

NO. 48373-4

**COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

MARVIN LAWRENCE MEADOWS, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Jerry Costello, Judge

No. 14-1-02188-9

BRIEF OF RESPONDENT

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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Whether sufficient evidence exists for a trier of fact to find that the defendant knowingly possessed the firearms when the firearms were found in a bedroom in which the defendant's clothes and utility bills with the defendant's name for the same residence were located? (Appellant's Assignment of Error No. 1-4)
2. Should this Court make a determination as to whether appellate costs are appropriate before the State seeks enforcement of costs if the State is to prevail on appeal? (Appellant's Assignment of Error No. 5)

B. STATEMENT OF THE CASE.

1. Procedure

Marvin Meadows, hereinafter "defendant," was charged with four counts of a violation of RCW 9.41.040(1)(a), unlawful possession of a firearm in the first degree. CP 1-2. Meadows waived his right to a jury trial and was subsequently tried in a bench trial by the Honorable Jerry Costello. CP 6. The court found the defendant guilty of two counts of

9.41.040(1)(a)¹. CP 9-15 (CoL V & VI)². The defendant was subsequently sentenced to a period of confinement of 40 months. CP 19-32. Defendant filed a timely notice of appeal. CP 33.

2. Facts

On June 5, 2014 the Pierce County Metro SWAT Team executed a search warrant at 1150 South 96th Street in Tacoma, Washington. RP 33³. The search warrant was targeting a Michael Reid. RP 34. Upon being taken into custody, Reid provided Detective Sean Conlon, the lead investigator, with information about a second residence located at 11216 Clover Park Drive in Lakewood, Washington. RP 35-36. At that point Detective Conlon worked to obtain a search warrant for the Clover Park Drive residence and set up a surveillance unit to monitor the house. RP 36.

While monitoring the Clover Park Drive residence, the surveillance unit became aware that two individuals, later identified as the defendant and his wife, Charmaine Meadows, had left the residence on Clover Park Drive. RP 36-37. When asked to provide the keys to the

¹ The defendant was found not guilty of two counts of unlawful possession of a firearm relating to the SKS assault rifle and the .22 caliber gun. Although the court did find that the SKS assault rifle and the .22 caliber gun were within the defendant's dominion and control, it was not proven beyond a reasonable doubt that they were operable and therefore met the definition of a firearm. CP 9-15, RP 292-294, 299.

² CP 9-15 are the trial court's Findings of Fact and Conclusion of Law. Findings of Fact will be referred to as FoF and Conclusions of Law will be referred to as CoL. The FoF's and CoL's will be referred to with the number which was entered for that specific FoF or CoL.

³ The Verbatim Report of Proceedings (VRPS) is contained in five volumes with consecutive pagination. The VRPS are referred to by page in both Petitioner's and Respondent's brief.

residence, the defendant complied. RP 185. A SWAT Team subsequently entered the residence and conducted a search. RP 38-39.

The residence contained four or five bedrooms. RP 39-40. In the shared bedroom⁴ the officers who conducted the search found an SKS assault rifle, a .357 magnum handgun, a Remington 870 shotgun, and a .22 caliber revolver with ammunition and a magazine. RP 40. Detective Conlon believed this bedroom was occupied and belonged to the defendant and his wife due to the presence of men's clothing and bills with the defendant's name on them being located in the bedroom. RP 56. The SKS assault rifle was found on the far left-hand side of the shared bedroom's closet up against the wall next to the TV. RP 41. The .357 handgun and the Remington 870 shotgun were found on the right-hand side of the closet in the shared bedroom. *Id.* The .22 caliber revolver was found in a Century-type safe in the same closet. *Id.*

Utility bills for the Clover Park Drive residence in the defendant's name and a certificate in the defendant's name were also found in the shared bedroom. *Id.*

Later on the same day as the search of the residence and the defendant's arrest, Ms. Meadows went to the Lakewood police station to speak with Detective Conlon. RP 237. While there, Ms. Meadows told

⁴ The trial court in its Findings of Facts and Conclusions of Law referred to the bedroom where the firearms were found as the shared bedroom. For consistency purposes the same phrasing will be utilized. CP 9-15, RP 292.

Detective Conlon that she only had a single shotgun and that Reid had brought the other firearms found over to the house and placed them in a room adjacent to the shared bedroom. RP 238. Detective Conlon specifically asked about the .357 magnum gun, the .22 caliber gun, and the SKS assault rifle. RP 239-240. At the time Ms. Meadows denied knowing anything about all three of those weapons. *Id.*

Defendant testified at trial that he did not have knowledge of the firearms in the house as the defendant and his wife were sleeping in separate bedrooms at the time of his arrest. RP 185-187. Ms. Meadows testified that she had purchased the .22 caliber gun, the SKS assault rifle, the .357 magnum handgun, and a shotgun that were found at the townhouse. RP 204-207. However, during testimony, Ms. Meadows testified that she had purchased a Mossberg pump shotgun. RP 206. In reality, the shotgun that was found at the residence was a Remington 870. RP 66.

C. ARGUMENT.

1. SUFFICIENT FACTS EXISTED FOR A TRIER OF FACT TO FIND THAT THE STATE HAD PROVEN THE DEFENDANT WAS IN KNOWING POSSESSION OF THE FIREARMS.

Due process requires that the State bear the burden of proving each and every element of the crime charged beyond a reasonable doubt. *State v. McCullum*, 98 Wn.2d 484, 488, 656 P.2d 1064 (1983); *see also Seattle v. Gellein*, 112 Wn.2d 58, 61, 768 P.2d 470 (1989); *State v. Mabry*, 51

Wn. App. 24, 25, 751 P.2d 882 (1988). The applicable standard of review is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found that the State met the essential elements of the crime beyond a reasonable doubt. *State v. Joy*, 121 Wn.2d 333, 338, 851 P.2d 654 (1993).

The sufficiency of the evidence is determined by whether any rational trier of fact could find the defendant guilty beyond a reasonable doubt after viewing the evidence in the light most favorable to the State. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992) (citing *State v. Green*, 94 Wn.2d 216, 220-22, 616 P.2d 628 (1980)). A challenge to the sufficiency of the evidence admits the truth of the State's evidence. *Id.* at 201. "All reasonable inferences must be drawn in favor of the State and interpreted most strongly against the defendant" when the sufficiency of the evidence is challenged. *Id.* at 201 (citing *State v. Partin*, 88 Wn.2d 899, 906-07, 567 P.2d 1136 (1977)). Criminal intent may be inferred from the conduct where "it is plainly indicated as a matter of logical probability." *State v. Goodman*, 150 Wn.2d 774, 781, 83 P.3d 410 (2004). The weight of the evidence is determined by the fact finder and not the appellate court. *Id.* at 783.

In considering this evidence, "[c]redibility determinations are for the trier of fact and cannot be reviewed upon appeal." *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990) (citing *State v. Casbeer*, 48 Wn. App. 539, 542, 740 P.2d 335, review denied, 109 Wn.2d 1008 (1987)).

Therefore, when the State has produced evidence of all the elements of a crime, the decision of the trier of fact should be upheld.

Sufficiency of the evidence is reviewed de novo. *State v. Berg*, 181 Wn.2d 857, 867, 337 P.3d 310 (2014).

When reviewing a trial court's findings of fact and conclusions of law, the court determines whether substantial evidence supports any challenged findings and whether the findings support the conclusions of law. *State v. Hovig*, 149 Wn. App. 1, 8, 202 P.3d 318 (2009).

Unchallenged findings of fact are verities of appeal. *Id.* Findings of fact erroneously labeled as conclusions of law are reviewed as findings of fact. *Willener v. Sweeting*, 107 Wn.2d 388, 394, 730 P.2d 45 (1986). Likewise, conclusions of law erroneously labeled as findings of fact are reviewed as conclusions of law. *State v. Gaines* 122 Wn.2d 502, 508, 859 P.2d 36 (1993). Conclusions of law are reviewed de novo. *State v. Homan*, 181 Wn.2d 102, 106, 330 P.3d 182 (2014).

RCW 9.41.040 provides that a convicted felon may not possess a firearm. 9.41.040(1)(a). A person is guilty of unlawful possession if he or she owns, has in their possession or control any firearm after having previously been convicted of any serious offense. 9.41.040(1)(a).

Possession may be actual or constructive. *State v. Chouinard*, 169 Wn. App. 895, 899, 282 P.3d 117 (2012). Actual possession occurs when something is in one's physical custody, while constructive possession occurs when something is not in one's physical custody, but is within their

dominion and control. *State v. Davis*, 182 Wn.2d 222, 227, 340 P.3d 820 (2014). The ability to reduce an object to actual possession is an aspect of dominion and control. *State v. Echeverria*, 85 Wn. App. 777, 783, 934 P.2d 214 (1997). The State may establish constructive possession by showing that the defendant had dominion and control over the firearm or *over the premises where the firearm was found*. *State v. Chouinard*, 169 Wn. App. at 900 (emphasis added).

When looking at the totality of the evidence in the light most favorable to the State, it is clear that the defendant had at least constructive possession of the firearms. Papers with the defendant's name were found in the shared upstairs bedroom where the guns were located. RP 41. These papers included information showing that the defendant had dominion and control over the property itself. A certificate with the defendant's name was also found inferring that the defendant was an occupant of the shared bedroom along with his wife. CP 9-15 (FoF V). Under the rationale of *Chouinard*, because evidence exists that infers that the defendant had dominion and control over the property via the papers of dominion and control addressed to the defendant, the evidence also showed that the defendant had dominion and control over the firearms as well.

The factual situation in this case is also similar to the facts in *State v. Holt*, 119 Wn. App. 712, 82 P.3d 688 (2004). In *Holt*, this Court found that evidence showing that the defendant lived in the trailer and controlled access to the specific room where the firearms were found was enough to support a conviction for second degree unlawful possession of a firearm. *Holt*, 119 Wn. App. at 721 (overruled on other grounds). Here, there is no dispute that the defendant lived in the house where the firearms were found. Clothes belonging to the defendant and papers of dominion and control over the property in the defendant's name were found in the shared bedroom. RP 41, 209. The shared bedroom is the same room where the firearms were discovered. *Id.* This demonstrates that the defendant would have had some control over access to the shared bedroom where the firearms were found. Hence, because the defendant lived in the house and could control access to the specific room where the firearms were found, he at least constructively possessed the firearms.

The evidence also showed that the defendant's story and explanation of the firearms was simply not credible. The credibility of witnesses is to be determined by the trier of fact and is not reviewed on appeal. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990) (citing *State v. Casbeer*, 48 Wn. App. 539, 542, 740 P.2d 335, review

denied, 109 Wn.2d 1008 (1987)). Here, the trial court found that neither the defendant's nor Ms. Meadows' stories were credible due to inconsistencies between the testimony and the evidence. CP 9-15 (FoF VIII and IX).

The defendant claimed that his wife never informed him that she had purchased firearms or that there were any firearms in the house. RP 185-187. According to the defendant, the firearms were kept under lock and key in the shared bedroom during the period that he was staying in the downstairs bedroom. *Id.* The defendant claimed that he was staying in the downstairs bedroom due to having marital troubles with his wife. RP 178-179. Ms. Meadows asserted that she moved the firearms from the downstairs bedroom into the shared bedroom when the defendant began to sleep downstairs. RP 202. In order to prevent the defendant from leaving her, Ms. Meadows moved all of the defendant's clothing from the downstairs bedroom into the shared bedroom. RP 201. In order to get his clothes, Ms. Meadows would put the defendant's clothes on the stairs in the morning. *Id.* The trial court found that it was simply not credible to believe that Ms. Meadows placed the defendant's clothing outside of the

downstairs bedroom each day. CP 9-15 (FoF VIII), RP 298. If Ms. Meadows did not place the clothing at a place where the defendant could access such each day, it can be inferred that the defendant was either sleeping in the shared bedroom where his clothes and the firearms were located or each day was entering the shared bedroom where the firearms were stored in order to get his clothes. Either way, the defendant would have had actual knowledge that the firearms were stored in the shared bedroom.

The testimony of both the defendant and Ms. Meadows does not align with the evidence and is full of contradictions. The defendant and his wife both claim that the defendant had only been sleeping in the downstairs bedroom for a period of seven to ten days prior to the search warrant being executed. RP 179, 202. The room was referred to by the defendant and his wife as the computer room. RP 178, 203. This was the same room in which the firearms were allegedly located so that the defendant would not know about them. RP 202. The defendant and his wife had been residing at the residence for just under two years when the search warrant was executed. RP 177. The learned judge found it unreasonable to believe that the defendant would not have had knowledge of what was in that room and did not access the room while living there,

especially because the evidence showed that there was a computer in the room. CP 9-15 (FoF VIII), RP 297. All of this establishes that there was enough evidence for a trier of fact to find that the defendant had actual knowledge of the firearms present in the house.

Ms. Meadows presented testimony regarding her knowledge of the firearms which was contradictory to what she told Detective Conlon. On the day that the search warrant was executed, Ms. Meadows went to the Lakewood police station to speak with Detective Conlon. RP 237. Detective Conlon testified that Ms. Meadows told him that she only had a single shotgun and that Reid had brought guns over to the house and placed them in a room adjacent to the shared bedroom. RP 238. Detective Conlon specifically asked about the .357 magnum gun, the .22 caliber gun, and the SKS assault rifle. RP 239-240. Ms. Meadows denied knowing anything about all three of those weapons. *Id.* This conflicts with her in-court testimony where she stated that she had purchased the .22 caliber gun, the SKS assault rifle, the .357 magnum handgun, and a shotgun that were found at the townhouse. RP 204-207.

The trial court found that the testimony of Ms. Meadows was not credible and her in-court testimony was inconsistent with the statements that she made to Detective Conlon. CP 9-15 (FoF VIII), RP 296. Similarly, during direct examination, Ms. Meadows testified that she had purchased a Mossberg pump shotgun. RP 206. In reality, the shotgun that

was found at the residence was a Remington 870. RP 66. The trial court found that it was unreasonable to believe that the purchaser of a \$300 shotgun would not know the manufacturer of the shotgun. CP 9-15 (FoF VIII), RP 296. Her lack of credibility and lack of knowledge about the guns suggests the defendant, not Ms. Meadows, actually owned the guns and thus knew about them.

Ms. Meadows testified that the firearms were placed under lock and key. RP 203. However, the officers accessed the firearms in an unlocked bedroom. RP 241-242. The trial court found that the evidence presented showed that there was no damage to the locks on the door of the shared bedroom and therefore, was not forcibly opened by the police. CP 9-15 (FoF VIII), RP 296-297. As such, because they did not need to forcibly open the door, the defendant had access to the firearms, as they were not truly under lock and key. Because the defendant had access to the firearms, the defendant had actual knowledge of the firearms and there is sufficient evidence to support a conviction of unlawful possession.

Finally, the defendant made statements suggesting that he was not aware he was prohibited from owning firearms until the trial. The defendant stipulated that he had a prior serious offense that made him a prohibited person from owning a firearm. RP 168-169. When asked by the court if defense counsel made the defendant aware that there was a difference between a felony and a serious offense the defendant stated, “[a]t the time, I didn’t know I had a serious offense on my record.” *Id.* If the

defendant did not know he had a serious offense prohibiting him from owning firearms, it is unlikely that he and Ms. Meadows took all the drastic steps to keep the weapons separate from him.

Based on the evidence that was presented, the various contradictions by the defendant and his wife show that the defendant knew about the firearms and had possession of such beyond a reasonable doubt.

In addition a trier of fact may find, when knowledge is a requirement of the indictment, that a defendant had knowledge if an ordinary person would have had knowledge under the circumstances. *State v. Shipp*, 93 Wn.2d 510, 516, 610 P.2d 1322 (1980). *See also State v. Funkhouser*, 30 Wn. App. 617, 631, 637 P.2d 974 (1981). Actual knowledge can be determined by the trier of fact from a subjective belief based upon circumstantial evidence, as it is subjective belief that is important for culpability. *State v. Johnson*, 119 Wn.2d 167, 174, 829 P.2d 1082 (1992). If a person has information to believe that facts exist that constitute a crime, that individual is considered to have acted with knowledge. *State v. Leech*, 114 Wn.2d 700, 710, 790 P.2d 160 (1990).

In this case, the defendant had been married to his wife for eighteen years. RP 186. The firearms were kept in a downstairs bedroom for approximately two years prior to when the search warrant was executed. RP 202. Even if it is assumed *arguendo* that during the two year period the firearms were in the downstairs bedroom, the defendant never entered the room described as the computer room, and did not ask his wife

of eighteen years what was in that room, the defendant can still be convicted of knowingly possessing the firearms. Under the knowledge standard articulated in *Shipp*, an ordinary person in the defendant's position would have known that firearms or other contraband were being kept in the computer room. The defendant can be considered to have acted with knowledge as he would have had information that facts existed which constituted a crime as he was denied access to the room where the firearms were kept.

2. APPELLATE COSTS MAY BE APPROPRIATE IN THIS CASE IF THE COURT AFFIRMS THE JUDGMENT OF THE TRIAL COURT AND SHOULD BE ADDRESSED IF THE STATE WERE TO PREVAIL AND WERE TO SEEK ENFORCEMENT OF COSTS.

Under RCW 10.73.160, an appellate court may provide for the recoupment of appellate costs from a convicted defendant. *State v. Blank*, 131 Wn.2d 230, 234, 930 P.2d 1213 (1997); *State v. Mahone*, 98 Wn. App. 342, 989 P. 2d 583 (1999). The award of appellate costs to a prevailing party is within the discretion of the appellate court. RAP 14.2; *State v. Nolan*, 141 Wn.2d 620, 8 P.3d 300 (2000).

In *Nolan*, as in most of other cases discussing the award of appellate costs, the defendant began review of the issue by filing an objection to the State's cost bill. *Id.*, at 622. As suggested by the Supreme Court in *Blank*, 131 Wn.2d at 244, this is an appropriate manner in which to raise the issue. The procedure invented by Division I in *State v.*

Sinclair, 192 Wn. App. 380, 389-390, 367 P. 3d 612 (2016), prematurely raises an issue that is not before the Court. *If* the defendant does not prevail; and *if* the State files a cost bill; the defendant can argue regarding the Court's exercise of discretion in an objection to the cost bill.

If appellate costs are imposed, the Legislature has provided a remedy in the same statute that authorizes the imposition of costs. RCW 10.73.160(4) provides:

A defendant who has been sentenced to pay costs and who is not in contumacious default in the payment may at any time petition the court that sentenced the defendant or juvenile offender for remission of the payment of costs or of any unpaid portion. If it appears to the satisfaction of the sentencing court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the sentencing court may remit all or part of the amount due in costs, or modify the method of payment under RCW 10.01.170.

The defendant argues that the Court should not impose costs on indigent defendants. App. Brf. at 12-13. However, through the language and provisions of RCW 10.73.160, the Legislature has demonstrated its intent that indigent defendants contribute to the cost of their appeal. This is not a new policy.

The legal principle that convicted offenders contribute toward the costs of the case, and even appointed counsel, goes back many years. In 1976, the Legislature enacted RCW 10.01.160, which permitted the trial courts to order the payment of various costs, including that of prosecuting

the defendant and his incarceration. *Id.*, .160(2). In *State v. Barklind*, 82 Wn.2d 814, 557 P.2d 314 (1977), the Supreme Court held that requiring a defendant to contribute toward paying for appointed counsel under this statute did not violate, or even “chill” the right to counsel. *Id.*, at 818.

In 1995, the Legislature enacted RCW 10.73.160, which specifically authorized the appellate courts to order the (unsuccessful) defendant to pay appellate costs. In *Blank*, *supra*, at 239, the Supreme Court held this statute constitutional, affirming this Court’s holding in *State v. Blank*, 80 Wn. App. 638, 641-642, 910 P.2d 545 (1996).

By enacting RCW 10.01.160 and RCW 10.73.160, the Legislature has expressed its intent that criminal defendants, including indigent ones, should contribute to the costs of their cases. RCW 10.01.160 was enacted in 1976 and 10.73.160 in 1995. They have been amended somewhat through the years, but despite concerns about adding to the financial burden of persons convicted of crimes, the Legislature has yet to show any sympathy.

In *State v. Blazina*, 182 Wn.2d 827, 344 P.3d 680 (2015), the Supreme Court interpreted the meaning of RCW 10.01.160(3). As *Blazina* instructed, trial courts should carefully consider a defendant’s financial circumstances, as required by RCW 10.01.160(3), before imposing discretionary LFOs. But, *Blazina* does not apply to appellate costs. As

Sinclair points out at 389, the Legislature did not include the “individual financial circumstances” provision in RCW 10.73.160. Instead, it provided that a defendant could petition for the remission of costs on the grounds of “manifest hardship.” *See* RCW 10.73.160(4).

The Legislature’s intent that indigent defendants contribute to the cost of representation is also demonstrated in RCW 10.73.160(4), above, which permits a defendant to petition for remission of part or all of the appellate costs ordered. In *Blank, supra*, at 242, the Supreme Court found that this relief provision prevented RCW 10.73.160 from being unconstitutional.

Not only does the Legislature intend indigent defendants to contribute to the costs of their litigation, the Legislature has decided that the defendants should pay interest on the debt. RCW 10.82.090(1) provides that such legal debts shall bear interest at the rate applicable to civil judgments, which is found in RCW 4.56.110. This can be as much as 12%. *Id.* RCW 10.82.090(2) establishes a means for defendants to obtain some relief from the interest, much as the cost remission procedure in RCW 10.73.160(4). But, the limits included in statutory scheme show that the Legislature intends that even judgments on defendants serving prison sentences accrue interest:

(2) The court may, on motion by the offender, following the offender's *release from total confinement*, reduce or waive the interest on legal financial obligations levied as a result of a criminal conviction...

RCW 10.82.090 (emphasis added). The rest of the “relief” is equally limited and demonstrative of the Legislature’s intent and presumption that the debts be paid:

(a) The court shall waive all interest on the portions of the legal financial obligations that are not restitution that accrued during the term of total confinement for the conviction giving rise to the financial obligations, *provided the offender shows that the interest creates a hardship for the offender or his or her immediate family*;

(b) The court may reduce interest on the restitution portion of the legal financial obligations only if the principal has been paid in full;

(c) The court may otherwise reduce or waive the interest on the portions of the legal financial obligations that are not restitution *if the offender shows that he or she has personally made a good faith effort to pay and that the interest accrual is causing a significant hardship. For purposes of this section, “good faith effort” means that the offender has either (i) paid the principal amount in full; or (ii) made at least fifteen monthly payments within an eighteen-month period*, excluding any payments mandatorily deducted by the department of corrections;

(d) For purposes of (a) through (c) of this subsection, the court may reduce or waive interest on legal financial obligations *only as an incentive for the offender to meet his or her legal financial obligations*. The court may grant the motion, establish a payment schedule, and retain jurisdiction over the offender for purposes of reviewing and revising the reduction or waiver of interest.

RCW 10.82.090(2) (emphasis added). This is not some legislative relic of the past. It was enacted in 1989, after RCW 9.94A, the Sentencing Reform Act, and most recently amended in 2015.

The unfortunate fact is that most criminal defendants are represented at public expense at trial and on appeal. Almost all of the defendants taxed for costs under RCW 10.73.160 are indigent. Subsection 3 specifically includes “recoupment of fees for court-appointed counsel.” Obviously, all these defendants have been found indigent by the court. If the Court decided on a policy to excuse every indigent defendant from payment of costs, such a policy would, in effect, nullify RCW 10.73.160(3).

Parties and the courts can criticize this legislation, its purpose and result, and that the debts accumulated by indigent defendants under RCW 10.73.160(3) (and 10.01.160) and the interest that accrues on it under RCW 10.82.090 and RCW 4.56.110 are onerous. The parties may even be in agreement in their criticism. In *Blazina* the Supreme Court was likewise critical of these statutes and their result. *See* 182 Wn.2d at 835-836. Yet, the Court did *not* find the statutes illegal or unconstitutional.

The question for this Court is not whether the Legislative intent or result of these laws is wise or even fair. The question is: are these laws legal or constitutional? Those questions were settled in the affirmative by

the Supreme Court in *Blank*, and what the Court did *not* do in *Blazina*. It is for the Legislature to change the statute if it so desires.

The State concedes that the trial court below entered an Order of Indigency. CP 34-35. In this case, however, the State has yet to “substantially prevail.” It has also not submitted a cost bill. This court should wait until the cost issue is ripe before exploring such legally and substantively. In this instance, if a cost bill is submitted, the court may find that the defendant has the ability to pay the cost of his appeal. Prior to his trial and conviction, the defendant had been working as a forklift operator for the past seven years. RP 310. Further, at the time of trial his wife was working as a privatized caregiver licensed through the Department of Social and Health Services. RP 196-197. Because a court may find that the defendant is employed again at the time that a cost bill is submitted, any ruling regarding such costs at this time would be merely speculative regarding the defendant’s future ability to pay for appellate costs at the time that a cost bill is submitted, if one even is submitted.

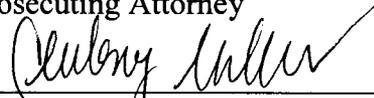
D. CONCLUSION.

The Court should affirm the judgement of the trial court that the defendant was guilty of two violations of RCW 9.41.040(1)(a). The contradictions in the testimony between the defendant and his wife and the actual evidence presented at trial show that the defendant had actual

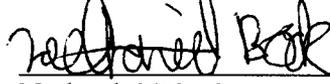
knowledge of the firearms present at the residence over which he had dominion and control. Further, this Court should address the issue of appellate costs only if the State prevails and seeks enforcement.

DATED: August 8, 2016.

MARK LINDQUIST
Pierce County
Prosecuting Attorney



CHELSEY MILLER
Deputy Prosecuting Attorney
WSB # 42892



Nathaniel Block
Legal Intern

Certificate of Service:

The undersigned certifies that on this day she delivered by ~~US mail~~ or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

8/8/16 
Date Signature

PIERCE COUNTY PROSECUTOR

August 08, 2016 - 2:26 PM

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