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THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

DANA MATTSON-GRAHAM,

Appellant.

Appeal from the Superior Court of Washington for Lewis County

Respondent's Brief

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I. ISSUES

- A. Is Sergeant Patrick's alleged improper opinion testimony a manifest constitutional error Mattson-Graham may raise for the first time on appeal?
- B. Did the trial court err when it imposed the 100 dollar DNA fee on Mattson-Graham?

II. STATEMENT OF THE CASE

Dana Mattson-Graham, upset and angry because she felt Detective Schlecht was wrongfully arresting her, intentionally kicked him in the upper thigh as he attempted to seatbelt Mattson-Graham in the back of his patrol vehicle. RP 55-56, 58-59, 84-86, 97. The incident occurred in the evening hours in March, 2018, while Detective Schlecht was investigating a report of a trespass at the Shell station. RP 53-54. Detective Schlecht and Sergeant Patrick encountered Mattson-Graham in a gravel parking lot behind a Shell station off the Toledo-Vader exit from Interstate 5. RP 44, 54-55, 79-80. Mattson-Graham was standing in the parking lot next to a van. RP 54.

Detective Schlecht asked Mattson-Graham what was going on that evening. RP 55. Mattson-Graham told Detective Schlecht she had gone into the Shell station to purchase a soda and the clerk told her to leave because she was not allowed in the store. *Id.* Detective Schlecht then placed Mattson-Graham under arrest for trespass and

requested she place her hands behind her back. *Id.* Sergeant Patrick was standing off to the side as a cover officer, there to provide assistance if needed. RP 80.

Mattson-Graham became verbally abusive and physically non-compliant. RP 55-57, 83-85. Mattson-Graham resisted being placed in handcuffs and Sergeant Patrick had to assist. RP 83-84. Detective Schlecht read Mattson-Graham her *Miranda* warnings and asked her if she understood the rights, which Mattson-Graham began to recite back to Detective Schlecht and then told Detective Schlecht he “was under arrest and that [he] could not arrest her.” RP 56. Mattson-Graham also started yelling accusatory statements at Detective Schlecht, falsely claiming he was inappropriately touching her in a sexual manner. RP 56-57, 81-82.

Detective Schlecht placed Mattson-Graham in the rear of the SUV. RP 58. Mattson-Graham was still yelling, screaming, and shouting vulgar names. *Id.* Detective Schlecht reached across Mattson-Graham to place the seatbelt on her and buckle her into the patrol vehicle. *Id.* Mattson-Graham then turned and kicked out towards Detective Schlecht’s groin area. RP 59. Detective Schlecht was able to shift his body and the kick caught him in the leg. *Id.*

Detective Schlecht described the kick as a “full-on horse kick out” that caused him to stumble backwards. *Id.*

The officers wanted to remove Mattson-Graham from the patrol vehicle to hobble her, which would prevent Mattson-Graham from harming anyone else. RP 59. The officers were unable to remove Mattson-Graham from the patrol vehicle because she managed to get her foot wedged into the gap that separates the cage from the backseat of the patrol vehicle. *Id.* Detective Schlecht eventually managed to get Mattson-Graham belted into the vehicle and shut the door. RP 60.

The State charged Mattson-Graham by Information with one count of Assault in the Third Degree and one count of Trespass in the First Degree. CP 1-3. Mattson-Graham elected to exercise her right to have her case tried to a jury. *See* RP. The officers testified consistent with the testimony outlined above. Mattson-Graham testified in her defense. RP 93-108. Mattson-Graham stated she was cooperative until she was placed into the patrol vehicle. RP 100. Mattson-Graham explained how her feelings were hurt and she was upset about being arrested. RP 99. Mattson-Graham testified she did not remember kicking Detective Schlecht or even being handcuffed.

RP 98-99. Mattson-Graham did recall getting her foot stuck in the gap between the cage and the backseat of the patrol vehicle. RP 98.

Mattson-Graham was convicted of Assault in the Third Degree and acquitted of Trespass in the Second Degree (the State had amended the charge). CP 75, 76. Mattson-Graham was sentenced to 5 months in jail, with credit for 61 days served. CP 81-82. Mattson-Graham was found to be indigent and only assessed the \$500 crime victim assessment and \$100 DNA fee. RP 169, CP 83. Mattson-Graham timely appeals her conviction. CP 87-94.

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

III. ARGUMENT

A. MATTSON-GRAHAM DID NOT OBJECT TO SERGEANT PATRICK'S TESTIFYING THE KICK APPEARED TO BE INTENTIONAL, ONLY OBJECTED TO HIS OTHER TESTIMONY ON THE BASIS OF SPECULATION, AND HAS NOT ARGUED THE ADMISSION OF THE EVIDENCE WAS A MANIFEST CONSTITUTIONAL ERROR REQUIRING REVERSAL.

Mattson-Graham failed to object to Sergeant Patrick's testimony stating the kick appeared to be intentional. Mattson-Graham's actual objection raised regarding other testimony of Sergeant Patrick were on the basis of speculation and "asked and answered." Mattson-Graham has failed to properly assert and argue

how the testimony of Sergeant Patrick meets RAP 2.5(a)'s manifest constitutional error standard. This Court should find Mattson-Graham is barred from raising the issue for the first time on appeal and affirm the trial court.

1. Standard Of Review.

A claim of a manifest constitutional error is reviewed de novo. *State v. Edwards*, 169 Wn. App. 561, 566, 280 P.3d 1152 (2012). Admissibility of evidence determinations by the trial court are reviewed under an abuse of discretion standard. *State v. Finch*, 137 Wn.2d 792, 810, 975 P.2d 967 (1999) (citations omitted).

It is an abuse of discretion when the trial court bases its decision on untenable reasons or grounds or the decision is manifestly unreasonable. *State v. C.J.*, 148 Wn.2d 672, 686, 63 P.3d 765 (2003). This Court will find a trial court abused its discretion "only when no reasonable judge would have reached the same conclusion." *State v. Rodriguez*, 146 Wn.2d 260, 269, 45 P.3d 541 (2002) (internal quotations and citation omitted).

If the trial court's evidentiary ruling is erroneous, the reviewing court must determine if the erroneous ruling was prejudicial. *State v. Bourgeois*, 133 Wn.2d 389, 403, 945 P.2d 1120 (1997). An error is prejudicial if "within reasonable probabilities, the outcome of the trial

would have been materially affected had the error not occurred.” *Id.*
(citations omitted).

2. Mattson-Graham’s Alleged Error, That Sergeant Patrick Testimony Was Impermissible Opinion Testimony, Is Not A Manifest Constitutional Error That May Be Raised For The First Time On Appeal.

Mattson-Graham attempts to assert, for the first time on appeal, that Sergeant Patrick’s testimony regarding his perception Mattson-Graham’s kick was intentional was an improper opinion testimony because it was prejudicial, went to an essential element of the crime, and frustrated her defense. Brief of Appellant 6-8. Mattson-Graham failed to object to Sergeant Patrick’s initial testimony indicating he believed the kick was intentional. RP 86. Mattson-Graham objected on the bases of speculation to the deputy prosecutor’s later question to Sergeant Patrick, asking whether the kick appeared to be an accident. RP 86. The trial court overruled the objection and Sergeant Patrick answered. RP 86-87. Mattson-Graham does not address the standards pursuant to RAP 2.5(a)(3) and requirements that must be met to raise an issue a party failed to address in the trial court. Sergeant’s Patrick’s testimony was permissible, Mattson-Graham cannot meet the requirements to show the asserted error is a manifest constitutional error, and this Court should deny review and affirm the conviction.

An appellate court generally will not consider an issue a party raises for the first time on appeal. RAP 2.5(a); *State v. O'Hara*, 167 Wn.2d 91, 97-98, 217 P.3d 756 (2009); *State v. McFarland*, 127 Wn.2d 322, 333-34, 899 P.2d 1251 (1995). The origins of this rule come from the principle that it is the obligation of trial counsel to seek a remedy for errors as they arise. *O'Hara*, 167 Wn.2d at 98. The exception to this rule is "when the claimed error is a manifest error affecting a constitutional right." *Id.*, citing RAP 2.5(a). There is a two-part test in determining whether the assigned error may be raised for the first time on appeal, "an appellant must demonstrate (1) the error is manifest, and (2) the error is truly of constitutional dimension." *Id.* (*citations omitted*).

The reviewing court analyzes the alleged error and does not assume it is of constitutional magnitude. *Id.* The alleged error must be assessed to make a determination of whether a constitutional interest is implicated. *Id.* If an alleged error is found to be of constitutional magnitude the reviewing court must then determine whether the alleged error is manifest. *Id.* at 99; *McFarland*, 127 Wn.2d at 333.

An error is manifest if the appellant can show actual prejudice. *O'Hara*, 167 Wn.2d at 99. The appellant must show the alleged error

had an identifiable and practical consequence in the trial. *Id.* This requires the appellate court to “place itself in the shoes of the trial court to ascertain whether, given what the trial court knew at that time, the court could have corrected the error.” *State v. Kalebaugh*, 183 Wn.2d 578, 584, 355 P.3d 253 (2015).

a. Mattson-Graham’s allegation regarding improperly admitted evidence is not a claim of constitutional magnitude and therefore cannot be raised for the first time on appeal.

Mattson-Graham argues a witness may not offer an opinion, directly or indirectly, regarding the defendant’s guilt because such an opinion invades the province of the jury and therefore, violates the defendant constitutional right to a jury trial. Brief of Appellant 5-6. It is not clear in the argument section of Mattson-Graham’s brief what testimony from Sergeant Patrick that Mattson-Graham is claiming is objectionable as there is no citation to the record or quotation to the testimony. Brief of Appellant 5-9. The only citations to the record come after Mattson-Graham’s argument that she was merely flailing her limbs when she was stuck between the cage and the backseat of the patrol vehicle. *Id.* at 8-9. Arguments “not supported by any reference to the record” or citation to legal authority will not be considered by this Court. RAP 10.3(a)(6); *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992).

In Mattson-Graham's statement of the case section, she quotes an exchange between the prosecutor and Sergeant Patrick:

Q. When she kicked the deputy, was that an attempt to keep him from grabbing her leg?

MR. BLAIR. Objection. Speculation.

THE COURT. Sustained.

Q. Was the kick an intentional act?

A. It appeared to be.

MR. BLAIR. Objection. Asked and answered.

THE COURT. Sustained.

Q. Was the kick an accident?

MR. BLAIR. Objection. Speculation.

THE COURT. I'll allow you to answer if you believe you can answer that.

A. It did not look like an accident.

Brief of Appellant at 4-5, *citing* RP 86-87.¹ The State can only presume this is the error Mattson-Graham is referring to, as no other testimony from Sergeant Patrick regarding his view on Mattson-Graham's kick of Detective Schlecht is discussed in her statement of the case. *Id.* at 2-5.

¹ The text in Mattson-Graham's brief was altered (as clearly identified) to note the parties speaking. The State altered the text back in the quotation to read as it does in the verbatim report of proceedings.

Neither the State, nor this Court, should have to guess what exact testimony from Sergeant Patrick that Mattson-Graham is now finding objectionable. This is of particular relevance here because Mattson-Graham couches her argument that she is now objecting to Sergeant Patrick's testimony because she claims it was impermissible opinion regarding her guilt, it was overly prejudicial, and undercut her defense, yet the only overruled objection raised in the trial court, as indicated in the above referenced cited testimony was speculative. RP 86-87. "When the trial court overrules a specific objection and admits evidence, we will not reverse on the basis that the evidence should have been excluded under a different rule which could have been, but was not argued at trial." *State v. Korum*, 157 Wn.2d 614, 648, 141 P.3d 13 (2006) (internal quotations and citations omitted).

In *Korum*, the defendant was arguing evidence should have been excluded pursuant to ER 403 because it allowed the jury to speculate about Korum's connections and contacts with codefendants causing him unfair prejudice. *Korum*, 157 Wn.2d at 647-48. In the trial court Korum objected to the evidence only on the basis of foundation. *Id.* at 648. The Supreme Court declined to review

the admissibility of the evidence pursuant to an ER 403 objection, citing RAP 2.5(a). *Id.*

Mattson-Graham deprived the trial court of the opportunity to rule on the evidentiary challenges she is now levying on Sergeant Patrick's testimony. RP 86-87. Mattson-Graham did object on the basis Sergeant Patrick's testimony was unfairly prejudicial, citing to ER 403 or case law. *Id.* Mattson-Graham also failed to object to the proffered testimony on the basis that it invaded the province of the jury by going to the ultimate issue. *Id.* Mattson-Graham does not now get to raise evidentiary challenges she could and should have raised at the trial court. RAP 2.5(a)(3); *Korum*, 157 Wn.2d 647-68.

Simply asserting a matter implicates a due process right does not actually make it so. Mattson-Graham's alleged error, is a simple evidentiary objection to testimony, not an error of constitutional magnitude warranting review for the first time on appeal. Mattson-Graham has waived raising these issues on appeal, absent showing they are a manifest constitutional error, by not allowing the trial court an opportunity to dispose of the evidentiary issues with the evidence she is now claiming existed.

Next, Mattson-Graham's trial counsel's failure to tender an objection to Sergeant Patrick's testimony on the basis of frustrating

her defense is understandable, because the testimony did no such thing. RP 86-87. Mattson-Graham asserts in this appeal that her “defense relied on showing that the kick was not intentional but rather an unintended result of trying to disengage her legs that were stuck under the cage separating the front and back seats.” Brief of Appellant at 8, *citing* RP 86, 88, 89. This is revisionist history not based upon the record. Mattson-Graham’s testimony was she did not remember kicking Detective Schlecht. RP 99. Mattson-Graham denied putting her foot up or kicking anyone. RP 107-08. In closing argument, Mattson-Graham’s trial counsel reminded the jury that Mattson-Graham denied kicking Detective Schlecht. RP 149-50. Trial counsel also spent time discussing “unanswered questions” regarding why the two officers testimony did not line up regarding the incident. RP 148-51. At no time during closing argument did Mattson-Graham put forward an argument that she kicked Detective Schlecht by accident while trying to dislodge her foot from between the cage and seat of the patrol vehicle. RP 144-52. Mattson-Graham’s claim the admission of Sergeant Patrick’s testimony frustrated her theory of her defense fails.

Further, the testimony elicited from Sergeant Patrick immediately preceding the passage cited in Mattson-Graham's statement of the case is as follows:

Q. Was it an intentional kick?

A. I believe so.

Q. Other than the kick, was she otherwise thrashing her limbs around?

A. What she could. She was in cuffs.

RP 86. There was no objection to the question if the kick was intentional until it was asked a second time. *Id.* Therefore, whether Sergeant Patrick viewed the kick as intentional falls squarely within RAP 2.5(a)(3), and Mattson-Graham must show this court the alleged error is a manifest constitutional error. Mattson-Graham does not cite to this testimony, nor does she argue how this testimony falls into the category of manifest constitutional error. As argued above, this is a simple evidentiary issue, not an issue of constitutional magnitude. The trial court did not abuse its discretion and it was Mattson-Graham's responsibility to object to the testimony under the grounds she wished to preserve. This Court should decline to review these matters for the first time on appeal.

b. If the alleged error is considered of constitutional magnitude it is not manifest.

Arguendo, if Mattson-Graham's alleged errors regarding Sergeant Patrick's testimony, that it was unfairly prejudicial and it inappropriate testimony regarding Mattson-Graham's intent, are of constitutional magnitude, Mattson-Graham still does not prevail. Mattson-Graham still may not raise these issues for the first time on appeal because the issues are not manifest. Mattson-Graham must show actual prejudice, meaning the alleged error had an identifiable and practical consequence in her trial. *O'Hara*, 167 Wn.2d at 99. Mattson-Graham cannot meet this burden.

Mattson-Graham argues pursuant to *State v. Kirkman*, 159 Wn.2d 918, 155 P.3d 125 (2007) and *State v. King*, 167 Wn.2d 324, 219 P.3d 642 (2009), Sergeant Patrick's testimony was improper. Brief of Appellant 5-7. Specifically, the opinion testimony from a police officer carried a special aura of reliability that resulted in unfair prejudice. Brief of Appellant at 7, *citing King*, 167 Wn.2d at 331; *Kirkman*, 159 Wn.2d at 928. Mattson-Graham also cites the above cases for the authority in support of her argument that Sergeant Patrick's testimony was inappropriate because intent was an essential element of the charge the State was required to prove. *Id.* The testimony, according to Mattson-Graham denied her right to a

jury trial regarding an essential element of the charged crime. *Id.* at 7-8, citing *State v. Montgomery*, 163 Wn. App. 577, 591, 183 P.3d 267 (2008). All of Mattson-Graham's arguments fail.

King does discuss, as cases have for over 30 years, it is impermissible for a witness to offer statements regarding the defendant's credibility or statements regarding the guilt of the defendant, as such testimony "invades the exclusive province of the jury." *King*, 167 Wn.2d at 331, citing *State v. Demery*, 144 Wn.2d 759, 30 P.3d 1278 (2001).² The Supreme Court explained the "admission of a witness opinion testimony on an ultimate issue of fact, without objection, is not *automatically* reviewable as a 'manifest' constitutional error." *King*, 167 Wn.2d at 332 (emphasis original, internal citations omitted). The Supreme Court clarified explicit or almost implicit opinions rendered during trial regarding a defendant's guilt may constitute manifest error. *Id.*

The Court set out five factors for courts to consider when determining if testimony is impermissible opinion testimony: "(1) the type of witness involved, (2) the specific nature of the testimony, (3) the nature of the charges, (4) the type of defense, and (5) the other evidence before the trier of fact." *Id.* at 332-33 (internal quotations

² Additional internal citations and quotations omitted.

and citations omitted). The State concedes Sergeant Patrick's testimony "may be especially prejudicial because an officer's testimony often carries a special aura of reliability." *Kirkman*, 159 Wn.2d at 929 (emphasis added).

Next, the "specific nature of the testimony." *King*, 159 Wn.2d at 332-33. As stated above, it appears Mattson-Graham is claiming the improper testimony is the response to the deputy prosecutor's question, "Was the kick an accident?" RP 86; Brief of Appellant 4-9. Sergeant Patrick replied, "It did not look like an accident." RP 87. The specific nature of the testimony was Sergeant Patrick's qualified answer that the kick did not appear to be an accident. Sergeant Patrick did not state in this part of his testimony that the kick was an intentional assault on Detective Schlecht. Sergeant Patrick simply responded the kick did not appear accidental. RP 86-87.

Third, "the nature of the charges." *King*, 159 Wn.2d at 333. Mattson-Graham was charged with Assault in the Third Degree. CP 1, 63; RCW 9A.36.031(1)(g); WPIIC 35.23.02.³ The State was required to prove, beyond a reasonable doubt, that Mattson-Graham, did intentionally assault a law enforcement officer, Detective

³ The State elected at trial to only proceed under subsection (g), as clearly indicated by the jury instructions although it originally charged Mattson-Graham under both RCW 9A.36.031(1)(a) and (g).

Schlecht, who was performing his official duties at the time of the assault. *Id.* The State had to prove Mattson-Graham acted intentionally, which the jury is instructed, “[a] person acts with intent or intentionally when acting with the objective or purpose to accomplish a result that constitutes an element of a crime.” CP 64, *citing* WPIC 10.01A. The trial court also instructed the jury on the standard definition of assault, that it “is an intentional touching or striking of another person that is harmful or offensive, regardless of whether any physical injury is done to the person...” CP 65, *citing* WPIC 35.50.

Fourth, the type of defense. *King*, 159 Wn.2d at 333. As argued above, Mattson-Graham’s defense was that she did not kick Detective Schlecht, the officers’ testimony was inconsistent, and there were many unanswered questions stemming from the inconsistent testimony. RP 99, 107-08, 144-52. Sergeant Patrick’s statement did not invade upon the theory of Mattson-Graham’s defense.

Fifth, “the other evidence before the trier of fact.” *King*, 159 Wn.2d at 333. Detective Schlect testified:

Q. And did she strike you on your leg?

A. It was right in my hip area, like the upper thigh/hip area.

Q. So it's clear for the record, that would be your left?

A. Correct.

Q. And where was she facing when she kicked at you?

A. She was facing towards me.

Q. Was she looking at you?

A. Honestly, I wasn't looking at her. I was focused on getting the seat belt, and then at the last second, I saw her foot come out, so I don't know if -- I know she had turned towards me.

Q. Was this a thrashing motion to keep herself from being placed in the vehicle?

MR. BLAIR: Objection. Speculation.

THE COURT: You may answer if you can answer that question.

A. She was not thrashing around the vehicle, no.

Q. Would you describe this kick as a purposeful act?

A. Yes.

RP 60-61. Detective Schlecht described the kick as a purposeful act. Mattson-Graham does not raise any objection to Detective Schlecht's testimony. See Brief of Appellant. Detective Schlecht is also a police officer, and the victim in this matter. He is the person who had the clearest view and experienced the kick first hand. Detective Schlecht described the kick as a horse kick and how the force of the kick actually drove his 250 pound frame backwards. RP

59-61. The force of the kick was corroborated by Sergeant Patrick, who described Detective Schlecht as being pushed backwards as a result of Mattson-Graham's kick. RP 90.

In regards to the second and third factors, the nature of the testimony and the nature of the charges, it was permissible for Sergeant Patrick to testify it appeared to him the kick was not accidental. *King*, 159 Wn.2d at 333-32; *State v. Jones*, 59 Wn. App. 744, 748-51, 801 P.2d 269 (1990). In *Jones*, the medical examiners were permitted to testify that the injuries were inflicted, not accidental in nature and the defendant's statements regarding how the injury occurred was not consistent with the physical evidence, therefore death was the result of an inflicted, not accidental, blow. *Jones*, 59 Wn. App. at 750-51. This evidence was permitted under ER 702 and ER 704, as the doctors were experts, the evidence was helpful to the finder of fact, and the doctors did not opine the defendant committed the offense, such a determination was left to the finder of fact. *Jones*, 59 Wn. App. at 750-51.

While Sergeant Patrick is not an expert, such as a medical examiner would be in a death investigation, a person who witnesses an alleged assault can testify the blow to the victim appeared accidental (or not). Sergeant Patrick's testimony did not state

Mattson-Graham intentionally assaulted Detective Schlecht. That determination was left to the jury, as instructed by the Court in its instructions to the jury. CP 56-74. We presume the jury follows its instructions, “absent evidence proving the contrary.” *Kirkman*, 159 Wn.2d at 928. This is not a case where the jury simply rubber stamped the charges put before them and did not view the evidence with a critical eye. The jury acquitted Mattson-Graham of one of the charged counts. CP 76. The jury was instructed it was the sole judges of the credibility of each of the witnesses. CP 58. The jurors were also instructed they may want to consider a number of different factors when evaluating a witness’s testimony. *Id.* This includes the bias or prejudice of a witnesses, their personal interest in the outcome, the opportunity the witnesses had to observe the events accurately, and the reasonableness of the witness’s testimony in context with the other evidence. *Id.* There is nothing in the record or alleged in Mattson-Graham’s briefing that would suggest the jury did not follow its instructions.

Therefore, while the alleged error, Sergeant Patrick’s opinion testimony, is of constitutional magnitude, the error is not manifest. After considering the five factors, Sergeant Patrick’s testimony that the kick “did not look like an accident” was not impermissible opinion

testimony. Although Sergeant Patrick is an officer, the specific nature of the charges and the testimony does not require this Court to find the testimony impermissible. Further, Mattson-Graham's defense was not impacted by the testimony. Finally, the other evidence, which Mattson-Graham does not complain of in this appeal, from the other police officer on the scene also states Mattson-Graham's kick was purposeful and describes the assault in detail. The alleged error is not manifest and this Court should decline to allow Mattson-Graham to raise the matter for the first time on review. This Court should affirm Mattson-Graham's conviction and sentence.

B. MATTSON-GRAHAM IS REQUIRED TO PAY THE DNA FEE IMPOSED BY THE TRIAL COURT.

Mattson-Graham argues the DNA fee imposed should be stricken per the 2018 legislative amendments enacted under Engrossed Second Substitute House Bill 1783. Brief of Appellant 10-11. Mattson-Graham's assertion is incorrect, this Court should affirm the DNA fee imposed by the trial court.

The 2018 amendments changed the mandatory imposition of a \$100 DNA fee upon the offender on every sentence. Laws of 2018, ch. 269, §18. The collection of the DNA fee is not tied to indigency status. RCW 43.43.7541. The law now only requires the DNA fee to be imposed if Washington State has not previously collected the

offender's DNA. *Id.*

The trial court correctly imposed the \$100 DNA fee. Mattson-Graham asserts her Oregon felonies would have required Mattson-Graham's DNA to be collected in Oregon, and therefore, pursuant to RCW 43.43.7541, the trial court erroneously imposed the DNA fee. Brief of Appellant 10-11, *citing* 78, [8]8-[8]9, ORS 137.076. The DNA fee is not required to be collected when a sample has been previously collected for the Washington State DNA database.

Every sentence imposed for a crime specified in RCW 43.43.754 must include a fee of one hundred dollars unless the state has previously collected the offender's DNA as a result of a prior conviction. The fee is a court-ordered legal financial obligation as defined in RCW 9.94A.030 and other applicable law. For a sentence imposed under chapter 9.94A RCW, the fee is payable by the offender after payment of all other legal financial obligations included in the sentence has been completed. For all other sentences, the fee is payable by the offender in the same manner as other assessments imposed. The clerk of the court shall transmit eighty percent of the fee collected to the state treasurer for deposit in the state DNA database account created under RCW 43.43.7532, and shall transmit twenty percent of the fee collected to the agency responsible for collection of a biological sample from the offender as required under RCW 43.43.754. This fee shall not be imposed on juvenile offenders if the state has previously collected the juvenile offender's DNA as a result of a prior conviction.

RCW 43.43.7541.

Mattson-Graham argues the imposition of the \$100 DNA fee was an abuse of the trial court's discretion and contrary to law because Washington State and Oregon State enter their DNA into the federal Combined DNA index System (CODIS). The exemption from paying the \$100 fee is only when the "state" has previously collected an offender's DNA and this is because the fee is used to support the "state" DNA database. RCW 43.43.753; RCW 43.43.7532; RCW 43.43.7541. The purpose is to enter a person's DNA into the Washington State DNA database. RCW 43.43.754. Mattson-Graham's DNA had not been previously submitted to the Washington state DNA database. CP 78, 88-89. The DNA fee was correctly imposed by the trial court.

IV. CONCLUSION

Mattson-Graham is barred from raising issue with Sergeant Patrick's testimony regarding whether she accidentally kicked Detective Schlecht because she failed to object under the grounds she now raises in the trial court. Mattson-Graham has not shown how her now alleged errors are manifest constitutional errors that may be raised for the first time on appeal. This Court should refuse to review

the matter. This Court should also affirm the trial court's imposition of the DNA collection fee.

RESPECTFULLY submitted this 18th day of February, 2020.

JONATHAN L. MEYER
Lewis County Prosecuting Attorney

A handwritten signature in blue ink, appearing to be 'SIB', written over a horizontal line.

by: _____
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LEWIS COUNTY PROSECUTING ATTORNEY'S OFFICE

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