

No. 47615-1-II

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

STATE OF WASHINGTON,

Respondent,

v.

NAZREF M.,
(DOB 5/4/97)

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR LEWIS COUNTY

BRIEF OF APPELLANT

ELAINE L. WINTERS
Attorney for Appellant

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 701
Seattle, Washington 98101
(206) 587-2711
washofficemail@washapp.org

TABLE OF CONTENTS

A. ASSIGNMENTS OF ERROR 1

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR..... 1

C. STATEMENT OF THE CASE..... 4

D. ARGUMENT 6

1. The State did not prove beyond a reasonable doubt that Nazref McGill committed custodial assault...... 6

 a. The State was required to prove every element of custodial assault beyond a reasonable doubt..... 6

 b. The State did not prove beyond a reasonable doubt that Nazref intentionally placed Baldwin-McGraw in reasonable fear and apprehension of bodily harm 8

 c. The State did not prove beyond a reasonable doubt that Nazref intentionally assaulted Baldwin-McGraw by means of battery 12

 d. Nazref’s custodial assault conviction must be reversed 14

2. The juvenile court’s requirement that Nazref McGill pay \$200 in attorneys fees must be stricken in light of the repeal of the statute authorizing juvenile courts to order the payment and the juvenile court’s failure to determine Nazref had the ability to pay 14

 a. The repeal of RCW 13.40.145 applies to Mr. McGraw’s case 15

 b. Even if the juvenile court had the authority to impose recoupment, it improperly imposed recoupment without considering Nazref’s ability to pay 19

 c. This Court should strike the requirement that Nazref pay the costs of court-appointed counsel..... 23

3. The juvenile court’s requirement that Nazref McGill pay a \$100 victim penalty must be stricken in light of the amendment of RCW 7.68.035(2) limiting the penalty assessment for juvenile offenders to serious violent offenses.	23
E. CONCLUSION	25

TABLE OF AUTHORITIES

Washington Supreme Court Decisions

Cazzanigi v. General Electric Credit Corp., 132 Wn.2d 433, 938 P.2d 819 (1997)..... 16

In re FD Processing, Inc., 119 Wn.2d 452, 832 P.2d 1303 (1992)..... 24

In re Personal Restraint of St. Pierre, 118 Wn.2d 321, 823 P.2d 492 (1992)..... 19

In re Postsentence Review of Leach, 161 Wn.2d 180, 163 P.3d 782 (2007)..... 17

Lau v. Nelson, 89 Wn.2d 772, 575 P.2d 719 (1978)..... 16

Macumber v. Shafer, 96 Wn.2d 568, 637 P.2d 645 (1981)..... 17, 24

Seattle Rendering Works, Inc. v. Darling-Delaware Co., Inc., 104 Wn.2d 15, 701 P.2d 502 (1985)..... 16

State v. Ammons, 105 Wn.2d 175, 713 P.2d 719, 718 P.2d 796 (1986)..... 17

State v. Blazina, 182 Wn.2d 827, 344 P.3d 680 (2015) 21, 22

State v. Byrd, 125 Wn.2d 707, 887 P.2d 396 (1995)..... 8, 11

State v. Green, 94 Wn.2d 216, 616 P.2d 628 (1980)..... 7

State v. Hanson, 151 Wn.2d 783, 91 P.3d 888 (2004) 18

State v. Wilson, 125 Wn.2d 212, 883 P.2d 320 (1994)..... 7, 8

Washington Court of Appeals Decisions

State v. Abuan, 161 Wn. App. 135, 257 P.3d 1 (2011)..... 11

State v. Bland, 71 Wn. App. 345, 860 P.2d 1046 (1993) 11

State v. Krup, 36 Wn. App. 454, 676 P.2d 507, rev. denied, 101
Wn.2d 1008 (1984) 9

State v. Ratliff, 77 Wn. App. 522, 892 P.2d 118, rev. denied, 127
Wn.2d 1012 (1995) 8, 11

State v. Toscano, 166 Wn. App. 546, 271 P.3d 912, rev. denied, 174
Wn.2d 1013 (2012) 9

Ward II v. Washington State University, 39 Wn. App. 630, 695 P.2d
133 (1985) 17

United States Supreme Court Decisions

In re Winship, 397 U.S. 358, 90 S. Ct. 1068, 25 L. Ed.2d 368 (1970) .. 6

Fuller v. Oregon, 417 U.S. 40, 94 S. Ct. 2116, 40 L. Ed. 2d 642
(1974) 20, 21

Jackson v. Virginia, 443 U.S. 307, 99 S. Ct. 2781, 61 L. Ed. 2d 560
(1979) 7

James v. Strange, 407 U.S. 128, 92 S. Ct. 2027, 32 L. Ed. 2d 600
(1972) 20

United States Constitution

U.S. Const. amend. VI 1, 2, 6

U.S. Const. amend. XIV 1, 2, 6, 20

Washington Constitution

Const. art. 1, § 3 1, 2, 6
Const. art. 1, § 22 1, 2, 6

Washington Statutes

Former RCW 13.40.145 3, 15, 16, 17, 19
Laws of 2015, ch. 265 15, 18, 24
RCW 10.01.160 21
RCW 13.34.150 19
RCW 13.40.0001 15
RCW 7.68.035 3, 23, 24
RCW 9.94A.030 24
RCW 9A.36.100 7, 24

Other Authorities

E2SSB 5564 17
House Final Bill Report, E2SSB 5564 15

A. ASSIGNMENTS OF ERROR

1. The juvenile court erred by finding Nazref McGill guilty of custodial assault. Conclusion of Law 2.3

2. The juvenile court erred by finding beyond a reasonable doubt that Nazref committed custodial assault by placing another person in fear and apprehension of bodily injury. Conclusion of Law 2.1

3. The juvenile court erred by finding beyond a reasonable doubt that Nazref committed custodial assault by means of actual battery. Conclusion of Law 2.1

4. Appellant assigns error to Findings of Fact 1.5, 1.7, 1.8, and 1.9.

5. The juvenile court erred by ordering Nazref to pay \$200 for the costs of his court-appointed attorney.

6. The juvenile court erred by ordering Nazref to pay a \$100 crime victim penalty.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. A juvenile may not be convicted of a crime unless the State proves every element of that crime beyond a reasonable doubt. U.S. Const. amends. VI, XIV; Const. art. I, §§ 3, 22. Nazref was found

guilty of custodial assault by means of placing a juvenile institution staff member in fear or apprehension of bodily injury. The juvenile court did not find that Nazref acted with the intent to cause the staff member to fear bodily injury, and the State did not prove that element of the crime. The staff member was constantly watching the residents to assess threats, and he did not testify that Nazref caused any greater fear of injury than his normal apprehension while at work. Must Nazref's adjudication be reversed because the State did not prove beyond a reasonable doubt that he intentionally placed the staff member in reasonable fear of bodily harm? (Assignments of Error 1, 2, 4)

2. A juvenile may not be convicted of a crime unless the State proves every element of that crime beyond a reasonable doubt. U.S. Const. amends. VI, XIV; Const. art. I, §§ 3, 22. Nazref was also found guilty of custodial assault by means of actual battery. One staff member who was close to the incident testified that Nazref did not touch the alleged assault victim. The purported victim's testimony that Nazref sprinted towards him and pushed his hands out of position was impeached with the report he wrote minutes after the incident. Must Nazref's adjudication be reversed because the State did not prove

beyond a reasonable doubt that Nazref struck the staff member's hands? (Assignments of Error 1, 3, 4)

3. The juvenile court's sentencing authority is provided by statute. Former RCW 13.40.145 provided the statutory authority to order a juvenile respondent to pay for the costs of his court-appointed counsel. The statute was repealed by the Legislature prior to Nazref's disposition hearing, with an effective date after the hearing. The juvenile court ordered Nazref to pay \$200 for his attorney as part of his disposition in this case. Does this remedial statute apply retroactively to Nazref's case? (Assignment of Error 5)

4. Former RCW 13.40.145 permitted the juvenile court to order a juvenile to pay for his court-appointed attorney only after determining the juvenile or his parents had the financial ability to pay the recoupment. Nazref had no income or assets and was facing a term of commitment at a juvenile institution. Should the requirement that Nazref pay \$200 in recoupment be stricken because the juvenile court did not inquire into his ability to pay and the record shows Nazref was indigent and unable to pay? (Assignment of Error 5)

5. The juvenile court's sentencing authority is provided by statute. Former RCW 7.68.035(1) authorized the juvenile court to

order a respondent to pay a \$100 penalty assessment for crime victim assistance. The statute was amended by the Legislature prior to Nazref's disposition hearing, with an effective date after the hearing, to require the penalty assessment only for most serious offenses or sex offenses. The juvenile court ordered Nazref to pay the \$100 penalty assessment for custodial assault, which is not a serious violence offense or a sex offense. Should the crime victim penalty be stricken because the remedial amendment applies retroactively to Nazref's case?

(Assignment of Error 6)

C. STATEMENT OF THE CASE

17-year-old Nazref McGill was a resident of Green Hill School, a juvenile correctional institution, in February 2015. RP 19-20.¹ Due to an ankle injury, Nazref was walking with crutches. RP 20. He was unable to keep up with the other boys in his unit as they walked with institutional staff to the kitchen for dinner, and he lagged behind with assistant counselor David Baldwin-McGraw. RP 22.

Before the group left the unit, Baldwin-McGraw told Nazref several times to get in line and use his crutches. RP 20-21. After the

¹ The verbatim report of proceedings contains two volumes. RP refers to the volume containing hearings on March 24, April 14, May 2, and May 26, 2015. DispoRP refers to the volume containing the May 19, 2015, disposition hearing.

group left, Nazref accused Baldwin-McGraw of singling him out and “disrespecting” him. RP 22-23. According to Baldwin-McGraw, Nazref threatened to “flex and flash” on him if he did it again. RP 23. He explained that Green Hill residents used the term for “posting up and then fighting or taking a swing at an individual.” RP 22.

The boys were supposed to be quiet when they moved between buildings. RP 53. As Baldwin-McGraw and Nazref entered the kitchen area, staff member Scott Broderick decided to send Nazref back to his unit because he was arguing and getting agitated. RP 42, 53-54. Nazref responded by throwing his crutches on the ground in a safe area. RP 26-27, 54-55.

Nazref walked towards Baldwin-McGraw, who was in an area of the kitchen reserved for staff. RP 27-28, 42-43, 49, 56. Baldwin-McGraw stood with his feet shoulder-length apart, one foot back, with his arms at his sides and his hands up in a 90-degree position. RP 28-29. Baldwin-McGraw claimed that Nazref brought his hands under Baldwin-McGraw’s hands and pushed them out of position. RP 30. Broderick, who was close by and observed the incident, did not observe any physical contact between the two. RP 57-58, 59.

Security Officer Jonathan Kendall immediately grabbed Nazref in a “bear hug hold” and took him to the ground. RP 30, 44, 58. Kendall and two other guards placed Nazref in wrist restraints and took him to the intensive management unit. RP 44.

The Lewis County Prosecutor charged Nazref with custodial assault. CP 1-2. After a fact-finding hearing, the Honorable James Lawler found Nazref guilty. CP 19-21

The juvenile court committed Nazref to the Juvenile Rehabilitation Administration for 15 to 36 weeks. CP 13. In addition, the court ordered him to pay \$200 for defense attorney’s fees and \$100 to the Crime Victims’ Compensation Fund. CP 15. The juvenile court made no inquiry into Nazref’s ability to pay. 5/19/15 RP 3.

D. ARGUMENT

1. **The State did not prove beyond a reasonable doubt that Nazref McGill committed custodial assault.**

a. The State was required to prove every element of custodial assault beyond a reasonable doubt.

The due process clauses of the federal and state constitutions require the State prove every element of a crime beyond a reasonable doubt. In re Winship, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed.2d 368 (1970); U.S. Const. amends. VI, XIV; Const. art. 1, §§ 3, 22. On

appellate review, the court must reverse if, after viewing the evidence in the light most favorable to the prosecution, it determines that a rational trier of fact could not have found an element of the crime beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 334, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979); State v. Green, 94 Wn.2d 216, 220-22, 616 P.2d 628 (1980).

Nazref was found guilty of custodial assault for assaulting a staff member of a juvenile correctional institution, RCW

9A.36.100(1)(a). CP 20-21. The statute reads:

A person is guilty of custodial assault if that person is not guilty of an assault in the first or second degree and where the person:

(a) Assaults a full or part-time staff member or volunteer, any educational personnel, any personal service provider, or any vendor or agent thereof at any juvenile corrections institution or local juvenile detention facilities who was performing official duties at the time of the assault.

RCW 9A.36.100(1)(a).

The criminal code does not provide a definition for the term “assault.” Washington courts therefore utilize the common law definition. State v. Wilson, 125 Wn.2d 212, 217-18, 883 P.2d 320 (1994); State v. Ratliff, 77 Wn. App. 522, 524, 892 P.2d 118, rev.

denied, 127 Wn.2d 1012 (1995). An assault may be committed in

three different ways:

(1) an attempt, with unlawful force, to inflict bodily injury upon another [attempted battery]; (2) an unlawful touching with criminal intent [actual battery]; and (3) putting another in apprehension of harm whether or not the actor intends to inflict or is capable of inflicting that harm [common law assault].

Wilson, 125 Wn.2d at 218. “[S]pecific intent either to create apprehension of bodily harm or to cause bodily harm” is required.

State v. Byrd, 125 Wn.2d 707, 713, 887 P.2d 396 (1995); Wilson, 125 Wn.2d at 218.

The juvenile court found Nazref guilty of custodial assault by means of placing a staff member in reasonable fear of bodily injury and by means of battery by hitting the staff member’s hands. CP 20-21. Because the State did not prove either means of committing assault beyond a reasonable doubt, Nazref’s custodial assault conviction should be reversed.

b. The State did not prove beyond a reasonable doubt that Nazref intentionally placed Baldwin-McGraw in reasonable fear and apprehension of bodily harm.

Assault by placing a person in reasonable apprehension of harm requires proof that the respondent acted with the specific intent to create a reasonable apprehension of bodily harm. State v. Toscano, 166

Wn. App. 546, 551, 271 P.3d 912, rev. denied, 174 Wn.2d 1013 (2012); State v. Krup, 36 Wn. App. 454, 458, 676 P.2d 507, rev. denied, 101 Wn.2d 1008 (1984). In a prosecution under this means of assault, “the State is not relieved from proving [the defendant] acted with an intent or design to create in his victim’s mind a reasonable apprehension of harm.” Krup, 36 Wn. App. at 458.

The juvenile court found that Nazref threw his crutches and walked quickly towards Baldwin-McGraw and his actions placed Baldwin-McGraw “in fear and apprehension that he would be struck by McGraw, and cause Baldwin-McGraw bodily injury.” Findings of Fact 1.5, 1.7. Based upon these findings, the court found Nazref guilty of assault by placing Baldwin-McGraw “in fear and apprehension that the defendant would cause Baldwin-McGraw bodily injury.” Conclusion of Law 2.1. The juvenile court, however, did not find that Nazref acted with the intent to place Baldwin-McGraw in reasonable apprehension of bodily harm.

The record does not provide evidence to prove Nazref’s intent beyond a reasonable doubt. Baldwin-McGraw testified that Nazref was angry with him for the manner in which he had spoken to him when the boys in his unit were getting ready to move to the kitchen. RP 20-22.

Baldwin-McGraw claimed Nazref threatened several times to “flex and flash” on him if he was disrespectful again. RP 22, 24. Baldwin-McGraw described Nazref as “dysregulated” and argumentative. RP 24.

Kendall, however, said Nazref appeared unhappy and only “somewhat agitated” when he and Baldwin-McGraw entered the kitchen. RP 42. Broderick testified that Nazref and Baldwin-McGraw were arguing, and the rules called for the boys to be quiet when they moved through the kitchen. RP 53.

In addition, Nazref did not throw his crutches in a dangerous or intimidating manner. Baldwin-McGraw testified that Nazref threw his crutches to a safer area and not at anyone. RP 26-27. Broderick believed Nazref threw his crutches out of frustration when Broderick informed him he had to leave the kitchen. RP 54-55.

Nazref was suffering from an ankle injury and had been told by the staff that he had to return to his unit rather than eating dinner with the other boys. RP 20, 55-56. He did not use his crutches as a weapon or put his hands up as if to fight. RP 54, 59. The fact that Nazref was frustrated, dropped his crutches, and hobbled towards Baldwin-

McGraw does not prove that he had the intent to place Baldwin-McGraw in fear of bodily harm.

The State was also required to prove that Baldwin-McGraw was placed in reasonable fear of bodily harm. Byrd, 125 Wn.2d at 713; State v. Abuan, 161 Wn. App. 135, 159, 257 P.3d 1 (2011); Ratliff, 77 Wn. App. at 524. In Abuan, for example, this Court found insufficient evidence of “fear in fact” when the defendant fired into a home but the occupant was inside on the telephone and did not see the shooting. Abuan, 161 Wn. App. at 159; accord State v. Bland, 71 Wn. App. 345, 355, 860 P.2d 1046 (1993) (no proof that sleeping occupant of home felt fear when defendant fired bullet that went through his window).

In the present case, Baldwin-McGraw was a counselor’s assistant at a juvenile institution, and several other staff members were present, including a security officer. RP 18, 23, 38. Safety and security of the staff and residents is a high priority at Green Hill. RP 32-33, 52. As a staff member, Baldwin-McGraw was always evaluating the residents around him for “a potential hazard.” RP 24-25. In this case, he was worried because Nazref had crutches that could be used as a weapon, but Nazref had disposed of the crutches before he walked toward Baldwin-McGraw. RP 24-25. Baldwin-McGraw also

perceived a possible threat simply because Nazref was emotional. RP 24. Baldwin-McGraw was always aware that he could be attacked by a resident, and the fear he testified to on this occasion was not caused by an objective view of Nazref's actions that day.

c. The State did not prove beyond a reasonable doubt that Nazref intentionally assaulted Baldwin-McGraw by means of battery.

The juvenile court also found Nazref guilty of custodial assault because he "knocked Baldwin-McGraw's hands out of the way." Finding of Fact 1.8; Conclusion of Law 2.1. The evidence produced at trial on this issue, however, was equivocal. Finding of Fact 1.8 is not supported by substantial evidence, and Nazref's guilty finding must be reversed because the State did not prove beyond a reasonable doubt that he committed a battery.

Three Green Hill staff members testified about the incident. Broderick talked to Nazref as he entered the kitchen and told him he had to return to his unit. RP 53-54. Kendall was only a few feet away from Baldwin-McGraw, and he observed Nazref throw away his crutches and approach Baldwin-McGraw. RP 54-58. He did not see any physical contact between the two. RP 59-60.

In the report Baldwin-McGraw wrote immediately after the incident, he did not note any physical contact, instead saying that Nazref attempted to grab his hands, causing him to rock backwards. RP 32-33, 37. This is in contrast to his testimony, where Baldwin-McGraw said Nazref pushed his hands out of the “ready position” Baldwin-McGraw had assumed. RP 29-30. Baldwin-McGraw also noted in his report that Nazref walked quickly towards him, but at the fact-finding hearing he said that Nazref ran or sprinted towards him. RP 27, 36.

The third witness, security officer Kendall, could not see whether Nazref touched Baldwin-McGraw or not. RP 50.

Broderick had a clear view of Nazref’s interaction with Baldwin-McGraw, and he testified Nazref did not touch Baldwin-McGraw. While Baldwin-McGraw said that Nazref knocked his hands out of position, his testimony was impeached with his inconsistent prior report. Finding of Fact 1.8 is not supported by substantial evidence, and the State did not prove beyond a reasonable doubt that Nazref assaulted Baldwin-McGraw by touching him with criminal intent.

d. Nazref's custodial assault conviction must be reversed.

The State did not prove Nazref intentionally placed Baldwin-McGraw in fear of bodily harm or that Baldwin-McGraw was in reasonable fear of Nazref. The trial court incorrectly found Nazref guilty of custodial assault by means of intentionally placing another person in fear of bodily injury.

The State also did not prove beyond a reasonable doubt that Nazref struck Baldwin-McGraw's hands with criminal intent. Given the conflicting evidence on this issue and Baldwin-McGraw's changing story, the trial court incorrectly found Nazref guilty of custodial assault by means of actual battery.

This Court should reverse and dismiss Nazref's custodial assault adjudication.

2. The juvenile court's requirement that Nazref McGill pay \$200 in attorney fees must be stricken in light of the repeal of the statute authorizing juvenile courts to order the payment and the juvenile court's failure to determine Nazref had the ability to pay.

The juvenile court's authority to sentence a juvenile offender is provided by statute. Shortly before Nazref's disposition hearing, the Legislature repealed the statute authorizing the juvenile court to require a juvenile or his parents to repay the costs of court-appointed counsel,

effective after the disposition date. The juvenile court required Nazref to pay \$200 for the costs of his attorney. The Court should apply the repeal of the recoupment statute retroactively to Nazref's case. In the alternative, the recoupment should be stricken because the juvenile court did not inquire into Nazref's ability to pay and the record demonstrates he had no income or financial resources.

- a. The repeal of RCW 13.40.145 applies to Mr. McGraw's case.

Before Nazref's juvenile disposition hearing, the Legislature repealed RCW 13.40.145, which authorized juvenile courts to require offenders to pay the costs of appointed counsel. Laws of 2015, ch. 265 §39. The repeal was part of a comprehensive act designed to reduce barriers to successful entry into adult life for low income youth by, among other means, eliminating most legal financial obligations for juvenile offenders. *Id.* at § 1; House Final Bill Report, E2SSB 5564 at 4-5. The act included a new law that makes it clear that "cities, towns, and counties may not impose any legal financial obligations, fees, fines, or costs associated with juvenile offenses unless there is express statutory authority for those legal financial obligations, fees, fines, or costs." RCW 13.40.0001. The bill was delivered to the Governor on

April 23. The Governor vetoed one section not relevant to this case and signed the bill on May 14. Nazref was sentenced on May 19.

This Court should hold that the juvenile court lacked statutory authority to order Nazref to pay recoupment because (1) repealing acts apply retroactively, (2) remedial legislation applies retroactively, and (3) the repeal of Former RCW 13.40.145 is remedial and should apply to Nazref's case because his appeal is pending when the repeal became effective.

Repealing legislation operates retrospectively. Cazzanigi v. General Electric Credit Corp., 132 Wn.2d 433, 938 P.2d 819 (1997); Seattle Rendering Works, Inc. v. Darling-Delaware Co., Inc., 104 Wn.2d 15, 19, 701 P.2d 502 (1985); Lau v. Nelson, 89 Wn.2d 772, 774, 575 P.2d 719 (1978), overruled on other grounds, Roberts v. Johnson, 91 Wn.2d 182, 588 P.2d 201 (1978).

While the general rule is that statutes are presumed to operate prospectively, rather than retrospectively, as to repealing acts the rule is different. As a general rule, such statutes terminate all rights dependent upon the repealed statute and all proceedings based upon it.

Lau, 89 Wn.2d at 774.

An exception exists for “vested rights or rights of a common law nature.” Lau, 89 Wn.2d at 774 (repeal of host-guest statute did not

impose new liability on respondents because statute was identical to liability existing at common law); Ward II v. Washington State University, 39 Wn. App. 630, 632, 695 P.2d 133 (1985) (student had no vested right in resident tuition when exception for military personnel was repealed). There is no common law or vested right to collect attorneys fee from indigent juvenile offenders. Instead, Washington courts derive their sentencing authority from the Legislature. In re Postsentence Review of Leach, 161 Wn.2d 180, 184, 163 P.3d 782 (2007); State v. Ammons, 105 Wn.2d 175, 180, 713 P.2d 719, 718 P.2d 796 (1986). The juvenile court's sole authority to order Nazref to pay for his court-appointed counsel was the repealed statute, RCW 13.40.145.

Second, a statute that is remedial in nature applies retroactively. Macumber v. Shafer, 96 Wn.2d 568, 570, 637 P.2d 645 (1981). The repeal of RCW 13.34.145 was part of a comprehensive remedial statute and therefore should apply retroactively. The title of the Act is "An act relating to decreasing the barriers to successful community participation for individuals involved within the juvenile justice system." E2SSB 5564. The Act begins with the legislative finding that

legal financial obligations disproportionately affect low-income youth and make it difficult for them to successfully participate in society:

The legislature finds that requiring juvenile offenders to pay all legal financial obligations before being eligible to have a juvenile record administratively sealed disproportionately affects youth based on their socioeconomic status. Juveniles who cannot afford to pay their legal financial obligations cannot seal their juvenile records once they turn eighteen and oftentimes struggle to find employment. By eliminating most nonrestitution legal financial obligations for juveniles convicted of less serious crimes, juvenile offenders will be better able to find employment and focus on making restitution payments first to the actual victim. This legislation is intended to help juveniles understand the consequences of their actions and the harm that those actions have caused others without placing insurmountable burdens on juveniles attempting to become productive members of society. . . .

Laws of Washington, ch. 265, §1 (emphasis added). The remedial nature of this act also shows that this Court should apply it retroactively. See Macumber, 96 Wn.2d at 570 (amendment increasing dollar amount of homestead exemption was remedial and applied retroactively).

Finally, when the court announces a new legal ruling that is not retroactive, the ruling applies prospectively to all cases not yet final. State v. Hanson, 151 Wn.2d 783, 791, 91 P.3d 888 (2004); In re Personal Restraint of St. Pierre, 118 Wn.2d 321, 326, 823 P.2d 492

(1992). Even if this Court concludes that the repeal of RCW 13.40.145 applies only prospectively, it should be applied to Nazref's case because his appeal is not yet final.

This Court should apply the repeal of Former RCW 13.40.145 to Nazref's case and strike the requirement that he pay recoupment.

- b. Even if the juvenile court had the authority to impose recoupment, it improperly imposed recoupment without considering Nazref's ability to pay.

Former RCW 13.40.145 permitted the juvenile court to impose recoupment after hearing from the respondent and his parents about their ability to pay the costs of court-appointed counsel. Even if former RCW 13.40.145 applies to Nazref's case, the recoupment should be stricken because the juvenile court ordered Nazref to pay recoupment without any inquiry into his ability to pay.

Former RCW 13.40.145 authorized the juvenile court to impose the costs of court-appointed counsel only after a hearing where the juvenile, his parents or other people legally obligated to support him may appear and the court "may inquire into the ability of those persons to pay a reasonable sum representing in whole or in part the fees for legal services provided by publicly funded counsel." RCW 13.34.150.

Here, the court made no inquiry into Nazref's ability to pay for his court-appointed attorney.

The record before the juvenile court showed Nazref did not have the ability to pay recoupment. Nazref was incarcerated at Green Hill at the time of the fact-finding hearing and disposition hearings, and the court sentenced him to an additional term of incarceration. RP 9, DispoRP 2. The juvenile court has also reviewed Nazref's declaration in support of his motion to appeal at public expense. DispoRP 5. The declaration revealed Nazref had no income and no property, and the court signed the proposed order of indigency. SuppCP 22-26; DispoRP 5.

The constitutional right to equal protection is at issue when an indigent person is ordered to pay recoupment that he cannot afford. Fuller v. Oregon, 417 U.S. 40, 47-50, 94 S. Ct. 2116, 40 L. Ed. 2d 642 (1974); James v. Strange, 407 U.S. 128, 140-41, 92 S. Ct. 2027, 32 L. Ed. 2d 600 (1972). Upholding Oregon's recoupment statute, the Fuller Court noted that "Oregon's legislation is tailored to impose an obligation only upon those with a foreseeable ability to meet it, and to enforce that obligation only against those who actually become able to meet it without hardship." Fuller, 417 U.S. at 53-54.

Importantly, the Oregon statute required the court to review the defendant's financial resources prior to ordering him to pay recoupment and to order recoupment only if the defendant "is or will be able to pay." Fuller, 417 U.S. at 45 (quoting former Or.Rev.Stat. § 161.655(3)). "No requirement to repay may be imposed if it appears at the time of sentencing that 'there is little likelihood that a defendant's indigency will end.'" Id. Nazref was indigent at the time of his disposition hearing, and the evidence shows his indigency was not likely to soon end.

The statute authorizing superior courts to order adult offenders to pay recoupment and other costs associated with prosecuting their case forbids the court from ordering costs "unless the defendant is or will be able to pay them." RCW 10.01.160(3); State v. Blazina, 182 Wn.2d 827, 837-38, 344 P.3d 680 (2015). "The record must reflect that the trial court made an individualized inquire into the defendant's current and future ability to pay." Blazina, 182 Wn.2d at 838.

Although the Blazina Court held that an error in imposing court costs is not a constitutional issue that can be raised on appeal pursuant to RAP 2.5, the Court nonetheless reviewed the issue in light of national and local "cries for reform of broken LFO [legal financial

obligation] systems.” Blazina, 182 Wn.2d at 834-35. The Blazina Court voiced concerns about the impact that legal financial obligations have on the indigent defendants and their ability to successfully reenter society. Id. at 835-37. For example, because indigent offenders cannot pay off their legal financial obligations and the obligations are subject to a high rate of interest, the offenders are under the court’s jurisdiction for a lengthy period of time which negatively impacts their ability to obtain employment or housing. Id. at 684.

The court ordered Nazref to pay recoupment without any inquiry into his ability to pay and without a written finding of ability to pay.² Given his complete lack of income and resources, the order violates his right to equal protection. In light of the Legislature’s comprehensive overhaul of the imposition of legal financial obligations on juveniles and the Blazina Court’s concern about the long-term impact of court costs on indigent offenders, this Court should exercise its discretion and review this issue.

² In the cases before the Blazina Court, the superior court judges had signed boilerplate written finding that the defendants had the ability to pay the imposed costs, but had never made an individualized inquiry into each defendant’s ability to pay. Blazina, 182 Wn.2d at 831, 832.

- c. This Court should strike the requirement that Nazref pay the costs of court-appointed counsel.

This Court should strike the requirement that Nazref pay the costs of his court-appointed counsel in light of the recent repeal of the statute authorizing the juvenile court to order him to pay recoupment. The recoupment requirement should also be stricken because the juvenile court made no inquiry into Nazref's ability to pay the costs of counsel and the record shows he had no income or other financial resources.

- 3. The juvenile court's requirement that Nazref McGill pay a \$100 victim penalty must be stricken in light of the amendment of RCW 7.68.035(2) limiting the penalty assessment for juvenile offenders to serious violent offenses.**

The comprehensive legislation eliminating the juvenile court's authority to require an offender to pay recoupment also amended RCW 7.68.035, the statute governing victim penalty assessments. As of July 24, a \$100 penalty assessment may only be imposed on juveniles who commit most serious offenses or sex offenses. RCW 7.68.035(2). This remedial statute applies to Nazref's case, and the penalty assessment should be stricken.

RCW 7.68.035(2) currently reads:

When any juvenile is adjudicated of an offense that is a most serious offense as defined in RCW 9.94A.030, or a sex offense under 9A.44 RCW, there shall be imposed upon the juvenile offender a penalty assessment. The assessment shall be in addition to any penalty or fine imposed by law and shall be one hundred dollars for each case or cause of action.

Laws of 2015 ch. 265 § 8. Custodial assault is not a most serious offense or a sex offense. RCW 9.94A.030(33); RCW 9A.36.100. The current statute does not give the juvenile court the authority necessary to order Nazref to pay the penalty assessment.

A statutory amendment applies retroactively if it is remedial and retroactive application will further its remedial purpose. In re FD Processing, Inc., 119 Wn.2d 452, 460, 463, 832 P.2d 1303 (1992); Macumber, 96 Wn.2d at 570. The amendments are part of Laws of 2015, chapter 265, the remedial legislation described in Argument 2. See Laws of Washington, ch. 265 § 1. Applying the recent amendments to RCW 7.68.035 to an indigent juvenile offender like Nazref will further its remedial purpose of helping low-income youth become productive members of society.

The amendments to RCW 7.68.035 are remedial, and this Court should find they apply retroactively to Nazref and strike the requirement that he pay a \$200 penalty assessment.

E. CONCLUSION

The State did not prove beyond a reasonable doubt that Nazref McGill committed custodial assault, and his juvenile adjudication should be reversed and dismissed. In the alternative, this Court should apply recent legislation retroactively and strike the requirements that Nazref pay \$200 for the costs of court-appointed counsel and a \$100 victim penalty assessment.

DATED this 2nd day of November.

Respectfully submitted,

s/Elaine L. Winters
Elaine L. Winters – WSBA # 7780
Washington Appellate Project
1511 Third Ave., Suite 701
Seattle, WA 98101
(206) 587-2711
(206) 587-2710 (FAX)
wapofficemail@washapp.org

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

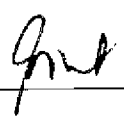
STATE OF WASHINGTON,)	
)	
Respondent,)	
)	NO. 47615-1-II
v.)	
)	
N.M.,)	
)	
Juvenile Appellant.)	

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375 SW 11 TH ST
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Washington Appellate Project
701 Melbourne Tower
1511 Third Avenue
Seattle, WA 98101
Phone (206) 587-2711
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