SUPREME COURT NO. 95711-8

NO. 34924-1-III

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

NATHAN CALVERT,

Petitioner.

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

The Honorable James Triplet, Judge

PETITION FOR REVIEW

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RULES, STATUTES AND OTHER AUTHORITIES

A. IDENTITY OF PETITIONER/COURT OF APPEALS DECISION

Petitioner Nathan John Calvert, the appellant below, seeks review of the Court of Appeals decision in State v. Calvert, noted at 2 Wn. App. 2d 1010, 2018 WL 461094, No. 34924-1-III (Jan. 18, 2018), following the denial of his motion for reconsideration on February 22, 2018.

B. ISSUES PRESENTED FOR REVIEW

1. The State bears the heavy burden to prove that Calvert understood and knowingly, voluntarily, and intelligently waived his rights under Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966). Did the State fail to carry this burden where a police officer (a) read the Miranda warnings immediately after Calvert was attacked by a police dog and (b) did not receive any acknowledgment, understanding, or waiver from Calvert because, by the officer's own admission, Calvert was paying no attention to the Miranda warnings given that he had just been attacked by a police dog?

2. Did the trial shift the burden to Calvert to prove he did not understand or waive his rights when it concluded, "The defendant was advised of his constitutional rights," "Although the defendant did not verbally acknowledge those rights, there is no evidence that he didn't understand these rights," "The State has established that the defendant underst[oo]d these rights when he made statements," and "These statements

were knowing, voluntary and intelligent"? CP 96 (conclusions of law 3.2, 3.3, 3.4, and 3.5).

3. Did the Court of Appeals endorse the erroneous burden-shifting discussed in the immediately preceding issue statement by ignoring the surrounding circumstances and instead concluding Calvert understood and waived his rights merely because he speaks English and did not appear to be under the influence of any controlled substances?

C. STATEMENT OF THE CASE

The State charged Calvert with residential burglary, possession of a stolen motor vehicle, attempt to elude a police vehicle, failure to remain at the scene of an accident, and possession of a controlled substance. CP 1-2.

The charges arose from a series of incidents on August 16, 2015. The Zuniga-Aguilera family returned in the evening after being away all day. RP 107-08. Luis Zuniga arrived 10 minutes ahead of the rest of the family, opened the garage, and then forgot to close it before he parked his car on the street. RP 107-08. Sofia Aguilera entered the garage, noticed someone emerging from behind a trailer, and screamed for help. RP 115, 117-18. The man in the garage was doing "nothing" in the garage and immediately ran. RP 108, 122, 127, 133, 141. Several family members gave chase but were unable to locate the man. RP 108, 137, 141-43.

Spokane sheriff's corporal Jeff Thurman was dispatched to the Zuniga-Aguilera household and noticed a vehicle travelling with no headlights. RP 71. He assumed the car was involved in the burglary and gave chase; he testified the vehicle was driving at least 60 miles per hour. RP 72-73. The vehicle lost control, skidding into a parked vehicle on the side of the road. RP 74-75. The driver ran from the car, Thurman loosed his police dog, and the dog tracked and bit the driver. RP 77-78.

Police bought Sofia Aguilera and Mayra Aguilar to a show-up identification. Calvert was surrounded by police officers, had a police light shining on him, was handcuffed, and had just been mauled by a police dog. RP 119, 123-24. Aguilar said she recognized Calvert's clothing but not his face. RP 128. Aguilera identified Calvert as the garage intruder. RP 119.

Before trial, Calvert pleaded guilty to possession of a stolen motor vehicle, failure to remain at the scene of an accident, and possession of a controlled substance. CP 7-13. Calvert proceeded to trial on the burglary and attempting to elude a police vehicle charges.

Pursuant to CrR 3.5, Calvert disputed the admission of his statements to police based on the failure of law enforcement to secure a knowing, voluntary, and intelligent waiver of Miranda rights.

Officer Clay Hilton read Miranda warnings. RP 27. However, he testified Calvert was not paying any attention to the advisement but instead

yelling about the dog attack. RP 28. Hilton asked Calvert if he understood his rights but Calvert did not acknowledge the question or respond in any way. RP 27, 30. Calvert "really wasn't paying much attention to [Hilton] at that point." RP 27. Hilton could say only that there was no indication Calvert did not hear or understand the warnings, even though he also testified Calvert was focused entirely on the dog attack. RP 27, 31-32. Calvert never acknowledged or expressly waived Miranda rights.

Although police had no indication Calvert understood or waived his rights against self-incrimination or to counsel, Thurman questioned Calvert in the hospital about 20 minutes later, where Calvert was receiving medical treatment for the dog bites. RP 37-38. Thurman stated he did not advise Calvert of his Miranda rights before commencing the hospital questioning because Hilton had already read the Miranda warnings. RP 37-38.

Calvert then confessed to stealing the vehicle and to stealing several items of property located inside the vehicle. RP 79-80; CP 95 (finding of fact 2.10). Calvert also confessed he was in the garage when the homeowners arrived "and he knew he was done because [police] got into the area quickly." RP 82; CP 95 (finding of fact 2.12).

The trial court determined Calvert had properly been advised of Miranda rights and knowingly, voluntarily, and intelligently waived them. CP 95-96. Even though there was no indication Calvert heard or understood

the rights and therefore no indication Calvert was responding to the reading of the rights, the trial court found, "In response to Deputy Hilton's questions, the defendant yelled at Corporal Thurman about the dog bit." CP 95 (finding of fact 2.6). The trial court ultimately concluded, "Although the defendant did not verbally acknowledge those rights, there is no evidence that he didn't understand these rights," thereby placing the burden of proving nonwaiver and nonunderstanding on Calvert. CP 96 (conclusion of law 3.3). Therefore, the trial court admitted Calvert's statements about the stolen car, property, presence in the garage, and "I knew I was done" comment in the State's case-in-chief. RP 57.

The jury found Calvert guilty of residential burglary and attempting to elude a police vehicle. CP 87, 89; RP 255, 257-60.

Calvert appealed. CP 117-18. Among other things, he argued that the State failed to prove Calvert understood and knowingly, voluntarily, and intelligently waived his rights to silence and to counsel before police interrogated him. Br. of Appellant at 8-13. He asserted that the error was not harmless as to his residential burglary charge. Br. of Appellant at 14-16.

The Court of Appeals relied on the officer's testimony that there was not "any indication that [Cavlert] did not hear you or did not understand that you were reading him his rights," to "establish[] that Calvert heard his Miranda rights" and "also understood those rights." Appendix at 5. The

Court of Appeals also relied on the fact that Calvert speaks English and did not appear to be under the influence of drugs at the time of arrest to find his waiver knowing, voluntary, and intelligent. Appendix at 5-6. In its legal analysis, the Court of Appeals did not so much as mention the fact that Calvert had just been attacked by a police dog when he supposedly understood and waived his Miranda rights.

D. ARGUMENT IN SUPPORT OF REVIEW

REVIEW IS NECESSARY TO DISABUSE THE COURT OF APPEALS OF THE NOTION THAT MERELY SPEAKING ENGLISH AND BEING SOBER ESTABLISHES A KNOWING, VOLUNTARY, AND INTELLIGENT WAIVER OF MIRANDA RIGHTS

When a police officer read Miranda warnings, Calvert had just been attacked by a police dog and was focusing on his wounds and yelling at the officer who sicked a police dog on him. The officer who read the warnings testified explicitly that Calvert was not paying attention to him. When this officer asked Calvert whether he understood his rights, Calvert did not acknowledge the question and continued yelling about the dog attack. Because neither his words nor conduct remotely indicated he heard, understood, or acknowledged his rights to silence and counsel, the State failed to carry its heavy burden to show Calvert knowingly, voluntarily, and intelligently waived these rights when an officer later interrogated him in his hospital bed. Calvert's statements must be suppressed.

The Fifth Amendment and article, section 9 prohibit any person from being compelled to testify or give evidence against himself. To honor this right, when placing an individual under custodial arrest, the police must inform the individual that he has a right to remain silent and to have attorney present during any questioning. Miranda, 384 U.S. at 479. "Under Miranda and its progeny, the State bears the burden of demonstrating that a suspect knowingly and intelligently waived his Miranda rights before it may introduce incriminating statements made during the course of custodial interrogation." State v. Mayer, 184 Wn.2d 548, 556, 362 P.3d 745 (2015). "'Only if the "totality of circumstances surrounding the interrogation" reveal both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the Miranda rights have been waived.'" Id. (quoting Moran v. Burbine, 475 U.S. 412, 421, 106 S. Ct. 1135, 89 L. Ed. 2d 410 (1986) (quoting Fare v. Michael C., 442 U.S. 707, 725, 99 S. Ct. 2560, 61 L. Ed. 2d 197 (1979))).

"[A] valid waiver will not be presumed simply from the fact that a confession was in fact eventually obtained." State v. Adams, 76 Wn.2d 650, 670, 458 P.2d 558 (1969), rev'd on other grounds, 403 U.S. 947, 91 S. Ct. 2273, 29 L. Ed. 2d 855 (1971); accord State v. Haverty, 3 Wn. App. 495, 496, 475 P.2d 887 (1970) ("[A]dditional evidence is required to show that the defendant understood his rights and relinquished them . . . ."). Although

no express statement of understanding and waiver by the suspect is required, "[t]he circumstances under which a statement is made, of course, must clearly show that it was made voluntarily, knowingly, and intelligently with full awareness by the accused of his rights." Adams, 76 Wn.2d at 671 (emphasis added); see also Berghuis v. Thompkins, 560 U.S. 370, 384-85, 130 S. Ct. 2250, 176 L. Ed. 2d 1098 (2010) (explaining requirements for implied waiver of Miranda rights). "The courts must presume that a defendant did not waive his rights[.]" North Carolina v. Butler, 441 U.S. 369, 373, 99 S. Ct. 1755, 60 L. Ed. 2d 286 (1979).

A trial court's CrR 3.5 findings will be upheld on appeal if they are supported by substantial evidence. State v. Radcliffe, 164 Wn.2d 900, 907, 194 P.3d 250 (2008). Substantial evidence exists where there is a sufficient quantity of evidence in the record to persuade a fair-minded, rational person of the truth of the finding. State v. Hill, 123 Wn.2d 641, 644, 870 P.2d 313 (1994). Appellate courts review de novo whether the trial court derived proper conclusions of law from its findings of fact. State v. Armenta, 134 Wn.2d 1, 9, 948 P.2d 1280 (1997).

The trial court found that Calvert "did not verbally acknowledge that his rights had been read and that he understood them." CP 95. Indeed, the record does not even show that Calvert heard the Miranda warnings, let

alone acknowledged, understood, or knowingly, voluntarily, and intelligently waived them.

Police testimony establishes as much. Deputy Clay Hinton testified, "While we were waiting for medics, I advised him of his rights. He started yelling at Corporal Thurman and really wasn't paying much attention to me at that point." RP 27 (emphasis added). Hilton did not receive a response from Calvert when he asked Calvert whether he understood his rights. RP 27, 30, 35. The most Hilton could say is that there was no indication that Calvert did not hear or understand the rights. RP 31-32. Of course, Hilton ignored the obvious indications that Calvert did not hear or understand his rights: Calvert had just been attacked by the dog and, as a result, Hilton himself indicated that Calvert was not paying any attention as the Miranda warnings were recited. RP 27.

The trial court misapplied the burden of proof in concluding that Calvert understood and waived his constitutional rights: "Although the defendant did not verbally acknowledge those rights, there is no evidence that he didn't understand these rights."[1] CP 96. This sets out the burden of

[1] The trial court also concluded Calvert's "statements were knowing, voluntary and intelligent." CP 96. However, it is Calvert's waiver, not the statements themselves, that must be knowing, voluntary, and intelligent. Along similar lines, the trial court found Calvert "was placed in handcuffs and almost immediately advised of his constitutional rights by Deputy Hilton." CP 95. This finding begs the question, as Calvert's entire dispute centers on whether he was adequately advised of his rights.

proof backwards. The State is not entitled to a presumption of waiver when a suspect does not acknowledge constitutional rights. Rather, the State must prove that Miranda rights are (1) understood and acknowledged and (2) knowingly, voluntarily, and intelligently waived. Berghuis, 560 U.S. at 385; Radcliffe, 164 Wn.2d at 905-06. There is no evidence in this record to which the State can point showing Calvert understood his rights and waived them. By shifting the burden to the defense to show a lack of understanding and nonwaiver, the trial court erred.

The Court of Appeals decision perpetuates this error. The Court of Appeals indicated that Hilton's testimony that there was no "indication that he did not hear you or did not understand that you were reading him his rights," was "sufficient to persuade a fair-minded, rational person that Calvert heard the rights that had been read to him." Appendix at 5. This conflicts with the constitutional precedent that the "prosecution must make the additional showing that the accused understood these rights." Berghuis, 560 U.S. at 384; accord Adams, 76 Wn.2d at 671 (circumstances under which statement made must "clearly show that it was made voluntarily, knowingly, and intelligently with full awareness by the accused of his rights"); Haverty, 3 Wn. App. at 499 ("additional evidence" beyond the fact that a statement was eventually obtained is necessary to demonstrate a valid waiver). The conflict between the Court of Appeals and well established

Washington precedent on the burden of proof merits review under RAP 13.4(b)(1), (2), and (3).

Not only did the Court of Appeals endorse the trial court's misapplication of the burden of proof, it also failed to analyze the surrounding circumstances, somehow completely ignoring the fact that Calvert had just been attacked by a dog in its legal discussion. According to the Court of Appeals decision, "Given Calvert's fluency in English and lack of noticeable impairment at the time of his arrest, we see no evidentiary basis to overturn the trial court's finding that Calvert understood the rights read to him by Detective Hilton." Appendix at 5. Contrary to the Court of Appeals decision, sobriety and English fluency are not sufficient to establish a valid waiver of the rights to silence and to counsel. By ignoring the dog attack in its analysis, the Court of Appeals fails to consider evidence that strongly indicates Calvert neither fully understood nor adequately waived his rights. The Court of Appeals decision conflicts with Supreme Court and Court of Appeals precedent that the record must clearly show that the accused fully understood his rights and voluntarily, knowingly, and intelligently waived them. Mayer, 184 Wn.2d at 556-57; Adams, 76 Wn.2d at 671; Haverty, 3 Wn. App. at 499. RAP 13.4(b)(1), (2), and (3) review is accordingly warranted.

Finally, under RAP 13.4(b)(4), this case presents an issue of substantial public interest that should be determined by the Washington Supreme Court. The Court of Appeals decision not only represents a far departure from controlling law, but also from common sense and basic decency. If officers are permitted to seriously injure suspects and then obtain waivers of important constitutional rights as the suspects scream in agony, then the public will rightly lack confidence in the judiciary as an independent check on executive power. The Court of Appeals' choice not to discuss the circumstances surrounding Calvert's arrest—namely that Calvert had just been attacked by a dog—is astonishing in and of itself. But its conclusion that persons severely injured by police action have knowingly, voluntarily, and intelligently waived their rights based on nothing more their fluency in English and apparent sobriety is simply ridiculous. Such absurdity should not be tolerated in a system that abides by the rule of law, making review appropriate under RAP 13.4(b)(4).

E. CONCLUSION

Because he satisfies all RAP 13.4(b) criteria, Calvert requests that this petition for review be granted.

DATED this 26th day of March, 2018.

Respectfully submitted,

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APPENDIX

FILED
JANUARY 18, 2018
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. NATHAN J. CALVERT, Appellant.	)	No. 34924-1-III UNPUBLISHED OPINION

LAWRENCE-BERREY, A.C.J. — Nathan Calvert appeals his convictions for residential burglary and attempt to elude a police officer. He argues the trial court erred when it denied his motion to suppress his custodial statements. He also argues the trial court erred when it imposed the $200 criminal filing fee as part of the judgment and sentence. We disagree and affirm.

FACTS

Javier Zuniga and Sofia Aguilera returned home one evening to find an intruder in their garage. The intruder fled, and Zuniga's daughter called the police. Spokane County Sheriff's Corporal Jeff Thurman, together with his police K-9, responded to the call.

While en route, Corporal Thurman noticed a car driving without any headlights. He initiated a traffic stop. The car sped to get away, attempted to make a turn, and hit a parked vehicle. The driver, Nathan Calvert, exited the car and ran. Corporal Thurman and his K-9 tracked Calvert and found him beneath a vehicle. The K-9 bit Calvert, and Corporal Thurman placed Calvert under arrest.

Sheriff's Deputy Clay Hilton arrived to assist Corporal Thurman. Deputy Hilton searched Calvert for weapons. Deputy Hilton advised Calvert of his *Miranda*[1] rights. While Deputy Hilton advised Calvert of his rights, Calvert was yelling at Corporal Thurman about his injury. After Deputy Hilton fully advised Calvert of his rights, Deputy Hilton asked Calvert if he understood his rights. Calvert did not respond.

About 20 minutes later, Corporal Thurman went to the hospital to speak with Calvert. Calvert agreed to talk with Corporal Thurman. During the conversation, Calvert admitted that he had been in the garage when Zuniga and Aguilera arrived.

In addition to other charges,[2] the State charged Calvert with residential burglary and attempting to elude a police vehicle. Calvert's defense to the residential burglary

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[1] *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

[2] We do not discuss these other charges because they are unrelated to the subject incident and because Calvert pleaded guilty to them before trial.

charge was that he was not the person in the garage when Zuniga and Aguilar arrived. His defense depended on having the admission he made to Corporal Thurman suppressed.

Calvert scheduled his CrR 3.5 hearing the day of trial. The State presented the testimonies of the arresting officers. Calvert chose not to testify. The trial court denied Calvert's suppression motion. Pertinent to the issue raised on appeal, the trial court found:

> 3.2 The defendant was advised of his constitutional rights.
> 3.3 Although the defendant did not verbally acknowledge those rights, there is no evidence that he didn't understand these rights.
> 3.4 The State has established that the defendant understand [sic] these rights when he made statements on [the] scene and at the hospital.
> 3.5 These statements[3] were knowing, voluntary and intelligent.[4]

Clerk's Paper (CP) at 96.

After trial, the jury found Calvert guilty of residential burglary and attempting to elude a police vehicle. The trial court later entered a judgment of conviction against Calvert, sentenced him, and imposed various financial obligations including a $200 criminal filing fee.

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[3] Both parties acknowledge that the proper inquiry is whether the waiver of *Miranda* rights was knowing, voluntary, and intelligent.

[4] Although these four paragraphs are listed under conclusions of law, they are findings of fact, and we treat them as such. *Hegwine v. Longview Fibre Co.*, 162 Wn.2d 340, 353, 172 P.3d 688 (2007).

Calvert timely appealed.

ANALYSIS

A. KNOWING WAIVER OF *MIRANDA* RIGHTS

Calvert challenges findings 3.3-3.5, set forth above. He argues that substantial evidence does not support the trial court's finding that he knowingly waived his *Miranda* rights. He argues the uncontested evidence establishes he was yelling at Corporal Thurman while Deputy Hilton recited his *Miranda* rights and when Deputy Hilton asked him if he understood his rights, he did not acknowledge that he understood them. Based on this uncontested evidence, he argues the State failed to establish that he heard or understood his rights. And unless he understood his rights, he could not have validly waived them.

A trial court's CrR 3.5 findings of fact will be upheld on appeal if supported by substantial evidence. *State v. Broadaway*, 133 Wn.2d 118, 131, 942 P.2d 363 (1997); *see State v. Radcliffe*, 164 Wn.2d 900, 907, 194 P.3d 250 (2008). Substantial evidence exists where there is a sufficient quantity of evidence in the record to persuade a fair-minded, rational person of the truth of the finding. *State v. Hill*, 123 Wn.2d 641, 644, 870 P.2d 313 (1994).

At the suppression hearing, the State elicited the following testimony from Deputy Hilton concerning whether Calvert heard and understood his *Miranda* rights:

> Q. Was there any indication that he did not hear you or did not understand that you were reading him his rights?
> A. No.

Report of Proceedings (RP) at 31-32. This testimony is sufficient to persuade a fair-minded, rational person that Calvert heard the rights that had been read to him.

A related question is whether the State, having established that Calvert heard his *Miranda* rights, sufficiently established that Calvert also understood those rights. We note that Calvert had no difficulty communicating in English with Corporal Thurman either during the arrest or at the hospital. We also note the trial court's unchallenged finding that at the time of his arrest, Calvert did not appear to have been unduly influenced by any substances. We treat this unchallenged finding as a verity on appeal. *Davis v. Dep't of Labor & Indus.*, 94 Wn.2d 119, 123, 615 P.2d 1279 (1980). Given Calvert's fluency in English and lack of noticeable impairment at the time of his arrest, we see no evidentiary basis to overturn the trial court's finding that Calvert understood the rights read to him by Detective Hilton.

For these reasons, we uphold the trial court's determination that Calvert understood his *Miranda* rights and knowingly waived them when he later spoke with Corporal Thurman at the hospital. The trial court properly denied Calvert's motion to suppress.

B. CALVERT FAILED TO PRESERVE HIS NONCONSTITUTIONAL CHALLENGE TO THE CRIMINAL FILING FEE

Calvert next argues the trial court erred when it imposed the $200 criminal filing fee under RCW 36.18.020(2)(h). He argues the criminal filing fee is a discretionary cost that may not be imposed unless the trial court first inquires into his current and likely future ability to pay.

Calvert did not make this argument to the sentencing court. We generally refuse to consider an argument raised for the first time on appeal unless one of three exceptions applies. RAP 2.5(a). Calvert does not argue that any exception to RAP 2.5(a) applies. We, therefore, refuse to review this claim of error.

C. IMPOSITION OF THE $200 CRIMINAL FILING FEE WAS NOT A MANIFEST ERROR AFFECTING A CONSTITUTIONAL RIGHT

Calvert further argues that imposition of the $200 criminal filing fee violates state and federal equal protection because a criminal defendant is required to pay a criminal

filing fee if convicted, whereas a civil litigant can apply to have the civil filing fee waived in accordance with GR 34.

Calvert did not make this argument to the sentencing court. Nevertheless, RAP 2.5(a)(3) permits an appellate court to review an unpreserved claim of error if it involves a manifest error affecting a constitutional right. Our RAP 2.5(a)(3) analysis involves a two-prong inquiry. First, the alleged error must truly be of constitutional magnitude. *State v. Kalebaugh*, 183 Wn.2d 578, 583, 355 P.3d 253 (2015). Second, the asserted error must be manifest. *Id.*

The first prong is met. Invoking both the state and federal constitutions, Calvert argues there is no rational basis to require all convicted criminal defendants to pay the criminal filing fee but allow some civil litigants to have their filing fee waived under GR 34. Calvert's claim of error therefore is truly of constitutional magnitude.

The second prong is not met. We construe RAP 2.5(a)(3) in a manner that strikes a careful policy balance between requiring objections to be raised so trial courts can correct errors and permitting review of errors that actually resulted in serious injustices to the accused. *Kalebaugh*, 183 Wn.2d at 583. "Manifest" has been described as an error of law "that the trial court should have known." *Id.* at 584. In addition, "manifestness 'requires a showing of actual prejudice.'" *Id.* (internal quotation marks omitted) (quoting

State v. O'Hara, 167 Wn.2d 91, 99, 217 P.3d 756 (2009)). "To demonstrate actual prejudice, there must be a 'plausible showing . . . that the asserted error had practical and identifiable consequences'" in the case. *Id.* (internal quotation marks omitted) (quoting *State v. Kirkman*, 159 Wn.2d 918, 935, 155 P.3d 125 (2007)). By limiting our review of unpreserved constitutional errors to truly constitutional errors that are obvious and resulted in actual prejudice, we strike the proper balance.

Here, it is not obvious that the trial court violated Calvert's state and federal equal protection rights when it imposed the $200 criminal filing fee. Calvert's argument has not been addressed in a published decision by our appellate courts. For this reason, we refuse to review this claim of error.

D. APPELLATE COST AWARD

Calvert requests that we deny the State an award of appellate costs in the event the State substantially prevails. We deem the State the substantially prevailing party. If the State seeks appellate costs, we defer the issue of appellate costs to our commissioner in accordance with RAP 14.2.

Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Lawrence-Berrey, A.C.J.

WE CONCUR:

Siddoway, J.

Pennell, J.

NIELSEN, BROMAN & KOCH P.L.L.C.

March 26, 2018 - 2:00 PM

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