

74537-9

74537-9

NO. 74537-9-I

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

STATE OF WASHINGTON,

Respondent,

v.

LATOUSHA RANEE YOUNG,

Appellant.

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State of Washington

BRIEF OF RESPONDENT

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I. ISSUES

1. Was the defendant properly convicted of burglary for unlawfully entering a residence in violation of a court protective order?

2. Was the court's instruction to the jury, which accurately instructed them on the law, an improper comment on the evidence?

3. Did the defendant fail to preserve the issue of legal financial obligations for appeal?

4. Is the court required to assess the defendant's future ability to pay before assessing mandatory legal financial obligations? Does this raise equal protection concerns?

5. Did the imposition of the mandatory LFOs violate the defendant's due process rights?

6. Should the defendant be assessed the costs of appeal if the State substantially prevails?

II. STATEMENT OF THE CASE

On August 13, 2015, a post-conviction, domestic violence no contact order was entered in Bothell Municipal Court, prohibiting the defendant from having contact with the victim in this case, Alexis R. Stewart for 5 years. The order prohibited the defendant from coming within 1,000 feet of Ms. Stewart's residence, school,

workplace, or person. The order was entered in open court with the defendant present. The defendant signed the order. Exhibit 23 and 24.

On October 4, 2015, Alexis Stewart and her 10 month old son had been living at the home of the defendant's mother, Janice Young, for about one month. Also in the home were Janice Toyne and her twelve years old daughter J.T. While residing there, Ms. Stewart and her son were sharing a bedroom with J.T. RP 41, 43, 72.

On October 4, 2015, Ms. Young was awakened by a loud bang. When she went to investigate, she discovered the defendant had broken the window next to the front door and was inside the house. The defendant then ran up the stairs to the bedroom where Ms. Stewart was staying. Ms. Young told the defendant not to do "this". Ms. Young warned the defendant she would call the police. The defendant continued past Ms. Young to Ms. Stewart's bedroom. The defendant was calling Ms. Stewart a "bitch", a "whore" and "stuff like that" and exclaiming that she was going to "beat her ass". RP 60. Ms. Young said she grabbed the defendant in a bear hug to try to keep her from entering the room. The defendant got away from Ms. Young. The defendant then jumped

on Ms. Stewart in her bed, pulled the covers back, and began hitting Ms. Stewart with her fists. J.T. and Ms. Stewart's 10 month old son were in the bed at that time. RP 44-7; 59-63.

Ms. Young called 9-1-1. The defendant fled outside. J.T. watched from the window and saw the defendant go to her truck. J.T. saw the defendant coming back toward the house so she went to the bedroom door and locked it, explaining that it was the safe thing to do. The defendant re-entered the house and grabbed the phone from Ms. Young's hand and stomped on it. Then she picked up a 15 pound dumbbell and pounded on the phone with it. The defendant demanded Ms. Young return her keys. When Ms. Young told her she did not have her keys, the defendant took a tribal mask from the wall and threw it on the floor, breaking it. The defendant then threw a piece of the mask at Ms. Young, striking her. The defendant also hit Ms. Young a couple of times in the face. Ms. Young denied that any of these blows hurt. The defendant kicked and banged on Ms. Stewart's bedroom door, but was not able to re-enter the bedroom that night. The defendant fled the house before the police arrived. RP 48-9; 63-5.

The defendant was located hiding under a bush in the backyard. The defendant was laying on her stomach, keeping her

face hidden from the light. The defendant presented as passed out, except she held herself completely rigid when the officers contacted her to arrest her. The defendant exhibited signs of having consumed alcohol. RP 113-17.

III. ARGUMENT

A. THE DEFENDANT WAS PROPERLY CONVICTED OF BURGLARY FOR UNLAWFULLY ENTERING A RESIDENCE IN VIOLATION OF A COURT PROTECTIVE ORDER.

A property possessor cannot grant access to a residence that has been banned by a court order. State v. Sanchez, 166 Wn. App. 304, 311, 271 P.3d 264, 268 (2012). In Sanchez, the defendant was charged with residential burglary for offenses committed in his ex-wife's residence after she gave him permission to enter the residence. There was a valid domestic violence no contact order in place excluding the defendant from his ex-wife's residence. The Sanchez court ruled that only a judge may alter a court order and the defendant could not reasonably rely on his ex-wife's decision to countermand the order. The property possessor cannot trump an order of the court. Sanchez, 166 Wn. App. at 310-11. This is consistent with prior rulings regarding consent as a defense to violation of a court order. "Indeed, the Legislature's intent is clear throughout the statute, and allowing consent as a

defense is not only inconsistent with, but would undermine, that intent." State v. Dejarlais, 136 Wn.2d 939, 944, 969 P.2d 90, 92 (1998).

Domestic violence is a problem of immense proportions affecting individuals as well as communities. Domestic violence has long been recognized as being at the core of other major social problems: Child abuse, other crimes of violence against person or property, juvenile delinquency, and alcohol and drug abuse. Domestic violence costs millions of dollars each year in the state of Washington for health care, absence from work, services to children, and more.

Id. (citing, Laws of 1992, ch. 111, sec. 1.)

As here, In Sanchez the defendant argued that State v. Wilson compelled dismissal of the burglary charge. In Wilson the court stated that the owner's consent or lack thereof, not the State's consent or lack thereof, controls whether the accused entered the premises lawfully. However, the holding in Wilson is based on the fact that the restraining order did not preclude the accused from entering the home or residence of the protected party. The court in Wilson emphasized this by pointing out that the restraining order could have excluded the defendant from the residence. State v. Wilson, 136 Wn. App. 596, 602, 150 P.3d 144 (2007).

Here, as in Sanchez, the restraining order prohibited the defendant from entering the residence. In Sanchez, the court held that a property possessor may not trump an order of the court. “A court may determine who, for purposes of a burglary charge, can be lawfully on the property. Nothing in this passage supports the theory that the property possessor can trump an order of the court...” Sanchez, 166 Wn. App. at 311.

The defendant also argues that the only portion of the home that constituted Ms. Stewart’s residence was the bedroom where she was sleeping and therefore the defendant could legally enter the remainder of the residence without being in conflict with the protection order. BOA at 9-10. There is no indication in the record that Ms. Stewart was confined to the bedroom. However, it is unnecessary to determine if the “residence” was limited in such a manner, the order specifically prohibited the defendant from coming within 1,000 feet, or just under a fifth of a mile, of Ms. Stewart’s residence. It is clear from the description of the home that any entry would have been in violation of this provision. Exh. 23.

B. THE COURT PROPERLY INSTRUCTED THE JURY.

Alleged instructional errors are reviewed novo standard. State v. Woods, 143 Wn.2d 561, 590, 23 P.3d 1046, 1064 (2001).

In assessing whether the trial court presented the jury with an erroneous instruction, the allegedly erroneous instruction is evaluated in the context of the instructions as a whole. Id. The Washington State Constitution does not allow judges to charge juries with respect to matters of fact, nor comment thereon. State v. Brush, 183 Wn.2d 550, 556–57, 353 P.3d 213, 216–17 (2015); Wash. Const. art. IV, § 16. A jury instruction that does no more than accurately state the law pertaining to an issue, however, does not constitute an impermissible comment on the evidence by the trial judge. Woods, 143 Wn.2d at 591. If an instruction resolves a contested factual issue, then it is an improper comment on the evidence. Brush, 183 Wn.2d at 557.

In Brush, the erroneous instruction resolved for the jury that “a prolonged period of time” meant more than a few weeks. The court found this was not an accurate statement of the law and therefore, was an improper comment of the evidence. Brush at The court held that this was an improper comment of the evidence because the court effectively answered a question of material fact that was contested in that case. Here, the instruction in question did not resolve an issue of contested fact but was simply a statement of the law. The instruction stated,

A person enters or remains unlawfully in or upon premises when he or she is not then licensed, invited, or otherwise privileged to so enter or remain.

A person who is prohibited by court order from entering a premise cannot be licensed, invited, or otherwise privileged to so enter or remain on the premise by an occupant of the premise.

1 CP 67 (Court's Instruction to the Jury No. 6).

The defendant argues that the instruction at issue is an improper statement of the law, arguing that the holding in Sanchez only applies to consent from a protected party. The defendant asserts that a third person, who is not a party to the order, can override a court's protective order. BOA at 11-12. This argument is entirely inconsistent with the rulings of this court and the legislative intent set forth above. If the protected party to an order cannot override the court's ruling, a person who is not a party to the order would have even less authority to do so. By this reasoning, a restrained person need only get a friend, relative or even stranger to grant him permission to contact a protected party to override a court's order. The defendant argues that the homeowner has the right to license whomever they please to enter their home. However, the restrictions of a court order are placed on the restrained person. That person is aware of the conditions of the order. The order, on its face, warns the restrained party that only

the court can change the order upon written application. Exh. 23. A restrained person may not violate the conditions of a court's order despite an invitation to do so.

Unlike the instruction in Brush, the instruction at issue here did not improperly resolve an issue of material fact. The court did not instruct the jury as to whether the defendant had been prohibited by court order from entering the premise in question in or define a premise as the entire house. The parties were free to argue those issues and did. The questions were left for the jury to decide.

C. THE INVITED ERROR DOCTRINE PRECLUDES THE DEFENDANT FROM SEEKING APPELLATE REVIEW OF THE ISSUE OF IMPOSITION OF MANDATORY LEGAL FINANCIAL OBLIGATIONS.

The invited error doctrine is a strict rule that precludes a criminal defendant from seeking appellate review of an error he helped create, even when the alleged error involves constitutional rights. State v. Studd, 137 Wn.2d 533, 546–47, 973 P.2d 1049 (1999). The invited error doctrine applies where the defendant engages in some affirmative action by which he knowingly and voluntarily set up the error. State v. Corbett, 158 Wn. App. 576, 592, 242 P.3d 52, 59 (2010).

Here the defendant asked the sentencing court to impose the mandatory \$100 DNA fee and \$500 VPA fee at sentencing and therefore is precluded from raising this issue on appeal. This court should decline to address this issue. 12/23/15 RP 10-13.

D. THE TRIAL COURT DID NOT NEED TO CONSIDER THE DEFENDANT'S PAST, PRESENT, OR FUTURE ABILITY TO PAY WHEN IT IMPOSES EITHER DNA OR VPA FEES.

At sentencing, the trial court imposed \$600 in mandatory LFOs: a crime victim penalty assessment (VPA) of \$500, and a DNA fee of \$100. It appears from the record the trial court neglected to impose the mandatory criminal filing fee of \$200. As it appears the State did not request the mandatory \$200 criminal filing fee, the State will not raise this issue on appeal. The defendant asked the court to impose the mandatory fees in question. The defendant now appeals her sentence objecting that the sentencing court did not determine her ability to pay prior to imposing the mandatory LFOs. 12/23/15 RP 10-13.

The sentencing court's authority to impose court costs and fees is statutory. State v. Mathers, 193 Wn. App. 913, 917, 376 P.3d 1163, 1166 (2016). Where the legislature has had time to correct a court's interpretation of a statute and has not done so, we presume the legislature approves of our interpretation. Washington

courts have consistently held that a trial court need not consider a defendant's past, present, or future ability to pay when it imposes either DNA or VPA fees. Id. at 918.

Two of the LFOs imposed by the trial court on [the defendant] are not discretionary costs governed by RCW 10.01.160. They are, instead, statutorily mandated financial obligations. The \$500 victim assessment is mandated by RCW 7.68.035 and the \$100 DNA collection fee is mandated by RCW 43.43.7541. Neither statute requires the trial court to consider the offender's past, present, or future ability to pay.

State v. Kuster, 175 Wn. App. 420, 424, 306 P.3d 1022, 1024 (2013).

"But unlike discretionary legal financial obligations, the legislature unequivocally requires imposition of the mandatory DNA fee and the mandatory victim penalty assessment at sentencing without regard to finding the ability to pay." State v. Shelton, 194 Wn. App. at 673–74.

The statutory inquiry is required only for discretionary LFOs. Mandatory fees, which include victim restitution, victim assessments, DNA fees, and criminal filing fees, operate without the court's discretion by legislative design. State v. Clark, 191 Wn. App. 369, 373, 362 P.3d 309, 311 (2015).

“We hold that (1) under the plain language of the applicable statutes, a sentencing court is required to impose mandatory LFOs and therefore has no obligation to assess the defendant's ability to pay them; and (2) imposing mandatory LFOs on indigent criminal defendants does not violate equal protection or substantive due process.” State v. Ma, 47226-1-II, 2016 WL 4248585, at 1 (Wash. Ct. App. Aug. 9, 2016).

The defendant argues that declining to waive mandatory fees in criminal cases violates equal protection because civil litigants can have their filing fees waived under GR 34. BOA 20.

Under the equal protection clause of the Washington State Constitution, article I, §12, and the Fourteenth Amendment to the United States Constitution, persons similarly situated with respect to the legitimate purpose of the law must receive like treatment. The defendant argues that equal protection applies here because indigent civil litigants receive the benefit of GR 34 which allows the court to waive the mandatory filing fee for purposes of allowing access to justice. She therefore asserts that the post-conviction mandatory fees must similarly be considered discretionary or criminal defendants are not equally treated.

The defendant argues that GR 34 should be applied to criminal defendants with regard to imposition of the mandatory fees. However, the purpose of GR 34 is to waive filing fees to allow access to justice. This does not apply to the final judgment. The court has declined to expand GR 34 to the mandatory DNA and VPA statutes. State v. Mathers, 193 Wn. App. 913, 924, 376 P.3d 1163, 1169 (2016).

E. IMPOSITION OF THE MANDATORY LFOS DID NOT VIOLATE THE DEFENDANT'S DUE PROCESS RIGHTS.

The defendant argues that his substantive due process rights were violated by the court not considering his ability to pay prior to imposing the mandatory fees. BOA 16. This argument is premature.

A statute is presumed constitutional. A party challenging a statute's constitutionality bears the heavy burden of establishing its unconstitutionality. Larson v. Seattle Popular Monorail Auth., 156 Wn.2d 752, 757, 131 P.3d 892, 895 (2006), as amended (May 24, 2006). Here, the defendant challenges the constitutional validity of the DNA and VPA fee statutes as-applied.

The United States Constitution guarantees federal and state government will not deprive an individual of "life, liberty, or property,

without due process of law." U.S. Const. amends. V, XIV, § 1. Article I, section 3 of the Washington Constitution guarantees no person shall be deprived of life, liberty, or property, without due process of law. In analyzing a substantive due process challenge, our Supreme Court has held the Washington due process clause does not afford broader protection than the Fourteenth Amendment. State v. Shelton, 194 Wn. App. 660, 666, 378 P.3d 230, 234 (2016).

Because the challenge to the DNA statute does not affect a fundamental right, a rational basis standard of review applies. Under that deferential standard, the challenged law must be rationally related to a legitimate state interest. State v. Shelton, 194 Wn. App. at 667.

Due process precludes the jailing of an offender for failure to pay a fine if the offender's failure to pay was due to his or her indigence. Under certain circumstances, however, the State may imprison an offender for failing to pay his or her LFOs, such as if the offender is capable of paying but willfully refuses to pay or if the offender does not make a genuine effort to seek employment or borrow money in order to pay. Due process requires the court to inquire into the offender's ability to pay, but the burden is on the

offender to show nonpayment is not willful. Therefore, it is at the point of enforced collection, where an indigent may be faced with the alternatives of payment or imprisonment, that he may assert a constitutional objection on the ground of his indigency. State v. Mathers, 193 Wn. App. 913, 927–28, 376 P.3d 1163, 1171 (2016)(internal citation omitted).

“We hold that because imposition of the mandatory DNA fee does not implicate constitutional principles until the State seeks to enforce collection of the DNA fee or impose a sanction for failure to pay, the as-applied substantive due process challenge to RCW 43.43.7541 is not ripe for review.” Shelton, 194 Wn. App. At 674.

F. THE DEFENDANT SHOULD BE REQUIRED TO PAY THE COSTS OF HIS UNSUCCESSFUL APPEAL.

The defendant asks this court to exercise its discretion to deny costs. Under RCW 10.73.160(1), this court “may require an adult offender convicted of an offense to pay appellate costs.” As this court has recognized, the statute gives this court discretion concerning as to the award of costs. State v. Sinclair, 192 Wn. App. 380, 367 P.3d 612 (2016); see State v. Nolan, 141 Wn.2d 620, 8 P.3d 300 (2000).

The defendant argues that because the trial court found her to be indigent, costs should presumptively be denied. The sole reason that she urges for denying costs is her indigence. RCW 10.73.160(3) specifically provides for an award of costs that includes recoupment of fees for court appointed counsel. Counsel is only appointed for defendants who are indigent. RCW 10.73.150.

The defendant's argument would create a "Catch-22." In the novel of that title, an airman could be removed from flight duty for mental illness, but only on his own request – and making the request proved that he wasn't mentally ill. See State v. Frederick, 100 Wn.2d 550, 558 n. 3, 674 P.2d 136 (1983), quoting J. Heller, *Catch-22* (1961). Similarly, under the defendant's argument, an indigent defendant can be required to recoup the costs of her appeal – but only if she isn't indigent. The defendant's argument is in effect a negation of the statute, which this court has already held constitutionally valid. See State v. Blank, 131 Wn.2d 230, 930 P.2d 1213 (1997).

The meaning of RCW 10.73.160 can be determined by reviewing its history. Prior to 1995, the rules governing appellate costs in criminal cases were the same as those applied in civil cases. The State could recover costs incurred by the prosecutor,

but not expensed incurred by the Appellate Indigent Defense Fund on the defendant's behalf. State v. Keeney, 112 Wn.2d 140, 112 P.2d 140, 769 P.2d 295 (1989). In 1995, the legislature authorized the State to seek recoupment of appellate costs by enacting RCW 10.73.160. Laws of 1995, ch. 275, § 3.

In Blank, this court upheld the constitutionality of RCW 10.73.160. The court held that it was not necessary to determine the defendant's ability to pay before imposing appellate costs. It pointed out that "it is nearly impossible to predict ability to pay over a period of 10 years or longer." Rather, the issue of inability to pay is properly resolved via motion to remit costs under RCW 10.73.160(4). Blank, 131 Wn.2d at 242; see City of Richland v. Wakefield, no. 92594-1 (9/22/16) (discussing standards for remission of costs). In accordance with this valid statute, indigent offenders should be required to pay costs, including recoupment of expenses incurred on their behalf.

Our supreme court's exercise of discretion with regard to appellate costs has always been based on the issues raised and the manner in which they were litigated, not the parties' financial status. An award of costs is discretionary with the appellate court. State v. Nolan, 141 Wn.2d 620, 628, 8 P.3d 300 (2000).

The appropriate standards for application of that discretion can be determined by reviewing cases concerning awards of costs. RCW 10.73.160(3) provides that “[c]osts ... shall be requested in accordance with the procedures contained in Title 14 of the rules of appellate procedure.” The statute thus preserved existing procedures for awarding costs. Under those procedures, the rule was that “[u]nder normal circumstances, the prevailing party on appeal would recover appeal costs.” Pilch v. Hendrix, 22 Wn. App. 531, 534 P.2d 824 (1979).

Despite the rule that normally allows costs, appellate courts have recognized several situations in which costs are properly denied. One situation is where the reversal resulted from an error that was attributable to the successful appellant. For example, costs were denied when a judgment was reversed because the action was premature, because the successful appellant was responsible for bringing the premature action. Water Dist. No. 111 v. Moore, 65 Wn.2d 392, 393, 397 P.2d 845 (1964). Similarly, costs were denied when reversal was based on issues that the successful appellant should have called to the attention of the trial court. See, e.g., In re Dill, 60 Wn.2d 148, 372 P.2d 541, 543 (1962); Ramsdell v. Ramsdell, 47 Wash. 444, 92 P. 278 (1907).

The court has recognized other situations in which costs may be denied. They may be denied as a sanction for violations for appellate rules. See, e.g., Tyree v. General Insurance Co., 64 Wn.2d 748, 753, 394 P.2d 222, 226 (1964). They may be denied when the court decides the case on an issue that was not raised by either party. Hall v. American National Plastics, Inc., 73 Wn.2d 203, 205, 437 P.2d 693, 694 (1968). Costs may likewise be denied when the court decides the merits of a moot case. Such a decision is in the public interest, not for the benefit of either party. National Electrical Contractors Assoc. v. Seattle School Dist. No. 1, 66 Wn.2d 14, 23, 400 P.2d 778 (1965).

All of these examples share a fundamental feature. All of them are based on the issues raised and the manner in which they were argued. It does not appear that the Supreme Court has ever denied costs based on financial hardship to a party. Rather, the court has refused to recognize hardship as a reason for denying costs. Association Collectors, 194 Wash. at 44.

This distinction reflects the nature of the appellate process. Appellate courts resolve cases on the basis of the record. "This court simply is not in a position either to take evidence or to weigh contested evidence and make factual determinations." State v.

Walker, 153 Wn. App. 701, 708, 224 P.3d 814 (2009). Consequently, a decision to grant or deny costs cannot be based on matters such as ability to pay. That ability can rarely be predicted from facts in the record – to the extent that it is predictable at all. Instead, decisions about costs must be based on facts in the record.

In this case, the record provides no basis for denying costs. This was a standard appellate proceeding in which the parties litigated for their own benefit. The defendant has not pointed to any misconduct that would justify denial of costs. The only basis asserted by the defendant is her alleged inability to pay – which is not a proper basis for denial. Any issue of hardship should be resolved by using the statutory procedure for remission of costs. Blank, 131 Wn.2d at 242. The State is entitled to costs.

This analysis is consistent with long-standing practice under RCW 10.73.160. That statute was enacted in 1995. In 1997, the Supreme Court held that costs could be awarded under the statute without a prior determination of the defendant's ability to pay. Blank, 131 Wn.2d at 242. From then until 2015, the Supreme Court and the Court of Appeals routinely awarded appellate costs to the

State when it prevailed in a criminal appeal. The Legislature has made no changes to the statute with regard to adult offenders.

“In interpreting a statute, we accord great weight to the contemporaneous construction placed upon it by officials charged with its enforcement, especially where the Legislature has silently acquiesced in that construction over a long period.” In re Sehome Park Care Ctr., Inc., 127 Wn.2d 774, 780, 903 P.2d 443 (1995). For almost 20 years, appellate courts construed RCW 10.73.160 as providing for the routine imposition of costs against indigent defendants. The Legislature has acquiesced in that decision. There is no reason for applying different standards now. If the Legislature believes that this results in an undue burden on adult defendants, it can amend the statute – just as it has done for juvenile offenders. See Laws of 2015, ch. 265, § 22 (eliminating statutory authority for imposition of appellate costs against juvenile offenders).

The defendant relies on State v. Sinclair, 192 Wn. App. 380, 367 P.3d 612 (2016). There, this court held: “Ability to pay is certainly an important factor that may be considered under RCW 10.73.160, but it is not necessarily the only relevant factor, nor is it necessarily an indispensable factor.” *Id.* at 389. This analysis is contrary to Blank. It tries to do exactly what the court there

considered “nearly impossible” – predict the defendant’s ability to pay over a lengthy period. Blank, 131 Wn.2d at 242. This court should reject an exercise of discretion on the basis of a factor that is generally not reflected in the appellate record and is largely impossible to predict. Rather, discretion as to costs should be exercised in the manner that it always has been – by looking at factors connected with the issues raised and the manner in which the appeal was litigated.

The defendant places heavy reliance on State v. Blazina, 182 Wn.2d 827, 344 P.3d 680 (2015). The court there construed the statute dealing with awards of trial costs, RCW 10.01.160. That statute specifically precludes courts from imposing costs “unless the defendant is or will be able to pay them.” RCW 10.01.160(3). As discussed above, RCW 10.73.160 contains no comparable provision. The holding of Blazina is therefore irrelevant to the present case.

In Blazina, the court discussed the burdens that financial obligations can place on offenders. Although this is an important consideration, it is not the only legitimate consideration. As our Supreme Court has recognized, restitution can be a rehabilitative tool. State v. Barr, 99 Wn.2d 75, 79, 658 P.2d 1247 (1983).

Recoupment of appellate costs is a form of restitution – it makes the offender responsible for out-of-pocket expenses that were incurred by the public as a direct result of his crime.

There are also issues of fairness involved. Washington follows the “American rule” – ordinarily each party bears its own attorney fees. Rettkowski v. Dep’t of Ecology, 128 Wn.2d 508, 514, 910 P.2d 462, 465 (1996). Under some circumstances, a prevailing party can be granted its attorney fees against its opponent. See, e.g., Knight v. City of Yelm, 173 Wn.2d 325, 346-47, 267 P.3d 973 (2011) (statutory award of attorney fees in zoning cases); Weiss v. Bruno, 83 Wn.2d 911, 912, 523 P.2d 915, 916 (1974) (challenge to patently unconstitutional expenditure of public funds). Criminal cases, however, present a paradoxical situation. Because of the State’s obligation to provide an adequate defense to indigents, the winning party (the State) is required to pay the attorney fees for the losing party (the defendant). The Legislature could reasonably conclude that the costs of an appeal should, to the extent possible, be borne by the guilty offender, not the innocent taxpayer.

The issue of appellate costs involves conflicting policy considerations. Within constitutional limitations, resolving those conflicts is a matter for the Legislature. The Legislature is

continuing to study these issues. In 2015, it amended RCW 10.73.160 to remove juvenile offenders from its coverage. Laws of 2015, ch. 265, § 22. The Legislature has not, however, altered the statute with regard to adult offenders. This court should not substitute its own ideas of public policy for those of the Legislature. In accordance with standard procedures, costs should be awarded in this case.

IV. CONCLUSION

For the foregoing reasons the State asks the court to affirm the defendant's convictions and sentence. Should the defendant not prevail, she should be required to pay appellate costs.

Respectfully submitted on October 5, 2016.

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

THE STATE OF WASHINGTON,

Respondent,

v.

LATOUSHA RANEE YOUNG,

Appellant.

No. 74537-9-1

DECLARATION OF DOCUMENT
FILING AND E-SERVICE

AFFIDAVIT BY CERTIFICATION:

The undersigned certifies that on the 6th day of October, 2016, affiant sent via e-mail as an attachment the following document(s) in the above-referenced cause:

BRIEF OF RESPONDENT

I certify that I sent via e-mail a copy of the foregoing document to: The Court of Appeals via Electronic Filing and to Marla Zink, Washington Appellate Project, marla@washapp.org; and wapofficemail@washapp.org.

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 6th day of October, 2016, at the Snohomish County Office.



Diane K. Kremenich
Legal Assistant/Appeals Unit
Snohomish County Prosecutor's Office