

FILED  
COURT OF APPEALS  
DIVISION II

2014 JUN 24 AM 9:06

STATE OF WASHINGTON

BY  DEPUTY

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

STATE OF WASHINGTON,

Respondent,

v.

JESSE L. SPENCER,

Appellant.

No. 44439-9-II

UNPUBLISHED OPINION

MAXA, J.—Jesse Spencer appeals from the judgment and sentence imposed following his conviction for unlawful possession of a machine gun.<sup>1</sup> He argues that: (1) he received ineffective assistance of counsel when his counsel requested and received a jury instruction on unwitting possession, (2) the trial court erred in instructing the jury on unanimity, and (3) the trial court erred in finding that he had the ability to pay legal financial obligations.

The State concedes that Spencer received ineffective assistance of counsel because the unwitting possession instruction shifted the burden of proof to Spencer. *State v. Carter*, 127 Wn. App. 713, 717-18, 112 P.3d 561 (2005). We accept the State's concession, reverse Spencer's conviction for unlawful possession of a machine gun, and remand to the trial court for further proceedings. Because we reverse on the first issue, we need not address Spencer's second and third issues.

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<sup>1</sup> Spencer does not appeal from his conviction for bail jumping.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

*Maxa, J.*  
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MAXA, J.

We concur:

*Hunt, J.*  
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HUNT, J.

*Bjorge, A.C.J.*  
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BJORGE, A.C.J.