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Division III
State of Washington
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Nº. 36138-1III

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

STATE OF WASHINGTON
Respondent,

v.

RAYMOND E. CHANEY,
Appellant.

OPENING BRIEF OF APPELLANT

Appeal from the Superior Court of Spokane County,
Cause No. 16-1-04478-7
The Honorable Maryann C. Moreno, Presiding Judge

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A. ASSIGNMENTS OF ERROR

1. The trial court erred in requiring Mr. Chaney to pay the legal the criminal filing fee under RCW 36.18.020(2)(h).
2. The Court of Appeals should decline to impose appellate costs, should Respondent substantially prevail and request such costs.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Did the trial court err in requiring Mr. Chaney to pay the legal the criminal filing fee under RCW 36.18.020(2)(h) where the legislature has amended that statute to make it inapplicable to indigent defendants and the Washington Supreme Court has found the change in the statute applicable to cases not yet final on appeal? (Assignment of Error No. 1)
2. If the state substantially prevails on appeal and makes a proper request for costs, should the Court of Appeals decline to impose appellate costs because Mr. Chaney is indigent, as noted in the Order of Indigency? (Assignment of Error No. 2)

C. STATEMENT OF THE CASE

Factual and Procedural Background

On the evening of November 20, 2016, Washington State Patrol Trooper Ryan Senger was on-duty and patrolling when he observed a green Mustang make an improper lane change and almost strike a curb and another vehicle.¹ The Mustang stopped at a red light.² Trooper Senger pulled behind the Mustang was and observed by a single male driver in the

¹ RP 64-69.

² RP 69.

car.³

When the stoplight turned green, the Mustang drove through the intersection and changed lanes without signaling, so Trooper Senger decided to stop the Mustang for the traffic violations.⁴ When Trooper Senger activated his emergency lights the Mustang accelerated at a high rate of speed; so high a rate of speed that the rear tires lost traction and the Mustang fishtailed into another lane and nearly hit another vehicle.⁵ After the Mustang accelerated away, Trooper Senger activated his siren.⁶

Trooper Senger pursued the Mustang at speeds up to 60 miles-per-hour in an area where the posted speed limit was 30 miles-per-hour.⁷ There were other vehicles in the area and Trooper Senger had to maneuver through them to catch up to the Mustang.⁸ The Mustang ran a red light while Trooper Senger was pursuing it.⁹

Trooper Senger observed the Mustang make a sharp left turn and pull into a parking lot and stop in a parking stall.¹⁰ Trooper Senger lost sight of the Mustang but drove to the parking lot and saw it again.¹¹

Trooper Senger saw that the driver's door of the Mustang was open and

³ RP 69-70.

⁴ RP 70.

⁵ RP 71.

⁶ RP 71.

⁷ RP 71-72, 75.

⁸ RP 72-73.

⁹ RP 73.

¹⁰ RP 76-77.

¹¹ RP 105, 112.

that the car was empty but he did not see anyone exit the Mustang.¹² As Trooper Senger drove through a nearby gas station looking for the driver of the Mustang, he observed a male running near the front of a store.¹³ The running man was wearing dark clothing and a hat with the bill pointed sideways.¹⁴ Trooper Senger believed the running man was the driver of the Mustang because the driver had been wearing a hat that was consistent with the one the running man was wearing.¹⁵

Trooper Senger initially pursued the running man by driving his patrol vehicle on the sidewalk and using the public announcement system to tell the man to stop running and put up his hands.¹⁶ The man stopped and put his hands in the air, but then took his jacket off and threw it on the ground and continued running.¹⁷ Trooper Senger realized he couldn't chase the man on the sidewalk with his car, so Trooper Senger exited his car and chased the man on foot.¹⁸ Trooper Senger eventually caught up with the man, tackled him, and arrested him.¹⁹ The man flailed his arms and legs around and Trooper Senger had to forcibly grab each of the

¹² RP 77, 106-107.

¹³ RP 77.

¹⁴ RP 78.

¹⁵ RP 78-79.

¹⁶ RP 79.

¹⁷ RP 79.

¹⁸ RP 80.

¹⁹ RP 80.

man's hands and secure them behind his back to put them in handcuffs.²⁰

Trooper Senger told the man to stop and that he was under arrest and the man eventually complied.²¹

Right before Trooper Senger caught up with the man, the man threw a glass object on the sidewalk.²² After arresting the man, Trooper Senger searched the area where the man had thrown the glass item and located a broken glass smoking pipe.²³ The pipe had a white powdery residue lining the entirety of the section that Trooper Senger found.²⁴

The glass pipe was analyzed by the Washington State Patrol Crime Laboratory and it was determined that the residue in the glass was methamphetamine.²⁵

On December 8, 2016, Mr. Raymond Chaney was charged with attempting to elude a police vehicle, possession of a controlled substance, obstructing a police officer, and driving while under the influence of intoxicating liquor and/or drug.²⁶

Mr. Chaney's trial began on April 16, 2018.²⁷ The State dismissed

²⁰ RP 83.

²¹ RP 83-84.

²² RP 80.

²³ RP 91.

²⁴ RP 93.

²⁵ RP 129, 134-135.

²⁶ CP 1-2.

²⁷ RP 55.

the DUI charge pre-trial.²⁸ Trooper Senger testified that Mr. Chaney was the man he had arrested after chasing the Mustang.²⁹

The jury found Mr. Chaney guilty of attempting to elude a police vehicle, unlawful possession of a controlled substance, and obstructing a law enforcement officer.³⁰ As part of Mr. Chaney's sentence, the trial court ordered Mr. Chaney to pay a \$200 criminal filing fee pursuant to RCW 36.18.020(2)(h) and a \$500 victim assessment fee pursuant to RCW 7.68.035.³¹ The trial court also found that Mr. Chaney was indigent.³²

Notice of appeal was filed on June 19, 2018.³³

D. ARGUMENT

1. The trial court erred in requiring Mr. Chaney to pay the \$200 criminal filing fee under RCW 36.18.020(2)(h).

Mr. Chaney was sentenced on May 25, 2018.³⁴ A new version of RCW 36.18.020 went into effect on June 7, 2018. Under the new version of the statute, the \$200 fee under RCW 36.18.020(2)(h) "shall not be imposed on a defendant who is indigent as defined in RCW 10.101.010(3) (a) through (c)."

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

²⁸ RP 7.

²⁹ RP 84.

³⁰ CP 97-99.

³¹ CP 109-110.

³² CP 125-130.

³³ CP 120-121.

³⁴ CP 102.

Washington Supreme Court held that amended RCW 36.18.020(2)(h) applies to all cases not yet final on appeal at the time the amended statute went into effect.³⁵

Like the defendant in *Ramirez*, Mr. Chaney filed a motion for an order of indigency indicating that he has no income source and owns no assets.³⁶ Also like the defendant in *Ramirez*, the trial court found Mr. Chaney was indigent and entitled to pursue an appeal wholly at public expense.³⁷

With regards to the \$200 fee imposed under RCW 36.18.020(2)(h), Mr. Chaney's case is virtually identical to *Ramirez*. The post June 7, 2018 version of the statute applies to Mr. Chaney's case and it was error to impose the \$200 fee because Mr. Chaney is indigent. As the *Ramirez* court found, the proper remedy in this case is to remand for the trial court to strike the \$200 filing fee from Mr. Chaney's judgment and sentence.

2. If the state substantially prevails, the Court of Appeals should decline to award any appellate costs requested.

Mr. Chaney was found to be indigent by the trial court.³⁸ Once an appellant is found indigent, the presumption of indigence continues

³⁵ *Ramirez*, 191 Wn.2d at 747-750, 426 P.3d 714.

³⁶ CP 125-128; *Ramirez*, 191 Wn.2d at 736, 426 P.3d 714.

³⁷ CP 129-130; *Ramirez*, 191 Wn.2d at 736, 426 P.3d 714.

³⁸ CP 129-130.

throughout review.³⁹

At this point in the appellate process, the Court of Appeals has yet to issue a decision terminating review. Neither the state nor the appellant can be characterized as the substantially prevailing party. Nonetheless, the Court of Appeals has indicated that indigent appellants must object in advance to any cost bill that might eventually be filed by the state, should it substantially prevail.⁴⁰ Pursuant to the General Court Order dated June 10, 2016 and Title 17 of the Rules on Appeal, Mr. Chaney respectfully requests that, due to his continued indigency, the court should decline to impose appellate costs in the event he does not prevail. His report as to continued indigency will be filed shortly after this brief.

Appellate costs are “indisputably” discretionary in nature.⁴¹ The concerns identified by the Supreme Court in *Blazina* apply with equal force to this court’s discretionary decisions on appellate costs.⁴² Furthermore, “[t]he future availability of a remission hearing in a trial court cannot displace [the Court of Appeals’] obligation to exercise discretion when properly requested to do so.”⁴³

In *State v. Blazina*, 182 Wn.2d 827, 835, 344 P.3d 680 (2015), the

³⁹ RAP 15.2(f).

⁴⁰ *State v. Sinclair*, 192 Wn.App. 380, 385-394, 367 P.3d 612 (2016) *review denied*, 185 Wn.2d 1034 (2016).

⁴¹ *Id.*, at 388.

⁴² *State v. Blazina*, 182 Wn.2d 827, 344 P.3d 680 (2015).

⁴³ *Sinclair*, 192 Wn. App. at 388.

Washington Supreme Court responded to growing national attention to the societal burdens associated with imposing unpayable legal financial obligations on indigent defendants, including "increased difficulty in reentering society, the doubtful recoupment of money by the government, and inequities in administration." Under Washington's system, unpaid obligations accrue interest at 12% per annum and can be subject to collection fees, creating the perverse outcome that impoverished defendants who pay only \$25 per month toward their obligations will, on average, owe more after ten years than at the time of the initial assessment.⁴⁴ As a result, unpaid financial obligations can become a burden on gaining (and keeping) employment, housing, and credit rating, and increase the chances of recidivism.⁴⁵

The Court of Appeals has recognized that in the absence of information from the State showing a change in the appellant's financial circumstances, an award of appellate costs on an indigent appellant may not be appropriate.⁴⁶ The Supreme Court has additionally recognized that application of RAP 14.2 should "allocate appellate costs in a fair and equitable manner depending on the realities of the case."⁴⁷

Lastly, the Washington Supreme Court recently amended RAP

⁴⁴ *Blazina*, 182 Wn.2d at 836.

⁴⁵ *Blazina*, 182 Wn.2d at 837.

⁴⁶ *Sinclair*, 192 Wn. App. at 393.

⁴⁷ *State v. Stump*, 185 Wn.2d 454, 461, 374 P.3d 89 (2016).

14.2 to provide that costs should not be imposed if the commissioner determines the offender does not have the current or likely future ability to pay such costs. When the offender has been found indigent for appeal, that presumption continues unless the commissioner determines that the offender's financial circumstances have significantly improved since the last determination of indigency. Because Mr. Chaney has been found indigent for this appeal, it is presumed he is unable to pay an appellate cost award unless the State presents evidence of a significant improvement in his financial condition.

Mr. Chaney has been convicted of a felony and sentenced to prison. The trial court determined that he is indigent for purposes of this appeal.⁴⁸ There is no reason to believe that status will change. The *Blazina* court indicated that courts should “seriously question” the ability of a person who meets the GR 34 standard for indigency to pay discretionary legal financial obligations.⁴⁹

If the state substantially prevails on this appeal, this court should exercise its discretion to deny any appellate costs requested.

E. CONCLUSION

For the reasons stated above, this court should remand Mr. Chaney’s case to the trial court to remove the \$200 fee imposed under

⁴⁸ CP 129-130.

⁴⁹ *Blazina*, 182 Wn.2d at 839, 344 P.3d 680.

RCW 36.18.020(2)(h)

DATED this 17th day of December, 2018.

Respectfully submitted,



Reed Speir, WSBA No. 36270
Attorney for Appellant

CERTIFICATE OF SERVICE

Reed Speir hereby certifies under penalty of perjury under the laws of the State of Washington that on the 17th day of December, 2018, I delivered a true and correct copy of the Brief of Appellant to which this certificate is attached via the electronic service system to the following:

Spokane County Prosecutor's Office
1100 W Mallon
Spokane, WA 99260

And via U.S. Mail to:

Raymond E. Chaney, DOC #798908
PO Box 2049
Airway Heights, WA 99001-2049

Signed at Tacoma, Washington this 17th day of December, 2018.



Reed Speir, WSBA No. 36270

LAW OFFICE OF REED SPEIR

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