

FILED  
SEPTEMBER 2, 2016  
Court of Appeals  
Division III  
State of Washington

**No. 33990-4-III**

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

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STATE OF WASHINGTON, Respondent

v.

JEROME J. CURRY, Appellant

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APPEAL FROM THE SUPERIOR COURT  
OF SPOKANE COUNTY

---

BRIEF OF APPELLANT

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I. ASSIGNMENTS OF ERROR

- A. The trial court erred when it allowed Mr. Curry to represent himself despite his equivocation and reluctance to proceed pro se.
- B. The trial court erred when it denied Mr. Curry's motion to hold an evidentiary hearing under CrR 3.6(a).
- C. The trial court erred when it denied Mr. Curry's motion to introduce the computer assisted dispatch (CAD) report.
- D. The Court of Appeals should not award costs if the state substantially prevails on appeal.

ISSUES RELATED TO ASSIGNMENTS OF ERROR

- A. Does the court violate defendant's right to counsel by granting a motion to discharge counsel when the defendant equivocated, stated it was not a voluntary choice to represent himself, and he had just recently been found competent to stand trial?
- B. Did the trial court violate Mr. Curry's federal and state rights to confrontation and a fair and impartial trial by denying his request to hold an evidentiary hearing in connection with his motion to suppress under CrR 3.6?

- C. Did the trial court err when it denied Mr. Curry's motion to admit the CAD report?
- D. Should this Court deny appellate costs if the State substantially prevails on appeal and submits a cost bill?

## II. STATEMENT OF FACTS

On December 29, 2014, Spokane County prosecutors charged Jerome Curry with possession of a controlled substance, heroin, with intent to deliver and possession of a controlled substance, methamphetamine. (CP 4). On the day of trial, he was charged by amended information with simple possession of heroin and methamphetamine. (CP 108).

### 1. COMPETENCY EVALUATION

On January 22, 2015, Judge Sypolt signed an agreed order for a sanity evaluation and report made upon motion of defense counsel. (CP 17-20). Mr. Curry was evaluated on March 4, 2015, at the Spokane County Jail. (CP 22, 24).

The report concluded Mr. Curry was competent to stand trial with the following caveat:

Mr. Curry was assessed for competency to stand trial using criteria developed by McGarry. McGarry criteria measure certain mental abilities and areas of knowledge that are useful in a trial situation. They are helpful in determining

whether an individual is competent to stand trial provided one recognizes:

- a. They have never been empirically validated;
- b. The court and not the consulting psychiatrist makes the final determination as to competency;
- c. It is presumptuous of a consulting psychiatrist to think he knows what mental skills and areas of knowledge will be important in any given trial.

(CP 31).

The court found Mr. Curry competent to stand trial. (4/3/15)

RP 4; CP 34-35. At the same hearing, Mr. Curry filed several handwritten pro se motions, including a motion for dismissal.

(4/3/15) RP 7-8.

## 2. PRO SE REPRESENTATION

The following month Mr. Curry's attorney moved for him to proceed pro se or select new counsel. (5/7/15) RP 1; (CP 48-51).

Counsel's affidavit stated:

On April 3, 2015 at the stay hearing to lift the stay for competency evaluation, Jerome Curry stated on the record that he was firing me. The court essentially deferred the issue... I met with Mr. Curry again on April 24<sup>th</sup>, 2015. At that meeting he asked me to set a motion to allow him to represent himself, or in the alternative, to get a new lawyer. ...He states that he is expressing this desire with knowledge of the possible risks and without any equivocation. The record supports the conclusion that he in fact understand[s] what it means to represent himself.

(CP 48-49, 51).

There is no on the record discussion of Mr. Curry firing his counsel on April 3, 2015.

The court addressed Mr. Curry:

THE COURT: ...And sir, you're here before the court requesting that you be able to represent yourself; is that right?

THE DEFENDANT: Oh, yes, but no.

THE COURT: All right. You don't sound very certain about that. Tell me about that.

(5/7/15) RP 3.

THE DEFENDANT: Basically I have no choice, because I'm ready for trial, but I have not gotten all the materials that I need for trial, so I've got to go with what I got. So yes, I'm ready for trial. (5/7/15) RP 4.

The court went through a colloquy with Mr. Curry, regarding the charges and possible maximum sentence if convicted of the charges. (5/7/15) RP 5-7. The court questioned his education level, previous representation experiences, and informed him of the requirement to follow the rules of evidence. (5/7/15) RP 7-11. Mr. Curry said he had an 8<sup>th</sup> grade education and was convicted on two charges when he had previously represented himself in 2009. (5/7/15) RP 8-9.

Mr. Curry explained he was dissatisfied with his appointed counsel and wanted to represent himself:

THE DEFENDANT: Well, we have different issues on how to fight cases and –and it's like I don't want it to be delayed anymore, because I have obligations that I need to continue from on the streets. And, you know, if I can't continue my obligations that I need to do, you know, I might as well just do them myself. I can do bad by myself.

(5/7/15) RP 7.

When discussing the requirement he follow evidentiary rules and trial procedure Mr. Curry told the court:

Yes. I mean, I have no choice. I mean, there – the law kind of contradicts itself on certain issues in like my community custody. And that's where I'm here at, for – I mean, I have none of the evidence that I need...

(5/7/15) RP 12.

"I'm basically – I'm not equipped, but I have no choice."

(5/7/15) RP 12.

In discussing potential trial delays, Mr. Curry said:

Because I basically, I mean, if I've got to sit and wait until the end of June, I might as well go ahead by myself. Because I - I mean, send me to prison or release me. One of the two. I mean, I ain't got time to sit here. I mean, I have obligations on the streets. I'm losing my home. And if I've got to lose my home, I might as well defend my own self.

(5/7/15) RP 13.

The court admonished Mr. Curry that it did not believe he was making a wise decision and questioned him:

THE COURT: And is this a voluntary decision just from your own thinking about it?

THE DEFENDANT: Sort of, kind of, yes.

(5/7/15) RP 15.

Mr. Curry's counsel told the court he had been assigned the case for 30 days, and had not yet received all the materials to evaluate the case. However, he believed he would likely be prepared for trial late the following month. (5/7/15) RP 15-17.

THE COURT: ...Mr. Curry further indicates that he's aware that there are dangers and pitfalls of self-representation, as I've described. Is that right, Mr. Curry?

THE DEFENDANT: Yes.

THE COURT: Nonetheless, he indicates it's his voluntary and steadfast decision at this time to proceed.

THE DEFENDANT: Well, it's not voluntary.

THE COURT: Pardon me?

THE DEFENDANT: It's not voluntary. It's I have no choice in the matter.

THE COURT: Well, it's either your freewill choice of doing this, or somehow there's been some pressure put on you. And the only pressure I recall you saying is the time pressure; that is, that you believe you don't have a choice because you don't want an extension of the trial date, since you have other affairs that you believe you need to take care of. And you'd rather have an outcome quicker rather than later on. That's what I understand you to say. Is that accurate?

THE DEFENDANT: That's -- that's accurate.

THE COURT: Okay. So, with all that, the court finds it is appropriate to permit Mr. Curry to represent himself.

(5/7/15) RP 18-19.

### 3. MOTION TO SUPPRESS EVIDENCE

Mr. Curry moved for a suppression hearing to exclude evidence obtained because of an illegal search and seizure. (CP 66). In his written motion he recounted that he was stopped by police as a robbery suspect. Officers stopped him, placed his hands behind his back and told him that if he ran the K-9 dog would get him. He was placed in front of the police car and searched. Officers found drugs. Less than five minutes later, the robbery

victim arrived and told officers he was not the suspect. Then they asked his name. (CP 66-67).

The State's response justifying the seizure and search rested on the police report: police had a general description of a robbery suspect as a black male, wearing blue jeans and a dark jacket. (CP 83). Mr. Curry was walking in the general vicinity of the robbery and because he was a black male, wearing jeans and a jacket, he was stopped as a possible suspect. (CP 83). The State related the ensuing sequence of events: Mr. Curry was stopped and police obtained his identity. The police ran his name through records. There was an outstanding warrant. (CP 83-84). Mr. Curry was placed under arrest. (CP 84). The robbery victim showed up at the scene and cleared Mr. Curry as the suspect. (CP 84). Mr. Curry was searched incident to his arrest on the outstanding warrant. Officers found heroin and methamphetamine on his person. (CP 84).

At the hearing to determine whether the court would conduct a CrR 3.6 hearing, the officers who conducted the seizure and search did not testify. Mr. Curry told the court he had walked from Fifth and Custer, down Haven to Pacific, and from Pacific turned onto Freya to First Street. (5/28/15) RP 4. He walked in and out of

the perimeter area police were guarding. (5/28/15) RP 4. He wore black pants, a brown-orange hoodie, stood 5'9" tall. Id.

As Mr. Curry reached the corner of Sprague and Haven he turned left and the police officers got out of their car and walked toward him. Id. He stated they stopped him, searched him, and his backpack, and only at the end of the encounter, asked him his name. (5/28/15) RP 5, 10. He offered as proof the CAD report which showed the officers never called his name in for a records check to see if he had a warrant. (5/28/15) RP 10. Mr. Curry maintained it was an illegal search and seizure based on racial profiling and there was no reasonable suspicion he was involved in any criminal activity. Id.

The state responded that Mr. Curry "fit the description of a robbery suspect" and that "at the time of being contacted they asked him his name, he provided his name. Police then ran a records check and learned of his warrants. Simultaneously, the victim of the robbery came for a 'show up' and told police that Mr. Curry was not the man involved in the robbery. Mr. Curry was placed under arrest for his warrants and nothing coming out of the robbery." (5/28/15) RP 8.

The court issued a written ruling denying the evidentiary

hearing, in relevant part:

While the defendant files a memorandum in which he generally complains about the circumstances of his arrest, he did not comply with the rule. Although this court may grant some leeway to *pro se* defendant in these circumstances, it cannot waive the rule altogether. Even if the court were to consider his oral arguments in the form of an affidavit, he still does not make out a case for suppression. The facts on file appear to support a generalized suspect description, which is not unusual. Defendant's detention appears to be brief and only ripened into an arrest when a warrant was discovered upon routine identification. The fact that he was eventually eliminated as a robbery suspect does not abrogate those facts. Accordingly, his assertion does not meet the criteria for an evidentiary hearing and his motion fails.

(CP 89).

#### 4. TRIAL TESTIMONY

Deputy Hunt testified he was on the perimeter patrol while K-9 units tracked a robbery suspect. (6/17/15) RP 39. He saw a black male walking westbound, wearing dark pants and a dark jacket. The jacket had a "large bulge." The male was later identified as Jerome Curry. *Id.* He reported that Mr. Curry walked up to him and the deputy told him they were looking for a robbery

suspect. (6/17/15) RP 40. Mr. Curry gave his name. Id.

Q. At some point, Deputy, did you form a basis to place Mr. Curry under arrest?

A. I did.

Q. And did that give you the authority to search him?

A. Yes, sir.

Q. Now, during this process, was it determined that Mr. Curry was involved in the robbery at all?

A. It was determined that he was not the suspect in the robbery.

Q. Had you placed him under arrest at that point when he was determined *not* to be involved in the robbery?"

A. "I don't believe so."

(6/17/15) RP 40.

The officer testified he searched Mr. Curry incident to arrest and found plastic baggies in his jacket pocket which field tested positive for heroin. (6/17/15) RP 41-42.

Deputy Wang conducted a second search of Mr. Curry separate from the one conducted by Deputy Hunt. (6/17/15) RP 48. He recovered a small baggie of white substance, which field-tested presumptive positive for methamphetamine. (6/17/15) RP 50.

By contrast, Mr. Curry testified the officers arrested him as a robbery suspect and searched him before they even knew his name. (6/17/15) RP 69. He said that after they learned he was not the robbery suspect they asked for his name and conducted a warrant check. (6/17/15) RP 70.

Mr. Curry sought to introduce the police CAD report, to show the officers had not done a records check before arresting him. The court denied introduction of the CAD report based on hearsay. (6/17/15) RP 66, 79-80, 83.

The jury found Mr. Curry guilty on both counts. (CP 127-128). The court imposed \$800 in mandatory legal financial obligations, and an 18 -month sentence, with credit for 346 days already served. (10/10/15) RP 126. Mr. Curry makes this appeal. (CP 380-381).

### III. ARGUMENT

#### A. The Trial Court Erred In Accepting Mr. Curry's Waiver of Counsel Despite His Equivocation.

A person accused of a crime has a fundamental constitutional right to the assistance of counsel for his defense. U.S. Const. Amend. VI; Wash. Const. art. 1, § 22; *Gideon v. Wainwright*, 372 U.S. 335, 342-43, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963). He may waive his constitutional right to counsel and instead, exercise his right to represent himself. *State v. Woods*, 143 Wn.2d 561, 586, 23 P.3d 1046 (2001); *Faretta v. California*, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975).

To protect defendants from making capricious or impulsive waivers of counsel, the defendant's request to proceed pro se must be unequivocal." *State v. Stenson*, 132 Wn.2d 668, 740, 940 P.2d 1239 (1997). The request must be clear and without doubt in the context of the record as a whole. *Id.* at 740-42.

Determining whether the request is unequivocal depends upon the particular facts and circumstances of each case. *Johnson v. Zerbst*, 304 U.S. 458, 464, 58 S.Ct. 1019, 82 L.Ed. 1461 (1938). Further, in viewing equivocation in the particular facts and circumstances, the United States Supreme Court requires that "courts indulge in every reasonable presumption" against a defendant's waiver of his right to counsel. *Brewer v. Williams*, 430 U.S. 387, 404, 97 S.Ct. 1232, 51 L.Ed.2d 424 (1977).

The record here demonstrates that Mr. Curry's request to represent himself was equivocal. He repeatedly told the court he felt he had no choice, he was unequipped, and he did not have the necessary discovery. His main voiced concern was about a delay in the trial date. He repeatedly told the court that his decision was not voluntary, but rather dictated by his perceived need to take care of his obligations; he did not want to lose his home.

In a strikingly similar set of facts, the Washington Supreme Court found a defendant had *not* unequivocally asserted his right to self-representation. There, the defendant told the court he was “prepared to go for myself”, “I’m not even prepared about that” and “[t]his is out of my league for doing that.” *State v. Luverne*, 127 Wn.2d 690, 698-99, 903 P.2d 960 (1995). The court reasoned that taken in the context of the record as a whole, the statements were expressions of frustration about a delay in going to trial and not an unequivocal assertion of his right to self-representation.

Courts are instructed to question a defendant regarding his true reasons for requesting to proceed pro se. *State v. Fritz*, 21 Wn. App. 354, 359, 585 P.2d 173 (1978). Mr. Curry’s statements, as in *Luverne*, reflected an overriding and singular interest in avoiding a delay. Mr. Curry’s complaint about continuing with assigned counsel was a delay of until after June 1<sup>st</sup> for trial: “If he’s ready on June 1<sup>st</sup>, we have no problem. But I mean, there’s evidence that we can’t get, because we’re being delayed on that.” (5/7/16) RP 14. Like *Luverne*, taken in the context of the record as a whole, Mr. Curry did not unequivocally assert his right to self-representation. Rather, Mr. Curry made it clear to the court he was not prepared, and felt he had no choice.

A trial court's decision on exercising the right to self-representation is reviewed for abuse of discretion. *State v. Coley*, 180 Wn.2d 543, 559, 326 P.3d 702 (2014) *cert. denied*, 135 S.Ct. 1444 (2015). A reviewing court will reverse such a decision if it is manifestly unreasonable, relies on unsupported facts, or applies an incorrect legal standard. *State v. Rohrich*, 149 Wn.2d 647, 654, 71 P.3d 638 (2003).

Here, the trial court abused its discretion in granting the motion to proceed pro se. A motion to act as pro se counsel may be granted only if the defendant's request is unequivocal. "The requirement that a request to proceed pro se be stated unequivocally derives from the fact that there is a conflict between a defendant's right to counsel and to self-representation." *State v. DeWeese*, 117 Wn.2d 369, 377, 816 P.2d 1 (1991). Mr. Curry's request was not unequivocal. Mr. Curry respectfully asks the Court to reverse the trial court ruling, finding an ineffective waiver of counsel.

B. Trial Court Erred When It Denied Defendant's Motion For An Evidentiary Hearing.

Article 1, section 7 of the Washington State Constitution guarantees that no citizen will be disturbed in his private affairs, or

his home invaded, without authority of law. Criminal Rule 3.6 insures that evidence obtained from illegal seizures and searches is not used to convict a criminal defendant in violation of their fundamental right to due process and a fair and impartial trial. U.S. Const. Amends. VI, XIV; art.1, § 22 (amend 10) Wash. Constitution.

In a suppression motion, the moving party sets out the facts in a pleading, asking the court for a legal conclusion whether some or all of the evidence should be suppressed. CrR 3.6 authorizes the trial court to determine whether an evidentiary hearing is required based upon the moving papers. "If the court determines that no evidentiary hearing is required, the court shall enter a written order setting forth its reasons." CrR 3.6(a).

Here, the trial court gave its reason:

Even if the court were to consider his oral arguments in the form of an affidavit, he still does not make out a case for suppression. The facts on file appear to support a generalized description, which is not unusual. Defendant's detention appears to be brief and only ripened into an arrest when a warrant was discovered upon routine identification. The fact that he was eventually eliminated as a robbery suspect does not abrogate those facts. Accordingly, his assertion does not meet the criteria for an evidentiary hearing and his motion fails. (CP 89).

The court noted that as a pro se defendant Mr. Curry had not met the technical requirements of CrR3.6. (CP 89). However,

reviewing courts allow for a trial court to not enter written findings of fact and conclusions of law as required by CrR 3.6(b) if the court's oral opinion and findings in its order provide sufficient information for review. So too, strict compliance should not be required where nothing in the motion prejudiced the court's ability to address the issue. *State v. Radka*, 120 Wn. App. 43, 47-48, 83 P.3d 1038 (2004).

Mr. Curry requested an evidentiary hearing to determine whether he had been unlawfully arrested and searched. The facts were in dispute and required more than a review of the police report and affidavit of probable cause. The parties disputed a material fact: whether Mr. Curry was arrested and searched without probable cause. The court discounted the disputed facts and refused to hold an evidentiary hearing. (CP 89). Mr. Curry had the right to question the officers' versions of events. By denying the requested evidentiary hearing, the trial court denied him his constitutionally guaranteed rights to confrontation and to a fair and impartial trial.

C. The Trial Court Erred When It Denied Mr. Curry's Motion to Introduce The CAD Report.

Whether to admit evidence lies within the sound discretion of the trial court and is reviewed for abuse of discretion. *State v. Brown*, 132 Wn.2d 529, 571-72, 940 P.2d 546 (1997). There is an abuse of discretion when the trial court's decision is manifestly unreasonable or based upon untenable grounds or reasons. *Id.* at 572. An evidentiary error is grounds for reversal if it is prejudicial. *State v. Neal*, 144 Wn.2d 600, 611, 30 P.3d 1255 (2001). An error is prejudicial if, within reasonable probabilities, it materially affected the outcome of the trial. *Id.*

Mr. Curry sought to introduce the CAD report for two reasons: first, to show he was illegally seized and second, that he was illegally searched. He believed the report would show that other officers reported seeing him in the perimeter area and allowed him to enter and exit it without incident. He also sought to rebut officer testimony they conducted a warrant check before arresting him, contending the CAD report would show that officers made no call for a warrant check. The trial court denied the introduction of the report based on a hearsay foundation.

Evidence Rule 801(c) defines hearsay as "a statement, other than one made by the declarant while testifying at the trial or hearing, offering in evidence to prove the truth of the matter

asserted.” ER 802 provides that hearsay is not admissible except as provided by evidence rules, by other court rules, or by statute.

The Business Records as Evidence Statute provides an exception to the hearsay rule:

A record of an act, condition or event, shall in so far as relevant, be competent evidence if the custodian or other qualified witness testifies to its identity and the mode of its preparation, and if it was made in the regular course of business, at or near the time of the act, condition or event, and if, in the opinion of the court, the sources of information, method and time of preparation were such as to justify its admission.

RCW 5.45.020.

ER 807(a)(7) applies when a party seeks to introduce evidence regarding the *absence* of an entry in a business record:

Absence of Entry in Records Kept in Accordance With RCW 5.45. Evidence that a matter is not included in the memoranda, reports, records, or data compilations, in any form, kept in accordance with the provisions of RCW 5.45, to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate lack of trustworthiness.

Police department CAD printouts are admissible under the statute. *State v. Bradley*, 17 Wn. App. 916, 567 P.2d 650 (1977).

Here, the CAD report was not being introduced to prove an out of court statement. Rather, it was to show the absence of a request

by officers for information about any outstanding warrants. ER 807(a)(7) allows the admission of evidence that an event or matter was not recorded to show it did not occur or did not exist. Karl. B. Tegland, *Washington Practice, Evidence* § 803:30, at 404 (2013-2014 ed.).

In *Bradley*, the defendant objected to the admission of the CAD report as a violation of the hearsay rule. *Id.* at 919. The Court found the printout qualified as a record of an event made in the regular course of business that satisfied the requirements for admission under RCW 5.45.020. *Id.* at 918. The CAD report was admitted to show that statements were made at a particular time, not whether the out of court statements were true. *Id.* at 919. Similarly, Mr. Curry wanted to show that either there was never a warrant check or that the warrant check occurred after he had already been arrested as a robbery suspect.

Here, the trial court abused its discretion in denying admission of the CAD report. Admission of CAD reports is allowed under the statute and qualifies as a business record exception to the evidentiary hearsay rule. Had the report been properly admitted Mr. Curry would have had the opportunity to not only rebut the testimony of the officers, but also show that his constitutional

rights were violated when he was arrested and searched without probable cause. The evidentiary error was prejudicial and within a reasonable probability materially affected the outcome of the trial. Mr. Curry respectfully asks this Court to reverse his convictions. *Neal*, 144 Wn.2d at 611.

D. The Court of Appeals Should Not Award Costs In The Event The State Substantially Prevails On Appeal.

RAP 14.2 authorizes the State to request the Court to order an appellant to pay appellate costs if the State substantially prevails on appeal. The Court of Appeals has held that an indigent appellant must object, before the Court has issued a decision terminating review, to any such cost bill that might eventually be filed by the state. *State v. Sinclair*, 192 Wn. App. 380, 395-394, 367 P.3d 612 (2016). The appellate courts may deny awarding the State the costs of appeal. RCW 10.73.160(1); *State v. Nolan*, 141 Wn.2d 620, 628, 8 P.3d 300 (2000); *Sinclair*, 192 Wn. App. at 382. In exercising its discretion, a defendant's inability to pay appellate costs is a significant factor to consider when deciding whether to impose such costs. *Sinclair*, 192 Wn. App. at 382.

The Washington Supreme Court recognized the "problematic consequences" legal financial obligations (LFOs) inflict on indigent

criminal defendants, which include an interest rate of 12 percent, court oversight until LFOs are paid, and long term court involvement which “inhibit re-entry” and increases the chances of recidivism. *State v. Blazina*, 182 Wn.2d 827, 836, 344 P.3d 680 (2015). An appellate court should deny an award of costs to the State if the defendant is indigent and lacks the ability to pay. *Sinclair*, 192 Wn. App. at 382.

In *Sinclair*, the defendant was indigent, aged, and facing a lengthy prison sentence. The Court determined there was no realistic possibility he could pay appellate costs and denied award of those costs. *Sinclair*, 192 Wn. App. at 392.

Here, the trial court assigned only the mandatory legal financial obligations. (12/10/15) RP 126; CP 373. The court did not inquire about Mr. Curry’s financial situation, acknowledging but acknowledged that it would set out the first payment until June 2016 and required him to make a \$10 per month payment. (12/10/15) RP 126. He is 47 years old and there is no evidence that Mr. Curry is employed or employable. The trial court found him indigent for his appeal and ordering filing fees, attorney fees, cost of preparation of briefs, verbatim transcripts and costs of

preparing clerk's papers to be paid at public expense. (CP 382-383).

The \$800 legal financial obligations already imposed over a year ago continue to grow at a 12% annual percentage rate. Adding the costs of an appeal, if unsuccessful, will increase the legal financial obligation at the same interest rate. Mr. Curry probably will not be able to pay more than \$10 per month and equally unlikely that he can ever pay off the debt in a reasonable amount of time. For these reasons, Mr. Curry respectfully asks the Court to deny awarding appeal costs should the State substantially prevail on appeal and submit a cost bill to this Court.

#### IV. CONCLUSION

Based on the foregoing facts and authorities, Mr. Curry respectfully asks this Court to reverse his convictions and dismiss all charges with prejudice. In the alternative, he asks the court to vacate his convictions and remand for a new trial where he can represent himself or be represented by counsel, and the trial court be instructed to hold a CrR 3.6 hearing and admit the CAD report as evidence.

Dated this 2<sup>nd</sup> day of September 2016.

Respectfully submitted,

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#### CERTIFICATE OF SERVICE

I, Marie Trombley, do hereby certify under penalty of perjury under the laws of the state of Washington, that on September 2, 2016, I mailed to the following US Postal Service first class mail, the postage prepaid, or electronically served, by prior agreement between the parties, a true and correct copy of the brief to the following:

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