# IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

## DIVISION II

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| STATE OF WASHINGTON,<br>Respondent,<br><br>v.<br><br>RONALD W. FLOREK,<br>Appellant. | No. 42463-1-II<br><br>UNPUBLISHED OPINION |

Van Deren — Ronald Florek appeals his convictions for felony violation of a no-contact domestic violence order and for fourth degree assault, arguing that convicting him of both crimes violates double jeopardy. He also appeals the legal financial obligations imposed in his sentence. We affirm his conviction but remand for a new sentencing hearing.[1]

In March 2011, a domestic violence no-contact order was in force that prohibited Florek from having contact with his wife, Saundra Gjertson-Florek. Despite that order, on March 22, 2011, Gjertson-Florek drove Florek to a casino. Florek became intoxicated. Gjertson-Florek started driving them home. When she refused his request to stop at another bar, he tried to hit her in the face. He missed, however, and hit her in the arm. After arriving home, Florek accidentally

[1] A commissioner of this court initially considered Florek's appeal as a motion on the merits under RAP 18.14 and then transferred it to a panel of judges.

called 911,[2] which caused the police to arrive at the residence.

The State charged Florek with felony violation of the no-contact order, alternatively because he assaulted her or because he had two prior convictions for violating no-contact orders, under RCW 10.99.020, and with fourth degree assault, under RCW 9A.36.041(1). The jury found him guilty on both counts but was not asked to specify which of the alternative means of violating the no-contact order had been proved.

First, Florek appeals his convictions, arguing that convicting him of both felony violation of a no-contact order and with fourth degree assault violates double jeopardy when both crimes arise out of the same assault. But we have held otherwise in *State v. Moreno*, 132 Wn. App. 663, 670-71, 132 P.3d 1137 (2006). While *Moreno* addressed third degree assault, Florek does not show that its reasoning is not equally applicable to fourth degree assault. The convictions do not violate double jeopardy.

Second, Florek argues that the record is insufficient to support the legal financial obligations that the trial court imposed as part of his sentence. *State v. Bertrand*, 165 Wn. App. 395, 403-04, 267 P.3d 511 (2011). A technical failure resulted in no record of the sentencing hearing being created. The State concedes that Florek is entitled to a new sentencing hearing so that a record can be created. We accept the State's concession.

[2] In his statement of additional grounds for review, Florek asserts that Gjertson-Florek called 911. But he does not show how that is relevant to this appeal.

We affirm Florek's convictions but remand for a new sentencing hearing.

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.

Van Deren, J.

We concur:

Quinn-Brintnall, J.

Penoyar, J.