IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. BRIAN BARND-SPJUT, Appellant.	)	No. 67161-8-I DIVISION ONE UNPUBLISHED OPINION FILED: October 31, 2011

Grosse, J. — RCW 9A.16.110 provides for reimbursement by the State of the costs a defendant incurs in successfully defending against a criminal prosecution on the ground of self-defense. Under the statute, when the trier of fact determines that the defendant's claim of self-defense was supported by substantial evidence, the trial court "shall" determine the amount of the award of costs. The statute does not give the trial court the authority to substitute its judgment for that of the jury on this factual question. Nor can such authority be derived from case law, court rule, or any inherent authority possessed by trial courts. Here, the trial court exceeded its authority by sua sponte substituting its judgment as to whether Brian Barnd-Spjut's claim of self-defense was supported by substantial evidence. Accordingly, its order denying Barnd-Spjut's motion for costs under RCW 9A.16.110 must be reversed. Further, the record is insufficient to permit review of the reasonableness of the trial court's initial

determination of the amount of costs to which Barnd-Spjut is entitled because the trial court failed to adequately articulate its reasons for awarding Barnd-Spjut substantially less than he requested in attorney fees and costs. Accordingly, the fee award must be remanded for the entry of adequate findings of fact detailing the reasons for the court's decision.

FACTS

Brian Barnd-Spjut was charged with four counts of assault in the second degree, each with a firearm enhancement. The charges arose out of a March 28, 2009 incident at Kesler's Bar and Grill, located in Longview. On that night, Barnd-Spjut, his fiancé, and some friends drove to Kesler's to meet Barnd-Spjut's friend, Brandon Kesler, whose father owns the establishment. Barnd-Spjut was aware of prior incidents where security staff from Kesler's roughed up patrons of the bar on the premises, including one incident where the patron suffered broken cheekbones and eye sockets at the hands of the security staff.

On the night at issue, Kesler's was hosting a comedy show and charging a cover to enter. The employee collecting the cover charge told Phillip Church, who worked as security, that Barnd-Spjut did not pay the cover charge. Church approached Barnd-Spjut and told him to either pay the cover charge or leave. Barnd-Spjut said that he was not at the bar to see the comedy show, but rather just wanted to talk to Brandon Kesler, so he was not going to pay the cover charge. Church told Barnd-Spjut to pay the cover and said that if and when Kesler showed up and agreed that Barnd-Spjut did not have to pay the cover,

Church would give him his money back. Barnd-Spjut still refused to pay the cover charge and told Church that he was going to wait for Kesler at the bar. Another member of the bar's security staff, Dominador Daniel, joined Church. Church grabbed Barnd-Spjut by the arms and held him in a bear hug as he, with Daniel walking alongside, led Barnd-Spjut down a hallway and outside. According to Church, he held Barnd-Spjut just tightly enough so he could direct him outside, and Barnd-Spjut was squirming and trying to get away from Church the entire time. Church and Daniel took Barnd-Spjut to the middle of the alley, where Church let him go. At some point, Brandon Kesler and another employee, Kirk Turya, joined the group and were in the alley when Barnd-Spjut was let go.

Church testified that at no point during the incident did he physically threaten Barnd-Spjut, threaten to get the cover charge from him "one way or another," kick him, or hit him. Rather, he testified, he simply released Barnd-Spjut and told him to leave. Daniel also testified that he did not threaten, hit, or punch Barnd-Spjut. Turya testified that he witnessed the incident and neither saw nor heard anyone threaten, hit, or kick Barnd-Spjut.

Barnd-Spjut has a concealed weapons permit. When he was let go in the alley, Barnd-Spjut pulled his gun out of his waistband, turned around, and pointed the gun at the people in the alley—Kesler, Church, Daniel, and Turya. Before doing so, Barnd-Spjut did not check to see if anyone was coming towards him or if anyone had a weapon. Kesler told Barnd-Spjut to leave the premises. Barnd-Spjut's truck was parked in the lot on the alley side of the building, and he

and his friends got in the truck and left.

After Barnd-Spjut pulled out his gun, Church went back inside Kesler's and called the police. The police responded to a call of display of a firearm and found Barnd-Spjut in his vehicle in a parking lot of another business.

Barnd-Spjut was charged with four counts of second degree assault, for assaulting Kesler, Church, Daniel, and Turya. Each count carried a firearm enhancement. Barnd-Spjut raised self-defense as a defense to the charges. The jury returned a verdict of not guilty on all four counts.

After the jury returned its verdict, the trial court instructed the jury as to Barnd-Spjut's entitlement to reimbursement pursuant to RCW 9A.16.110. Under that statute, when a person is charged with assault and is found not guilty by reason of self-defense, the defendant is entitled reimbursement from the State for all reasonable costs, including loss of time, attorney fees, and other expenses involved in his or her defense. Along with special instructions on RCW 9A.16.110, the trial court provided the jury with a special verdict form that asked two questions: (1) Did Barnd-Spjut prove by a preponderance of the evidence that the use of force was lawful? and (2) Was Barnd-Spjut engaged in criminal conduct substantially related to the events that gave rise to the crimes with which he was charged?

Counsel for both sides presented oral argument to the jury. After ten minutes of deliberation, the jury returned its special verdict, answering "yes" to the first question and "no" to the second question. That is, the jury found that

Barnd-Spjut proved by a preponderance of the evidence that his use of force was lawful and that he was not engaged in criminal conduct substantially related to the events giving rise to the assault charges.

Under the statute, if the jury determines self-defense, then the judge must determine the amount of the award.[1] On January 21, 2010, Barnd-Spjut filed a motion for attorney fees, costs, and lost wages, seeking $75,000 in attorney fees, $12,249.15 in lost wages, $3,460.92 in costs, and $1,500 for the bail bond premium. In support of his request for $75,000 in attorney fees, Barnd-Spjut filed affidavits or declarations from four attorneys, all of whom were of the opinion that the $75,000 fee Barnd-Spjut's attorney charged to defend him against the four assault charges was a reasonable amount. Barnd-Spjut's attorney also submitted a declaration explaining the basis for his fee. In support of his request for lost wages, Barnd-Spjut submitted his own declaration. The State filed a response to Barnd-Spjut's motion. The only argument in its response was that the amount of reimbursement Barnd-Spjut requested was not reasonable. The State did not argue that Barnd-Spjut was not entitled to any reimbursement, nor did the State submit any evidence as to what it deemed a reasonable amount.

The trial court set a hearing on Barnd-Spjut's motion for reimbursement for January 29, 2010. At the outset of the hearing, the court expressed concern that neither the State's nor Barnd-Spjut's arguments on the special instructions—made two weeks earlier—addressed the appropriate issues and

[1] RCW 9A.16.110(2).

that the jury might not have followed the second set of instructions. In fact, the court stated that the arguments "may have been highly inappropriate and inflammatory." The trial court ordered a transcript of the arguments on Barnd-Spjut's motion and stated it would not address the reimbursement claim until it reviewed the transcript.

On February 26, 2010, the court once again held a hearing on Barnd-Spjut's motion for reimbursement. At the outset of the hearing, the court stated that after reviewing some case law on RCW 9A.16.110:

> [I]t is my opinion that the last twenty minutes of this trial was mistake after mistake after mistake.
>
> The first mistake: The prosecutor never made any motion concerning this matter not going to the jury or there being any factual basis to support the claim.
>
> Second mistake: I don't think there is any factual basis to support the claim and I let it go to the jury.
>
> Third mistake: Your argument was totally not directed to the issues in this case.
>
> So, at this point, before we get to attorney's fees, I'm asking myself, and this is the first question, do I sua sponte have any authority without any motion from the other side to enter a judgment [notwithstanding the verdict]. Two, if I do have the authority, should I? Three, what is the affect [sic] of the argument?
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> . . . .
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> But, of all those things -- all of those things we don't even -- we don't even get to because my initial reaction, after reading the case, is there was no objective evidence that the defendant was being assaulted and therefore, objectively, he had no right to pull a gun on these people.
>
> Now, the prosecutor never made any motion about it. And, this is -- this is, I guess, the thing that is troubling to me. I'm sitting here and I'm thinking, this is a mistake. But, nobody raised it. Is it appropriate for me to raise it sua sponte? And, maybe it's not. And, if it is not, then I'll -- we'll move onto the next issue. But, I'm very concerned about that.

Despite its concerns, the court allowed testimony on the reasonableness of the amount Barnd-Spjut requested. As to his claim for $75,000 in attorney

fees, Barnd-Spjut presented the testimony of three attorneys. The State presented no witnesses. Both sides presented closing arguments. At the conclusion of arguments, the trial court orally stated, as "preliminary findings," that Barnd-Spjut was entitled to an award of $40,000 in attorney fees, $4,000 in lost wages, $3,460.92 in costs, and $1,500 for the bail bond premium. The court's award of attorney fees was $35,000 less than the amount Barnd-Spjut requested, and its award of lost wages was $8,249.15 less than the amount Barnd-Spjut requested.

The court held another hearing on March 12, 2010 during which counsel and the court discussed the issues of whether the amount Barnd-Spjut sought as reimbursement was reasonable, whether the lawfulness of Barnd-Spjut's use of force was to be determined using a subjective test or an objective test, and whether Barnd-Spjut was entitled to reimbursement in the first place. At the conclusion of the hearing, the court informed counsel that it would have an order prepared "by next Friday," which would have been March 19, 2010.

On March 16, 2010, the trial court filed a "Proposed Decision," dated March 15, 2010. In the decision, the court stated its belief that the facts, viewed in a light most favorable to Barnd-Spjut, did not support a finding that he acted lawfully in pointing a gun at the four Kesler's employees. The court found no objective evidence that Barnd-Spjut was about to be injured when he pointed his gun and therefore no objective evidence to support a finding that Barnd-Spjut acted in self-defense. The court also concluded that it gave an improper

instruction to the jury. The court's instruction on lawful force stated: "The use of force or the offer to use force is lawful when a person appears about to be injured." The court noted that RCW 9A.16.020 states that the use of force is lawful when "used by a party about to be injured." Consequently, the court concluded, the word "appears" should not have been in the instruction the court gave because the instruction improperly substituted a subjective test for an objective test of self-defense.

Next, the court considered whether a trial court judge can sua sponte direct an order setting aside a verdict which was arrived at by improper instruction and which is not supported by the evidence. Or, as alternatively framed by the court, "is the Court overreaching in setting aside a verdict arrived at by a jury when neither party has objected to the giving of improper instructions, not moved for a directed verdict, and not moved for judgment notwithstanding the verdict?" The court found no clear answer to its question, but ultimately determined that its "best judgment at this time is to set aside the special interrogatory as being unsupported by the evidence." Finally, the court stated that it entered findings as to reasonable attorney fees in order to expedite the resolution of the case in the event the court's decision setting aside the special interrogatory is determined to be error, and that those findings were unchanged by the court's proposed decision. The record before us does not, however, contain any written findings of the trial court as to the amount Barnd-Spjut requested as reimbursement.[2]

[2] The record contains proposed findings of fact and conclusions of law as to the

On March 17, 2010, the trial court entered an order awarding Barnd-Spjut costs, lost wages, and attorney fees in the amounts the court determined at the February 26, 2010, hearing to be reasonable, namely $40,000 in attorney fees, $4,000 in lost wages, $3,460.92 in costs, and $1,500 for the bail bond premium.

On March 29, 2010, the trial court entered an order providing: "The proposed decision filed on 3/16/10 is the final order of the court. The defendant is awarded no costs or attorneys fees. The order establishing the reasonable costs and attorney fees is void." Barnd-Spjut appeals this order.

ANALYSIS

RCW 9A.16.110

To protect the right of citizens of this state to use lawful force in self-defense, the Legislature has provided, in RCW 9A.16.110, for reimbursement by the State of the costs a defendant incurs in successfully defending against a criminal prosecution for assault. Under the statute, when a person charged with assault is found not guilty by reason of self-defense, the State is required to reimburse such person "for all reasonable costs, including loss of time, legal fees incurred, and other expenses involved in his or her defense."[3]

The reimbursement is not an independent cause of action.[4] Rather, the reimbursement proceedings are held, as was done in this case, at the conclusion of the criminal trial. Although held at the conclusion of the criminal

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amount of reimbursement Barnd-Spjut requested, but these are not signed by the trial court. The trial court did give a brief oral opinion as to the amount requested.

[3] RCW 9A.16.110(2).

[4] RCW 9A.16.110(2).

trial, the reimbursement proceedings are conducted under the civil rules of procedure and evidence, and the civil standard for self-defense applies.[5] The statute "contemplates an objective determination that the person's actions were justified, whereas justification in defense of a charge of assault or homicide is determined by examining the situation as it appeared to the defendant, under all of the circumstances."[6]

The statute provides that in order for a defendant to be entitled to an award of reasonable costs, "the trier of fact must find that the defendant's claim of self-defense was sustained by a preponderance of the evidence."[7] The statute directs that "[i]f the trier of fact makes a determination of self-defense, the judge shall determine the amount of the award."[8]

Trial Court's Authority to Set Aside the Special Verdict

The trial court questioned whether it had the authority to sua sponte set aside the jury's special verdict and substitute its judgment for that of the jury. Not surprisingly, Barnd-Spjut argued that the trial court lacked such authority. The State argued that the trial court did indeed have the authority to sua sponte set aside the jury's special verdict, but failed to identify any basis for that authority. On appeal, the State again fails to identify any authority that allows a

[5] State v. Park, 88 Wn. App. 910, 915, 946 P.2d 1231 (1997).
[6] State v. Manuel, 94 Wn.2d 695, 699, 619 P.2d 977 (1989).
[7] RCW 9A.16.110(2).
[8] RCW 9A.16.110(2). The statute allows the judge to deny or reduce the amount of the award if the trier of fact also determines that the defendant was engaged in criminal conduct substantially related to the events giving rise to the charges filed against the defendant. RCW 9A.16.110(3). This provision is not at issue here.

trial court to sua sponte vacate a jury's special verdict and substitute its own judgment. We agree with Barnd-Spjut that the trial court lacked such authority.

We begin the inquiry into whether the trial court had the authority to act as it did under RCW 9A.16.110 with an examination of whether the statute itself provides the court with such authority. Where a statute is clear and unambiguous, we derive the statute's meaning from the wording of the statute itself.[9] The reimbursement statute is clear and unambiguous: when the trier of fact makes a determination of self-defense, "the [trial] judge shall determine the amount of the award."[10] The statute makes no provision allowing a trial court to substitute its judgment for that of the trier of fact. Rather, the statute directs the trial court to proceed with the calculation of the amount of the award once the trier of fact finds that the defendant acted in self-defense.

Nor does case law interpreting RCW 9A.16.110 provide a basis for validating the trial court's actions here. Although the trial court in State v. Park[11] vacated a jury's special verdict in a reimbursement proceeding under RCW 9A.16.110, the court did so on motion of a party, not on its own motion. The trial court in this case recognized this significant distinction between the present case and Park and properly concluded that Park did not provide it with the authority to sua sponte set aside the special verdict. Moreover, in Park, the court vacated the special verdict because of a procedural irregularity, namely, the fact that the verdict was based on an erroneous construction of a repealed

[9] State v. Lee, 96 Wn. App. 336, 341, 979 P.2d 458 (1999).
[10] RCW 9A.16.110(2).
[11] 88 Wn. App. 910, 946 P.2d 1231 (1997).

statute. Here, the trial court's reasons for setting aside the special verdict were substantive, rather than merely procedural.

Further, although the rules of civil procedure contemplate circumstances where the evidence is legally insufficient to support a jury's verdict, the rules do not provide the authority for the trial court's actions here. CR 50 provides for a judgment as a matter of law, but only upon motion of a party during a trial by jury[12] or after the entry of judgment.[13] CR 50 does not provide for a trial court's entry of judgment as a matter of law on the court's own motion.

CR 59 provides for the granting of a new trial where there is no evidence or reasonable inference from the evidence to justify the verdict or where it is contrary to law.[14] The rule allows the trial court to act on its own initiative, but prescribes the circumstances under which the court may so act:

> Not later than 10 days after entry of judgment, the court on its own initiative may order a hearing on its proposed order for a new trial for any reason for which it might have granted a new trial on motion of a party. After giving the parties notice and an opportunity to be heard, the court may grant a timely motion for a new trial for a reason not stated in the motion. When granting a new trial on its own initiative or for a reason not stated in a motion, the court shall specify the grounds in its order.[15]

The trial court in this case did not avail itself of this procedure.

Moreover, neither CR 50 nor CR 59 gives the trial court unfettered discretion to substitute its judgment for that of the jury. Firmly rooted in our jurisprudence is the principle that a trial court's discretion to grant or deny a

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[12] CR 50(a).
[13] CR 50(b).
[14] CR 59(a)(7).
[15] CR 59(d).

motion for a new trial does not constitute a license allowing the trial court to weigh the evidence and substitute its judgment for that of the jury simply because the trial court disagrees with the jury's verdict.[16] The trial court's disagreement with the jury's determinations as to credibility and interpretation of the evidence is not an adequate reason for granting a new trial when the verdict of the jury is otherwise supported by substantial evidence.[17] Further, where substantial evidence supports a jury's verdict, the entry of judgment as a matter of law is error.[18] The trial court must defer to the trier of fact on issues involving conflicting testimony, credibility of the witnesses, and persuasiveness of the evidence.[19] Here, substantial evidence supports the jury's determination that Barnd-Spjut proved by a preponderance of the evidence that his use of force was lawful and that he was not engaged in criminal conduct substantially related to the events giving rise to the assault charges. Accordingly, the trial court had no authority to vacate the jury's verdict and enter judgment contrary to that verdict, even if the trial court disagreed with the jury's determination.

In addition to the sufficiency of the evidence as to the lawfulness of the

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[16] Bunnell v. Barr, 68 Wn.2d 771, 775, 415 P.2d 640 (1966); see also Estate of Stalkup v. Vancouver Clinic, Inc., P.S., 145 Wn. App. 572, 584-85, 187 P.3d 291 (2008) (holding that the trial court erred in ruling that an expert's testimony, which was admitted without a foundation objection, was legally insufficient for want of such foundation because the trial court was belatedly ruling on an objection never made or preserved for review and was substituting its judgment as to the weight of the testimony for that of the jury).

[17] Bunnell, 68 Wn.2d at 777.

[18] Faust v. Albertson, 167 Wn.2d 531, 538, 222 P.3d 1208 (2009); Weissman v. Dep't of Labor & Indus., 52 Wn.2d 477, 481, 326 P.2d 743 (1958) (analyzing the issue in the context of a judgment notwithstanding the verdict, the predecessor to a judgment as a matter of law).

[19] Faust, 167 Wn.2d at 538.

force Barnd-Spjut used, the trial court also based its decision to set aside the special verdict on an error it perceived in its jury instruction on lawful force. However, neither party objected to the instruction as given. Yet on appeal, the State argues that the instruction was erroneous. Again, by failing to object below, the State has failed to preserve this issue for review. "Failure to object to jury instructions waives objection on appeal. Instructions to which no exceptions are taken become the law of the case."[20] This rule applies even where the instruction is erroneous.[21] The State offers no authority, nor can we find any authority, allowing a trial court to sua sponte vacate a verdict on the basis of a jury instruction the court gave and to which neither party objected. The trial court exceeded its authority in vacating the special verdict on this ground.[22]

In addition to lacking authority grounded in statute, case law, or procedural rule, the trial court also lacked any inherent authority to substitute its judgment for that of the jury under the circumstances of this case. While it has been recognized that a trial court may set aside a jury's verdict on its own motion when the verdict was obtained by fraud and illegal means,[23] there is no evidence in this case that the special verdict was so obtained. Further, any inherent powers of a court are strictly procedural in nature and do not confer any substantive authority on the court.[24] It cannot be disputed that setting aside a

[20] Valdez-Zontek v. Eastmont Sch. Dist., 154 Wn. App. 147, 165, 225 P.3d 339 (2010) (internal citations omitted) (quotation marks omitted).
[21] State v. Hickman, 135 Wn.2d 97, 101-02, 954 P.2d 900 (1998).
[22] We need not and do not address the issue of whether the court's instruction on lawful force was correct or erroneous.
[23] Cranford v. O'Shea, 75 Wash. 33, 42, 134 P. 486 (1913).
[24] State v. Gilkinson, 57 Wn. App. 861, 865, 790 P.2d 1247 (1990).

jury's verdict and substituting the court's judgment for that of the jury is not a matter strictly procedural in nature.

In sum, the trial court lacked the authority to sua sponte set aside the jury's special verdict in the reimbursement proceeding and substitute its judgment that Barnd-Spjut did not prove by a preponderance of the evidence that his use of force was lawful. Accordingly, the trial court's order voiding its order awarding Barnd-Spjut his costs under RCW 9A.16.110 must be reversed.

Reasonableness of the Amount of Reimbursement

Barnd-Spjut argues not only that the trial court erred by deciding that he was not entitled to any award under RCW 9A.16.110, but also that the trial court erred in initially determining that he was entitled to a substantially lesser amount of lost wages and attorney fees than he requested.[25] Although the State argues that the amount Barnd-Spjut requested was not reasonable, the State presented no evidence in support of this argument.

1. Attorney Fees

We review whether the amount of an award of attorney fees is reasonable for abuse of discretion.[26] We will not disturb a trial court's award of attorney fees unless the court exercised its discretion in a manifestly unreasonable manner or based its decision on untenable grounds.[27]

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[25] Barnd-Spjut did not appeal the trial court's March 17, 2010 order awarding him costs and fees in an amount substantially less than the amount he requested. However, review of this order is appropriate under RAP 2.4(b) (appealability of orders not designated in the notice of appeal).

[26] Harmony at Madrona Park Owners Ass'n v. Madison Harmony Dev., Inc., 143 Wn. App. 345, 363, 177 P.3d 755 (2008).

[27] Hanson Indus., Inc. v. Kutschkau, 158 Wn. App. 278, 296, 239 P.3d 367

RCW 9A.16.110 requires the State to "reimburse" a defendant for costs involved in the defendant's defense.[28] The State reimburses a defendant by paying the defendant an amount equal to the attorney fees the defendant paid in the past,[29] with the limitation that the State is obligated to reimburse only the *reasonable* costs the defendant incurs.[30]

Barnd-Spjut, as the party requesting an award of attorney fees, had the burden of proving the reasonableness of the fees.[31] In support of his request for an award of $75,000 in attorney fees, Barnd-Spjut submitted the declaration of his own attorney and declarations of four other attorneys, all of whom opined that $75,000 was a reasonable fee for defending Barnd-Spjut against the four assault charges.

Barnd-Spjut's evidence that the $75,000 fee was reasonable was the only evidence before the trial court as to what constitutes a reasonable attorney fee. Nonetheless, the court determined that a reasonable attorney fee was $40,000. Because the trial court's attorney fee award was substantially less than the amount Barnd-Spjut requested, the court's award "should indicate at least approximately how the court arrived at the final numbers, and explain why discounts were applied."[32] In other words, the trial court must provide articulable

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(2010), review denied, 171 Wn.2d 1011 (2011).

[28] RCW 9A.16.110(2). Prior to a 1995 amendment, the statute required the State to "indemnify or reimburse" the defendant. Former RCW 9A.16.110(2) (1994).

[29] State v. Anderson, 72 Wn. App. 253, 263, 863 P.2d 1370 (1993).

[30] RCW 9A.16.110(2).

[31] Cornish College of the Arts v. 1000 Virginia Ltd. P'ship, 158 Wn. App. 203, 234, 242 P.3d 1 (2010), review denied, 171 Wn.2d 1014 (2011).

[32] Taliesen Corp. v. Raxore Land Co., 135 Wn. App. 106, 146, 144 P.3d 1185

grounds for its fee award so that the record is adequate to permit review of the award.[33] Where the trial court fails to make findings explaining how it calculated the fee award and the basis for its reduction from the amount requested, the fee award must be remanded for the entry of such findings.[34]

Here, the record contains no written findings of fact entered by the court as to its award of $40,000 in attorney fees. At oral argument, the trial court, at Barnd-Spjut's request, made a few oral comments. To be an adequate record for review of a fee award, however, a trial court's opinion must be comprehensive and must detail the trial court's reasons for its decision.[35]

In reducing the amount of attorney fees awarded, the trial court divided counsel's time between the time spent on trial preparation and the time spent in trial. The trial court awarded Barnd-Spjut's counsel $25,000 for work done in preparation for trial. The court's entire reasoning for this award, stated in defense of its use of a 10-hour day for calculation of the award for trial time, was:

> I'm giving you quite a bit, what I consider to be, quite a bit of preparation time. I think that most of this work is done in preparation. I think most of the work you do, most of the work you have done in this case, you did before you came into the courtroom. Therefore, I don't think ten hours is unreasonable. So that's my analysis.

The trial court's opinion as to its determination that Barnd-Spjut's counsel is entitled to $25,000 for trial preparation is neither detailed nor comprehensive

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(2006).

[33] Mahler v. Szucs, 135 Wn.2d 398, 435, 957 P.2d 632 (1998).

[34] Taliesen Corp., 135 Wn. App. at 147.

[35] Johnson v. Mermis, 91 Wn. App. 127, 136, 955 P.2d 826 (1998).

and is insufficient to permit review.

The trial court awarded Barnd-Spjut's counsel $15,000 for trial work, calculated at $300 per hour for five 10-hour days. The court considered the $300 per hour rate to be a 50 percent premium over counsel's usual rate of $200 per hour, but counsel repeatedly informed the trial court that his $200 per hour rate was for civil cases, not criminal cases. Also, counsel informed the court that a typical trial day is longer than 10 hours. Even if the trial court's articulation of the method by which it arrived at $15,000 for trial work was adequate, the court's method is based on faulty premises.

In sum, the only evidence the trial court had before it was that attorney fees in the amount of $75,000 was reasonable. Nonetheless, the trial court substantially reduced that amount and awarded Barnd-Spjut $40,000 in attorney fees. Because the record does not contain any written findings of fact as to this award, we have only the trial court's oral opinion as a record upon which to review the award. The court's oral opinion is not, however, sufficiently detailed or comprehensive to permit review. Accordingly, the attorney fee award must be remanded to the trial court for findings explaining how the trial court calculated the attorney fee award and the basis for the substantial reduction in the award from the amount Barnd-Spjut requested.

2. Lost Wages

A defendant who establishes entitlement to an award of reimbursement under RCW 9A.16.110 is entitled to receive compensation for lawful earnings he

or she would have received but for being prosecuted.[36]

Barnd-Spjut sought reimbursement of $12,249.15 for wages lost due to his prosecution. According to his declaration submitted in support of this claim, Barnd-Spjut is a general contractor, lost both wages and jobs due to his prosecution, and had to hire subcontractors for two jobs. At oral argument, Barnd-Spjut's counsel conceded that $1,500 of Barnd-Spjut's claim for lost wages constituted "double dipping" and was improper, but argued that Barnd-Spjut is entitled to the remainder of the amount he claimed as lost wages.

Again, the record contains no written findings of fact as to the court's decision to award Barnd-Spjut substantially less in lost wages than he requested. The trial court's oral opinion on this issue consists solely of the following: "Okay. You have your declaration. I'm going to award him $4,000.00. That's what I think he is entitled to." As with the award of attorney fees, the trial court's oral opinion on the lost wages claim provides an inadequate basis for review and the matter must be remanded for the entry of findings detailing the court's reasons for awarding lost wages in an amount substantially less than the amount requested.[37]

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[36] Anderson, 72 Wn. App. at 261.

[37] Barnd-Spjut's counsel submitted to the trial court a declaration as to fees requested for post-verdict time spent preparing and arguing Barnd-Spjut's claim for reimbursement under RCW 9A.16.110. See Steele v. Lundgren, 96 Wn. App. 773, 781, 982 P.2d 619 (1999) ("a court may properly award fees for time expended to prepare a fee petition"). Counsel also orally asked the trial court whether it was going to order the State to reimburse Barnd-Spjut for these fees. The trial court failed to respond to counsel's oral request and the court's order awarding costs fails to award these costs. Barnd-Spjut fails, however, to argue on appeal that the trial court's failure to award fees for the time expended preparing his fee petition was error. Accordingly, we do not address Barnd-

Attorney Fees on Appeal

Barnd-Spjut requests an award of costs and attorney fees on appeal. The State does not address Barnd-Spjut's request. Under RCW 9A.16.110, where a defendant is entitled to reimbursement, the State is obligated to reimburse for reasonable costs and fees incurred through final appeal.[38] Accordingly, Barnd-Spjut is entitled to reimbursement from the State of his reasonable costs, including attorney fees, incurred in this appeal.

CONCLUSION

We reverse the trial court's order awarding Barnd-Spjut no costs or attorney fees, reinstate the court's order awarding Barnd-Spjut costs and fees under RCW 9A.16.110, and remand this matter for proceedings consistent with this opinion. We award Barnd-Spjut his reasonable costs under RCW 9A.16.110, including attorney fees, he incurred in this appeal.

Grosse, J

WE CONCUR:

Leach, A.C.J.

Appelwick, J

Spjut's entitlement to these fees.

[38] Lee, 96 Wn. App. at 346.