

FILED  
Court of Appeals  
Division II  
State of Washington  
9/28/2018 12:50 PM

NO. 51734-5-II

COURT OF APPEALS OF THE STATE OF WASHINGTON,  
DIVISION II

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STATE OF WASHINGTON,

Respondent,

vs.

SAMMY B. WEAVER,

Appellant.

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BRIEF OF APPELLANT

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## ***ASSIGNMENT OF ERROR***

### ***Assignment of Error***

1. The trial court acted without statutory authority when it imposed a \$250.00 filing fee.

2. The imposition of a crime victim penalty assessment under RCW 7.68.035(1)(a) in this case violated the defendant's constitutional right to equal protection under Washington Constitution, Article 1, § 12, and United States Constitution, Fourteenth Amendment.

### ***Issues Pertaining to Assignment of Error***

1. Does a trial court err if it imposes a filing fee in excess of the amount authorized by the legislature?

2. Does the imposition of a crime victim penalty assessment under RCW 7.68.035(1)(a) for person's solely convicted of a misdemeanor in Superior Court but not in a court of limited jurisdiction violate a defendant's constitutional right to equal protection under Washington Constitution, Article 1, § 12, and United States Constitution, Fourteenth Amendment?

## STATEMENT OF THE CASE

### *Factual History*

During the morning of August 19, 2017, Kyle Ulrich of Belfair drove to his new apartment at 101 NE Byerly Drive in Belfair to unload some of his possessions. RP 45-46, 53. Although his lease did not start until the next day, his landlord gave him permission to move some items in that day. *Id.* The residence into which Mr. Ulrich was moving had three separate bedrooms over which each resident would have exclusive possession, while the kitchen and front room were common areas. RP 47-52. After he arrived, Mr. Ulrich walked up the front steps, approached the door, and then heard glass breaking inside, even though he was told he was currently the only resident. RP 53. Upon hearing this noise he called the sheriff's office, got back in his car, and waited a distance down the street. RP 54.

Within a few minutes a sheriff's deputy arrived and walked up to the residence with Mr. Ulrich. RP 54, 81-82. The deputy then used a key Mr. Ulrich provided, went inside the residence and found the defendant Sammy Weaver laying on the floor in one of the common rooms. RP 81-84. The defendant's cell phone was sitting on a counter plugged into an electrical socket. RP 85. At this point the deputy arrested the defendant, who told him that he was tired and didn't have any place to sleep. *Id.* The

Deputy then searched the home for any other intruders. *Id.* While he did not find anyone else present, he did determine that one of the back windows had recently been broken. *Id.* When Mr. Ulrich went through the residence he found nothing moved or missing, and no damage other than the broken window. RP 67-68.

The defendant later claimed that he had been at a house up the street retrieving a motorcycle that someone had stolen from him, that the thief had taken a shot at him, and that he had retreated to 101 NE Byerly Drive because he had some friends who lived there. RP 99-100. In fact, he claimed that he had previously been in that residence as a guest of those friends about a year previous. RP 99-103. According to the defendant when he knocked on the front door it swung open so he entered, believing that his friends would have no objection to his actions. *Id.*

#### ***Procedural History***

By information filed August 23, 2017, The Mason County Prosecutor charged the defendant Sammy B. Weaver with one count of residential burglary. CP 6-7. The case later went to trial before a jury with the state calling Mr. Ulrich, the deputy who arrested the defendant, and the landlord. RP 44, 69, 80. They testified to the facts included in the preceding factual history. *See Factual History, supra.* In addition, both Mr. Ulrich and the

landlord testified that they had no idea who the defendant was and that the defendant did not have permission to be in the residence. RP 45, 69-77. The defendant then testified as the only witness for the defense and stated that he had entered through the front door, that he had not broken the window, that he believed his friends were still residents, and that he had only stayed inside because he believed his friends would have permitted him to stay. RP 97.113.

After brief rebuttal testimony the court instructed the jury on the charged crime as well as on the lesser included offense of first degree trespassing. RP 125-136; CP 32-50. Following argument and deliberation the jury returned verdicts of “not guilty” to the burglary charge and “guilty” to the lesser included offenses of first degree trespassing. RP 150-154; CP 51-52.

The court later sentenced the defendant to 364 days in jail with 330 suspended with 15 days of the jail time converted to 120 hours of community service. CP 60-62; RP 160-170. The court further ordered the defendant to pay legal financial obligations of a \$250.00 filing fee and a \$500.00 assessment for crime victim compensation fund. *Id.* The defendant thereafter filed timely noticed of appeal. CP 63

## ARGUMENT

### I. THE TRIAL COURT ACTED WITHOUT STATUTORY AUTHORITY WHEN IT IMPOSED A \$250.00 FILING FEE.

A trial court has no inherent authority to sentence a defendant in a criminal case; it is limited to that authority the legislature expressly provides in the applicable statutes. *In re Postsentence Review of Leach*, 161 Wn.2d 180, 184, 163 P.3d 782 (2007). As part of this limitation, a sentencing court may only impose those legal-financial obligations the legislature authorizes. *State v. Hathaway*, 161 Wn.App. 634, 251 P.3d 253 (2011). In addition, since statutes authorizing the imposition of legal-financial obligations are in derogation of common law, courts must strictly construe them. *State v. Moon*, 124 Wn.App. 190, 100 P.3d 357 (2004).

Under RCW 36.18.020(2)(h), the legislature has authorized trial courts to include filing fees as part of the legal-financial obligations a convicted defendant is required to pay. As of the date the defendant committed the offense in this case, this subsection stated:

(2) Clerks of superior courts shall collect the following fees for their official services:

. . . .

(h) Upon conviction or plea of guilty, upon failure to prosecute an appeal from a court of limited jurisdiction as provided by law, or upon affirmance of a conviction by a court of limited jurisdiction, an

adult defendant in a criminal case shall be liable for a fee of two hundred dollars.

RCW 36.18.020(2)(h) (effective 7/1/17 to 6/7/18).

The defendant committed the instant offense on 8/19/17 and was sentenced on 4/18/18. CP 6-7, 60-62. Thus, under RCW 36.18.020(2)(h), as of the date of the commission of the crime in this case and as the date of sentencing, the legislature authorized the imposition of \$200.00 in legal-financial obligations for filing fees. Thus, the trial court erred in this case when it imposed a \$250.00 filing fee.

**II. THE IMPOSITION OF A CRIME VICTIM PENALTY ASSESSMENT UNDER RCW 7.68.035(1)(a) IN THIS CASE VIOLATED THE DEFENDANT'S CONSTITUTIONAL RIGHT TO EQUAL PROTECTION.**

Under the equal protection clauses of both Washington Constitution, Article 1, § 12, and United States Constitution, Fourteenth Amendment, persons similarly situated with respect to the legitimate purpose of the law must receive like treatment. *State v. Coria*, 120 Wn.2d 156, 839 P.2d 890 (1992). In cases which do not involve a suspect class or a fundamental right, courts utilize a rational basis test when analyzing a claimed equal protection violation. *State v. Scherner*, 153 Wn.App. 621, 225 P.3d 248 (2009).

Under the rational basis test, a statute is constitutional if (1) the legislation applies alike to all persons within a designated class; (2)

reasonable grounds exist for distinguishing between those who fall within the class and those who do not; and (3) the classification has a rational relationship to the purpose of the legislation.

*State v. Smith*, 117 Wn.2d 263, 279, 814 P.2d 652 (1991).

For example, in *State v. Martinez*, 85 Wn.2d 671, 538 P.2d 521 (1975), a defendant was convicted under a vagrancy statute that made it illegal for anyone other than a student, parent of a student, or school employee to loiter near a private or public school building. The defendant then appealed, arguing that the statute violated his right to equal protection in that its implementation bore no rational relation to a legitimate stated purpose. The Washington Supreme Court agreed and reversed, stating as follows: "In short, we think it plain that the classifications established in RCW 9.87.010(13) are not substantially related to the statute's ostensible purpose of preventing disruption in the schools. Therefore, we hold RCW 9.87.010(13) is an unconstitutional deprivation of equal protection of the law." *State v. Martinez*, 85 Wn.2d at 684.

In the case at bar, the statute at issue is 7.68.035(1)(a), which states:

(1)(a) When any person is found guilty in any superior court of having committed a crime, except as provided in subsection (2) of this section, there shall be imposed by the court upon such convicted person a penalty assessment. The assessment shall be in addition to any other penalty or fine imposed by law and shall be five hundred dollars for each case or cause of action that includes one or more convictions of a felony or gross misdemeanor and two

hundred fifty dollars for any case or cause of action that includes convictions of only one or more misdemeanors.

RCW 7.68.035(1)(a).

In this statute the legislature has created two classes of persons convicted of misdemeanors: those convicted in superior court and those convicted in a court of limited jurisdiction. Those convicted in superior court have to pay a crime victim compensation fund assessment of \$500.00 (gross misdemeanor) or \$250.00 (simple misdemeanor). Those convicted in a court of limited jurisdiction do not have to pay a crime victim compensation fund assessment. The only distinction between these two classes of defendants who are all convicted of misdemeanors is that in the former class the prosecuting attorney decided to file the charge in superior court while in the latter class the prosecuting attorney decided to file the charge in a court of limited jurisdiction.

Under the decision in *State v. Smith* this class distinction fails to meet the rational basis test. First, there is no reasonable ground for distinguishing between those who are convicted of a misdemeanor in Superior Court as opposed to those convicted of the same offense in a court of limited jurisdiction. Second, there is no distinction between the conduct or culpability of the defendants in either class. The harm to individuals and

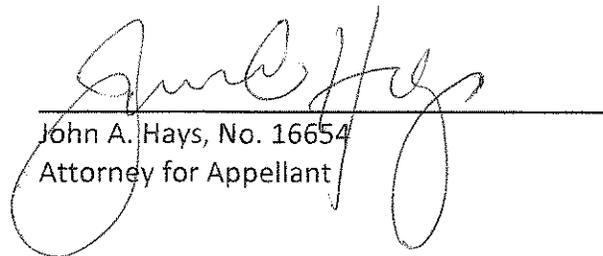
to society is the same regardless of the forum where the offense is prosecuted. Third, since the distinction between the two classes is solely a function of the prosecutor's filing decision, the classification has no rational relationship to any legitimate purpose of the legislation. Consequently, in the case at bar the trial court's imposition of a \$500.00 crime victim compensation fund assessment violated the defendant's right to equal protection under Washington Constitution, Article 1, § 12, and United States Constitution, Fourteenth Amendment. As a result this court should vacate that assessment in this case.

## CONCLUSION

The trial court erred when it imposed a legal-financial obligation exceeding the amount authorized by the legislature. In addition, the trial court's imposition of a crime victim fund assessment in this case violated the defendant's right to equal protection under Washington Constitution, Article 1, § 12, and United States Constitution, Fourteenth Amendment. As a result, this court should order a reduction of the filing fee assessment and order the crime victim fund assessment vacated.

DATED this 28<sup>th</sup> day of September, 2018.

Respectfully submitted,



John A. Hays, No. 16654  
Attorney for Appellant

**APPENDIX**

**WASHINGTON CONSTITUTION  
ARTICLE 1, § 12**

No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations.

**UNITED STATES CONSTITUTION,  
FOURTEENTH AMENDMENT**

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

**RCW 7.68.035(1)**

(1)(a) When any person is found guilty in any superior court of having committed a crime, except as provided in subsection (2) of this section, there shall be imposed by the court upon such convicted person a penalty assessment. The assessment shall be in addition to any other penalty or fine imposed by law and shall be five hundred dollars for each case or cause of action that includes one or more convictions of a felony or gross misdemeanor and two hundred fifty dollars for any case or cause of action that includes convictions of only one or more misdemeanors.

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

(c) When any juvenile is adjudicated of an offense which has a victim, and which is not a most serious offense as defined in RCW 9.94A.030 or a sex offense under chapter 9A.44 RCW, the court shall order up to seven hours of community restitution, unless the court finds that such an order is not practicable for the offender. This community restitution must be imposed consecutively to any other community restitution the court imposes for the offense.

**RCW 36.18.020(2)(h)**  
(effective 7/1/17 to 6/7/18)

(2) Clerks of superior courts shall collect the following fees for their official services:

(h) Upon conviction or plea of guilty, upon failure to prosecute an appeal from a court of limited jurisdiction as provided by law, or upon affirmance of a conviction by a court of limited jurisdiction, an adult defendant in a criminal case shall be liable for a fee of two hundred dollars.

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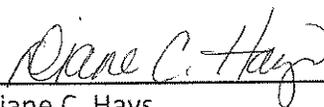
AFFIRMATION  
OF SERVICE

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The under signed states the following under penalty of perjury under the laws of Washington State. On the date below, I personally e-filed and/or placed in the United States Mail the Brief of Appellant with this Affirmation of Service Attached with postage paid to the indicated parties:

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Mason County Prosecuting Attorney  
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2. Sammy B. Weaver  
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Dated this 28<sup>th</sup> day of September, 2018, at Longview, WA.

  
\_\_\_\_\_  
Diane C. Hays

**JOHN A. HAYS, ATTORNEY AT LAW**

**September 28, 2018 - 12:50 PM**

**Transmittal Information**

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**Appellate Court Case Number:** 51734-5  
**Appellate Court Case Title:** State of Washington, Respondent v. Sammy B. Weaver, Appellant  
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