

NO. 46028-9-II

**IN THE COURT OF APPEALS OF THE STATE OF
WASHINGTON,**

DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

DANIELLE A. GRAVES

Appellant.

RESPONDENT'S BRIEF

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TABLE OF CONTENTS

	PAGE
I. ISSUE PRESENTED.....	1
II. SHORT ANSWER.....	1
III. STATEMENT OF FACTS.....	1
IV. ARGUMENT.....	2
A. THE APPELLANT DID NOT OBJECT TO THE IMPOSITION OF LEGAL FINANCIAL OBLIGATIONS AT THE TIME OF SENTENCING; THEREFORE, THE COURT SHOULD NOT CONSIDER THIS ISSUE.	2
B. THE IMPOSITION OF LEGAL FINANCIAL OBLIGATIONS WAS APPROPRIATE.....	3
V. CONCLUSION	5

TABLE OF AUTHORITIES

	PAGE
Cases	
<i>State v. Blazina</i> , 174 Wn. App. 906, 301 P.3d 492 (2013)	2
<i>State v. Curry</i> , 118 Wn.2d 911, 829 P.2d 166 (1992).....	3
<i>State v. Guzman Nunez</i> , 160 Wn. App. 150, 248 P.3d 103 (2011).....	2
<i>State v. Kirkpatrick</i> , 160 Wn.2d 873, 880 n. 10, 161 P.3d 990 (2007), overruled in part on other grounds by <i>State v. Jasper</i> , 174 Wn.2d 96, 271 P.3d 876 (2012).....	2
<i>State v. Kuster</i> , 175 Wn. App. 420, 306 P.3d 1022 (2013).....	2
<i>State v. Lundy</i> , 176 Wn. App. 96, 105, 308 P.3d 755 (2013)	3
<i>State v. Scott</i> , 110 Wn.2d 682, 757 P.2d 492 (1988)), aff'd, 174 Wn.2d 707, 285 P.3d 21 (2012).....	2
Statutes	
RCW 10.01.160	3
Rules	
RAP 2.5(a)	2

I. ISSUE PRESENTED

1. Can the Appellant raise for the first time on appeal that the trial court improperly assessed her legal financial obligations associated with her conviction?
2. Did the trial court error when imposing legal financial obligations upon the Appellant?

II. SHORT ANSWER

1. No.
2. No.

III. STATEMENT OF FACTS

On October 7, 2013, Danielle Graves, the Appellant, was charged by information with Violation of Uniform Controlled Substances Act – Delivery of Methamphetamine within a School Bus Stop Zone. CP 1-2. On January 22, 2014, at the first day of her jury trial, the State filed an amended information that contained the same criminal allegation, but specified the exact date of the offense. CP 5-6; RP 1 at 5. On January 23, 2014, the jury returned a verdict of guilty. CP 7, 8; RP 2B at 422. On March 6, 2014, the Appellant was sentenced to 84 months in prison, 12 months of community custody, and assessed \$4,625 in legal financial obligations. CP 13, 15. The instant appeal timely followed. CP 23.

IV. ARGUMENT

A. THE APPELLANT DID NOT OBJECT TO THE IMPOSITION OF LEGAL FINANCIAL OBLIGATIONS AT THE TIME OF SENTENCING; THEREFORE, THE COURT SHOULD NOT CONSIDER THIS ISSUE.

“RAP 2.5(a) states the general rule for appellate disposition of issues not raised in the trial court: appellate courts will not entertain them.” *State v. Kuster*, 175 Wn. App. 420, 425, 306 P.3d 1022 (2013) (citing *State v. Guzman Nunez*, 160 Wn. App. 150, 157, 248 P.3d 103 (2011) (citing *State v. Scott*, 110 Wn.2d 682, 685, 757 P.2d 492 (1988)), *aff'd*, 174 Wn.2d 707, 285 P.3d 21 (2012)). Furthermore, under RAP 2.5(a), appellate courts can refuse to address an issue sua sponte. *State v. Kirkpatrick*, 160 Wn.2d 873, 880 n. 10, 161 P.3d 990 (2007), *overruled in part on other grounds by State v. Jasper*, 174 Wn.2d 96, 271 P.3d 876 (2012). In fact, in regards to the imposition of legal financial obligations being raised for the first time on appeal, this Court has previously declined to review such claims. *State v. Blazina*, 174 Wn. App. 906, 911, 301 P.3d 492 (2013) (“Because he did not object in the trial court to finding 2.5, we decline to allow him to raise it for the first time on appeal.”)

Additionally, “[n]either RCW 10.01.160 ‘nor the constitution requires a trial court to enter formal specific findings regarding a defendant’s ability to pay [discretionary] court costs.’” *State v. Lundy*, 176 Wn. App. 96, 105, 308 P.3d 755 (2013) (quoting *State v. Curry*, 118 Wn.2d 911, 916, 829 P.2d 166 (1992)). “The State’s burden for establishing whether a defendant has the present or likely future ability to pay discretionary legal financial obligations is a low one.” *Lundy*, 176 Wn. App. at 106. A showing of indigency is the defendant’s burden. *Id.* at 108.

Here, this Court should not review the trial court’s imposition of the legal financial obligations because the Appellant did not object at the time of sentencing. The Appellant’s attempt at shoehorning a constitutional issue into this argument is without merit.

B. THE IMPOSITION OF LEGAL FINANCIAL OBLIGATIONS WAS APPROPRIATE.

If the Court chooses to consider this issue, the trial court’s imposition of legal financial obligations was proper and supported by the record. At the time of sentencing, the Appellant indicated that she received a minimal income and resided in a four bedroom house with her family. RP 2B at 468. Her oldest son, who resided with her, had recently gained employment. RP 2B at 469. As an alternative to confinement in prison, the Appellant suggested the court restrict her movements by having her wear

an electronic monitoring device. RP 2B at 471. The Appellant also informed the court that she was educated and within one year of obtaining a degree to be a youth counselor. RP 2B at 472. The Appellant also had friends and family speak on her behalf. Each one of them described how the Appellant would open her home and provide meals and services for the community. RP 2B at 451-57.

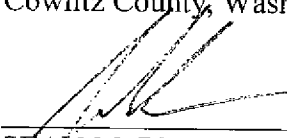
Essentially, the trial court was presented with a defendant who resided in a multiple-roomed home, with family who are employed, a small income, an education with career prospects to follow, and the ability to provide her home, her food, and various services for the community. It is the State's position that what the Appellant presented to the court is clearly a basis to impose the legal financial obligations. These facts were readily available to the trial court at the time of sentencing. Therefore, the record does support the court's imposition of the legal financial obligations.

V. CONCLUSION

Based on the preceding argument, the State respectfully requests the Court to affirm the trial court's imposition of legal financial obligations.

Respectfully submitted this 24th day of November, 2014.

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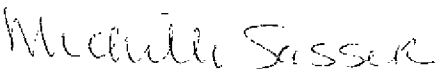
CERTIFICATE OF SERVICE

Michelle Sasser, certifies that opposing counsel was served electronically via the Division II portal:

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I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Kelso, Washington on November 24th, 2014.



Michelle Sasser

COWLITZ COUNTY PROSECUTOR

November 24, 2014 - 3:54 PM

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