No. 46754-2-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

ROBERT WADE NAILLON,

Appellant.

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

BRIEF OF APPELLANT

JAN TRASEN
Attorney for Appellant

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 701
Seattle, Washington 98101
(206) 587-2711

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Washington Supreme Court

Washington Court of Appeals

United States Supreme Court

Washington Constitution

United States Constitution

Statutes

Rules

Other Authorities

A. ASSIGNMENTS OF ERROR

1. The trial court violated Mr. Naillon's right to present a defense when it denied his motion for an independent expert, in violation of the Sixth Amendment to the United States Constitution and Article I, Section 22 of the Washington Constitution.

2. The trial court deprived Mr. Naillon of the right to due process when it denied his motion for an independent expert, in violation of the federal and state constitutions.

3. The trial court interfered with the effective assistance of Mr. Naillon's counsel, when the court refused to approve public funds for the independent laboratory test requested by Mr. Naillon, which was essential to his defense.

4. The trial court violated Mr. Naillon's due process rights and improperly encumbered his right to testify when it ordered a courtroom security officer be posted next to Mr. Naillon while he testified in his own defense.

5. The court erred by imposing legal financial obligations without inquiring into Mr. Naillon's indigence or his ability to pay.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. The Sixth Amendment's guarantee of the right to present a defense and the Fourteenth Amendment guarantee of due process, along with similar guarantees of the Washington Constitution, are violated where a trial court bars a defendant from presenting relevant evidence. Washington courts have concluded that so long as evidence is minimally relevant, the refusal to admit evidence violates a defendant's rights unless the State can establish the relevance is outweighed by potential prejudice to the fairness of the process. Where the trial denied Mr. Naillon's motion for an independent expert, did the court violate Mr. Naillon's right to due process under the United States and Washington Constitutions?

2. The Fourteenth Amendment, as well as CrR 3.1(f), entitle indigent defendants to the appointment of experts at public expense. In addition, the right to the effective assistance of counsel includes the necessary hiring and payment of experts to help defend against the State's charges. Did the trial court err where it refused to permit the independent testing requested by Mr. Naillon, which was essential to his defense? And did the court, in denying his request for an

independent laboratory test, thus deprive him of the effective assistance of counsel?

3. In a criminal trial, an accused has a due process right to testify, which cannot be encumbered by visible, prejudicial security measures. U.S. Const. Amends. V, VI, XIV; Art. I, § 3, 22. Any courtroom security measures must be necessary and supported by facts within the record. Were the protections of due process and the presumption of innocence violated where the court posted a security officer next to Mr. Naillon during his testimony, lacking any individualized findings that he posed a threat of injury, disorderly conduct, or escape, as required by State v. Hartzog, 96 Wn.2d 383, 635 P.2d 694 (1981) and State v. Jaime, 168 Wn.2d 857, 862, 233 P.3d 554 (2010)?

4. Before imposing legal financial obligations, a sentencing court must make an inquiry as to a defendant's ability to pay. This court may address a trial court's failure to conduct this inquiry for the first time on appeal. The trial court here imposed discretionary financial obligations against an indigent defendant, although it did not inquire on the record as to the defendant's ability to pay. Following our Supreme Court's lead, should this Court remand for a proper

determination as to the defendant's ability to pay discretionary legal financial obligations in excess of $4000? State v. Blazina, 344 P.3d 680, No. 89028-5 (Mar. 12, 2015).

C. STATEMENT OF THE CASE

Robert Naillon clearly remembers June 17, 2014, because this was the day that he helped some friends move from their home to a storage unit. RP 268. After finishing this task, Mr. Naillon walked to the Mormon church on 30th Street in Longview, still burdened with a bag containing some of the belongings given to him by his friends. Id.

In the church parking lot, Mr. Naillon saw a familiar car; he thought the rare Cadillac might belong to his mother, since she was a Mormon Church member and drove a similar car. RP 267-68.[1] Finding the Cadillac unlocked, Mr. Naillon explored the car a bit, leaving when a bystander noticed him. RP 207. He took nothing from the car, and walked over to a nearby alley; he did not run or leave the area. Id. at 207, 271-72.

The bystander and her daughter called Longview police, who soon responded to the scene. RP 206-08, 227-28. Officers detained

[1] Both Mr. Naillon and the owner stated the car was a white Cadillac Deville with a "pearly" or "pearlescent" finish. RP 214, 267.

Mr. Naillon, and once he was identified by the eye-witness, officers arrested and searched Mr. Naillon. RP 232, 273-74. Officers recovered a glass pipe containing a small amount of crystalline residue from Mr. Naillon's back pocket. Following testing at the state crime lab, the residue ultimately was determined to contain a small amount of purported methamphetamine. RP 251.

Mr. Naillon was charged with vehicle prowling in the second and degree and violation of the Uniform Controlled Substances Act (VUCSA). CP 23-25.[2]

During pre-trial hearings, Mr. Naillon repeatedly requested independent testing of the "incense burner" recovered from his pocket. RP 12, 19, 26-27, 48-52, 65-66, 85-86, 146-47. At one such hearing, on August 19, 2014, the Honorable Michael Evans explained that Mr. Naillon's request for independent testing was "a fairly common request and that's commonly granted." RP 65-66. The matter was continued and was then transferred to a different judge -- the Honorable Marilyn Haan -- who denied the motion for an independent laboratory test

[2] An additional count of possession of stolen property, as to items in Mr. Naillon's shopping cart allegedly belonging to the local Safeway store, was dismissed by the State before trial. RP 157.

without explanation on September 2, 2014. RP 148.[3] Judge Haan did not hear argument on the motion and made no findings, but simply stated, "I have reviewed the motion and I find absolutely no legal basis that allows you a second test to occur here. So that request is denied." RP 148.

Following a jury trial, Mr. Naillon was found guilty of vehicle prowling and VUCSA. CP 48-49.

He timely appeals. CP 65-79.

D. ARGUMENT

1. THE TRIAL COURT'S DENIAL OF MR. NAILLON'S REQUEST FOR A DEFENSE EXPERT DEPRIVED HIM OF HIS CONSTITUTIONAL RIGHT TO DUE PROCESS, TO PRESENT A DEFENSE, AND TO THE EFFECTIVE ASSISTANCE OF COUNSEL.

The trial court should have granted Mr. Naillon's request for an independent defense expert to test the alleged controlled substance. Such an expert was essential to his defense, and the denial of independent laboratory testing violated Mr. Naillon's right to a fair trial and impermissibly impeded his ability to present a defense. U.S. Const. Amends. VI, XIV; Art. I, § 3.

[3] Judge Evans stated that he personally knew the owner of the Cadillac and could not be fair. RP 68.

a. The Sixth and Fourteenth Amendments guarantee an individual the tools necessary for counsel to present an effective defense.

A person accused of a crime is entitled to the effective assistance of counsel. Strickland v. Washington, 466 U.S. 668, 693, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). It is axiomatic that an accused person who cannot afford to hire private counsel has the right to have appointed counsel represent him at all stages of proceedings. E.g., Gideon v. Wainwright, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963); McCoy v. Court of Appeals of Wisconsin, Dist. 1, 486 U.S. 429, 435, 108 S. Ct. 1895, 100 L.Ed.2d 440 (1988); Evitts v. Lucey, 469 U.S. 387, 395, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985).

This Court has held that the State must provide indigent defendants "with the basic tools of an adequate defense … when those tools are available for a price to other prisoners." State v. Cuthbert, 154 Wn. App. 318, 329, 225 P.3d 407 (2010) (quoting Britt v. North Carolina, 404 U.S. 226, 227, 92 S.Ct. 431, 30 L.Ed.2d 400 (1971)). In Cuthbert, this Court specifically discussed the "constitutional right to the assistance of an expert as provided in CrR 3.1." 154 Wn. App. at 330 (internal quotations omitted); see also State v. Poulsen, 45 Wn.

App. 706, 709, 726 P.2d 1036 (1986) (error not to allow defendant to call own expert witness to establish psychiatric defense).

In Poulsen, an indigent defendant moved for a publicly-funded expert to establish a diminished capacity defense. 45 Wn. App. at 710. This Court held that denying Mr. Poulsen the funds for such an expert witness violated the principles of due process and equal justice. Id. "Justice cannot be equal where, simply as a result of his poverty, a defendant is denied the opportunity to participate meaningfully in a judicial proceeding in which his liberty is at stake." Id. (quoting Ake v. Oklahoma, 470 U.S. at 68, 76, 105 S.Ct. 1087, 84 L.Ed.2d 53 (1985)).

Likewise, in City of Mount Vernon v. Cochran, an indigent defendant sought to call an independent expert witness to challenge the reliability of the BAC (blood-alcohol concentration) testing protocol. 70 Wn. App. 517, 518-19, 855 P.2d 1180 (1993). Because Mr. Cochran sought to pay this expert from public funds, the City objected, arguing Mr. Cochran had not shown: 1) the defense expert's testimony was necessary to an adequate defense; or that 2) the defense expert's testimony was generally accepted in the scientific community. Id. at

519.[4] The Cochran Court upheld the lower court's decision to authorize public funding for the defense expert, noting that the Superior Court had relied in part on the "belief that a defendant with the independent means to hire [an expert] would have done so. This is an appropriate factor to consider in making the discretionary determination of necessity under CrRLJ 3.1(f)." Id. at 526.

Mr. Naillon's case is distinguishable from State v. Heffner, where this Court considered the necessity for an expert in a theft case at a casino. 126 Wn. App. 803, 810, 110 P.3d 219 (2005). In Heffner, this Court found no substantial prejudice to the accused, because he had failed to state why an expert was needed, or to state with any specificity "the aspect of the evidence an expert was needed to rebut." Id. at 809. Here, Mr. Naillon argued repeatedly and specifically that he did not know or believe that the incense burner recovered from him contained any controlled substance. RP 12, 19, 26-27, 48-52, 65-66, 85-86, 146-47. Mr. Naillon's counsel called laboratories and prepared an order

[4] The Cochran Court also found no abuse of discretion in the Superior Court's ruling that included the finding that "most of what he [defense expert] proposes is preposterous, … The other side of the coin is that … I do think that his testimony may be helpful, and I don't think it requires the showing of absolute necessity." 70 Wn. App. at 520 (authorizing appointment of defense expert with showing of "reasonable necessity").

requesting funds for an expert to test the alleged controlled substance, unlike the vague assertions in the Heffner case. RP 65, 85-86. Lastly, Mr. Naillon presented a defense of unwitting possession, which was consistent with his request for re-testing of the alleged residue by a defense expert. RP 315; CP 41.

The trial court's summary denial of Mr. Naillon's motion for an independent expert deprived his counsel of the ability to present an effective defense, calling for reversal by this Court on due process grounds. Poulson, 45 Wn. App. at 710; Cochran, 70 Wn. App. at 519; see Ake, 470 U.S. at 76.

b. The Sixth Amendment guarantees an individual the right to present a defense.

The Sixth Amendment guarantees a defendant the right to present a defense. Davis v. Alaska, 415 U.S. 308, 318, 94 S.Ct. 1105, 39 L.Ed.2d 347 (1974). A defendant must receive the opportunity to present his version of the facts to the jury so that it may decide "where the truth lies." Washington v. Texas, 388 U.S. 14, 19, 87 S.Ct. 1920, 18 L.Ed.2d 1019 (1967); Chambers v. Mississippi, 410 U.S. 284, 294-95, 302, 93 S.Ct. 1038, 35 L.Ed.2d 297 (1973); State v. Jones, 168 Wn.2d 713, 720, 230 P.3d 576 (2010). "[A]t a minimum . . . criminal defendants have . . . the right to put before the jury evidence that might

influence the determination of guilt." Pennsylvania v. Ritchie, 480 U.S. 39, 56, 107 S.Ct. 989, 94 L.Ed.2d 40 (1987).

So long as evidence is minimally relevant,

> ". . . the burden is on the State to show the evidence is so prejudicial as to disrupt the fairness of the fact-finding process at trial." The State's interest in excluding prejudicial evidence must also "be balanced against the defendant's need for the information sought," and relevant information can be withheld only "if the State's interest outweighs the defendant's need."

Jones, 168 Wn.2d at 720 (quoting State v. Darden, 145 Wn.2d 612, 622, 41 P.3d 1189 (2002)) (internal citations omitted).

Both the United States and our own Supreme Courts have rejected the argument that "neutral scientific testing" is as neutral or as reliable as suggested by the State's lone chemical analysis. Melendez-Diaz v. Massachusetts, 557 U.S. 305, 318, 129 S. Ct. 2527, 2536-37, 174 L. Ed. 2d 314 (2009) ("Forensic evidence is not uniquely immune from the risk of manipulation"); State v. Lui, 153 Wn. App. 304, 317-18, 221 P.3d 948, 955 (2009), aff'd, 179 Wn. 2d 457, 315 P.3d 493 (2014).[5] The Melendez-Diaz Court noted its concern that a forensic

[5] One study of cases in which exonerating evidence resulted in the overturning of criminal convictions concluded that invalid forensic testimony contributed to the convictions in 60% of the cases. Garrett & Neufeld, Invalid Forensic Science Testimony and Wrongful Convictions, 95 Va. L.Rev. 1, 14 (2009).

analyst employed by the State "may feel pressure—or have an incentive—to alter the evidence in a manner favorable to the prosecution." 557 U.S. at 318. The Court held that confrontation can ensure accuracy in forensic analysis – so here, can the opportunity to present independent forensic analysis and expert testimony. See Poulson, 45 Wn. App. at 710; Cochran, 70 Wn. App. at 519; Ake, 470 U.S. at 76.

Here, the court rejected, without explanation or findings, Mr. Naillon's motion to have the alleged controlled substance re-tested, and to present an independent expert witness on this subject, which was crucial to his defense. Mr. Naillon repeatedly argued that an independent laboratory test would have shown the substance on the incense burner/pipe was something other than a controlled substance. E.g., RP 12, 26-27, 48-52, 65-66, 85-86.

The trial court should have applied the standard set forth in Jones -- specifically, that the proposed evidence regarding a defense expert was admissible, unless it was "so prejudicial as to disrupt the fairness of the fact-finding process at trial" and that this prejudice

outweighed Mr. Naillon's need for the evidence. See Jones, 168 Wn.2d at 720.

Neither the trial court, nor the State, met that standard. The trial court made no showing of prejudice at all, much less a showing that admission of this relevant evidence would upset the fairness of the proceeding. The trial court's erroneous ruling – lacking findings or a hearing -- deprived Mr. Naillon of his right under the Sixth Amendment and Article 1, section 22 to present a defense.

c. This Court should reverse Mr. Naillon's convictions so that he may have a trial that satisfies his right to present a defense and his right to due process.

A constitutional error requires reversal unless the State can establish beyond a reasonable doubt the error "did not contribute to the verdict obtained." Chapman v. California, 386 U.S. 18, 24, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967); United States v. Neder, 527 U.S. 1, 9, 119 S.Ct. 1827, 144 L.Ed.2d 35 (1999). To meet its burden here, the State must prove beyond a reasonable doubt that none of the jurors could have entertained a doubt as to Mr. Naillon's guilt after hearing scientific evidence from an independent expert witness. Because the State cannot meet that burden, this Court should reverse Mr. Naillon's convictions.

2. THE TRIAL COURT VIOLATED MR. NAILLON'S DUE PROCESS RIGHTS WHEN IT PLACED A COURT OFFICER BESIDE HIM AS HE TESTIFIED, WITHOUT ANY FINDING OF NECESSITY.

a. A trial court may not order security restrictions in the courtroom that prejudice the accused by removing his Due Process presumption of innocence, without compelling cause.

The trial court is vested with discretion to provide for the security of its courtroom. State v. Hartzog, 96 Wn.2d 383, 396, 635 P.2d 694 (1981). However, a court cannot, without compelling cause found on the record, simply order security restrictions in the courtroom that prejudice the accused by removing his due process presumption of innocence before the jury. U.S. Const. amends. V, VI, XIV; Const. Art. I, § 3, § 22; State v. Jaime, 168 Wn.2d 857, 862, 233 P.3d 554 (2010); Hartzog, 96 Wn.2d at 401 (court would abuse discretion to extend "blanket order shackling procedure" to accused due to security concerns at DOC facility, but not due to specific conduct of individual accused found on the record); see Estelle v. Williams, 425 U.S. 501, 503, 96 S.Ct. 1691, 48 L.Ed.2d 126 (1976) (presumption of innocence is basic component of Due Process).

Here, the court did not hold a hearing, and did not make any findings; thus, it did not "make a record of a compelling individualized

threat" posed by Mr. Naillon, before stating it intended to impose a dramatic and noticeable security measure that would prejudice him as dangerous or potentially violent before the jury. State v. Gonzalez, 129 Wn. App. 895, 901-02, 120 P.3d 645 (2005) (citing State v. Hartzog, 96 Wn.2d at 397-98). This determination violated Mr. Naillon's right to testify in his defense unencumbered by an armed and uniformed court officer beside him. RP 262-64.

b. Proposed measures by court personnel and paucity of findings by trial court itself.

Shortly after the State rested its case, there was a discussion in the jury's absence concerning the defense case. RP 260-63. A member of the court staff, referred to only as "Court Officer," initiated a conversation with the court regarding security precautions needed, should Mr. Naillon choose to testify. Mr. Naillon objected to the presence of a court officer beside him at the witness stand, stating that he had no history of being a "flight risk." RP 263. The following colloquy occurred:

> Court Officer: Your Honor, if he's going to testify, one of us is going to --
>
> Judge Haan: We need to have him seated. Well, I'll take the jury out and have you take him up, seat him –

Court Officer: Well, one of us will be standing up there.

Judge Haan: Yeah. Yeah.

Court Officer: Just so that you –

Judge Haan: But what I'm saying is –

Defendant: I have to have somebody near me while I'm up there?

Defense Co.: That would be up to the judge, not me.

Defendant: Ma'am, I feel that that's going to –

Judge Haan: Mr. Naillon, stop. I'm not talking to you at the moment.

Defendant: Well –

Judge Haan: So what I would do is – when he is called – actually when it's planned for him to be called – are you going to put him on next?

Defense Co.: Yes. You want to go first, don't you?

Defendant: It's up to you but I – I don't see how I should have a guard up there by me, I mean it's just –

Court Officer: Because there's an exit door there.

Judge Haan: Okay. The guard is going to be there.

Defendant: I've never been a flight risk. I've never been a flight risk.

Judge Haan: So the question, I guess, are you going to do your opening?

Defense Co.: No, Your Honor. We're just going to do the closing is what we're going to do.

Judge Haan: Okay. All right. So, if you want to go ahead and take him up there at this time, go ahead and seat him.

Court Officer: It's – it's just our procedure, Rob.

RP 262-64 (Mr. Naillon is escorted to witness box and then jury enters).

The trial judge in this case bowed to the requests of the courtroom personnel, failing to make the required inquiry or specific findings and conclusions that Mr. Naillon presented a danger of causing injury, disorderly conduct, or escape. This action violated Mr. Naillon's due process right to testify without the infringement on his rights of a guard standing beside him. See, e.g. Hartzog, 96 Wn.2d at 397-98; see also Jaime, 168 Wn.2d at 862; State v. Finch, 137 Wn.2d 792, 853, 975 P.2d 967 (1999) (trial court abuses its discretion when it relies solely on concerns expressed by a correctional officer as a justification for ordering prejudicial security measures).

c. Because the trial court violated Mr. Naillon's right to testify, this Court should reverse and grant a new trial.

The right of an accused to testify on his own behalf is protected by both the federal and state constitutions. U.S. Const. amends. V, VI, XIV; Const. Art. I §§ 3, 22. Mr. Naillon's defense of unwitting

possession depended on his testimony. The trial court, without a hearing or compelling individualized finding, imposed a highly visible and pointed security measure which deeply prejudiced Mr. Naillon as someone who was potentially dangerous and violent in the judge's view. For this reason, the court's procedure was constitutionally impermissible. Hartzog, 96 Wn.2d at 397-98; Gonzalez, 129 Wn. App. at 901-02.

As the Gonzalez Court held, "The presumption of innocence guarantees every criminal defendant all 'the physical indicia of innocence,' including that of being 'brought before the court with the appearance, dignity, and self-respect of a free and innocent man.'" 129 Wn. App. at 901(quoting Finch, 137 Wn.2d at 792); Holbrook v. Flynn, 475 U.S. 560, 579, 106 S. Ct. 1340, 89 L.Ed.2d 525 (1986) (approving jail guards in courtroom so long as placed at some distance from accused, so as to not suggest defendant has special status as either dangerous or culpable).[6]

[6] Our Supreme Court has also cautioned: "The court's duty to shield the jury from routine security measures is a constitutional mandate." State v. Hutchinson, 135 Wn.2d 863, 887, 959 P.2d 1061 (1998).

Because the trial court failed to make a record of compelling cause or a particularized threat, the court committed reversible error when it infringed upon Mr. Naillon's right to testify. This Court should reverse and grant a new trial.

3. THE TRIAL COURT IMPROPERLY IMPOSED DISCRETIONARY LEGAL FINANCIAL OBLIGATIONS BASED ON AN UNSUPPORTED FINDING THAT MR. NAILLON HAD THE ABILITY TO PAY.

Courts may require an indigent defendant to reimburse the state for only certain authorized costs, and only if the defendant has the financial ability to do so. State v. Blazina, __ Wn.2d __, 344 P.3d 680, 684 (2015) ("the state cannot collect money from defendants who cannot pay"); see also Fuller v. Oregon, 417 U.S. 40, 47-48, 94 S.Ct. 2116, 40 L.Ed.2d 642 (1974); State v. Curry, 118 Wn.2d 911, 915-16, 829 P.2d 166 (1992); RCW 10.01.160(3) ("The court shall not order a defendant to pay costs unless the defendant is or will be able to pay them"). To do otherwise would violate equal protection by imposing extra punishment on a defendant due to his poverty.

a. There is no evidence to support the trial court's finding that Mr. Naillon had the present or future ability to pay legal financial obligations.

"The trial court must decide to impose LFOs and must consider the defendant's current or future ability to pay those LFOs based on the particular facts of the defendant's case." Blazina, 344 P.3d at 683. Only by conducting such a "case-by-case analysis" may courts "arrive at an LFO order appropriate to the individual defendant's circumstances." Id.; RCW 10.01.160(3) (the court shall take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose) (emphasis added).

Here, the court entered a finding on the Judgment and Sentence that Mr. Naillon had the ability to pay LFOs. CP 69-79.[7] This was identical to the standard "boilerplate language" that the Supreme Court found an insufficient assessment of a defendant's inability to pay LFOs in Blazina. 344 P.3d at 681-82.

[7] In the Judgment and Sentence, the court's findings include the statement:

> The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753. CP 54 (J & S §. 2.5).

There was no evidence Mr. Naillon was employed or would be employable following his release from prison. Mr. Naillon was represented by a court-appointed attorney during trial, and the trial court found he remained sufficiently indigent to require appointed counsel on appeal. Yet inexplicably, the court entered a finding on the Judgment and Sentence that he "has the ability or likely future ability to pay the legal financial obligations imposed herein." CP 54. The LFOs in this matter exceed $4000. CP 55.

b. Because the court failed to exercise its discretion in the imposition of LFOs, this Court should remand for resentencing.

Since the recent Blazina decision, the mandate to trial courts has been clarified: judicial discretion must be exercised when the issue of LFOs is considered, and the trial court must consider a defendant's "current or future ability to pay those LFOs based on the particular facts of the defendant's case." Blazina, 344 P.3d at 683. As the Supreme Court noted in the Blazina decision, Washington has been part of the "national conversation" on the equal justice concerns raised by LFO's, as the amount of fines and fees imposed upon conviction vary

greatly by "gender and ethnicity, charge type, adjudication method, and the county in which the case is adjudicated and sentenced."[8]

The court's imposition of legal financial obligations without giving any consideration to a person's ability to pay exacerbates the problems that those released from confinement face, and often leads to increased recidivism.

> It therefore appears that the legislative effort to hold offenders financially accountable for their past criminal behavior reduces the likelihood that those with criminal histories are able to successfully reintegrate themselves into society. Insofar as legal debt stemming from LFOs makes it more difficult for people to find stable housing, improve their occupational and education situation, establish a livable income, improve their credit ratings, disentangle themselves from the criminal justice system, expunge or discharge their conviction, and re-establish their voting rights, it may also increase repeat offending.

Beckett, The Assessment of Legal Financial Obligations in Washington State, at 74.

The Blazina Court also discussed its concern about LFOs inhibiting re-entry for past offenders, noting that LFOs accrue interest at a rate of 12 percent, so that even an individual "who pays $25 per month toward their LFOs will owe the state more 10 years after

---

[8] See Katherine A. Beckett, et al, Washington State Minority and Justice Commission, The Assessment of Legal Financial Obligations in Washington State, 32 (2008); Blazina, 344 P.3d at 684.

conviction than they did when the LFOs were initially assessed." Blazina, 344 P.3d at 684 (citing State Minority and Justice Commission at 22).

The court's imposition of substantial legal financial obligations, even though it knew of Mr. Naillon's ongoing indigence, coupled with the obvious hardship of reentering society after spending time in prison, constitutes significant punishment that violates the right to equal protection of the law, is contrary to statute and case law, and must be reconsidered on remand, giving attention to his financial circumstances.

E. CONCLUSION

For the reasons stated above, Mr. Naillon respectfully asks this Court to reverse his convictions and remand for a new trial. In the alternative, Mr. Naillon asks that this Court remand this case for consideration of his ability to pay legal financial obligations.

DATED this 23rd day of April, 2015.

Respectfully submitted,

s/ Jan Trasen

JAN TRASEN (WSBA 41177)
Washington Appellate Project (WSBA 91052)
Attorneys for Appellant

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

STATE OF WASHINGTON,	)	
	)	
RESPONDENT,	)	
	)	NO. 46754-2-II
v.	)	
	)	
ROBERT NAILLON,	)	
	)	
APPELLANT.	)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 23RD DAY OF APRIL, 2015, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION TWO** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X] RYAN JURVAKAINEN	( )	U.S. MAIL
[appeals@co.cowlitz.wa.us]	( )	HAND DELIVERY
COWLITZ COUNTY PROSECUTING ATTORNEY	(X)	E-SERVICE VIA
312 SW 1ST AVE		COA PORTAL
KELSO, WA 98626-1739		
[X] ROBERT NAILLON	(X)	U.S. MAIL
982980	( )	HAND DELIVERY
STAFFORD CREEK CORRECTIONS CENTER	( )	_____
191 CONSTANTINE WAY		
ABERDEEN, WA 98520		

SIGNED IN SEATTLE, WASHINGTON THIS 23RD DAY OF APRIL, 2015.

X_____

Washington Appellate Project
701 Melbourne Tower
1511 Third Avenue
Seattle, Washington 98101
(206) 587-2711

WASHINGTON APPELLATE PROJECT

April 23, 2015 - 4:02 PM

Transmittal Letter

Document Uploaded: 1-467542-Appellant's Brief.pdf

Case Name: STATE V. ROBERT NAILLON

Court of Appeals Case Number: 46754-2

Is this a Personal Restraint Petition? Yes ■ No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: ____

Answer/Reply to Motion: ____

■ Brief: __Appellant's__

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: ____
Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

Comments:

No Comments were entered.

Sender Name: Maria A Riley - Email: maria@washapp.org

A copy of this document has been emailed to the following addresses:

appeals@co.cowlitz.wa.us