted the appellate courts discretion to refrain from granting an award of appellate costs. Subsection one of this statute states: [t]he court of appeals, supreme court, and superior courts *may* require an adult offender convicted of an offense to pay appellate costs. (emphasis added). In *State v. Sinclair*,

supra, this Court recently affirmed that the statute provides the appellate court the authority to deny appellate costs in appropriate cases. *State v. Sinclair*, 192 Wn. App. at 388. A defendant should not be forced to seek a remission hearing in the trial court, as the availability of such a hearing cannot displace the court's obligation to exercise discretion when properly requested to do so. *Supra*.

Moreover, the issue of costs should be decided at the appellate court level rather than remanding to the trial court to make an individualized finding regarding the defendant's ability to pay, as remand to the trial court not only delegate[s] the issue of appellate costs away from the court that is assigned to exercise discretion, it would also potentially be expensive and time-consuming for courts and parties. *State v. Sinclair*, 192 Wn. App. at 388. Thus, it is appropriate for [an appellate court] to consider the issue of appellate costs in a criminal case during the course of appellate review when the issue is raised in an appellate brief. *State v. Sinclair*, 192 Wn. App. at 390. In addition, under RAP 14.2, the Court may exercise its discretion in a decision terminating review. *Id.*

An appellate court should deny an award of costs to the state in a criminal case if the defendant is indigent and lacks the ability to pay. *Sinclair, supra*. The imposition of costs against indigent defendants raises problems that are well documented, such as increased difficulty in reentering

society, the doubtful recoument of money by the government, and inequities in administration. *State v. Sinclair*, 192 Wn.App. at 391 (citing *State v. Blazina, supra*). As the court notes in *Sinclair*, [i]t is entirely appropriate for an appellate court to be mindful of these concerns. *State v. Sinclair*, 192 Wn.App. at 391.

In *Sinclair*, the trial court entered an order authorizing the defendant to appeal *in forma pauperis*, to have appointment of counsel, and to have the preparation of the necessary record, all at State expense upon its findings that the defendant was unable by reason of poverty to pay for any of the expenses of appellate review and that the defendant cannot contribute anything toward the costs of appellate review. *State v. Sinclair*, 192 Wn. App. at 392. Given the defendant's indigency, combined with his advanced age and lengthy prison sentence, there was no realistic possibility he would be able to pay appellate costs. Accordingly, the Court ordered that appellate costs not be awarded.

Similarly in the case at bar, the defendant is indigent and lacks an ability to pay. In this case the trial court twice found the defendant indigent. The first time was when it appointed an attorney to represent him before the Superior Court. The second time was when it entered an order of indigency and ruled that he was entitled to the appointment of an attorney on appeal. These finding are supported by the record, which reveals that he is 26-year-

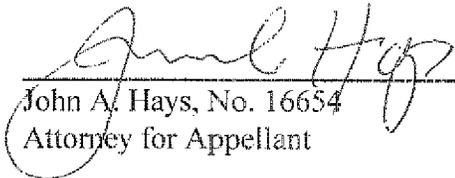
old felon with a 60 months sentence to serve. He is married and the father of three children who lived with him and his wife. His only possession was a 1997 Honda Accord. At the time of his arrest he was working as a “handyman painter” making from \$80.00 to \$100.00 a week. Apart from “routine living expenses such as rent, utilities, food, etc.” the defendant was paying “\$300.00 a month for court-ordered fines.” He was also receiving food stamps. Under these circumstances there is no basis upon which to believe that he has the current or future ability to pay legal financial obligations. Thus, this court should exercise its discretion to reach a just and equitable result and direct that no appellate costs be allowed should the State substantially prevail on appeal.

CONCLUSION

This court should vacate the defendant's conviction for robbery and remand with instructions to dismiss with prejudice because substantial evidence does not support this charge. In the alternative, the court should vacate the defendant's legal-financial obligations and not impose legal financial obligations on appeal.

DATED this 26th day of May, 2016.

Respectfully submitted,



John A. Hays, No. 16654
Attorney for Appellant

APPENDIX

**WASHINGTON CONSTITUTION
ARTICLE 1, § 3**

No person shall be deprived of life, liberty, or property, without due process of law.

**WASHINGTON CONSTITUTION
ARTICLE 1, § 22**

In criminal prosecutions the accused shall have the right to appear and defend in person, or by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to meet the the witnesses against him face to face, to have compulsory process to compel the attendance of witnesses in his own behalf, to have a speedy public trial by an impartial jury of the county in which the offense is charged to have been committed and the right to appeal in all cases: Provided, The route traversed by any railway coach, train or public conveyance, and the water traversed by any boat shall be criminal districts; and the jurisdiction of all public offenses committed on any such railway car, coach, train, boat or other public conveyance, or at any station of depot upon such route, shall be in any county through which the said car, coach, train, boat or other public conveyance may pass during the trip or voyage, or in which the trip or voyage may begin or terminate. In no instance shall any accused person before final judgment be compelled to advance money or fees to secure the rights herein guaranteed.

**UNITED STATES CONSTITUTION,
SIXTH AMENDMENT**

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

**UNITED STATES CONSTITUTION,
FOURTEENTH AMENDMENT**

. . .

All persons born or naturalized in the United State, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

**RCW 9A.56.190
Robbery – Definition**

A person commits robbery when he or she unlawfully takes personal property from the person of another or in his or her presence against his or her will by the use or threatened use of immediate force, violence, or fear of injury to that person or his or her property or the person or property of anyone. Such force or fear must be used to obtain or retain possession of the property, or to prevent or overcome resistance to the taking; in either of which cases the degree of force is immaterial. Such taking constitutes robbery whenever it appears that, although the taking was fully completed without the knowledge of the person from whom taken, such knowledge was prevented by the use of force or fear.

COURT OF APPEALS OF WASHINGTON, DIVISION II

STATE OF WASHINGTON,
Respondent,

NO. 48354-8-II

vs.

**AFFIRMATION
OF SERVICE**

JEREMY KEITH,
Appellant.

The under signed states the following under penalty of perjury under the laws of Washington State. On the date below, I personally e-filed and/or placed in the United States Mail the Brief of Appellant with this Affirmation of Service Attached with postage paid to the indicated parties:

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2. Jeremy Keith, No. 343704
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Dated this 27th day of May, 2016, at Longview, WA.



Donna Baker

HAYS LAW OFFICE

May 27, 2016 - 10:19 AM

Transmittal Letter

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Case Name: State vs. Jeremy Keith

Court of Appeals Case Number: 48354-8

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Brief of Appellant

Sender Name: Diane C Hays - Email: jahayslaw@comcast.net

A copy of this document has been emailed to the following addresses:

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