NO. 46819-1-II

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

STATE OF WASHINGTON,

Respondent,

v.

LONZELL GRAHAM,

Appellant.

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

The Honorable Garold E. Johnson, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The trial court erred when it denied appellant's motion to suppress evidence discovered as the result of an illegal traffic stop.

2. RCW 43.43.7541's mandatory DNA-collection fee violates substantive due process when applied to defendants who do not have the ability or likely future ability to pay.

3. RCW 43.43.7541's mandatory DNA-collection fee violates equal protection when applied to defendants who have already paid the fee and had their DNA collected, analyzed, and entered into the DNA database.

4. The trial court erred when it ordered appellant to submit to another DNA collection under RCW 43.43.754.

5. The trial court erred when it entered a discretionary legal financial obligation (LFO) based solely on the mistaken belief that it was mandatory.

6. The trial court erred in entering Finding of Fact 1 (in so far as it states that the stop was based on the officer's training and experience) and Conclusion of Law 4. (CP 64-65).

Issues Pertaining to Assignments of Error

1. The arresting officer testified that his basis for stopping appellant's car was the fact the windshield wipers were parked in the upright position and the windows were too darkly tinted. However, it is not illegal to have windshield wipers parked in the upright position, and the officer had an insufficient basis for determining the degree of the window tint. As such, did the trial court err when it denied appellant's motion to dismiss the evidence seized as a result of this traffic stop?

2. RCW 43.43.7541 requires trial courts impose a mandatory DNA-collection fee each time a felony offender is sentenced.[1] This ostensibly serves the State's interest in funding the collection, testing, and retention of a convicted defendant's DNA profile so this might help facilitate criminal investigations. However, the statute makes it mandatory that trial courts order this fee even when the defendant has no ability to pay the fee. Does the statute violate substantive due process when as applied to

[1] RCW 43.43.754 and 43.43.7541 require the courts to impose a mandatory $100 DNA-collection fee on any offender convicted of a felony or of a specifically designated misdemeanor. For clarity and ease of reading, appellant will refer only to felony defendants in this brief, but the arguments apply equally to defendants sentenced to other qualifying crimes.

defendants who do not have the ability – or the likely future ability – to pay the DNA collection fee?

3. Under RCW 43.43.7541, defendants who have only been sentenced once pay only a single $100 DNA collection fee. However, defendants who are sentenced more than once are statutorily required to pay multiple fees. This is so despite the fact that a defendant's DNA profile need only be collected, analyzed, and entered into the DNA database one time to fulfill the purpose of the statute. As such, is the statute unconstitutional as applied to defendants who are required to pay the DNA-collection fee multiple times?

4. RCW 43.43.754 expressly states a defendant need not provide a DNA sample upon sentencing if he has already provided a sample pursuant to the statute. Where the record sufficiently shows the defendant's DNA has already been collected pursuant to the statute, does the trial court abuse its discretion when it orders a defendant to submit to yet another DNA collection?

5. At sentencing, the trial court expressly stated it did not want to impose any LFOs that were not statutorily mandated. Did the trial court fail to recognize and exercise its discretion when it mistakenly ordered appellant to pay a discretionary court-appointed

attorney fee?

B. STATEMENT OF THE CASE

1. Procedural Facts

On May 20, 2014, the Pierce County prosecutor charged appellant Lonzell Graham with one count of felony violation of a domestic violence no contact order. CP 1-2. A jury found him guilty as charged. CP 25-26. He was given a standard range sentence, ordered to pay certain LFOs, and ordered to provide a DNA sample. CP 52-62; CP 75-76. He timely filed a notice of appeal. CP 71-72

2. Substantive Facts

On May 18, 2014, Graham and his passenger, Tasha Lamb, were driving on Pacific Highway in Milton. RP 55, 65. Officer Donald Hobbs observed the car and noticed the windshield wipers were parked in the upright position. RP 57. He also noticed the tint of the windows was dark. RP 57.

Hobbs initiated a traffic stop. RP 58. He informed Graham why he had stopped the car. RP 59. Graham said the wipers were defective and explained he had paid someone else to tint his windows. RP 59. Hobbs used a tint meter to test the windows and found they were darker than allowed by law. RP 72.

Hobbs took Graham's registration and performed a routine records check. RP 60. He discovered there was a protection order against Graham, and the protected person was Tasha Lamb. RP 61-64. Noting that the passenger was the same race and in the same age range as Lamb, Hobbs returned to the car and asked the passenger for her identification. RP 65. She handed him her Washington ID Card, which confirmed she was Tasha Lamb. RP 65. Graham was arrested. RP 66.

C. ARGUMENT

1. THE TRIAL COURT ERRED WHEN IT FAILED TO SUPPRESS EVIDENCE THAT WAS OBTAINED AS THE RESULT OF AN ILLEGAL TRAFFIC STOP.

Both the Fourth Amendment and article I, section 7 of the Washington Constitution prohibit unreasonable seizures. State v. Kennedy, 107 Wn.2d 1, 4, 726 P.2d 445 (1986). A traffic stop is a seizure. State v. Byrd, 110 Wn. App. 259, 260, 39 P.3d 1010, 1012 (2002).

Warrantless seizures are per se unreasonable, unless an exception to the warrant requirement applies. State v. Ladson, 138 Wn.2d 343, 353, 979 P.2d 833 (1999). The State bears the burden of establishing an exception to the warrant requirement. Id. at 350. One exception is an investigative stop, including a traffic stop, that

is based on a police officer's reasonable suspicion of either criminal activity or a traffic infraction. Terry v. Ohio, 392 U.S. 1, 21, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968); State v. Arreola, 176 Wn.2d 284, 292–93, 290 P.3d 983 (2012). However, a reasonable suspicion exists only when specific, articulable facts and rational inferences from those facts establish a substantial possibility that criminal activity or a traffic infraction has occurred or is about to occur. Ladson, 138 Wn.2d at 350.

The State failed to carry its burden of establishing Officer Hobbs had a reasonable suspicion Graham was committing a traffic infraction when he stopped him.

First, Hobbs testified he stopped Graham because the windshield wipers were in an upright position on the windshield. RP 57. From this alone, he speculated the wipers were defective in violation of RCW 46.37.410(3), under which Hobbs ultimately cited Graham. RCW 46.37.410(3) provides:

> The windshield on every motor vehicle shall be equipped with a device for cleaning rain, snow, or other moisture from the windshield, which device shall be so constructed as to be controlled or operated by the driver of the vehicle. After January 1, 1938, it shall be unlawful for any person to operate a new motor vehicle first sold or delivered after that date which is not equipped with such device or devices in good working order capable of cleaning the windshield

> thereof over two separate arcs, one each on the left and right side of the windshield, each capable of cleaning a surface of not less than one hundred twenty square inches, or other device or devices capable of accomplishing substantially the same result.

Notably, this statutory provision does not require windshield wipers be parked in any specific position on the windshield.[2]

The record establishes Hobbs' decision to initiate the traffic stop was not based on a reasonable suspicion of a windshield wiper violation. This is because there was nothing illegal about having the windshield wipers parked in an upright position, and Hobbs could not rationally infer the wipers were defective from that fact alone.

Hobbs testified it was a sunny dry day. RP 69. Thus, there was no reason for Graham to be using his wipers on that day and it was not unusual to have them parked. RCW 46.37.410(3) requires only that the wipers be capable of cleaning the windshield over two

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[2] RCW 46.37.410(2) requires the driver have a "clear view" out the window free from objects obstructing the driver's view. Officer Hobbs did not cite Graham under this provision. And, as the defense argued, there was no evidence to support this. RP 88. More importantly, the trial court never found Hobbs had a reasonable suspicion Graham had violated the "clear view" provision of the statute and stopped him for this purpose. CP 63-65.

separate arcs of certain specifications. It does not require that wipers be parked in a certain position. So the only way Hobbs could validly stop Graham for a wiper violation under that section would be for him to infer, from the parked position of the wipers alone, that the wipers did not work. Such an inference is not rational, however.

Windshield wipers may meet the functionality requirements under RCW 46.37.410(3) even if the park mechanism is not functioning and the wipers are parked in an upright position. This is because, mechanically speaking, the wiping system can function separately from the parking mechanism. Indeed, the wiper system can function as required under the statute even when the park switch mechanism, the wires connecting to that switch, or the timing censors are defective.[3] As such, an officer's observation that a person is driving with the windshield wipers parked in an upright position does not – standing alone – support a reasonable

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[3] See, e.g., Dan Masters, "Windshield Wiper Motors," at https://docs.google.com/file/d/0B2H2NJt34OffdDhNcWRjRkZOa2s/edit?pli=1 (explaining how the different systems work mechanically and how to troubleshoot a situation where the wipers work but the park mechanism does not); see also, Protect, Grounding Wiper Motor Corrects Parking and Other Problems, at http://my.cardone.com/techdocs/PT%2040-0001.pdf (same).

suspicion that a traffic offense has occurred. The trial court erred in finding otherwise.

Second, Officer Hobbs stated he stopped Graham because his car windows were tinted darker than allowed by law. RP 57. Hobbs testified he knew the tint was too dark based on his "training and experience." RP 58, 80. However, it turns out, the officer had no formal training in tint detection and his experience was based solely on his personal use of the tint meter to determine whether the degree of tint is legal. RP 80. Thus, the reliability of his experience is only as good as the reliability of the tint meter.

The State failed to establish the tint meter Hobbs used is a reliable instrument for measuring the degree of tint in windows. Hobbs admitted: there is no training provided to officers using these instruments; there is no way to preserve the readings of the instruments for review; there are no protocols or WACs establishing how to properly use tint meters; and the particular instrument Hobbs used had not been tested or calibrated since he first employed it in 2011. RP 73-76. This record does not establish the tint meter is reliable. Hence, Hobbs' experience also was not shown to be reliable.

The State failed to prove Officer Hobbs had enough training

or experience to support his suspicion as to the tint degree of Graham's car windows. Unless an officer is shown to have specific training as to how to determine the degree of tint of a car window that is passing by in traffic, or unless the tint meter is shown to be a reliable instrument for providing the officer with the necessary "experience" to reliably recognize tint violations in passing cars, an officer's suspicions as to the illegality of window tints is not a reasonable basis for conducting a traffic stop. This record fails to establish either of those circumstances. Consequently, the trial court erred in finding the stop was valid based on the officer's suspicion of a tint violation.

In sum, the traffic stop was not based on a reasonable suspicion of criminal activity. This invalid stop violated Graham's constitutional rights against illegal seizures. Without the unconstitutional stop, Graham would not have been seized and the protection order violation would not have been discovered. Therefore, the results of the search must be suppressed, and Graham's conviction reversed. Wong Sun v. United States, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963); State v. Canady, 116 Wn.2d 853, 858, 809 P.2d 203 (1991).

2. RCW 43.43.7541 IS UNCONSTITUTIONAL AS APPLIED TO DEFENDANTS WHO DO NOT HAVE THE ABILITY, OR LIKELY FUTURE ABILITY, TO PAY THE DNA-COLLECTION FEE.

The mandatory $100 DNA-collection fee authorized under RCW 43.43.7541 violates substantive due process when applied to defendants who do not have the ability or likely future ability to pay the fine.

(i) Facts

Graham is indigent and was, therefore, provided court-appointed counsel. RP 348-49; CP 77-84. At sentencing, he informed the trial court that he receives social security benefits and has previously been found unable to pay LFOs.[4] RP 349. The defense questioned the imposition of another DNA-collection fee, but the trial court said the fee was mandatory. RP 349.

(ii) Argument

Both the Washington and United States Constitutions mandate that no person may be deprived of life, liberty, or property without due process of law. U.S. Const. amends. V, XIV, § 1; Wash. Const. art. I, § 3. "The due process clause of the Fourteenth

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[4] Graham collects only $721 a month in social security benefits and has no other assets. CP 77-84.

Amendment confers both procedural and substantive protections." Amunrud v. Bd. of Appeals, 158 Wn.2d 208, 216, 143 P.3d 571 (2006) (citation omitted).

"Substantive due process protects against arbitrary and capricious government action even when the decision to take action is pursuant to constitutionally adequate procedures." Id. at 218–19, 143 P.3d 571. It requires that "deprivations of life, liberty, or property be substantively reasonable;" in other words, such deprivations are constitutionally infirm if not "supported by some legitimate justification." Nielsen v. Washington State Dep't of Licensing, 177 Wn. App. 45, 52-53, 309 P.3d 1221, 1225 (2013) (citing Russell W. Galloway, Jr., Basic Substantive Due Process Analysis, 26 U.S.F. L.Rev. 625, 625–26 (1992)).

The level of review applied to a substantive due process challenge depends on the nature of the right affected. Johnson v. Washington Dep't of Fish & Wildlife, 175 Wn. App. 765, 775, 305 P.3d 1130, 1135 (2013). Where a fundamental right is not at issue, as is the case here, the rational basis standard applies. Nielsen, 177 Wn. App. at 53-54.

To survive rational basis scrutiny, the State must show its regulation is rationally related to a legitimate state interest. Id.

Although the burden on the State is lighter under this standard, the standard is not meaningless. Indeed, the United States Supreme Court has cautioned the rational basis test "is not a toothless one." Mathews v. DeCastro, 429 U.S. 181, 185, 97 S.Ct. 431, 50 L.Ed.2d 389 (1976). As the Washington Supreme Court has explained, "the court's role is to assure that even under this deferential standard of review the challenged legislation is constitutional." DeYoung v. Providence Med. Ctr., 136 Wn.2d 136, 144, 960 P.2d 919 (1998) (determining that statute at issue did not survive rational basis scrutiny); Nielsen, 177 Wn. App. at 61 (same). Statutes that do not rationally relate to a legitimate State interest must be struck down as unconstitutional under the substantive due process clause. Id.

Here, the statute mandates all felony defendants pay the DNA-collection fee. RCW 43.43.754. This ostensibly serves the State's interest to fund the collection, analysis, and retention of a convicted offender's DNA profile so this might help facilitate future criminal identifications. RCW 43.43.752-7541. This is a legitimate interest. However, the imposition of this mandatory fee upon defendants who cannot pay the fee does not rationally serve that interest.

There is nothing reasonable about requiring sentencing

courts to impose the DNA-collection fee upon all felony defendants regardless of whether they have the ability – or likely future ability – to pay. This does not further the State's interest in funding DNA collection and preservation. As the Washington Supreme Court recently emphasized, "the state cannot collect money from defendants who cannot pay." State v. Blazina, __ Wn.2d __, __ P.3d __, WL 1086552, at 4 (2015). When applied to such defendants, not only do the mandatory fee orders under RCW 43.43.7541 fail to further the State's interest, they are utterly pointless. It is simply irrational for the State to mandate trial courts impose this debt upon defendants who cannot pay.

In response, the State may argue that – standing alone – the $100 DNA collection-fee is of such a small amount that most defendants would likely be able to pay. The problem with this argument, however, is this fee does not stand alone.

The Legislature expressly directs that the fee is "payable by the offender after payment of all other legal financial obligations included in the sentence." RCW 43.43.7541. This means the fee is paid after restitution, the victim's compensation assessment, and all other LFOs have been satisfied. As such, the statute makes this the least likely fee to be paid by indigent defendants.

Additionally, the defendant will be saddled with a 12% rate on his unpaid DNA-collection fee, making the actual debt incurred even more onerous in ways that reach far beyond his financial situation. Indeed, it actually can impede rehabilitation. Hence, the imposition of mounting debt upon people who cannot pay actually works against another important State interest – reducing recidivism. See, Blazina, __ Wn.2d at __, WL 1086552, at 3-4 (discussing the cascading effect of LFOs with an accompanying 12% interest rate and examining the detrimental impact to rehabilitation that comes with ordering fees that cannot be paid).

In sum, when applied to defendants who do not have the ability, or likely ability to pay, the mandatory imposition of the DNA-collection fee does not rationally relate to the State's interest in funding the collection, testing, and retention of the defendant's DNA. Hence, this Court should find RCW 43.43.7541 violates substantive due process as applied and vacate the order based on Graham's indigent status.

3. RCW 43.43.7541 VIOLATES EQUAL PROTECTION BECAUSE IT IRRATIONALLY REQUIRES SOME DEFENDANTS TO PAY A DNA-COLLECTION FEE MULTIPLE TIMES, WHILE OTHERS NEED PAY ONLY ONCE.

Imposition of the mandatory DNA-collection fee under RCW 43.43.7541 violates equal protection when applied to defendants who have previously provided a sample and paid the $100 DNA-collection fee.

(i) Facts

The parties stipulated to Graham's criminal history. CP 47-49. The stipulation established Graham was convicted of nine prior felony offenses for which he was sentenced on seven different dates. CP 47-49.

At sentencing, the defense questioned the imposition of another DNA-collection fee and informed the trial court that Graham had previously paid that fee. RP 349. The trial court explained it had no choice because the fee was mandatory. RP 349; CP 54.

(ii) Argument

Under the Equal Protection Clause, persons similarly situated with respect to the legitimate purpose of the law must receive like treatment. U.S. Const. amend. XIV; Wash. Const. Art. 1, § 12. A valid law administered in a manner that unjustly

discriminates between similarly situated persons, violates equal protection. State v. Gaines, 121 Wn. App. 687, 704, 90 P.3d 1095, 1103-04 (2004) (citations omitted).

Before an equal protection analysis may be applied, a defendant must establish he is similarly situated with other affected persons. State v. Gaines, 121 Wn. App. 687, 704, 90 P.3d 1095, 1103-04 (2004). In this case, the relevant group is all defendants subject to the mandatory DNA-collection fee under RCW 43.43.7541. Having been convicted of a felony, Graham is similarly situated to other affected persons within this affected group. See, RCW 43.43.754 and .7541.

The next step is determining the standard of review. Where neither a suspect/semi-suspect class nor a fundamental right are at issue, a rational basis analysis is used to evaluate the validity of the differential treatment. State v. Bryan, 145 Wn. App. 353, 358, 185 P .3d 1230 (2008). That standard applies here.

Under rational basis scrutiny, a legislative enactment that, in effect, creates different classes will survive an equal protection challenge only if: (1) there are reasonable grounds to distinguish between different classes of affected individuals; and (2) the classification has a rational relationship to the proper purpose of the

legislation. DeYoung, 136 Wn.2d at 144. Where a statute fails to meet these standards, it must be struck down as unconstitutional. Id.

Here, RCW 43.43.7541 does not apply equally to all felony defendants because those who are sentenced more than once have to pay the fee multiple times. This classification is unreasonable because multiple payments are not rationally related to the legitimate purpose of the law.

Once a defendant's DNA is collected, tested, and entered into the database, subsequent collections are unnecessary. This is because DNA – for identification purposes – does not change. Indeed, the statute itself contemplates this, expressly stating it is unnecessary to collect more than one sample. RCW 43.43.754(2). Hence, there is nothing to collect with respect to defendants who have already had their DNA profiles entered into the database. As to these individuals, the imposition of multiple DNA-collection fees is not rationally related to the purpose of the statute, which is to fund the collection, analysis, and retention of a convicted defendant's DNA.

In sum, RCW 43.43.7541 discriminates against felony defendants who have previously been sentenced by requiring them

to pay multiple DNA-collection fees, while other felony defendants need only pay one DNA-collection fee. The mandatory requirement that the fee be collected from such defendants upon each sentencing is not rationally related to the purpose of the statute. As such, RCW 43.43.7541 violates equal protection, and this Court must vacate the DNA-collection fee order.

4. THE TRIAL COURT ERRED WHEN IT ORDERED GRAHAM TO SUBMIT TO ANOTHER COLLECTION OF HIS DNA.

The sentencing court ordered Graham to submit to DNA collection pursuant to RCW 43.43.754(1). CP 55; CP 75-76. Yet, the record strongly supports the fact that Graham's DNA was already collected pursuant to that statute. CP 47-49; RP 349. Given this record, the trial court abused its discretion when it ordered Graham to submit to yet another collection of his DNA.

A trial court abuses its discretion if its decision is "manifestly unreasonable," based on "untenable grounds," or made for "untenable reasons." State ex rel. Carroll v. Junker, 79 Wn.2d 12, 26, 482 P.2d 775 (1971). "A decision is based on untenable grounds or made for untenable reasons if it rests on facts unsupported in the record or was reached by applying the wrong legal standard." State v. Rohrich, 149 Wn.2d 647, 654, 71 P.3d

638 (2003).

RCW 43.43.754(1) requires a biological example "must be collected" when an individual is convicted of a felony offense. However, RCW 43.43.754(2) expressly provides: "If the Washington state patrol crime laboratory already has a DNA sample from an individual for a qualifying offense, a subsequent submission is not required." Thus, the trial court has discretion as to whether to order the collection of an offender's DNA under such circumstances.

It is manifestly unreasonable for a sentencing court to order a defendant's DNA to be collected pursuant to RCW 43.43.754(1) where the record adequately supports the fact that the defendant's DNA has already been collected. The Legislature clearly recognizes that collecting more than one DNA sample from an individual is unnecessary. Moreover, it is an utter waste of judicial, state, and local law enforcement resources when sentencing courts issue duplicative DNA collection orders. The plain fact is multiple DNA collections are wasteful and pointless.

The record in this case strongly supports the fact that Graham's DNA has previously been collected pursuant to RCW 43.43.754(1). First, the criminal history stipulated to by the parties

established he was convicted of nine prior felony offenses for which he was sentenced on seven different dates. CP 47-49. Second, Graham informed the court that he had previously been ordered to pay the DNA collection fee. RP 349. Third, there was no evidence suggesting Graham's DNA had not been collected and placed in the DNA database. These facts create a strong inference that Graham's DNA was already in the database and, thus, he fell within the parameters of RCW 43.43.754(2). Hence, the trial court erred in ordering him to submit to another collection of his DNA.

In sum, the record establishes Graham was not statutorily required to submit to yet another collection of his DNA and it was pointless to make him do so. Under these circumstances, it was manifestly unreasonable for the sentencing court to impose the requirement. As such, the DNA collection order must be reversed.

5. THE TRIAL COURT ERRED WHEN IT ORDERED GRAHAM TO PAY A "COURT-APPOINTED ATTORNEY FEE" BECAUSE IT MISTAKENLY BELIEVED IT WAS MANDATORY.

The trial court erred when it failed to recognize and exercise its discretion to decline the prosecution's request that Graham be ordered to pay the Pierce County's Department of Assigned Counsel (DAC) recoupment fee.

(i) Facts

At sentencing, the State asked the trial court to impose a $500 DAC fee as a mandatory LFO. This exchange followed:

> THE COURT: DAC recoupment is not mandatory.
> [PROSECUTOR]: I believe she was a conflict through DAC.
> [DEFENSE COUNSEL]: Yes.
> [PROSECUTOR]: And the $200 filing fee. I just wanted to accurately –
> THE COURT: What the court's intent is, is that it be the minimum we can impose and still be consistent with the statute. It makes no sense to burden [Graham] further with financial obligations. He walks out of here and he has another problem. Enough already.

RP 348-49. Apparently believing it was statutorily required to do so, the trial court ordered Graham to pay the $500 DAC fee. CP 54.

(ii) Argument

When sentencing a criminal defendant, the trial court may exercise its discretion and order discretionary LFOs if certain conditions are met. RCW 10.01.160. Here, the trial court erred when it failure to recognize and exercise its discretion regarding the DAC fee. See, State v. Grayson, 154 Wn.2d 333, 335-36 111 P.3d 1183 (2005) (failure to exercise is discretion is an abuse of discretion); State v. Flieger, 91 Wn. App. 236, 242, 955 P.2d 872

(1998) (same).

Trial courts have the discretion as to whether to order the defendant to pay a court-appointed attorney fee. State v. Ralph, 175 Wn. App. 814, 827, 308 P.3d 729, 735 (2013). As the Washington Supreme Court has specifically recognized, Pierce County's DAC recoupment fee is a discretionary LFO. Blazina, __Wn.2d at __,WL 1086552, at 1.[5]

Here, the trial court did not recognize it had discretion to decline the State's proposed DAC fee. Hence, it cannot be said the trial court reasonably exercised its discretion when it imposed the DAC fee. Indeed, the record shows that the trial court would not have imposed the fee had it known it was discretionary. RP 349. This Court, therefore, should vacate the DAC recoupment fee order.

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[5] Graham is unaware of any statute or policy that provides a court-appointed attorney fee becomes mandatory when conflict counsel is appointed. Indeed, case law recognizes as mandatory only the following LFOs: victim restitution, victim assessments, DNA fees, and criminal filing fees. E.g., State v. Lundy, 176 Wn. App. 96, 102, 308 P.3d 755, 758 (2013). Should the State – for the first time on appeal – point to such a policy in its response, Graham requests the opportunity to fully respond.

D. CONCLUSION

For reasons stated above, this Court should reverse the trial court's order denying Graham's motion to suppress and reverse Graham's conviction.

Alternatively, this Court should find RCW 43.43.7541 violates the due process and/or equal protection clauses and vacate the $100 DNA-collection fee order. This Court should also vacate the court's order authorizing the collection of Graham's DNA. Finally, this Court should vacate the erroneously imposed $500 DAC recoupment fee.

Dated this 10th day of April, 2015.

Respectfully submitted

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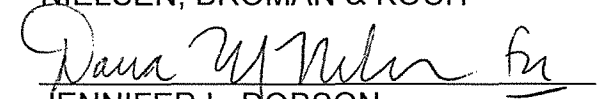

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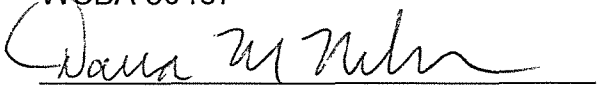

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON Respondent, v. LONZELL GRAHAM, Appellant.	)	COA NO. 46819-1-II

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THAT ON THE 10TH DAY OF APRIL 2015, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

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X Patrick Mayovsky

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