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Court of Appeals
Division II
State of Washington
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NO. 51914-3-II

COURT OF APPEALS OF THE STATE OF WASHINGTON,
DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

TAMARA AVERY,

Appellant.

BRIEF OF APPELLANT

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ASSIGNMENT OF ERROR

Assignment of Error

1. The trial court denied the defendant her right to due process when it sentenced her for possession of methamphetamine with intent to deliver because there was no substantial evidence in the record that the defendant had the intent to deliver the drugs she possessed.

2. The trial court erred when, without consideration of any evidence, it found that the defendant had the future ability to pay legal-financial obligations and when it imposed a criminal filing fee after finding that she was indigent.

Issues Pertaining to Assignment of Error

1. Does a trial court deny a defendant the right to due process if it accepts a verdict for possession of methamphetamine with intent to deliver when no substantial evidence supports the conclusion that the defendant had the intent to deliver the drugs he or she admittedly possessed?

2. Does a trial court err if it imposes a criminal filing fee upon an indigent defendant?

STATEMENT OF THE CASE

Factual History

On January 28, 2016, United States Drug Enforcement Agency (DEA) agents went to defendant Tamara Avery's apartment at 11510 NE 112th Drive in Vancouver to execute a federal warrant that authorized the search of the defendant's apartment, her cell phones and her vehicle for methamphetamine and evidence of methamphetamine distribution. RP 140-143, 184-187.¹ As they approached the area where the defendant lived they saw her walk out to her car, put a purse in the front seat, close the car door and then start to return to her apartment. RP 140-143, 186-188. At that point one of the agents put the defendant into custody and returned her to her apartment with other agents to begin the search. *Id.* At the same time an agent retrieved the purse from the defendant's vehicle. *Id.*

The search of the defendant's apartment produced two cell phones, electronic scales, methamphetamine pipes and various small plastic baggies. RP 188-199. Inside the purse the agents found an HTC cell phone and a locked bag. RP 140-143. Inside the locked bag the agents found two

¹The record on appeal includes five volumes of continuously numbered verbatim reports of the pretrial motions held on 3/16/18, the jury trial held on 3/26/18, 3/27/18 and 3/28/18, and the sentencing hearing held on 4/30/18. They are referred to herein as "RP [page #]."

plastic baggies each with about one-eighth ounce of methamphetamine, as well as four other baggies with smaller amounts of methamphetamine in them. RP 197-212. One eighth of an ounce is approximately 3 grams and is usually referred to as an “eight ball.” RP 213-215. For a typical user of methamphetamine it would be about 30 “doses” although a heavy user would consume it much faster. *Id.* The officers did not claim that they found any methamphetamine in the apartment, any money in the apartment, or any buy and owe sheets in the apartment. RP 139-161, 172-200, 211-219, 257-232. Neither did they claim that they had seen any suspected methamphetamine residue on the scales. *Id.*

A search of the cell phone in the purse and one of the cell phones from the apartment revealed hundreds of text messages exchanged between the defendant and a number of other persons. RP 215-159. The officers believed that at least some of the incoming and outgoing text messages dealt with the buying and selling of methamphetamine. *Id.* The following quotes from a number of those messages:

Tam, where are you? call or text me please, please.

Is this Tamara? This is Rose and David.

Just come get his out . . . ass out of bed. LOL. You are at Upullit. You cans ee if they have any Mustang seats - electric. The wire is sticking through on mine.

I have more.

Call me now, pretty please! Need you bad LOL, J.

Getting a lot of complaints about the last and nor sure on new.
I don't like.

This last isn't . . . it's not the same because I looked at it . . .
because I looked at all then under a black light. It is not . . . if it is it's
not stable and shelf life.

Come look at it with me and bring more if you have so we can
look.

Depends how many they buy and on who's selling them 6-10 a
piece.

Do you have some you're getting rid of?

K. I can trade if she wants to do that.

I was thinking 3 to her and .5 to you for you for doing it.

She has more.

She says she's getting 8-10 a piece for them.

RP 260, 261, 262, 263, 264-265, 267, 269-270, 271, 273.

The defendant's apartment sits within 1,000 feet of both a school
bus stop as well as the perimeter of a school zone. RP 163-171, 455-466.

Procedural History

By information filed March 31, 2016, and later amended on January
31, 2018, the Clark County Prosecutor charged the defendant Tamara Avery

with one count of possession of methamphetamine with intent to deliver within 1,000 feet of a school bus stop or the perimeter of a school zone, and one count of bail jumping from a Class B or C felony. CP 1, 21, 22. The defendant thereafter brought a Motion to Suppress Evidence and a Supplemental Motion to Suppress Evidence arguing that (1) the affidavit given in support of the request for a search warrant did not establish probable cause to search, (2) the affidavit given in support of the request for a search warrant was defective because it was not signed in front of the issuing magistrate, (3) the search of the defendant's vehicle exceeded the scope of the warrant, and (4) the search warrant did not authorize a search of locked containers and the federal Drug Enforcement Agents who searched the locked container in the defendant's purse coerced the defendant into giving them the combination and coerced her consent to the search of that locked container. CP 2-01-247, 249-253; RP 24-32, 31-137. Following two hearings and argument from counsel the trial court denied the motion and supplemental motion. RP 24-32, 101-104. The court later entered the following findings of fact and conclusions of law in support of its decision:

On March 16, 2018 and March 26, 2018, CrR 3.6 hearings were held in this Court before the Honorable Daniel L. Stahnke. The Defendant was present with her attorney of record, Darquise

Cloutier. Deputy Prosecuting Attorney Laurel K. Smith represented the State. The Court reviewed the Application for a Search Warrant authored by Drug Enforcement Administration (DEA) Special Agent Daniel Riley (attached to State's response brief as Exhibit 1) and the Search and Seizure Warrant (attached to State' response brief as Exhibit 2). The Court also reviewed the pleadings of the parties pertaining to this motion to suppress, photographs that were admitted during the hearing on March 26, 2018, and a declaration authored by defense investigator Julia Thornton. On March 26, 2018, the Cout heard the testimony of Special Agent Riley. The Court makes the following findings of fact and conclusions of law.

I. FINDINGS OF FACT

1. The court incorporates all facts in the warrant affidavit and in the ral records pertaining to the hearings, held on March 16 and March 26, 2018.

2. In 2016, the DEA initiated an investigation of the Defendant and her involvement in trafficking methamphetamine in Vancouver, WA. After initiating the investigation, the DEA directed the entire investigation of the Defendant.

3. In September and October of 2015, DEA Special Agent Daniel Riley worked in an undercover capacity and personally purchased multiple ounces of methamphetamine from a subject who was coming and going from the Defendant's apartment at the Reflections at the Park Apartment Complex, located at 11510 NE 112th Drive in Vancouver, WA.

4. At the time of these purchases, the subject was surveilled by other DEA agents, and was seen coming out of the Defendant's apartment prior to meeting with Special Agent Riley, and then seen returning to the Defendant's apartment after meeting with Special Agent Riley.

5. On January 27, 2016, Special Agent Riley obtained a search warrant to search the Defendant's apartment as well as any parking space associated with it. The warrant was signed by United States

Magistrate Judge J. Richard Creatura from the United States District Court for the Western District of Washington.

6. Special Agent Riley was working in the DEA's office in Portland, Oregon at the time that he applied for the warrant and Judge Creatura was working in Tacoma, Washington. Special Agent Riley emailed his warrant application to the Assistant U.S. Attorney who approved it and took it to Judge Creatura for signature. Judge Creatura then called Special Agent Riley and swore him to his affidavit over the phone prior to signing off on it.

7. Prior to applying for the warrant, the DEA had obtained cell phone toll records through the administrative subpoena process. Information from these records was included in Special Agent Riley's warrant application. The DEA was not working at the direction of local law enforcement employed by the State of Washington and were not in an agency relationship with local law enforcement employed by the State of Washington.

8. On January 28, 2016, Special Agent Riley executed the search warrant on the Defendant's apartment. The Defendant's apartment was unit #H53.

9. While on scene, agents searched a vehicle that was in a parking space in front of the Defendant's apartment unit and located a purse that contained a bag that contained several smaller bags of suspected methamphetamine. The parking space was approximately 30 feet from the Defendant's front door, and fifteen feet from the apartment itself. The parking space was covered and was marked with the number 58.

10. Just before executing the search warrant, Special Agent Riley observed the Defendant walk out of her apartment and place the purse in her vehicle in parking space 58. Special Agent Riley knew the vehicle to be registered to the Defendant.

11. At the time of the search, Special Agent Riley had seen the Defendant in parking space 58 with the vehicle that was searched on at least five or six prior occasions during a two to three month

period leading up to service of the warrant.

12. Special Agent Riley knew that the parking spaces at the complex were assigned.

13. When agents served the search warrant on the Defendant's apartment and vehicle on January 28, 2016, there was no local law enforcement present or assisting.

14. On the morning of March 26, 2018, prior to the CrR 3.6 hearing in this matter, Special Agent Riley returned to the Reflections at the Park Apartment Complex and spoke with Emily Moffett, the complex's business manager who had been working at the complex since 2007 when it was built.

15. During Special Agent Riley's discussion with Ms. Moffett, he confirmed that parking spot 58, where the vehicle was parked and searched, was officially assigned to apartment unit #H53. Ms. Moffett also explained that the apartments are numbered differently from the parking spaces and that a person would need to add five to the apartment number to know the assigned parking space. Accordingly, apartment unit #1 is assigned to parking space 6, and apartment #H53 is assigned parking unit 58.

CONCLUSIONS OF LAW

1. The Court has jurisdiction over the Defendant and the subject matter of this action.

2. The Court incorporates all findings and conclusions in the oral record pertaining to these hearings, made on March 16 and March 26, 2018.

3. The affidavit in support of the warrant sets forth facts and circumstances sufficient to establish a nexus between criminal activity and the items to be seized, and also a nexus between the items to be seized and the places to be searched. Accordingly, the search warrant was supported by probable cause.

4. The facts and circumstances supporting the probable cause underlying the warrant were not based on information from a confidential informant, but rather, on information from law enforcement and the affiant himself as Special Agent Riley authored the warrant application and personally participated in the undercover purchases of methamphetamine. Accordingly, the court finds that the information underlying the warrant was reliable.

5. The information underlying the search warrant affidavit was not stale at the time the search warrant was authorized and when it was executed, as it was executed on the day after it was authorized.

6. The Defendant's vehicle was located in a parking space associated with the apartment unit named in the search warrant. Accordingly, the vehicle was covered by the search warrant and the search of the vehicle did not fall outside the scope of the search warrant.

7. The cell phone toll records were obtained by federal government agents through the administrative subpoena process, which is lawful under federal law. Because the records were obtained lawfully by federal agents under federal law, the DEA was not in an agency relationship with local law enforcement at the time that the records were obtained, the silver platter doctrine applies.

8. Even if the toll records were excised from the search warrant affidavit, the Court finds that there would still be probable cause underlying the warrant.

9. There is no legal requirement that Special Agent Riley need to be in the physical presence of Judge Creatura when he swore to his affidavit or when the search warrant was signed by Judge Creatura. Warrant applications can be provided or transmitted by telephone, email, or any other reliable method and the method used in the present case was proper and reliable.

10. The search warrant and the service of the search warrant were lawful under federal law.

11. The Defendant's CrR 3.6 motion to suppress evidence is denied.

CP 174-179.

This case later went to trial before a jury with the state calling seven witnesses: two of the investigating DEA agents who searched the defendant's home and car, a school employee and Clark County employee who testified that there was a school bus stop and a school grounds within 1,000 feet of the defendant's apartment, a Washington State Patrol scientist who verified that the substances seized were methamphetamine, a Vancouver Police Officer who later took custody of the drugs, and a Deputy Prosecuting attorney who testified that the defendant had failed to appear in court at one of her review hearings. RP 139, 163, 172, 384, 412, 430, 455. Following the presentation of the state's case the defendant took the stand, stated that during this period of time she was addicted to methamphetamine, and stated that the drugs seized were for her personal use. RP 470-496, 534-549.

After a single brief rebuttal witness the court instructed the jury, including an instruction on the lesser included offense of simple possession of methamphetamine. CP 63-89; RP 570-584. The parties then presented closing arguments, after which the jury retired for deliberation. RP 584-

594, 594-608, 608-614. The jury later returned verdicts of guilty to possession of methamphetamine with intent to deliver as well as bail jumping from and Class B or C felony. RP 616-618; CP 120-122. The jury also returned a special verdict that the defendant had committed the first offense within 1,000 feet of a school bus stop and within 1,000 feet of the perimeter of a school. RP 616-618; CP 123.

At a later sentencing hearing the court imposed a prison-based DOSA sentence. RP 624-647. Without any argument from the parties or discussion about the issue, the court entered the following finding:

2.5 Ability to Pay Legal Financial Obligations. 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 that:

That the defendant is presently indigent but is anticipated to be able to pay financial obligations in the future. RCW 9.94A.753.

CP 162; RP 624-647.

The court then imposed legal-financial obligations including a \$200.00 filing fee. CP 164. The defendant thereafter filed timely notice of appeal and the court signed a new order of indigency for the purposes of appeal. CP 180-193, 194-195, 196-197.

ARGUMENT

I. THE TRIAL COURT DENIED THE DEFENDANT HER RIGHT TO DUE PROCESS WHEN IT SENTENCED HER FOR POSSESSION OF METHAMPHETAMINE WITH INTENT TO DELIVER BECAUSE THERE WAS NO SUBSTANTIAL EVIDENCE IN THE RECORD THAT THE DEFENDANT HAD THE INTENT TO DELIVER THE DRUGS SHE POSSESSED.

As a part of the due process rights guaranteed under both the Washington Constitution, Article 1, § 3 and United States Constitution, Fourteenth Amendment, the state must prove every element of a crime charged beyond a reasonable doubt. *State v. Baeza*, 100 Wn.2d 487, 488, 670 P.2d 646 (1983); *In re Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068, 1073, 25 L.Ed.2d 368 (1970). As the United States Supreme Court explained in *Winship*: “[The] use of the reasonable-doubt standard is indispensable to command the respect and confidence of the community in applications of the criminal law.” *In re Winship*, 397 U.S. at 364.

Mere possibility, suspicion, speculation, conjecture, or even a scintilla of evidence, is not substantial evidence, and does not meet the minimum requirements of due process. *State v. Moore*, 7 Wn.App. 1, 499 P.2d 16 (1972). As a result, any conviction not supported by substantial evidence may be attacked for the first time on appeal as a due process violation. *Id.* In addition, evidence that is equally consistent with innocence as it is with guilt is not sufficient to support a conviction; it is not

substantial evidence. *State v. Aten*, 130 Wn.2d 640, 927 P.2d 210 (1996).

“Substantial evidence” in the context of a criminal case means evidence sufficient to persuade “an unprejudiced thinking mind of the truth of the fact to which the evidence is directed.” *State v. Taplin*, 9 Wn.App. 545, 513 P.2d 549 (1973) (quoting *State v. Collins*, 2 Wn.App. 757, 759, 470 P.2d 227, 228 (1970)). The test for determining the sufficiency of the evidence is whether “after viewing the evidence in the light most favorable to the prosecution any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Jackson v. Virginia*, 443 U.S. 307, 334, 99 S.Ct. 2781, 2797, 61 L.Ed.2d 560 (1979).

In the case at bar, the state charged the defendant with possession of methamphetamine with intent to deliver. Specifically, the state alleged that the defendant possessed the methamphetamine found in the bag that was in her car with the intent to deliver that methamphetamine to another person. Thus, in order to sustain a conviction on this charge, the state had the burden of presenting substantial evidence both that the defendant actually possessed the methamphetamine, and that she also had the intent to deliver it.

As a general proposition, substantial evidence of a specific criminal intent exists when the evidence supports a logical probability that the

defendant acted with the requisite intent. *State v. Stearns*, 61 Wn.App. 224, 228, 810 P.2d 41 (1991). However, evidence of the specific intent to deliver a controlled substance must be compelling. *State v. Davis*, 79 Wn.App. 591, 594, 904 P.2d 306 (1995). Mere possession of a controlled substance even in large amounts is insufficient alone to establish an inference of intent to deliver. *State v. Lopez*, 79 Wn.App. 755, 768, 904 P.2d 1179 (1995). Rather, there must be compelling other evidence that supports the inference of the intent to deliver in order that most possessions of controlled substances are not improperly turned into possessions with intent to deliver without substantial evidence as to the possessor's intent, above and beyond the possession itself. *State v. Hutchins*, 73 Wn.App. 211, 217, 868 P.2d 196 (1994). Finally, as the court stated in *State v. Brown*, 68 Wn.App. 480, 485, 843 P.2d 1098 (1993), “[c]onvictions for possession with intent to deliver are highly fact specific and require substantial corroborating evidence in addition to the mere fact of possession”).

For example, in *State v. Davis, supra*, the defendant sought relief from personal restraint following his conviction for possession of marijuana with intent to deliver arguing that substantial evidence did not support his conviction. At trial, the state had presented evidence that at the time of his

arrest, the defendant possessed a bread sack with six individually wrapped baggies of marijuana, two baggies of marijuana seeds, a film canister containing marijuana, a baggie with marijuana residue in it, a box of sandwich baggies, a pipe used for smoking marijuana, and a number of knives. In addition, at trial the state presented the testimony of a police officer that it was not customary for people who simply use marijuana to have that “quantity with that packaging.” The state argued that the items the defendant possessed, particularly the amount of marijuana in conjunction with the packaging materials and the testimony of the officer constituted substantial evidence of an intent to deliver.

In addressing these arguments, the court first noted the following concerning the quantum and type of evidence necessary to sustain an inference of intent to deliver. The court states:

Convictions for possession with intent to deliver are highly fact specific. Certainly, an intent to deliver might be inferred from an exchange or possession of significant amounts of drugs or money. And there are also a variety of other circumstances which, taken together with possession of a controlled substance, lead to the conclusion that possession was with the intent to deliver.

In *Kovac*, officers seized seven baggies containing a total of eight grams of marijuana from the defendant. We held the evidence insufficient to justify an inference of intent to deliver. In *Hutchins*, police seized in excess of 40 grams of marijuana and charged the defendant with possession with intent to deliver. A police officer testified at trial about the “normal quantity” of

marijuana seized in an arrest. We held that “[a]n officer’s opinion of the quantity of a controlled substance normal for personal use is insufficient to establish, beyond a reasonable doubt, that a defendant possessed the controlled substance with an intent to deliver.”

State v. Davis, 79 Wn.App. at 594-595 (citations omitted).

After this review, the court considered the evidence presented at trial and came to the conclusions that it did not constitute substantial evidence of an intent to deliver. The court held as follows:

Here, police discovered six baggies of packaged marijuana, two baggies of seeds, a film canister containing marijuana, a baggie with marijuana residue in it, and a box of sandwich baggies. No quantity of money was found nor were any weighing devices. The seeds might well suggest an intent to grow marijuana. But there was no evidence Mr. Davis had bought or sold marijuana or was in the business of buying or selling. The marijuana totaled 19 grams, an amount which could certainly be consumed in the course of normal personal use. The packaging likewise is not inconsistent with personal use. There is not enough evidence before us to infer the specific criminal intent to deliver required by the statute. Intent to deliver does not follow as a matter of logical probability.

State v. Davis, 79 Wn.App. at 595-596 (citations omitted).

As a comparison between the case at bar and *Davis* reveals, the only piece of evidence present in this case that was not present in *Davis* was the scales. However, in *Davis* there was the presence of a number of bags of marijuana. By contrast, in this case there was essentially one bag with six smaller baggies of methamphetamine. In addition, in this case the officer

found glass methamphetamine pipes with residue in them, both indicative of personal use, not possession with intent. What is compelling in this case on the issue of intent to deliver is what the police did not find. They did not find pre-wrapped methamphetamine weighted out in commercially saleable amounts. They did not find any money indicative of drug sales. Although they seized cell phones from the defendant, their claim that the cell phones included text messages that might have evidence of drug transactions was highly ambiguous. In addition, there was no mention of methamphetamine or code words for methamphetamine in the text messages. Thus, the evidence in this case, even seen in the light most favorable to the state, indicates that while the defendant did possess the methamphetamine, she had no intent to deliver it. Consequently, substantial evidence does not support the conviction. As a result, this court should vacate her conviction for possession of methamphetamine with intent to deliver and remand it to the trial court with instructions to enter judgment for possession.

II. THE TRIAL COURT ERRED WHEN, WITHOUT CONSIDERATION OF ANY EVIDENCE, IT FOUND THAT THE DEFENDANT HAD THE FUTURE ABILITY TO PAY LEGAL-FINANCIAL OBLIGATIONS AND WHEN IT IMPOSED CERTAIN LEGAL-FINANCIAL COSTS.

In the case at bar the trial court made the following finding of fact in the written judgment and sentence at paragraph 2.5:

2.5 Ability to Pay Legal Financial Obligations. 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 that:

That the defendant is presently indigent but is anticipated to be able to pay financial obligations in the future. RCW 9.94A.753.

CP 162.

In fact, there was no discussion of the defendant's past, current or future financial ability to pay during the sentencing hearing on April 20, 2018. RP 624-647. The record below and the record on appeal reveals that at the time the defendant was charged with this crime she was indigent and that for many years her only income was from a monthly social security disability check and the money she made from odd cleaning jobs. Based upon these findings, the court assigned counsel to represent her at trial. Following trial her attorney filed a Motion and Declaration for Order of Indigency indicating that the defendant's financial status had not changed. Based upon this affirmation the trial court entered an order of indigency for the purposes of appeal. Thus, in this case, the record is devoid of any evidence that the defendant will have a future ability to pay, particularly given the evidence that she is completely disabled and lives off a social security disability check. Consequently, the trial court erred when it

entered the finding that the defendant, while currently indigent, would have the future ability to pay her legal financial obligations.

In addition, effective June 7, 2018, the legislature amended RCW 36.18.020(2)(h) to prohibit the imposition of a filing fee upon an indigent defendant following conviction. The following quotes this section of the statute with the modifications underlined.

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

. . . .

(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, except this fee shall not be imposed on a defendant who is indigent as defined in RCW 10.101.010(3) (a) through (c).

RCW 36.18.020(2)(h) (showing amendments underlined).

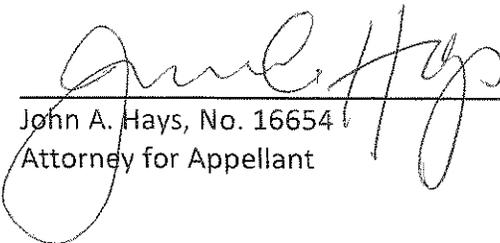
The Washington Supreme Court has ruled that this amendment applies to all cases still on appeal when it becomes effective. *See State v. Ramirez*, 191 Wn.2d 732, 426 P.3d 714 (2018). Thus, in this case the trial court erred when it imposed a filing fee because the defendant is indigent. Consequently, this court should remand this case to the trial court to strike the unsupported finding and to strike the imposition of the filing fee.

CONCLUSION

This court should vacate the defendant's conviction for possession of methamphetamine with intent to deliver and remand with instructions to enter judgment for simple possession. In addition, this court should vacate the trial court's finding that the defendant has the future ability to pay and vacate the imposition of the filing fee.

DATED this 28th day of November, 2018.

Respectfully submitted,



John A. Hays, No. 16654
Attorney for Appellant

APPENDIX

**WASHINGTON CONSTITUTION
ARTICLE 1, § 3**

No person shall be deprived of life, liberty, or property, without due process of law.

**UNITED STATES CONSTITUTION,
FOURTEENTH AMENDMENT**

All persons born or naturalized in the United State, 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 36.18.020(2)(h)
Clerk's fees, surcharges

(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, except this fee shall not be imposed on a defendant who is indigent as defined in RCW 10.101.010(3) (a) through (c).

COURT OF APPEALS OF WASHINGTON, DIVISION II

STATE OF WASHINGTON,
Respondent,

vs.

TAMARA AVERY,
Appellant.

NO. 51914-3-II

AFFIRMATION
OF SERVICE

The undersigned 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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Dated this 28th day of November, 2018, at Longview, WA.



Diane C. Hays

JOHN A. HAYS, ATTORNEY AT LAW

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