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Court of Appeals  
Division III  
State of Washington  
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36689-8-III

COURT OF APPEALS  
DIVISION III  
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON, RESPONDENT

v.

GLORIA REDMANN, APPELLANT

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APPEAL FROM THE SUPERIOR COURT  
OF SPOKANE COUNTY

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**BRIEF OF RESPONDENT**

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## **I. APPELLANT'S ASSIGNMENTS OF ERROR**

1. The trial court erred in imposing a condition of community custody requiring Ms. Redmann to pay supervision fees as determined by DOC.
2. The trial court erred in imposing \$200 in court costs.

## **II. ISSUES PRESENTED**

1. Did the trial court err in imposing the \$200 filing fee?
2. Is the community custody condition requiring the defendant to pay supervision fees subject to RCW 10.01.160?

## **III. STATEMENT OF THE CASE**

The defendant pled guilty to a reduced charge of first-degree manslaughter on March 5, 2019. CP 378-388; RP 327-36. The parties agreed that the State would recommend a low-end sentence of 78 months confinement with credit for time served, 36 months DOC supervision, and legal financial obligations, which included a \$500 victim assessment, a \$200 filing fee and a \$100 DNA collection fee. CP 381; RP 329-30.

The court followed the plea agreement and entered the judgment and sentence on March 6, 2019. CP 407-19. The court entered the order permitting appeal at public expense on March 19, 2019, CP 442-43, and the defendant filed a notice of appeal on March 20, 2019, CP 422.

#### IV. ARGUMENT

##### **A. DEFENDANT’S CLAIM IS BARRED UNDER RAP 2.5 BECAUSE DEFENDANT FAILED TO PRESERVE ANY LEGAL FINANCIAL OBLIGATION (LFO) ISSUE FOR APPEAL, AND AGREED TO THE IMPOSITION OF SUCH FEES.**

In this case, the most recent statute limiting the levying of certain costs on those who are indigent (RCW 36.18.020(2)(h))<sup>1</sup> was already in effect at the time of the defendant’s sentencing.

A party may not assert a claim on appeal that was not first raised at trial. *State v. Strine*, 176 Wn.2d 742, 749, 293 P.3d 1177 (2013). It is a fundamental principle of appellate jurisprudence in Washington and in the federal system that a party may not assert on appeal a claim that was not first raised at trial. *Id.* at 749. This principle is embodied in Washington under RAP 2.5. The rule is principled as it “affords the trial court an opportunity to rule correctly upon a matter before it can be presented on appeal.” *Strine*, 176 Wn.2d at 749.

Although RAP 2.5 permits an appellant to raise for the first time on appeal an issue that involves a manifest error affecting a constitutional right,

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<sup>1</sup> Note that RCW 10.101.010(3) also includes “indigent” defendants as persons who are “(d) Unable to pay the anticipated cost of counsel for the matter before the court because his or her available funds are insufficient to pay any amount for the retention of counsel.” There is nothing in this record to indicate under which subsection the defendant fell when appointed public defense counsel.

our courts have indicated that “the constitutional error exception is not intended to afford criminal defendants a means for obtaining new trials whenever they can ‘identify a constitutional issue not litigated below.’” *State v. Scott*, 110 Wn.2d 682, 687, 757 P.2d 492 (1988). The issue raised here is not constitutionally based.

Additionally, this Court should not accept review of this claim based upon an undeveloped record. As in *State v. Stoddard*, 192 Wn. App. 222, 366 P.3d 474 (2016), the issue now raised by defendant was not preserved or developed in the trial court with supporting facts that would enable this Court to properly review the claim. In *Stoddard*, this Court emphasized:

We consider whether the record on appeal is sufficient to review Gary Stoddard’s constitutional arguments. Stoddard’s contentions assume his poverty. Nevertheless, the record contains no information, other than Stoddard’s statutory indigence for purposes of hiring an attorney, that he lacks funds to pay a \$100 fee. The cost of a criminal charge’s defense exponentially exceeds \$100. Therefore, one may be able to afford payment of \$100, but not afford defense counsel. Stoddard has presented no evidence of his assets, income, or debts. Thus, the record lacks the details important in resolving Stoddard’s due process argument.

Gary Stoddard underscores that other mandatory fees must be paid first and interest will accrue on the \$100 DNA collection fee. This emphasis helps Stoddard little, since we still lack evidence of his income and assets.

*Id.* at 228-29.

The defendant does not establish the court committed a manifest constitutional error at the time of sentencing. There was nothing in the record to indicate whether the defendant was provided an attorney at public expense under subsections (a) through (c), instead of (d) of RCW 10.101.010. The plea agreement had included the recommendation the \$200 filing fee, along with other fees, be imposed. CP 381. The court was not asked to waive any fee, nor were those costs objected to at sentencing. *See* RP 345-351, 353-356. The defendant's attorney even stated: "I've had a chance to review the judgment and sentence with my client. It appears to be a *true and accurate* reflection of the Court's ruling." RP 356 (emphasis added).

Therefore, policy and RAP 2.5 do not favor consideration of the belatedly-raised legal financial obligations issue. Nothing presented to the trial court at the time of sentencing indicated that the \$200 filing fee could not be imposed; and the defendant had expressly agreed to pay the \$200 filing fee, and the community custody conditions. *See* CP 381; RP 356.

**B. THE COURT DID NOT ERR IN IMPOSING A CONDITION OF COMMUNITY CUSTODY REQUIRING DEFENDANT TO PAY SUPERVISION FEES.**

The community custody condition requiring the defendant to pay supervision fees as determined by the Department of Corrections ("DOC" herein) is not a "cost" within the meaning of RCW 10.01.160(3).

RCW 10.01.160(2) defines “costs” as expenses specially incurred by the State to prosecute the defendant, to administer a deferred prosecution program, or to administer pretrial supervision.

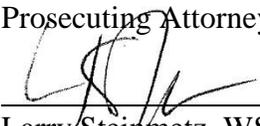
The supervision assessment is imposed under RCW 9.94A.703(2)(d) which provides that, “[u]nless waived by the court, as part of any term of community custody, the court shall order an offender to ... [p]ay supervision fees as determined by the DOC.” Because this condition does not fall under RCW 10.01.160(3), the court did not err in imposing this condition and was not required to conduct an inquiry into the defendant’s ability to pay under RCW 10.01.160(2) nor waive the fee under RCW 10.01.160(3). *See State v. Clark*, 191 Wn. App. 369, 374-75, 362 P.2d 309 (2015) (distinguishing fines from costs).

## V. CONCLUSION

This Court should affirm both the imposition of the agreed \$200 filing fee and the community custody condition requiring the defendant to pay supervision fees as determined by DOC.

Dated this 22 day of November, 2019.

LAWRENCE H. HASKELL  
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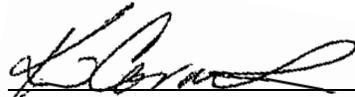
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I certify under penalty of perjury under the laws of the State of Washington, that on November 22, 2019, I e-mailed a copy of the Brief of Respondent in this matter, pursuant to the parties' agreement, to:

Laura Chuang and Jill Reuter  
admin@ewalaw.com

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(Place)

  
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(Signature)

# SPOKANE COUNTY PROSECUTOR

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## Transmittal Information

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**Appellate Court Case Title:** State of Washington v. Gloria Rae Redmann  
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