

FILED  
Court of Appeals  
Division II  
State of Washington  
2/8/2019 10:58 AM  
No. 52036-2-II

THE COURT OF APPEALS FOR THE STATE OF WASHINGTON  
DIVISION II

---

**STATE OF WASHINGTON,**

Respondent,

vs.

**JUSTIN SHANE INGALSBE,**

Appellant.

---

Appeal from the Superior Court of Washington for Lewis County

---

**Respondent's Brief**

---

JONATHAN L. MEYER  
Lewis County Prosecuting Attorney



By:

SARA I. BEIGH, WSBA No. 35564  
Senior Deputy Prosecuting Attorney

Lewis County Prosecutor's Office  
345 W. Main Street, 2nd Floor  
Chehalis, WA 98532-1900  
(360) 740-1240

**TABLE OF CONTENTS**

TABLE OF AUTHORITES ..... ii

I. ISSUES.....1

II. STATEMENT OF THE CASE .....1

III. ARGUMENT .....3

    A. THE TRIAL COURT DID NOT ABUSE ITS  
        DISCRETION WHEN IT DENIED INGALSBE’S  
        REQUEST TO PROCEED PRO SE, AS THE REQUEST  
        WAS EQUIVOCAL.....3

        1. Standard Of Review .....4

        2. The Trial Court Did Not Abuse Its Discretion When It  
            Denied Ingalsbe’s Request To Self-Represent  
            Because The Request Was Equivocal.....4

    B. THE RECORD SUPPORTS INGALSBE’S ASSERTION  
        HE IS INDIGENT PER SE, THEREFORE, THE STATE  
        CONCEDES THE LEGAL FINANCIAL OBLIGATIONS  
        WERE IMPPPROPERLY IMPOSED .....12

IV. CONCLUSION.....16

**TABLE OF AUTHORITIES**

**Washington Cases**

*State v. Breedlove*, 79 Wn. App. 101, 900 P.2d 586 (1995) .....4

*State v. Coley*, 180 Wn.2d 543, 326 P.3d 702 (2014).....3

*State v. Curry*, 191 Wn.2d 475, 423 P.3d (2018) .....6, 11, 12

*State v. DeWeese*, 117 Wn.2d 369, 816, P2d 1 (1991) .....6, 7

*State v. Dougherty*, 33 Wn. App. 466, 655 P.2d 1187 (1982) .....7

*State v. Madsen*, 168 Wn.2d 496, 229 P.3d 714 (2010) .....5, 7, 11

*State v. Ramirez*, 191 Wn.2d 732, 426 P.3d 714 (2018).....14

*State v. Vermillion*, 112 Wn. App. 844, 51 P.3d 188 (2002).....5

**Federal Cases**

*Faretta v. California*, 422 U.S. 806, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975) .....4, 5, 7

*McKaskle v. Wiggins*, 465 U.S. 168, 104 S. Ct. 944, 79 L. Ed. 2d 122 (1984) .....5

**Washington Statutes**

RCW 10.01.160 .....13, 14

RCW 10.101.010 .....13, 15

RCW 36.18.020(2)(h).....13, 15

RCW 43.43.690 .....14

RCW 43.43.7541 .....14

RCW 74.09.035 .....15

**Constitutional Provisions**

U.S. Constitution, Amendment VI .....4

**Other Rules or Authorities**

Engrossed Second Substitute House Bill 1783.....12

Laws of 2018, ch. 269 §§ 1, 2, 3, 4, 5, 17, 18, 20 .....13

## I. ISSUES

- A. Did the trial court abuse its discretion when it determined Ingalsbe's request to self-represent was equivocal?
- B. Did the trial court improperly impose discretionary legal financial obligations and the DNA fee on an indigent defendant due to the 2018 legislative amendments to the legal financial obligations statutes?

## II. STATEMENT OF THE CASE

On May 19, 2017, Morton Police Officers Lupo and Courmyer responded to the Bucksnot Bar and Grill, where they had contact with Ingalsbe. RP 88, 106-07. During their contact with Ingalsbe, the officers learned Ingalsbe recently had surgery on his knee. RP 107, 89. Ingalsbe appeared to be in considerable pain and intoxicated. RP 89. Officer Lupo believed Ingalsbe was under the influence of something other than alcohol. RP 90.

During the contact, Ingalsbe was given paperwork, which, along with his identification, he returned to his front pants pocket. RP 89. After finishing at the Bucksnot, officers helped walk Ingalsbe back to the motel. RP 113. Ingalsbe requested to go to the hospital to seek medical attention regarding the pain in his leg. RP 90-91. The medical personnel asked Ingalsbe where his identification was located, and Ingalsbe either told them or motioned it was in his pocket. RP 91. The medics began to remove items from Ingalsbe's

pockets in an effort to locate his identification and to look for any pain medication Ingalsbe may have in his possession. RP 91-92.

When the medics extracted Ingalsbe's driver's license there was a white, thin, plastic baggie hung up on the corner. RP 92. Officer Lupo secured the driver's license to make sure it did not fall off the balcony, as they were on the second story of the motel. RP 92-93. Officer Lupo asked Ingalsbe what the baggie was and Ingalsbe replied he did not know. RP 104. Ingalsbe stated he did not know if the jeans were his pants. RP 104. The baggie contained methamphetamine. RP 94, 98-99.

The State charged Ingalsbe by information with Possession of a Controlled Substance - Methamphetamine. CP 1-3. The day before his jury trial, May 14, 2018, Ingalsbe asked the court for permission to represent himself. RP 9. Ingalsbe explained he had twice attempted to fire his court appointed attorney but had been denied that right by the trial court. *Id.* The trial court inquired why Ingalsbe wished to represent himself. RP 9. Ingalsbe explained he believed his attorney was not fairly representing him. RP 10. The trial court engaged in a colloquy with the defendant and ultimately denied the defendant's request to proceed pro se. RP 10-14.

Ingalsbe proceeded to jury trial the next day, May 15, 2018, with his attorney. RP 18-147. Ingalsbe testified he had never seen the baggie before and had no idea it was in his pocket. RP 114. Ingalsbe did not recall asking to be taken to the hospital or having a conversation with the medics. RP 113. Ingalsbe also explained he did not recall saying “I don’t know if these are my pants.” RP 114-15.

The jury convicted Ingalsbe as charged. CP 25. Ingalsbe was sentenced to nine months in jail. CP 28. Ingalsbe was also ordered to pay legal financial obligations, including: \$700 court appointed attorney costs, \$500 VUCSA fine, \$100 crime lab fee, \$100 DNA fee, \$200 criminal filing fee, and \$500 crime victim assessment. CP 30. Ingalsbe timely appeals his conviction. CP 35-44.

The State will supplement the facts as necessary throughout its argument below.

### **III. ARGUMENT**

#### **A. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION WHEN IT DENIED INGALSBE’S REQUEST TO PROCEED PRO SE, AS THE REQUEST WAS EQUIVOCAL.**

Ingalsbe argues the trial court violated his constitutional right to represent himself in a criminal proceeding when it denied his unequivocal request to represent himself. Brief of Appellant 4-9. Ingalsbe’s request to proceed pro se was based upon an equivocal

request due to Ingalsbe's dissatisfaction with his appointed counsel and desire for new counsel. The trial court's denial of Ingalsbe's request to proceed pro se was not an abuse of discretion, and this Court should affirm the conviction.

### **1. Standard Of Review.**

Denial of a request by a defendant to self-represent is reviewed for abuse of discretion. *State v. Coley*, 180 Wn.2d 543, 559, 326 P.3d 702 (2014). A trial court abuses its discretion if its decision is manifestly unreasonable, applies an incorrect legal standard, or relies on unsupported facts. *Coley*, 180 Wn.2d at 559 (internal quotations and citations omitted).

### **2. The Trial Court Did Not Abuse Its Discretion When It Denied Ingalsbe's Request To Self-Represent Because The Request Was Equivocal.**

The Sixth Amendment grants a criminal defendant the right to self-representation. *Faretta v. California*, 422 U.S. 806, 572-74, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975). "The right to defend is given directly to the accused; for it is he who suffers the consequences if the defense fails." *Faretta*, 422 U.S. at 572-73. The Washington State Constitution also expressly guarantees a criminal defendant the right to self-representation. *State v. Breedlove*, 79 Wn. App. 101, 105-06, 900 P.2d 586 (1995).

The right to self-representation “is so fundamental that it is afforded despite its potentially detrimental impact on both the defendant and the administration of justice.” *State v. Madsen*, 168 Wn.2d 496, 503, 229 P.3d 714 (2010), *citing*, *Faretta* 422 U.S. at 834; *State v. Vermillion*, 112 Wn. App. 844, 51 P.3d 188 (2002). An improper denial of the right to self-representation cannot be harmless and requires reversal. *Madsen*, 168 Wn.2d at 503; *Vermillion*, 112 Wn. App. at 851, *citing*, *McKaskle v. Wiggins*, 465 U.S. 168, 177 n.8, 104 S. Ct. 944, 79 L. Ed. 2d 122 (1984).

The trial court is “required to indulge in every reasonable presumption against a defendant’s waiver of his or her right to counsel.” *Madsen*, 168 Wn.2d at 503 (internal quotations and citations omitted). A defendant does not have an absolute or self-executing right to proceed pro se. *Id.* at 504. When a defendant makes a request to proceed pro se, the trial court first must determine whether the request is timely and unequivocal. *Id.* If the trial court finds the request is unequivocal and timely it must then determine if the waiver of the right to counsel is knowing, voluntary, and intelligent. *Id.*

The court must determine two things: first, if the defendant made a request to self-represent, and if so, was the request

unequivocal. *State v. Curry*, 191 Wn.2d 475, 487, 423 P.3d (2018). “The court should examine the ‘facts and circumstances’ of the case[.]” *Curry*, 191 Wn.2d at 487, *citing*, *State v. DeWeese*, 117 Wn.2d 369, 378, 816, P2d 1 (1991). To determine if a request was made, the reviewing court may consider the following nonexclusive factors:

(1) how the request was made—for example, was the request made formally in a motion or spontaneously at a hearing?; (2) the language used in the actual request—for example, was the defendant asking to proceed pro se or expressing frustration?; and (3) the context surrounding the request—for example, was the request made after counsel sought a continuance or because of a disagreement regarding strategy?

*Id.* at 488 (internal citations omitted).

If there has been a request, a court must examine the nature of the defendant’s request. *Id.* at 488-89. “Relevant considerations include whether the request was made as an alternative to other, preferable options and whether the defendant’s subsequent actions indicate the request was unequivocal.” *Id.* While not dispositive, these factors should be considered. *Id.* An unequivocal request to self-represent is not rendered equivocal merely because it is paired with a request for new counsel. *Id.* Yet, a request for new counsel may, given the complete record of the case, make the request to proceed pro se equivocal. *Id.* Further, displaying frustration with

one's current attorney while requesting to proceed pro se does not necessarily render the request equivocal. *Id.*

If the court finds the request to self-represent “untimely, equivocal, involuntary, or made without a general understanding of the consequences... [s]uch a finding must be based on some identifiable fact...” *Madsen*. at 504-05. It is not proper for a judge to deny a request to self-represent out of concern for the defendant's competency because if the trial court doubts a defendant's competence the court needs to take the necessary action in regards to a competency review. *Id.* at 505.

The trial court, prior to accepting a defendant's waiver of counsel, must inform the defendant of the disadvantages and dangers of self-representation. *State v. Dougherty*, 33 Wn. App. 466, 469, 655 P.2d 1187 (1982), *citing Faretta*, 422 U.S. at 835. The record must establish that the defendant “knows what he is doing and his choice is made with eyes open.” *Id.*

Ingalsbe argues his request was unequivocal, making an explicit choice between exercising the right to counsel and the right to self-representation. Brief of Appellant 8 (citation and quotations omitted). When reviewing the entire record this is not correct.

Ingalsbe's request to proceed pro se was equivocal and the trial court did not abuse its discretion when it denied the request.

A hearing on February 8, 2018, was the first time Ingalsbe expressed frustration and dissatisfaction with his situation with his court appointed attorney. RP 4-6.<sup>1</sup> Ingalsbe, through Mr. Brown, references a possible conflict of interest regarding the secretary at Mr. Brown's firm. RP 4. The trial court found no conflict and Mr. Brown stayed on the case. *Id.*

On May 14, 2018, Mr. Blair, who is at Mr. Brown's firm, stepped in at the hearing to address the trial court on behalf of Ingalsbe after discovering Ingalsbe in the hallway outside the courtrooms. RP 7-9. Mr. Blair explained when discussing with Ingalsbe that the trial was actually scheduled for tomorrow, the discussion was as follows:

So in my conversation he indicated to me -- he posed a couple of questions like, "What if I show up tomorrow with an attorney I hired and ask for a continuance?" I suggested to him that he would probably be best served if he got his matter in front of the court today rather than that happening tomorrow, because then the jury would be here, and that probably wouldn't go over well.

---

<sup>1</sup> The State cannot say if the other court hearings that were not transcribed, such as trial confirmation on 5/10/18 or the initial omnibus hearing on 1/4/18 that was continued, contain any statements by Ingalsbe regarding dissatisfaction with his attorney. Ingalsbe references Judge Lawler denying him the ability to fire his attorney twice. RP 9. A review of Ingalsbe's case in Odyssey yield only these two hearings presided over by Judge Lawler.

And then he talked to me about going pro se, and I told him that if he wanted to do that, Your Honor or one of the other judges would have a number of questions for him. I do know that Mr. Ingalsbe, as far as criminal defendants, he has had quite a bit of in-court experience. I don't know if he's ever represented himself, but I indicated to him that should he act as his own attorney, he would be held to the standards of an attorney. He probably would want to know the rules of evidence, cross examination, opening statement, closing argument, things like that. And then we parted ways.

RP 8. The Court then inquired and asked Ingalsbe why he believed trial was that day. RP 9. Ingalsbe explained, the prior Thursday, he received no paperwork. *Id.* Ingalsbe then told the trial court:

THE DEFENDANT: I want to represent myself because I feel that I'm not represented. I fired my lawyer twice and...

THE DEFENDANT: I fired my lawyer twice, and Mr. Lawler won't let me fire him.

THE COURT: You can't fire a lawyer that you didn't hire. He was appointed to represent you by the court.

THE DEFENDANT: So I'm here today because I want to represent myself.

THE COURT: Why is it you want to represent yourself?

THE DEFENDANT: Because I don't feel I'm being fairly represented.

THE COURT: Sorry?

THE DEFENDANT: Because I don't feel I'm being fairly represented. I'm being misinformed about things continually.

RP 9-10.

The trial court then conducted a colloquy with Ingalsbe about his knowledge of court rules, procedures, and jury selection. RP 10-

11. The trial court then stated:

THE COURT: My concern, Mr. Ingalsbe, is that in order for you -- for me to allow you to represent yourself, it has to be what's called an unequivocal request, and the reason I don't think it's unequivocal is it's premised on the fact that you don't think your lawyer is doing the job that you want him to do.

So to me, my interpretation is that you believe you're faced with a choice of going to trial with an attorney you don't think is doing the job you want him to do and doing it yourself. That's not to me --

RP 11-12. Ingalsbe replied, "I know he's not." RP 12. Asked to explain, Ingalsbe told the trial court how he had given the secretary names of witnesses and nothing had come out of it. *Id.* The trial court inquired about the witnesses, the circumstances, when the information was passed on. RP 12-13. Ingalsbe told the trial court he did not know when the alleged offense even happened, let alone what his proposed witnesses saw or could testify about. RP 13. The trial court denied the request, finding it equivocal, "I think it's based on the fact that you don't believe your attorney is doing the job that

you want him to do.” RP 14. The trial court asked Ingalsbe if there was anything else he wanted the court to consider and Ingalsbe asked how to get a different attorney, “I do not want him.” RP 14. There was further discussion, regarding the witnesses, the alleged conflict, and ultimately, Mr. Blair stated he would pass on the witness information to Mr. Brown. RP 14-16.

The trial court is required to indulge in every reasonable presumption against Ingalsbe’s waiver of his right to counsel, and in the context of the complete record, Ingalsbe’s request to proceed pro se was equivocal. *Curry*, 191 Wn.2d at 487; *Madsen*, 168 Wn.2d at 503. On February 8, 2018, Ingalsbe attempted to have Mr. Brown removed from the case for a conflict of interest that did not exist. Ingalsbe brought up the same meritless conflict again after the trial court raised its concern about Ingalsbe’s request to self-represent being equivocal. Ingalsbe told the trial court he attempted to fire his attorney twice but was prohibited from doing so by Judge Lawler. Mr. Blair, in his colloquy at the beginning of the hearing, explained how Mr. Ingalsbe inquired what would happen if he showed up at trial the next day with an attorney he had hired and requested to continue the trial.

While dissatisfaction and frustration with one's attorney does not make a request to self-represent equivocal per se, Ingalsbe's multiple, unsuccessful, attempts to secure different counsel, paint a picture of a man who felt he had no other option. *Curry*, 191 Wn.2d at 489. Ingalsbe expressed his frustration that his attorney did not communicate with him, did not represent him, and Ingalsbe wanted anyone but Mr. Brown to represent Ingalsbe at the trial. All of these actions are consistent with someone who desperately wants new counsel, and had for at a minimum of three months. This is an equivocal request, made due to what was perceived as a Hobson's choice, go to trial with counsel you do not want or do it yourself. The trial court's decision applied the correct legal standard and was manifestly reasonable, supported by the facts, and therefore was not an abuse of discretion. This Court should affirm Ingalsbe's conviction.

**B. THE RECORD SUPPORTS INGALSBE'S ASSERTION HE IS INDIGENT PER SE, THEREFORE, THE STATE CONCEDES THE LEGAL FINANCIAL OBLIGATIONS WERE IMPPROPERLY IMPOSED.**

Ingalsbe asserts he was indigent at the time of sentencing and therefore this Court must, pursuant to the 2018 legislative amendments to the legal financial obligation statutes enacted under Engrossed Second Substitute House Bill 1783, eliminate all

discretionary legal financial obligations and the DNA fee. Brief of Appellant 9-11. While the legal financial obligation reforms eliminate interest, the DNA fee for previously convicted defendants who have had the sample already taken, and many other useful reforms in regards to eliminating fees for indigent defendants, all indigent defendants are not created equal. Laws of 2018, ch. 269 §§ 1, 2, 3, 4, 5, 17, 18, 20; RCW 10.01.160(3); RCW 10.101.010. Only indigent defendants who fall into the category of indigent “per se” status pursuant to RCW 10.01.160(3) and RCW 10.101.010(3)(a)-(c) qualify to eliminate all discretionary legal financial obligations. The record supports, and the State concedes, Ingalsbe meets the criteria of indigent “per se.”

Contrary to Ingalsbe’s assertion, the change in the law does not require that “the \$200 filing fee and other discretionary fees, cannot be imposed on indigent defendants. Brief of Appellant at 9-10, *citing* Laws of 2018, ch. 269, § 17(2)(h). The section Ingalsbe cites to only pertains to the criminal filing fee. Laws of 2018, ch. 269, § 17(2)(h) (codified as RCW 36.18.020(2)(h)). A criminal defendant shall not be assessed **costs** at the conclusion of their case if the defendant is determined to be indigent. RCW 10.01.160 (emphasis added). There is a difference between a fee and a cost, therefore,

the legislature specifically exempted the criminal filing fee from legal financial obligations that could be collected upon a finding that a person was indigent, as it is a fee, not a cost, and would not fall under RCW 10.01.160's prohibition. The fee for laboratory testing, RCW 43.43.690, is a fee, not a cost. RCW 10.01.160. Therefore, the correct analysis regarding legal financial obligations is a full colloquy regarding a defendant's ability to pay. *State v. Ramirez*, 191 Wn.2d 732, 744-46, 426 P.3d 714 (2018).

The 2018 amendments apply to defendants whose appeals were pending — i.e., their cases were not yet final — when the amendment was enacted. *Ramirez*, 191 Wn.2d at 747-49. Therefore, Ingalsbe receives the benefit of the amendments that apply to him.

Pursuant to RCW 43.43.7541, effective June 7, 2018, and retroactively applied to Ingalsbe, the imposition of the DNA-collection fee is required “unless the state has previously collected the offender’s DNA as a result of a prior conviction.” The State’s records show Ingalsbe’s DNA was previously collected and is on file with the Washington State Patrol Crime Lab.<sup>2</sup> The State respectfully asks

---

<sup>2</sup> The State acknowledges the record on appeal is lacking this information, but the undersigned deputy prosecutor can attest if this case is remanded to strike the fee, this information would be put into the trial record.

this Court to remand this case to the superior court to amend the judgment and sentence to strike the imposition of the \$100 DNA fee.

Ingalsbe is indigent because he had no income at the time of his sentencing. RP 152; CP 47. Per the statutory amendments of 2018, the filing fee is no longer a nondiscretionary legal financial obligation if a defendant qualifies for indigency under RCW 10.101.010(3)(a)-(c). RCW 36.18.020(h). Further, only if a defendant is indigent "per se" under RCW 10.101.010(3)(a)-(c) shall the sentencing court not order a defendant to pay costs. RCW 10.01.160(3).

(3) "Indigent" means a person who, at any stage of a court proceeding, is:

(a) Receiving one of the following types of public assistance: Temporary assistance for needy families, aged, blind, or disabled assistance benefits, medical care services under RCW 74.09.035, pregnant women assistance benefits, poverty-related veterans' benefits, food stamps or food stamp benefits transferred electronically, refugee resettlement benefits, medicaid, or supplemental security income; or

(b) Involuntarily committed to a public mental health facility; or

(c) Receiving an annual income, after taxes, of one hundred twenty-five percent or less of the current federally established poverty level;

RCW 10.101.010(3)(a)-(c).

Therefore, because Ingalsbe is indigent per se, he would also qualify as indigent under a proper inquiry for the \$100 crime lab fee. The State concedes this Court should remand this matter back to the trial court to strike the DNA fee, the \$200 filing fee, the \$700 court appointed attorney cost, and the \$100 crime lab fee.

#### **IV. CONCLUSION**

The trial court did not abuse its discretion when it found Ingalsbe's request to proceed pro se was equivocal based upon the record before it. Ingalsbe, due to his lack of employment and assets, was indigent per se on the date of sentencing, therefore the State concedes the discretionary legal financial obligations should be stricken. Further, the DNA fee does not apply to Ingalsbe, as the State has previously collected his DNA. Therefore, this Court should affirm Ingalsbe's conviction but remand the case to the trial court to strike the erroneous legal financial obligations.

RESPECTFULLY submitted this 8<sup>th</sup> day of February, 2019.

JONATHAN L. MEYER  
Lewis County Prosecuting Attorney



by: \_\_\_\_\_  
SARA I. BEIGH, WSBA 35564  
Attorney for Plaintiff

**LEWIS COUNTY PROSECUTING ATTORNEY'S OFFICE**

**February 08, 2019 - 10:58 AM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 52036-2  
**Appellate Court Case Title:** State of Washington, Respondent v. Justin Shane Ingalsbe, Appellant  
**Superior Court Case Number:** 17-1-00706-9

**The following documents have been uploaded:**

- 520362\_Briefs\_20190208105726D2272453\_9073.pdf  
This File Contains:  
Briefs - Respondents  
*The Original File Name was Ingalsbe.jus Response 52036-2.pdf*

**A copy of the uploaded files will be sent to:**

- appeals@lewiscountywa.gov
- oliver@washapp.org
- wapofficemail@washapp.org

**Comments:**

---

Sender Name: Teri Bryant - Email: teri.bryant@lewiscountywa.gov

**Filing on Behalf of:** Sara I Beigh - Email: sara.beigh@lewiscountywa.gov (Alternate Email: teri.bryant@lewiscountywa.gov)

Address:  
345 W. Main Street  
2nd Floor  
Chehalis, WA, 98532  
Phone: (360) 740-1240

**Note: The Filing Id is 20190208105726D2272453**