

74055-5

No. 95551-4

74055-5

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Court of Appeals  
Division I  
State of Washington

NO. 74055-5-I

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

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STATE OF WASHINGTON

Respondent

v.

JENNIFER C. DREEWES,

Appellant

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BRIEF OF RESPONDENT

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MARK K. ROE  
Prosecuting Attorney

MARA J. ROZZANO  
Deputy Prosecuting Attorney  
Attorney for Respondent

Snohomish County Prosecutor's Office  
3000 Rockefeller Avenue, M/S #504  
Everett, Washington 98201  
Telephone: (425) 388-3333

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## **I. ISSUES**

1. Was there sufficient evidence of accomplice liability presented for a rational trier of fact to find the essential elements of count 1 first degree burglary and count 2 second degree assault proven beyond a reasonable doubt?

2. Did the court properly admit State's Exhibit 52, the Facebook messages between the defendant and Michelle Thomas based on Ms. Thomas' testimony that it was an accurate copy of their Facebook messages?

3. Is it prosecutorial error for the prosecutor to argue from facts presented at trial that the jury should only consider the facts relevant to the charge before it and not consider evidence of other potentially criminal acts as evidence of that crime? If so, could such error have been cured by an instruction had it been objected to at trial?

4. Did the sentencing court properly impose the mandatory legal financial obligations?

5. If the state substantially prevails on appeal, should the defendant be required to pay the costs of appeal?

## **II. STATEMENT OF THE CASE**

On January 12, 2014, Marysville Police officers responded to a cold theft report at the defendant's residence. The defendant reported that a number of items had been stolen from her unlocked truck. These items including a Samsung laptop, an iPhone, two rings, and her personal and business checks. Although the police were investigating the case, the defendant began her own investigation. The day after the theft, the defendant found out someone was using her credit card. The defendant notified the police of this new information, but also continued investigating it on her own. She posted information from the stores on her Facebook page. 2 RP 255-59; 2 RP 290.

Co-defendant Michelle Thomas testified that she and the defendant were friends who regularly communicated on Facebook, text, phone and in person. She responded to the defendant's initial post about the incident. The defendant later posted on Facebook that she had identified the female who was using her credit card was a "skinny, white crackhead with pink hair". The defendant solicited aid in identifying the person and getting her stuff back. The defendant conveyed to Ms. Thomas that there were important, irreplaceable photographs on her laptop. The defendant expressed

concern that the police were taking too long to arrest the defendant just because they needed to find evidence. 2 RP 291, 293, 297, 308.

Ms. Thomas and the defendant communicated about the theft numerous times. They sent comments back and forth about locating the pink haired girl and giving her black eyes, beating her up, etc. Ms. Thomas thought it was all joking until the defendant offered \$300 for information leading to the pink haired girl and the recovery of her stuff. 2 RP 294-97, 299-300, 304-6.

Ms. Thomas, who was an unemployed single mother of two at the time, needed the money. Ms. Thomas was dating Don Parrish. He had connections to criminals and street people in Marysville. Ms. Thomas asked Mr. Parrish to help her locate the pink haired girl. Through their efforts, they were able to get a partial name of Nessa and some photos they forwarded to the defendant. They posted Nessa's photo on Facebook and looked for her Facebook page. 2 RP 292-93, 297-98.

The defendant advised Ms. Thomas that she would pay her the \$300 for the information, but asked if she could further assist her in getting her stuff back without the police knowing. The defendant explained that she had received \$1,500 from her

insurance company and if the police didn't know she got it back, there would be more money to pay Ms. Thomas, "wink, wink". 2 RP 306-7, 309, 329.

The defendant then told Ms. Thomas that her nephew, Kyle, had seen Nessa at the victim' address in Marysville. The defendant told Ms. Thomas the address was where Nessa was living. She told her that Kyle was 100% certain the defendant's laptop and iPhone were at the residence. 2 RP 308, 337.

Ms. Thomas asked the defendant for more details about the residence, how many people were in the residence, were there any weapons etc. The defendant responded that Kyle said there were four or five people there and that they should not go to the house unless they had weapons. Kyle testified at the trial and denied having told the defendant any of the information attributed to him. 2 RP 313-14, 337; 4 RP 518-20.

Ms. Thomas asked the defendant to clarify exactly what she wanted them to do. The defendant responded that she wanted her things back, she wanted Nessa to get two black eyes and to go to jail. Ms. Thomas responded that they could do the first two, but they couldn't do the jail part. The defendant told Ms. Thomas to nab her and take her to the defendant's barn in Arlington. The

defendant told Ms. Thomas she would be in Leavenworth, Washington, on January 23, 2014, making arrangements for the transfer of some horses. Based on the Sprint records admitted at trial, there were 183 communications between the defendant and Ms. Thomas from the time the items were taken from her truck and January 23, 2014. One hundred five of those were initiated by the defendant. 2 RP 299-300, 305-7, 317-18; 3 RP 450.

On January 23, 2014, Michelle Thomas and Don Parrish entered the victim's home in Marysville. They were there to take back the defendant's property that had been stolen out of her unlocked truck and to "nab" the person believed to be responsible for the theft. They had brought duct tape and zip ties. Since the defendant told them not to go unless they were armed, Ms. Thomas had a small pistol and Mr. Parrish was armed with an assault rifle. However, the defendant had sent Ms. Thomas and Mr. Parrish to the wrong house. The residents of the home had nothing to do with the theft of the defendant's property. 1 RP 115, 123-24; 2 RP 304-6, 308-10; 313-16, 319.

The residents of the house were Rohen and Marty Brewer-Slater. They lived there with their four children. Ms. Brewer-Slater was a minister. She was home at the time and severely ill. Her

husband, Rohen, who worked in aerospace, was also home, as was their adult daughter, Eeone Johnson-McDonell, and her boyfriend, James Meline. 1 RP 116-17; 148-50; 171; 189-90.

Rohen Brewer-Slater testified that someone knocked on the door. He didn't answer it right away because they were not expecting anyone. He did not recognize the people outside, but checked with his daughter to see if she was expecting anyone. The knocking continued for almost 15 minutes before Rohen finally opened the door to see what he wanted. A male, later identified as Don Parrish began asking for "Nessa". When Rohen denied that there was anyone there by that name, Mr. Parrish brought out his rifle and forced his way into the house. Ms. Thomas followed with her handgun drawn as well. They then locked the door behind them. Rohen began yelling at them that they had the wrong house, that he didn't know who they were and he wanted them to leave his house immediately. He also began shouting for his daughter or anyone to call 9-1-1. 1 RP 121-26; 2 RP 319.

Mr. Parrish and Ms. Thomas had Rohen at gunpoint demanding he produce any computers or cell phones in the house and that he turn over "Nessa". Eeone and James came up the stairs to see what was happening. Ms. Thomas pointed her gun at

James to get him to come all the way upstairs. Eeone ran back down the stairs to get her phone to call 9-1-1. Mr. Parrish chased her down the stairs to her room to take her phone from her. 1 RP 123-24; 127; 174-75; 192; 2 RP 319.

While Mr. Parrish was chasing Eeone, Ms. Thomas was trying to cover both Rohen and James with her handgun. Rohen was concerned about what was happening to his daughter. He took Ms. Thomas's gun away from her and threw it across the room. Mr. Parrish returned to the entry way at just this moment and used the butt of his rifle to hit Rohen in the face. Ms. Thomas ran out the door. 1 RP 128-31, 156, 178, 194-95; 2 RP 319-20.

Mr. Parrish tried to leave too, but Rohen grabbed him by his rifle sling and his jacket and threw him back into the house. Rohen and James tried to wrestle the rifle away from Mr. Parrish, but they were not able to because of the sling. During the struggle, Mr. Parrish had his finger on the trigger of the rifle. Eeone arrived and tried to help by grabbing Mr. Parrish's arms. Marty came out of her room with bear mace. When she got to them, she saw Mr. Parrish point the rifle directly at her and attempt to pull the trigger. Rohen also saw Mr. Parrish point the rifle at his wife and pull the trigger. The gun did not fire. Eeone saw Mr. Parrish pointing the gun at all

of them and trying to pull the trigger and could see that he was very confused that the gun was not firing. Apparently, Mr. Parrish had forgotten to release the safety. Marty sprayed the bear mace at Mr. Parrish. The mace got everyone. Mr. Parrish ran from the house but Rohen chased him down and held him for the police. Mr. Parrish returned Eeone's cell phone to Rohen. 1 RP 131-33, 135, 157-59, 178-80,194-95; 2 RP 321.

Ms. Thomas had run from the house, but she didn't know where to go. She called the defendant in Leavenworth and told her what had happened. The defendant told her to delete all her messages from her phone and to go to the defendant's mother's house. The defendant instructed Ms. Thomas not to tell her mother the truth about what had happened but to make up a story. 2 RP 321-24.

Ms. Thomas said she was too upset to find the defendant's mother's house. Instead she called her own mother who told her to turn herself in to the police. She did. Ms. Thomas was offered a reduced sentence recommendation if she agreed to testify truthfully in the case involving the defendant. Ms. Thomas pleaded guilty to first degree burglary and second degree assault with a firearm. 2 RP 324-27.

### III. ARGUMENT

#### A. THERE WAS AMPLE EVIDENCE PRESENTED FOR A RATIONAL TRIER OF FACT TO FIND THE ESSENTIAL ELEMENTS OF FIRST DEGREE BURGLARY AND SECOND DEGREE ASSAULT PROVED BEYOND A REASONABLE DOUBT.

On a challenge to the sufficiency of the evidence, the court reviews the evidence in the light most favorable to the State to determine whether any rational trier of fact could have found guilt beyond a reasonable doubt. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). A claim of insufficiency admits the truth of the State's evidence and all inferences that can reasonably be drawn therefrom. Id. Circumstantial and direct evidence are of equal weight. A reviewing court defers to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. State v. Cantu, 156 Wn.2d 819, 831, 132 P.3d 725 (2006).

The defendant does not challenge the sufficiency of the evidence of each count against the principal offenders, but challenges the sufficiency of the evidence to establish accomplice liability. BOA 2, 9. "[A]n accomplice need not have specific knowledge of every element of the crime committed by the principal, provided he has general knowledge of that specific

crime.” In re Domingo, 155 Wn.2d 356, 365, 119 P.3d 816, 821 (2005). Since the purpose of the deadly weapon statute is to deter would-be criminals from carrying weapons which have the potential of inflicting death and injury, the statute should reach not only those who are armed, but also those who know an accomplice is armed. State v. McKim, 98 Wn.2d 111, 118, 653 P.2d 1040 (1982).

Here, there is ample evidence the defendant was aware of the crimes she was soliciting be committed. There is the testimony of the co-defendant, Michelle Thomas, which is corroborated by the 183 communications from the Sprint phone records, 105 of which were initiated by the defendant as well as the Facebook records Ms. Thomas testified accurately represented their communications.

The defendant asked Ms. Thomas and her boyfriend Mr. Parrish to go to the residence get her stuff back, kidnap the pink haired girl and assault her. She asks them to go there and get her stuff back and to do it in a manner that would not involve the police. She did not ask them to approach the person and request her stuff back. The defendant advised the co-defendants of the number of people inside the residence which a reasonable jury could infer she expected they would enter the residence, otherwise they would

never come in contact with those inside. It is clear from her advice to go armed that she anticipated resistance to the request and that they would enter the residence and have to take the items by force. She asked them to go there and get her stuff and kidnap the person she believed was responsible for the theft. There would be no need for guns if they were simply going to lawfully go there to request the return of the property. The defendant was anticipating a taking by force, an entering into the residence with the intent to take the items and to unlawfully seize the pink haired girl. It is a reasonable inference that she knew what amounts to a first degree burglary would take place. There is also ample evidence for the jury to conclude the defendant knew through advising the defendants to go there armed that a firearm would be used and at a minimum pointed at someone in the residence to gain compliance with the return of the property or the "nabbing" of the pink haired girl. She did not need to have foreknowledge of at whom the gun would be pointed.

**B. THE COURT PROPERLY ADMITTED THE FACEBOOK EVIDENCE AUTHENTICATED THROUGH THE TESTIMONY OF A PARTICIPANT IN THE COMMUNICATION.**

Co-defendant, Michelle Thomas testified at trial. Ms. Thomas testified that she and the defendant and had been friends

in high school and had reconnected on Facebook about a year prior to this incident. Ms. Thomas initially testified from her memory regarding communications she and the defendant had regarding the initial theft and what led to the subsequent incident at the Brewer-Slater residence. Ms. Thomas explained that she and the defendant communicated through Facebook, private messaging on Facebook, text, telephone and in person throughout these events. Ms. Thomas identified State's exhibit 52 as an accurate copy of the Facebook messages between herself and the defendant. 2 RP 288-91, 294, 291-302, 302-4.

The defendant challenges the trial court's ruling that State's exhibit 52 had been sufficiently authenticated by the testimony of Michelle Thomas. BOA 23.

A court's admission of evidence is reviewed for abuse of discretion. Abuse of discretion occurs when a trial court's decision is manifestly unreasonable or based on untenable grounds. State v. Bradford, 175 Wn. App. 912, 927, 308 P.3d 736, 743 (2013).

Authentication is a threshold requirement designed to assure that evidence is what it purports to be. In June of 2015, Division III of the Washington State Court of Appeals issued an unpublished opinion noting the dearth of authority with regard to the

authentication requirements for Facebook posting. “[The defendant] has identified no Washington authority, nor have we, that sets forth authentication requirements for Facebook postings.” State v. Fawver, 188 Wn. App. 1015, No. 32271-8-III (unpublished nonbinding authority) (2015)<sup>1</sup>. That court turned to ER 901 to determine if the Facebook records in question had been properly authenticated. ER 901 sets forth the requirement of authentication precedent to admissibility of evidence.

“The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.” ER 901(a). Rule 901 does not limit the type of evidence allowed to authenticate a document. It merely requires some evidence which is sufficient to support a finding that the evidence in question is what its proponent claims it to be. State v. Payne, 117 Wn. App. at 106.

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<sup>1</sup> Unpublished opinions of the Court of Appeals have no precedential value and are not binding upon any court. However, unpublished opinions of the Court of Appeals filed on or after March 1, 2013, may be cited as non-binding authorities, if identified as such by the citing party, and may be accorded such persuasive value as the court deems appropriate. GR 14.1(a).

ER 901(b) provides a non-exclusive list of examples of means of authentication or identification that conform with the rule.

The relevant parts include:

**(b) Illustrations.** By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this Rule:

(1) *Testimony of Witness with Knowledge.* Testimony that a matter is what it is claimed to be.

...

(4) *Distinctive Characteristics and the Like.* Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances.

...

(10) *Electronic Mail (E-mail).* Testimony by a person with knowledge that (i) the email purports to be authored or created by the particular sender or the sender's agent; (ii) the email purports to be sent from an e-mail address associated with the particular sender or the sender's agent; and (iii) the appearance, contents, substance, internal patterns, or other distinctive characteristics of the e-mail, taken in conjunction with the circumstances, are sufficient to support a finding that the e-mail in question is what the proponent claims.

The State satisfies ER 901 if it introduces sufficient proof to permit a reasonable juror to find in favor of authenticity or identification.

State v. Payne, 117 Wn. App. 99, 106, 69 P.3d 889, 893 (2003).

In making a determination as to authenticity, a trial court is not bound by the rules of evidence. A trial court may, therefore, rely upon such information as lay opinions, hearsay, or the proffered evidence itself in making its determination. Such information must be reliable but need not be admissible. State v. Williams, 136 Wn. App. 486, 500, 150 P.3d 111 (2007).

[T]he trial court considers only the evidence offered by the proponent and disregards any contrary evidence offered by the opponent in determining whether evidence has been authenticated. [The defendant] was free to bring up any contrary evidence, but this goes to weight, not admissibility.

State v. Young, 192 Wn. App. 850, 857, 369 P.3d 205, review denied, 185 Wn.2d 1042 (2016) (citation omitted). This is consistent with federal case law. It is no less proper to consider a wide range of evidence for the authentication of social media records than it is for more traditional documentary evidence. United States v. Browne, 834 F.3d 403, 412 (3d Cir. 2016).

In the present case, as in Fawver, the Facebook exhibit was offered by the State. Ms. Thomas was able to identify the Facebook page as belonging to the defendant. She and the defendant had been friends in high school and had renewed that friendship. She testified that she communicated about planning this incident with

the defendant by Facebook, text, phone, and in person. She was able to identify the defendant as the person with whom she had been communicating. She testified that the document was an accurate copy of their Facebook communications. The content of the multiple communications were consistent with and contemporaneous to the events in question. The defendant's nephew testified at trial. Considered together, this evidence supported a finding that the Facebook page was what it purported to be. The court did not abuse its discretion in admitting this evidence.

**C. SINCE THE TESTIMONY PRESENTED NUMEROUS ALTERNATIVE ACTS THAT COULD HAVE PROVEN THE ELEMENTS OF COUNT 2 ASSAULT 2, IT WAS PROPER FOR THE PROSECUTOR TO ELECT THE ACT UPON WHICH HE WAS RELYING IN HIS CLOSING ARGUMENT.**

A defendant claiming prosecutorial error must show both improper conduct and resulting prejudice. State v. Fisher, 165 Wn.2d 727, 747, 202 P.3d 937 (2009). The prosecutor's statements at closing must be viewed in the context of the total argument, the issues in the case, the evidence addressed in the argument, and the jury instructions. State v. Brown, 132 Wn.2d 529, 561, 940 P.2d 546 (1997). A prosecutor has wide latitude in making arguments to the jury and may draw reasonable inferences

from the evidence. Fisher, 165 Wn.2d at 747. Because the defendant in this case did not object to the portion of the State's closing argument that he now asserts constituted misconduct, he must demonstrate that the any prejudice resulting from the alleged misconduct was incurable by a jury instruction. State v. Stenson, 132 Wn.2d 668, 719, 940 P.2d 1239 (1997).

The defendant alleges misconduct in closing argument alleging that the prosecutor's argument was an attempt to solicit a conviction based on uncharged offenses. This is the opposite of the prosecutor's argument.

Defendant relies on State v. Boehning, 127 Wn. App. 511, 111 P.3d 899 (2005), to argue that the State's argument was misconduct. Brief of Appellant 27-8. That reliance is misplaced as the argument presented here was a clarification for the jury, much like an election, to disregard the evidence of other offenses presented in testimony and to focus only on the facts related to the charged offense.

In Boehning, the State charged three counts of rape and three counts of child molestation. At the close of the State's evidence, the three rape charges were dismissed. Despite that dismissal, the State referred to those counts in closing argument

and said that the victim's out of court statements had proved the counts, but she was not comfortable enough on the stand to testify about them. Boehning, 127 Wn. App. at 513. The Court of Appeals held that "a prosecutor may not make statements that are unsupported by the evidence[.]" Boehning, 127 Wn. App. at 529.

Unlike the argument in Boehning, the State's argument here was supported by the clear testimony of the victim and other witnesses. "A prosecutor has wide latitude in closing argument to draw reasonable inferences from the evidence and to express such inferences to the jury." State v. Hoffman, 116 Wn.2d 51, 94-95, 804 P.2d 577 (1991). The prosecutor's argument was not that the jury should convict because the defendant could have been charged with more offenses, but was more akin to an election of the specific act on which it was relying for the conviction. The jury heard testimony about a number of acts that could have constituted second degree assault. In multiple acts cases, either (1) the State must elect a specific act on which it will rely for conviction or (2) the trial court must instruct the jury that it must unanimously agree that a specific criminal act has been proved beyond a reasonable doubt. State v. Bobenhouse, 166 Wn.2d 881, 892, 214 P.3d 907 (2009).

Here, the prosecutor reasonably argued that the jury should not be distracted by the testimony regarding the other possible acts of assault but focused the jury on the act the State was relying upon. The prosecutor argued:

And Count II, I'm just going to go over that real quick: Person commits the crime of assault in the second degree – this is Instruction Number 14 – when he or she assaults another with a deadly weapon.

Instruction 5 tells you what it is. Count I, That on or about the 23<sup>rd</sup> day of January, 2014, the defendant assaulted Marty Brewer-Slater with a deadly weapon.

Did she do that? Yes. Because when Don Parrish, who is her accomplice, is squeezing the trigger right there in her face with the safety on... A deadly weapon, the instruction also tells you in a different instruction, is a firearm.

Now, recall that we just charged the crime of assault in the second degree for Marty Brewer. The State would have charged the crime of assault in the second degree for everybody in that house.

We could have added three more counts of assault in the second degree, because when you think about an assault – and I tell you this because you're going to say, Well, were other people assaulted in that house based on that definition?

Yes. But the counts that you've been charged with, that you're to determine, is Marty Brewer-Slater alone.

9/24/15 RP 545-46.

This argument was a just clarification of the evidence the jury should rely upon when deciding whether the defendant was guilty of assault in the second degree.

Even if the court were to find the argument was error, since the defendant did not object at trial, she has failed to establish the remarks evinced an enduring and resulting prejudice that was incurable by a jury instruction. Objections are required not only to prevent counsel from making additional improper remarks, but also to prevent potential abuse of the appellate process. [W]ere a party not required to object, a party could simply lie back, not allowing the trial court to avoid the potential prejudice, gamble on the verdict, and then seek a new trial on appeal. Based on these principles, misconduct is to be judged not so much by what was said or done as by the effect which is likely to flow therefrom. Reviewing courts should focus less on whether the prosecutor's misconduct was flagrant or ill-intentioned and more on whether the resulting prejudice could have been cured. State v. Emery, 174 Wn.2d 741, 762, 278 P.3d 653, 664–65 (2012).

**D. THE SENTENCING COURT PROPERLY IMPOSED THE MANDATORY LEGAL FINANCIAL OBLIGATIONS.**

Although the defendant did not object to their imposition at the time of the sentencing, she now challenges for the first time on appeal, the imposition of the mandatory DNA fee and victim penalty assessment without the sentencing court engaging in a determination of the defendant's current or future ability to pay. BOA 28-35. But unlike discretionary legal financial obligations, the legislature unequivocally requires imposition of the mandatory DNA fee and the mandatory victim penalty assessment at sentencing without regard to finding the ability to pay. The legislature has divested courts of the discretion to consider a defendant's ability to pay when imposing mandatory legal financial obligations. For victim restitution, victim assessments, and DNA fees, the legislature has directed expressly that a defendant's ability to pay should not be taken into account. State v. Shelton, 194 Wn. App. 660, 673–74, 378 P.3d 230, 237–38 (2016).

The imposition of the mandatory VPO and DNA fees do not implicate constitutional principles until the State seeks to enforce collection or impose a sanction for failure to pay; therefore, the as-applied substantive due process challenge is not ripe for review.

The as-applied substantive due process challenge to the mandatory fee statutes is also not a manifest error subject to review under RAP 2.5(a)(3). To review the merits of the constitutional challenge to the mandatory fee statutes for the first time on appeal, the defendant must show the error is manifest and implicates a constitutional interest. Shelton, 194 Wn. App. at 674–75. She has failed to do so.

**E. IF THE STATE SUBSTANTIALLY PREVAILS ON APPEAL, THE DEFENDANT SHOULD BE REQUIRED TO PAY THE COSTS OF APPEAL.**

Although the defendant was represented at trial by private counsel, she filed a declaration after trial requesting the court find her indigent for purposes of appeal. In that declaration, the defendant claims to have a 1997 Honda Accord and a \$1,800 IRA as her only assets. The defendant denied having a spouse or income from any other source. CP 1/19/16.

This appeared to be in conflict with the testimony provided at trial. For example, at the time of the incident at the Brewer-Slater residence, the defendant was in Leavenworth at a business meeting involving the sale or transfer of multiple horses. She was described as owning a home and a separate farm near Arlington. The car prowl that sparked this incident was a newer model truck.

Upon further research, the State has discovered the defendant is in the process of a divorce under Snohomish County Superior Court cause number 16-3-00771-8. The defendant's declaration in that case presents a very different financial situation. In her divorce declaration, the defendant claims her spouse has a salary in excess of \$75,000 a year plus approximately \$11,000 in yearly bonuses. They own a business in common, which holds assets to include a farm, tractors, horse trailers etc. She also claims there is a 2011 Dodge Ram 2500 valued at approximately \$31,000 with \$14,000 owing. She also claims ownership of PJ Trailer worth \$3,800 and two tractors. The defendant also refers to approximately \$10,000 in firearms and ammunition in the community. The defendant also refers to her separate property including the 1997 Honda Accord and her father's trailer and other belongings. There is also a reference to horse tack and "other trailers and vehicles". Ironically, the defendant concludes this declaration by accusing her husband of committing perjury against the court. \_\_\_ CP \_\_\_ (Declaration of Jennifer Cathryn Dreewes, 11/30/16 in Snohomish County Superior Court No. 16-3-00771-8).

Property ownership allows the defendant to borrow money or otherwise legally acquire resources in order to pay his court-

ordered financial obligation to pay his or her debt to society. State v. Johnson, 179 Wn.2d 534, 554–55, 315 P.3d 1090, 1100 (2014), as amended (Mar. 13, 2014). Despite the trial court relying upon the defendant's declaration to find her indigent for purposes of appeal, there is sufficient evidence of ability to pay for this court to impose the costs of appeal should the State substantially prevail.

#### **IV. CONCLUSION**

For the foregoing reasons, the judgment and sentence should be affirmed and should the State substantially prevail on appeal, the defendant should be required to pay the costs of appeal.

Respectfully submitted on January 12, 2017.

MARK K. ROE  
Snohomish County Prosecuting Attorney

By:

MARA J. ROZZANO, WSBA #22248  
Deputy Prosecuting Attorney  
Attorney for Respondent

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

THE STATE OF WASHINGTON,  
  
Respondent,  
  
v.  
  
JENNIFER C. DREEWES,  
  
Appellant.

No. 74055-5-I

DECLARATION OF DOCUMENT  
FILING AND E-SERVICE

AFFIDAVIT BY CERTIFICATION:

The undersigned certifies that on the 12<sup>th</sup> day of January, 2017, affiant sent via e-mail as an attachment the following document(s) in the above-referenced cause:

BRIEF OF RESPONDENT

I certify that I sent via e-mail a copy of the foregoing document to: The Court of Appeals via Electronic Filing and to Washington Appellate Project; [wapofficemail@washapp.org](mailto:wapofficemail@washapp.org); [marla@washapp.org](mailto:marla@washapp.org)

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 12<sup>th</sup> day of January, 2017, at the Snohomish County Office.



Diane K. Kremenich  
Legal Assistant/Appeals Unit  
Snohomish County Prosecutor's Office