89913-4

ORIGINAL

No.

SUPREME COURT

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

DANIEL LEE BROWN,

Petitioner.

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Daniel Lee Brown, petitioner here and appellant below, asks this Court to accept review of the Court of Appeals' published decision terminating review designated in Part B of this petition.

B. COURT OF APPEALS DECISION

Mr. Brown seeks review of *State v. Brown*, No. 31323-9-III (January 16, 2014). A copy of the decision is attached as Appendix A. The decision affirmed the Spokane County Superior Court's order, dated November 8, 2012, denying Mr. Brown's motion to suppress and/or dismiss. (Appendix B).

C. ISSUES PRESENTED FOR REVIEW

Issue 1: Did the State violate Article I, Section 22 of the Washington State Constitution by imposing costs of reproduction of discovery materials on a criminal defendant who requires said materials to adequately prepare to his defense?

Issue 2: Does the State's imposition of costs for reproduction of discovery materials on a criminal defendant, prior to conviction of any crime, violate RCW 10.01.160?

Issue 3: Is a criminal defendant required to advance the costs of reproduction of discovery materials, which the State is obligated to provide under CrR 4.7(a)?

D. STATEMENT OF THE CASE

On January 15, 2012, Mr. Brown was arrested for felony harassment. Appendix A at 1 (hereinafter "App"). Prior to his arrest that evening, Justin Perrine, the boyfriend of Mr. Brown's former girlfriend, Nicolette Olson, had called 911 to report the context of threatening text messages sent to Ms. Olson by Mr. Brown. *Id.* Based on the 911 call, police officers were dispatched to the apartment complex where Mr. Brown was found, and ultimately placed him under arrest. *Id.* After charges were filed, Mr. Brown made a discovery request to "inspect" and "copy" any "written or recorded statements" of any witnesses the State intended to call at trial. CP at 1. The State disclosed that it possessed a recording of the 911 call made by Justin Perrine. Mr. Brown then requested a copy of the recording.

Instead of producing a copy of the recording for Mr. Brown, the State advised him that he could purchase the recording from the sheriff's office for $17, or alternatively, that his counsel could listen to a copy of the recording at the prosecutor's office, and could take notes or make his

own recording of the prosecutor's copy. As Mr. Brown did not believe that he could legally be required to pay for a copy of this material or be required to rely on a copy of a copy, Mr. Brown filed a motion to suppress and/or dismiss the charges based on the State's failure to provide him with a copy of the official 911 recording. CP 14-21.

Mr. Brown's motion to suppress and/or dismiss was denied by the Spokane County Superior Court on November 8, 2012. CP 36. In denying Mr. Brown's motion, the court reasoned that CrR 4.7[1] "speaks in terms of disclosure rather than providing...." And because "[t]he word 'disclosure' was not picked by accident," its meaning is "totally separate from one of 'providing' evidence." CP 50-51. Therefore, once the State discloses the existence of something like an audio recording, "the defense has to provide the costs of copying, reproduction, whatever." CP 52. Furthermore, with regard to Article I, Section 22[2] of the Washington State Constitution, the court appeared to hold that since Mr. Brown was not indigent, he was required to pay costs. CP 51-52.

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[1] "Except as otherwise provided...the prosecuting attorney shall disclose to the defendant...the names and addresses of persons whom the prosecuting attorney intends to call as witnesses at the hearing or trial, together with any written or recorded statements and the substance of any oral statements of such witnesses[.]" CrR 4.7(a)(1)(i).

[2] "In criminal prosecutions the accused shall have the right to appear and defend in person, or by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof...In no instance shall any accused person before final judgment be compelled to advance money or fees to secure the rights herein guaranteed." Const. art. I, §22.

Upon denial of the aforementioned motion, Mr. Brown successfully sought discretionary review of the trial court's decision by the Court of Appeals. However, the Court of Appeals ultimately upheld the trial court's decision, agreeing that a person accused of a crime is responsible for the cost of reproduction of the State's evidence against them, which the State is obligated to "provide" under CrR 4.7(a). App. A at 4, 6. Furthermore, the Court of Appeals held that the State was not in violation of RCW 10.01.160(1)[3] because the State was not "imposing" costs on Mr. Brown by requiring him to either pay for the 911 recording, or listen to it at the prosecutor's office. *Id.* at 5. Lastly, the court rejected Mr. Brown's constitutional argument, stating that Mr. Brown was not being "compelled" to advance money or fees, because he could choose to forego having a copy of the 911 recording, or his attorney could listen to it in the prosecutor's office. *Id.* at 6. The court held that "[d]ue process affords a criminally accused defendant extensive discovery rights, but we know of no principle requiring the State to bear the expense of copying discovery materials for a nonindigent defendant." *Id.*

[3] "The court may require a defendant to pay costs. Costs may be imposed only upon a convicted defendant, except for costs imposed upon a defendant's entry into a deferred prosecution program, costs imposed upon a defendant for pretrial supervision, or costs imposed upon a defendant for preparing and serving a warrant for failure to appear." RCW 10.01.160(1).

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

Under RAP 13.4(b), this Court will accept petitions for review if the issues presented for review represent a conflict with a decision of this Court, of the Court of Appeals, involve a significant question under the Washington or United States Constitution, or involve issues of substantial public interest that should be determined by this Court. RAP 13.4(b)(1-4). The issue presented represents all four bases for review.

I. REQUIRING A CRIMINAL DEFENDANT TO ADVANCE THE COSTS OF REPRODUCING THE STATE'S DISCOVERY,TO WHICH HE IS CONSTITUTIONALLY ENTITLED IN ORDER TO PREPARE HIS DEFENSE, VIOLATES ARTICLE I, SECTION 22 OF THE WASHINGTON STATE CONSTITUTION, CONFLICTS WITH PREVIOUS DECISIONS OF THE COURT OF APPEALS, AND CONTRAVENES PUBLIC POLICY.

A. Standard of Review

Although most pretrial rulings in criminal cases are reviewed for abuse of discretion, in criminal cases, "[t]he determination of whether undisputed facts constitute a violation of [a] provision of the Washington Constitution is a question of law, which is reviewed de novo." *State v. Rankin*, 151 Wn.2d 689, 694, 92 P.3d 202, 204 (2004); *See generally State v. Knapstad*, 41 Wn.App. 781, 706 P.2d 238 (1985). Furthermore, it has long been held that questions of constitutional or statutory interpretation are reviewed de novo, as are trial court interpretations of court rules.

Citizens Protecting Resources v. Yakima County, 152 Wn.App. 914, 919, 219 P.3d 730, 732 (2009); *Odyssey Healthcare Operating BLP v. Washington State Dept. of Health*, 145 Wn.App. 131, 140, 185 P.3d 652, 656 (2008). Accordingly, this Court may substitute its own judgment for the aforementioned judgment in error. *Skamania County v. Columbia River Gorge Comm'n*, 144 Wn.2d. 30, 42, 26 P.3d 241, 247 (2001).

B. Requiring a criminal defendant to pay for discovery materials necessary to prepare an adequate defense violates Article I, Section 22 of the Washington State Constitution such that review is appropriate under RAP 13.4(b)(3)

In deciding that the State's actions in the present case did not violate Article I, Section 22, the Court of Appeals focused on one word--"compelled". App. A at 6. It held that Mr. Brown was not "compelled" to pay $17 for a copy of the 911 recording because he could simply go without a copy, or his counsel could accept the State's offer to listen to it at the prosecutor's office. *Id.* However, is so doing, the lower court erred; it read out the most crucial word in Article I, Section 22 as it applies to the case at bar—"rights". "Right" is defined at law as:

> 1. That which is proper under law, morality, or ethics. 2. Something that is due to a person by just claim, legal guarantee, or moral principle. 3. A power, privilege, or immunity secured to a person by law. 4. A legally enforceable claim that another will do or will not do a given act; a recognized and protected interest the violation of which is a wrong...

BLACK'S LAW DICTIONARY 1436 (9th ed. 2009).

Clearly, the word "right", as used in Article I , Section 22, refers to something of high importance—a "legal guarantee", "privilege", or "moral principle". *Id.* "Nothing modifies the listed rights. There are no caveats." *State v. Pugh*, 167 Wn.2d 825, 854, 225 P.3d 892, 906 (2009); Const. art. I, §22. If a defendant's only other options are to go without discovery which is "necessary to an effective defense", or rely on a copy of a copy, which cannot be guaranteed as to accuracy or properly examined by an expert, then the right to prepare an effective defense ceases to exist. App A at 4. A cursory glossing-over of the rights at issue herein—perhaps based on the lower court's view of the lacking importance of the dispute[4], is constitutionally insufficient, and does violence to the true meaning of Article I, Section 22.

C. Imposing costs of discovery upon an accused defendant presupposes his guilt and violates public policy, such that this Court should accept review under RAP 13.4(b)(4)

Public policy is determined by the will of the people—voiced either through the constitution or through the legislature. *Housing*

[4] The introduction to the Court of Appeals' opinion, it's very first words, in fact, read "[n]either party, out of principle, will budge one cent. So we are asked to resolve a $17 dispute..." App. A at 1.

Authority of King County v. Saylors, 87 Wn.2d 732, 740, 557 P.2d 321, 326 (1976). Public policy could not speak louder than to assert itself as a right granted by the state constitution. The fact that Article I, Section 22 provides that "*[i]n no instance* shall any accused person before final judgment be compelled to advance money or fees to secure the rights herein guaranteed", and that Mr. Brown is herein compelled to pay money for the reproduction of the State's discovery (if he wants his rights secured), speaks to a flagrant violation of Washington State's public policy against presuming guilt. Const. art. I, §22 (emphasis added).

II. REQUIRING A CRIMINAL DEFENDANT TO ADVANCE THE COSTS OF REPRODUCING THE STATE'S DISCOVERY VIOLATES RCW 10.01.160, AND CONFLICTS WITH PREVIOUS DECISIONS OF THE COURT OF APPEALS, THIS COURT, AND THE UNITED STATES SUPREME COURT.

A. Standard of Review

See Part I-A, *supra*, for the appropriate standard of review.

In the present case, the lower courts have ignored binding case law from the Court of Appeals, this Court, and the United States Supreme Court, thereby violating the legal principle of stare decisis. "Without stare decisis, the law ceases to be a system; it becomes instead a formless mass of unrelated rules, policies, declarations and assertions...[t]ake away stare decisis, and what is left may have force, but

it will not be law." *State ex rel. Washington State Finance Committee v. Martin*, 62 Wn.2d 645, 665, 384 P.2d 833, 845 (1963).

B. The Court of Appeals has previously held the act of imposing costs of prosecution on a defendant prior to a conviction to be unlawful under RCW 10.01.160, such that review is appropriate under RAP 13.4(b)(2)

The Court of Appeals has already resolved the issue of the State seeking to impose, prior to conviction, costs specially incurred in prosecuting a defendant. *See generally, Utter v. Dept. of Soc. and Health Servs.*, 140 Wn.App. 293, 154 P.3d 399 (2007). In *Utter*, a criminal defendant (also accused of felony harassment) was ordered into a psychiatric treatment facility prior to trial to assess his competency to stand trial, and/or to provide treatment to make him competent. *See Utter*, 140 Wn.App. at 297. Subsequent to Utter's admission to the facility, the Department of Social and Health Services ("Department") sought reimbursement for costs related to his evaluation and treatment. *Id.* at 297-98. Utter challenged the Department's authority to seek reimbursement under RCW 10.01.160 and Article I, Section 22 of the Washington State Constitution. *Id.* at 298. Ultimately, the court concluded that the costs of treatment and evaluation were costs specially incurred under RCW 10.01.160, such that the Department might seek reimbursement, but that the trial court may impose costs "*only upon a*

convicted defendant." *Id.* at 312 (emphasis in original) (citing RCW 10.01.160(1)). As such, the Department's attempt to secure reimbursement prior to conviction was unlawful. *See id.*

C. This Court has applied United States Supreme Court precedent in requiring a conviction prior to the imposition of any costs such as the ones sought in the present case, such that review is appropriate under RAP 13.4(b)(1)

In *State v. Barklind*, 87 Wn.2d 814, 817, 668 P.2d 314, 317 (1976), this Court applied the test for the post-conviction imposition of costs delineated by the United States Supreme Court in *Oregon v. Fuller*, 417 U.S. 40, 94 S.Ct. 2116, 40 L.Ed.2d 642 (1974). In *Fuller*, the Court analyzed former Oregon statute ORS 161.665 (1971), which was identical to RCW 10.01.160. The *Fuller* Court held that "a requirement of repayment may be imposed only upon a *convicted* defendant; those who are acquitted, whose trials end in mistrial or dismissal, and those whose convictions are overturned upon appeal face no possibility of being required to pay.'" *Oregon v. Fuller*, 417 U.S. 40, 45, 94 S.Ct. 2116, 40 L.Ed.2d 642 (1974) (emphasis in original)). In applying *Fuller*, this Court in *Barklind* noted that repayment can only imposed upon convicted defendants. *Barklind*, 87 Wn.2d at 817.

Based on the foregoing, it is clear that, no defendant, prior to conviction, may be required to pay any costs incurred by the State in prosecuting them. *See generally id*; *Oregon v. Fuller*, 417 U.S. 40, 94 S.Ct. 2116, 40 L.Ed.2d 642 (1974); *Utter v. Dept. of Soc. and Health Servs*, 140 Wn.App. 293, 154 P.3d 399 (2007); RCW 10.01.160.

D. Imposing costs of discovery upon an accused defendant presupposes his guilt and violates public policy, such that this Court should accept review under RAP 13.4(b)(4)

See Part I-B, *supra*, for a discussion of the law of public policy.

Public policy has been spoken through the will of the legislature, and the adoption of RCW 10.01.160, which does not allow for the imposition of costs of prosecution on a criminal defendant, prior to conviction. RCW 10.01.160.

III. REQUIRING A CRIMINAL DEFENDANT TO ADVANCE THE COSTS OF REPRODUCING THE STATE'S DISCOVERY, VIOLATES CrR 4.7(a), AND IS IN CONFLICT WITH DECISIONS OF THE SUPREME COURT AND PUBLIC POLICY.

A. Standard of Review

See Part I-A, *supra*, for the appropriate standard of review.

B. The Court of Appeals' determination that a defendant should have to pay costs associated with reproducing the State's discovery violates CrR 4.7(a) and is in conflict with a prior decision of this Court, such that review is appropriate under RAP 13.4(b)(1)

Washington's discovery rules obligate the State to "disclose to the defendant...any written or recorded statements" of witnesses the State intends to call at trial. CrR 4.7(a)(1). This Court has clarified that, although CrR 4.7 does not define the word "disclose", "the policies underlying the rules, and the provisions of CrR 4.7 indicate that 'disclose' includes making copies of certain kinds of evidence." *State v. Boyd*, 160 Wn.2d 424, 433, 158 P.3d 54 (2007). The Court went on to clarify that "[w]here the nature of the case is such that copies are necessary...CrR 4.7(a) obliges the prosecutor to provide copies of the evidence as a necessary consequence of the right to effective representation and a fair trial." *Id.* at 435.

The parties in the present case agree that the 911 recording represents such a necessary piece of evidence, and that the prosecution is obligated to provide a copy to the defendant. Appendix A at ___. In the Court of Appeals' ruling, however, it held that "[t]he State is willing to provide Brown a copy of the recording, but wants Brown to pay for the duplication." Appendix A at 4. The lower court reasoned that because the Court in *Boyd* ordered that the defense pay for cost of duplication of a

mirror-image hard drive containing evidence of the crime charged, that a similar ruling is appropriate any time duplication is required. Appendix A at 4; *Boyd*, 160 Wn.2d at 438. However, such a ruling is not justified by the holding in *Boyd*, which discussed such a fee strictly in the context of a case requiring a protective order over the disclosed evidence. *Boyd*, 160 Wn.2d at 438. That holding is inapplicable here, where the case is a standard criminal felony prosecution, and the evidence sought is a standard 911 recording, not implicating the need for a protective order.

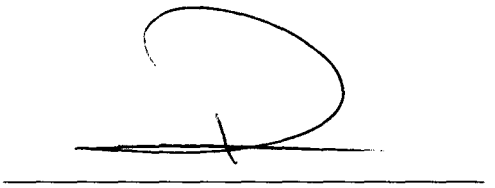
This Court is therefore asked to consider the legal fiction created by such a holding—if the Washington State Constitution and RCW 10.01.160 prohibit imposing such costs on a defendant prior to conviction, but the State does not have to pay those costs under CrR 4.7(a), who is left?

F. CONCLUSION

Mr. Brown respectfully requests that this Court grant review of the decision of the Court of Appeals in this case, as that court's ruling is contrary to Court of Appeals, Washington State Supreme Court, and United States Supreme Court precedent, violates Article I, Section 22 of the Washington State Constitution, RCW 10.01.160 and CrR 4.7(a)(1), and is contrary to public policy.

Such a ruling places all Washington defendants in a state of legal limbo, where their rights to discovery may or may not be upheld by the courts, and where the State is free to violate those rights by requiring payment for discovery, until this Court says otherwise. This Court should take the opportunity to do just that—to clarify that defendants who have not been convicted of a crime cannot be required to pay for reproduction of the State's discovery which is necessary to an adequate defense.

DATED this 13 day of February, 2014



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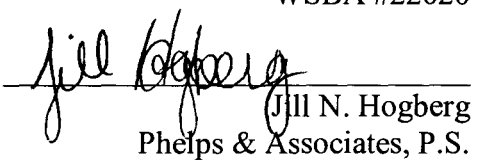

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Appendix

A-1

(Court of Appeals Div. III – Opinion filed January 16, 2014)

FILED
JAN. 16, 2014
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

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

STATE OF WASHINGTON, Respondent, v. DANIEL LEE BROWN, Petitioner.	)	No. 31323-9-III PUBLISHED OPINION

FEARING, J. — Neither party, out of principle, will budge one cent. So we are asked to resolve a $17 dispute—who should pay for the copying of a 911 recording demanded by a pecunious criminal defendant during discovery? The State offers Daniel Brown's counsel the option to either listen to the recording at the prosecutor's office or pay the sheriff's office reasonable costs for a copy. Brown argues that he need not pay for discovery and thus the State's proposal violates CrR 4.7, RCW 10.01.160, and article I, section 22 of the Washington Constitution. He moved below for dismissal or, alternatively, to suppress the evidence. The trial court denied his motion. We affirm the denial of Brown's motion, since the court rule, the statute, and the constitution do not impose upon the State the expense to copy records for a nonindigent defendant.

FACTS

On January 15, 2012, Daniel Brown sent text messages to his former girl friend, Nicolette Olson, threatening to shoot Olson's new friend, Justin Perrine. Olson received the messages while at Perrine's apartment. The textative Brown consecutively wrote, "I'll be in jail by morning for killing him will you please give me his apartment;" "What if I just walk in and shoot;" and "I'm in the parking lot." Clerk's Papers (CP) at 29.

Nicolette Olson shared the text messages with Justin Perrine. Concerned for his well being, Perrine turned off all lights in his apartment and called 911. When police arrived at Perrine's apartment, they found Daniel Brown parked in the parking lot of the apartment complex. Brown told police he had a pistol concealed in a pocket of his pants. Police handcuffed Brown and retrieved the loaded pistol. Brown admitted to sending threatening text messages to Olson's phone. Police searched his car and found a second loaded firearm. The State charged Brown with felony harassment.

Daniel Brown filed a request for discovery to "inspect" and "copy" any "written or recorded statements" of witnesses the State intended to call at trial. CP at 1. In response, the State disclosed it possessed a recording of the 911 call from Justin Perrine. Brown then requested a copy of the recording. The State informed Brown that he could obtain a copy of the 911 recording from the sheriff's office for $17. The State explained it did not have the technical capability to copy the recording on a disc. If, however, Brown did not want to pay for a recording, the State offered his counsel an opportunity to listen to and

record the 911 call at the Spokane County prosecutor's office. Brown insisted on the receipt of a copy of the recording and demurred at paying for the duplication.

Daniel Brown moved to dismiss the charges against him or, in the alternative, to suppress the 911 recording. Brown argued the State violated the discovery rules in CrR 4.7 when it failed to provide a copy of the recording without charge. The trial court denied Brown's motion, ruling that, although "[t]he defense is entitled to disclosure of the 911 recording under the court rules, there is no finding of indigency or prejudice if defendant is required to pay reasonable costs of duplicating the 911 recording." CP at 33.

LAW AND ANALYSIS

CrR 4.7

Daniel Brown did not ask the trial court to impose the copying expense of the 911 recording upon the State. Nevertheless, his motion to dismiss or to exclude the recording from trial presupposes that the State owes the duty to pay for the copying. We must therefore address whether the State owes Brown the duty.

CrR 4.7(a)(1) states, "[T]he prosecuting attorney shall *disclose* to the defendant . . . (i) the names and addresses of persons whom the prosecuting attorney intends to call as witnesses at the hearing or trial, together with any written or recorded statements." (Emphasis added.) In the past, the State argued it need not provide the defense with actual copies of discoverable material, only disclose its existence. In two recent decisions, the Washington Supreme Court rejected this argument and ruled that the State must allow the defense to copy discoverable material. *State v. Grenning*, 169 Wn.2d 47,

54, 234 P.3d 169 (2010); *State v. Boyd*, 160 Wn.2d 424, 435, 158 P.3d 54 (2007). In *Boyd*, the superior court entered an order allowing defense counsel to access the mirror image of a computer hard drive, but only in a State facility, during two sessions, and only through the State's operating system and software. Our high court noted that CrR 4.7(a) does not define "disclose." *Boyd*, 160 Wn.2d at 433. But the general usage of "disclose," the policies underlying the rules, and the provisions of CrR 4.7 indicate that "disclose" includes making copies of certain kinds of evidence. *Id.* Where copies of discovery material are necessary for defense counsel to provide effective representation, "CrR 4.7(a) obliges the prosecutor to provide copies of the evidence as a necessary consequence of the right to effective representation and a fair trial." *Boyd*, 160 Wn.2d at 435.

Here, the State does not contest the 911 recording is necessary to an effective defense of Daniel Brown. The State is willing to provide Brown a copy of the recording, but wants Brown to pay for the duplication.

In *Boyd*, the Supreme Court wrote, "Any order . . . should obligate the defense to pay the reasonable cost of duplication." *Id.* at 438. The parties in *Boyd* likely did not contest who paid for the cost of copying, but Brown provides us no decision supporting his position that the State must pay the cost. He also forwards no prejudice to a fair trial in the event he pays the expense. Thus, we hold that CrR 4.7(a) does not require the prosecution to pay for reproduction expenses.

RCW 10.01.160

Next, Daniel Brown contends RCW 10.01.160 prohibits the State from imposing costs "inherent in providing a constitutionally guaranteed jury trial." Nevertheless, the State has not imposed any costs. Brown may elect to obtain a copy of the 911 call from the sheriff's office for $17, or may listen to and record the 911 call at the prosecutor's office.

ARTICLE I, SECTION 22 OF THE WASHINGTON CONSTITUTION

Article I, section 22 reads, in pertinent part, "In no instance shall any accused person before final judgment be compelled to advance money or fees to secure the rights herein guaranteed." Daniel Brown argues this provision of Washington's declaration of rights entitles him to discovery materials without charge.

Washington courts have interpreted the constitutional provision on the "advance[ment] of money or fees" at least four times. *Stowe v. State*, 2 Wash. 124, 126, 25 P. 1085 (1891); *State ex rel. Coella v. Fennimore*, 2 Wash. 370, 371, 26 P. 807 (1891); *State ex rel. Mahoney v. Ronald*, 117 Wash. 641, 643, 202 P. 241 (1921); *State v. McCarter*, 173 Wn. App. 912, 921, 295 P.3d 1210 (2010). The first three decisions revolved around the issue of whether a judgment was final. In the latest decision in *McCarter*, the defendant was charged with two driving offenses, and, upon the State's dismissal of charges to pursue enhanced charges in the superior court, the district court imposed warrant fees totaling $250. We held that the district court's imposition of fees did not compel McCarter to advance money or fees in order to secure his rights as a

defendant under the Washington Constitution. None of these four previous decisions are of value in determining whether Brown was "compelled to advance money or fees to secure the rights" guaranteed in article I, section 22 of the Washington Constitution.

We hold Daniel Brown was not "*compelled* to advance money or fees" in violation of article I, section 22 of the constitution. (Emphasis added.) "'Where the language of the constitution is clear, the words used therein should be given their plain meaning.'" *Young v. Clark*, 149 Wn.2d 130, 133, 65 P.3d 1192 (2003) (quoting *City of Tacoma v. Taxpayers of City of Tacoma*, 108 Wn.2d 679, 706, 743 P.2d 793 (1987)). "Compel" means to "force, drive, [or] impel," "as to force by physical necessity or evidential fact." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 463 (1993); BLACK'S LAW DICTIONARY 321 (9th ed. 2009) ("to cause or bring about by force, threats, or overwhelming pressure."). Brown is not being forced, driven, impelled, threatened, or pressured to advance money or fees. Although the recording may be important to his defense, the State does not require him to obtain a copy. Brown is free to forego a copy and may even access the 911 recording without paying money or a fee. Due process affords a criminally accused defendant extensive discovery rights, but we know of no principle requiring the State to bear the expense of copying discovery materials for a nonindigent defendant.

CONCLUSION

The State holds no obligation to pay the costs of duplicating the 911 recording sought by Daniel Brown. Therefore, we affirm the trial court's denial of Brown's motion to suppress the recording or to dismiss the prosecution.

Affirmed.

Fearing, J.

WE CONCUR:

Korsmo, C.J.

Kulik, J.

Appendix

A-2

(Order On Defendant's Discovery Motion filed November 08, 2012)

SUPERIOR COURT OF WASHINGTON
COUNTY OF SPOKANE

STATE

Plaintiff,

VS.

DANIEL L. BROWN

Defendant.

Cause No.: 12-1-00161-9

ORDER ON DEFENDANTS DISCOVERY MOTION

I. BASIS

DEFENDANT moves the court for: AN ORDER SUPPRESSING EVIDENCE FOR DISCOVERY VIOLATIONS.

II. FINDING

After reviewing the case record to date, and the basis for the motion, the court finds that:

THE DEFENSE IS ENTITLED TO DISCLOSURE OF THE 911 RECORDING AND UNDER THE COURT RULES. THERE IS NO FINDING OF INDIGENCY OR PREJUDICE IF DEFENDANT IS REQUIRED TO PAY REASONABLE COSTS OF DUPLICATING THE 911 RECORDING.

III. ORDER

IT IS ORDERED that: THE MOTION TO SUPPRESS AND/OR DISMISS IS DENIED. DEFENDANT SHALL BEAR THE REASONABLE COST OF DUPLICATING THE 911 RECORDING.

Dated: 11/8/2012

HONORABLE SALVATORE F. COZZA
Superior Court Judge

Presented by:

28279
Attorney for the Plaintiff

36815
Attorney for the Defendant