NO. 43927-1-II

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

STATE OF WASHINGTON, Respondent

v.

MICHAEL SCOTT NORRIS, Appellant

FROM THE SUPERIOR COURT FOR CLARK COUNTY
CLARK COUNTY SUPERIOR COURT CAUSE NO.06-1-01550-9

BRIEF OF RESPONDENT

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B. STATEMENT OF THE CASE

Michael Scott Norris (hereafter 'Norris') was arrested on August 16, 2006 on allegations of Rape of a Child in the First Degree, Child Molestation in the First Degree and Child Molestation in the Second Degree. CP 1. On August 30, 2006, the State charged Norris by information with 10 counts, including 6 counts of Rape of a Child in the First Degree, 1 count of Child Molestation in the First Degree, 2 counts of Child Molestation in the Second Degree and 2 counts of Sexual Exploitation of a Minor. CP 5-7. By February 2008, the State had filed a Second Amended Information which charged Norris with 13 counts including 4 counts of Rape of a Child in the First Degree, 2 counts of Rape of a Child in the Second Degree, 2 counts of Child Molestation in the First

Degree, 2 Counts of Child Molestation in the Second Degree, 1 count of Rape of a Child in the Third Degree, and 2 counts of Sexual Exploitation of a Minor. CP 13-17. The charges also included allegations that Norris used a position or status of trust to facilitate the commission of the crimes on all 13 counts, and also allegations that this was a part of a pattern of ongoing sexual abuse on all 13 counts. CP 13-17. There were two alleged victims, a minor female and a minor male. CP 3-4.

The State alleged there were photographs and videos of the defendant abusing the victims in this case, showing sexually explicit material involving minors. CP 3. Pending trial, there were discovery issues involving the provision of copies of these photographs and videos as the prosecutor on the case argued that it would violate federal law to provide defense with copies of the images. RP (7/24/07)[1] at 160-98. For several months, the State contested giving copies of the images to Norris, and Norris asked the Court to order the State to provide copies. See RP (8/7/07, 8/23/07, 9/13/07, 9/28/07, 11/7/07, 11/29/07, 1/3/08, 2/4/08,

[1] The State refers to the verbatim report of proceedings as the Appellant does in his Amended Opening Brief. The verbatim report of proceedings is referenced as follows: 1RP- one volume consisting of 1/19/07, 4/13/07, 5/3/07, and 5/11/07; 2RP-one volume consisting of 10/25/07, 11/8/07, 11/21/07 and 12/28/07; 3RP-one volume consisting of 7/30/12 and 9/4/12. The verbatim report of proceedings that have been transferred to this appeal from the previous appeal under 37842-6-II are identified by hearing date as RP (hearing date). These hearing dates include: 9/26/06, 2/1/07, 3/9/07, 3/30/07, 4/19/07, 6/14/07, 7/13/07, 7/24/07, 8/7/07, 8/23/07, 8/24/07, 8/31/07, 9/13/07, 9/28/07, 11/1/07, 11/29/07, 1/3/08, 1/25/08, 2/4/08 (two volumes), 2/13/08, 3/4/08, 4/8/08, 4/16/08, 4/21/08, 4/24/08.

2/13/08, 3/4/08, 4/8/08, 4/16/08, 4/21/08).

On February 4, 2008, a hearing was held wherein photographs and movies of Norris committing multiple acts of Rape of a Child and Child Molestation were viewed as the State detailed which images and videos it would rely upon at trial. CP 116; RP (2/4/08) at 422-574. Judge Wulle viewed these graphic images during this hearing. CP 116; RP (2/4/08) at 422-574.

This was a long and drawn-out case in which the court heard argument on several issues. One issue of concern for the judge was how to present the evidence of the graphic images to a jury without offending the public or violating any laws. RP (3/9/07) at 44-45, 50; RP (3/30/07) at 74-76. The trial court did make many comments about the "distasteful" nature of the graphic images and his displeasure at seeing them over the course of the pre-trial litigation in this case. RP (3/30/07) at 75-76, 80; RP (6/14/07) at 16-17; RP (9/28/07) at 40-41; RP (11/29/07) at 17-18; RP (2/4/08) at 450, 494; RP (2/13/08) at 626-27; 3RP at 41-45.

Norris filed an affidavit of prejudice against the trial court judge on June 14, 2007, nearly 10 months after arrest and charging. CP 318-20. Norris made this motion pursuant to RCW 4.12. CP 318. Norris alleged that the trial judge was prejudiced because his prior attorney probably made disparaging comments about Norris to the judge; that the judge

expressed his "distaste" and "disgust" for child pornography; that the trial court referenced prior similar cases in discussing how logistically to handle this case; and that the judge expressed his desire to keep these images from the view of the public. CP 319-20. At the hearing on this motion, the trial judge expressed that he did not believe Norris' former counsel made any disparaging remarks about Norris. RP (6/14/07) at 13-14. In response to Norris' allegations that the judge used the words "disgust" or "distaste" in referencing child pornography, the trial court reiterated it did not have a desire to view child pornography, "If in fact, it is what is truly depicted." *Id.* at 16. The court went on to say, "It's my job to have a fair and impartial trial and to keep the case moving in an appropriate manner under the law." *Id.* Regarding having had similar cases in the past, the court indicated that he didn't believe "that affects my ability to be fair and impartial." *Id.* at 25. The trial court denied Norris' motion for a new judge. *Id.* at 26.

Norris filed a second motion requesting the judge recuse himself in January 2008 pursuant to RCW 4.12.040. CP 321-33.This motion was based on the fact that the trial court judge had recently been censured by the State Commission on Judicial Conduct. CP 322. Norris alleged he could not receive a fair trial from Judge Wulle because his charges involved "homosexual acts" and Judge Wulle was censured for "gratuitous

and prejudicial references regarding sexual orientation." CP 322. Norris attached the Order of Censure to this second motion. CP 323-33.The allegations of Judge Wulle's comments regarding sexual orientation include referring to the city of San Francisco as "very gay," and when asked who the facilitator of his group was (at a conference) he said, "the black, gay guy." CP 326-27. These comments occurred outside the courtroom. CP 328. The Order of Censure calls Wulle's conduct at this conference "an aberration." CP 329. Witnesses who provided information in this investigation "do not believe [Judge Wulle] to be...homophobic...." CP 329. Further, Judge Wulle's "reputation is generally that of a thoughtful jurist." CP 329. Judge Wulle was censured and required to take ten hours of courses in judicial ethics, obtain a drug and alcohol evaluation and attend at least seven hours in one or more programs on racial, religious, sexual orientation and diversity training. CP 330-31.

The court heard argument on Norris' second motion requesting the judge recuse himself on January 25, 2008. RP (1/25/08). At this hearing, the trial court denied Norris' motion and stated:

> Second, I pride myself on bending over backwards as a rule number one that anyone that walks into my courtroom regardless of who or what they are will be treated fairly and that the justice system will provide fairness to them.

> That is my responsibility under the State Constitution and the Federal Constitution.
>
> I leave it for others to determine if I accomplish that task, but that is my goal, that is what I've done.
>
> I have bent over backward to make sure that you have adequate representation, that you have more than enough resources, even when people who control the purse strings have told me, We don't want to do it, we don't think the Defense is entitled to it. I've erred on the side of protecting the rights of the defendant.
>
> I will continue to do so....

RP (1/25/08) at 419.

In April 2008 Norris filed a motion to dismiss under CrR 8.3 and CrR 4.7 on the grounds that his rights were violated by the State's refusal to turn over evidence and that he was forced him to sacrifice his right to speedy trial. CP 18-24. The trial court denied this motion. CP 44-47.

On May 23, 2008 Norris filed a Notice of Discretionary Review in the Court of Appeal and this Court accepted review and issued a published opinion on July 27, 2010 at *State v. Norris*, 157 Wn. App. 50, 236 P.3d 225 (2010), *rev. denied*, 170 Wn.2d 1017 (2011). This Court reversed the trial court's ruling that the State did not have to provide Norris with copies of the images it intended to admit at trial. *Id.* at 65-67, 71-72. The case was remanded for further proceedings, including consideration of Norris' motions to dismiss and suppress. *Id.* at 55, 81.

On remand, Norris waived his CrR 4.7 and CrR 8.3 motions, his right to a jury trial and his right to speedy trial. CP 114-18, 120-21, 220-

23. Norris entered a stipulation of facts wherein he admitted that he had sexual intercourse with a child, L.B.B., DOB 3/14/93, while he was more than twenty-four months older and thirty-six months older than her on many occasions. CP 115. He admitted he had sexual contact with L.B.B. CP 115. Norris admitted that he also had sexual intercourse with A.M.B., a child born on 6/17/91, while Norris was at least thirty-six months older. Norris also admitted to sexual contact with A.M.B. CP 116. Norris admitted that he created sexually explicit photographs and movies of himself, L.B.B. and A.M.B., which images and movies were viewed in court on February 4, 2008. CP 116.

Norris filed a third motion for the judge to recuse himself on June 1, 2012 CP 283-86. This motion was based on Norris' perception that a meeting between his attorney, the prosecuting attorney and the judge created an appearance of impropriety. CP 284. The court heard this motion, along with defense attorney's motion to withdraw on July 30, 2012. 3RP at 3-32. The judge found no impropriety and denied the motion for disqualification of the trial judge and denied counsel's motion to withdraw. 3RP 25-27, 32. During the hearing, Judge Wulle stated:

> ...I have always had the opinion that the number one function of a judge is to provide fairness to all parties who enter a courtroom. I have bent over backwards, if I can steal a phrase from Mr. Harvey, to do everything I can to make sure Mr. Spencer (sic) has adequate representation—

> excuse me, Mr. Norris has adequate representation, has the opportunity to be heard on the issues and everything I could think of to make sure it was fair to him. Have reached the point where I'm starting to feel that I'm not being fair to the State. This matter has been before the court, a question of recusal of me, or removal of me or whatever you want to call it, for some time now, okay, and I've been—my wife uses the phrase noodling it, thinking through exactly what role did I have in this case that I should remove myself.
> .....
> Based on what I'm seeing here in this case, I see no reason to recuse myself.

3RP 25-26.

The case proceeded to trial before the court on the same date. 3RP at 33-72. Norris had previously waived his right to a jury trial and the case proceeded with the judge as trier of fact. 3 RP at 33-72. As evidence at trial, the State relied upon Norris' stipulations of fact, and the photographs and movies which the court viewed in February 2008. 3RP at 40-45. During this part of the trial, in discussion of whether the judge remembered viewing the images, the court indicated he had "tried to block them out of my mind," and that he was "disgusted by looking at the images." 3 RP at 43-44.

The trial court found Norris guilty of Counts 1 through 9 and 12, and also found the aggravating circumstances alleged for those counts. CP 272-77. The court sentenced Norris in September 4, 2012 to the agreed recommended sentence of 420 months. 3RP at 103; CP 128. This appeal

follows. CP 141.

C. ARGUMENT

I. NORRIS RECEIVED A FAIR TRIAL AND THE TRIAL JUDGE DID NOT ERR IN FAILING TO RECUSE HIMSELF.

Norris claims his trial court judge had a duty to recuse himself because of actual or potential bias. Norris alleges the judge harbored prejudice against Norris because Norris engaged in "homosexual" activities by sexually abusing a child who was male, and that the judge had an improper emotional reaction to the evidence which proves the judge's bias against Norris. The trial judge gave Norris a fair trial and ensured his rights were protected. Norris' claims of actual or potential bias are without merit.

A criminal defendant has a due process right to a fair trial by an impartial judge. Wash. Const. art. I, sec 22; U.S. Const. Amends VI, XIV. The fair administration of justice, and the public's confidence in the administration of justice requires the appearance of fairness and actual fairness. *State v. Dugan*, 96 Wn. App. 346, 354, 979 P.2d 885 (1999).

A judge should disqualify him or herself in any proceeding in which his or her impartiality might reasonably be questioned. Former Canon of Judicial Conduct 3(D)(1) (now codified as Canon 2.11(A)). This

includes any instance where the judge has a personal bias or prejudice against one party. *Id.* On review, appellate courts apply a reasonable person test, finding no judicial bias when a reasonable person, who knows and understands all the relevant facts would conclude the parties received a fair hearing. *See Sherman v. State*, 128 Wn.2d 164, 206, 905 P.2d 355 (1995) (quoting *In re Drexel Burnham Lambert Inc.*, 861 F.2d 1307, 1313 (2d Cir. 1988)). But the law does not simply require an impartial judge, the judge must also appear to be impartial. *State v. Post*, 118 Wn.2d 596, 618, 826 P.2d 172, *modified by* 837 P.2d 599 (1992) (quoting *State v. Madry*, 8 Wn. App. 61, 70, 504 P.2d 1156 (1972)). A perceived bias must result from an actual personal interest in the outcome. *Id.* at 619. The personal interest must be real, but the resulting bias from that personal interest may only be perceived. *See, e.g., id.* at 618.

The burden is on Norris to support his claim of judicial bias with evidence of the judge's actual or potential bias. First, Norris claims the trial judge was biased because of extra-judicial comments he had made in the past regarding homosexual persons. Norris himself did not engage in "homosexual" activities by raping and molesting a child. Norris engaged in pedophilic activities. Even if the judge had a bias against homosexual persons, that bias would not have extended to Norris, as Norris did not represent himself to be a homosexual male, but instead, the judge was

presented with evidence, including stipulated admissions by Norris, that he engaged in pedophilic criminal activities. CP 116. There is a significant difference and distinction between pedophilic activities and homosexual activities. Further, there is nothing in the record to support Norris' claim that the judge was biased against him due to his sexual orientation, and Norris has pointed to nothing more than the trial court's extra-judicial comment, which all involved say was out-of-character for the judge. CP 329. This allegation is not supported by evidence of the judge's actual or potential bias regarding Norris or his case.

Second, Norris' claim that the judge had a personal bias against him because of his reaction to seeing the photographs and movies of Norris raping two children is without merit. Though the trial judge did make unfortunate remarks, these remarks in no way were directed at Norris or showed the judge's opinion of Norris as a person or of his case. He simply was expressing an opinion about graphic evidence he saw. Just as a judge who expresses distaste for graphic photos of a murder scene is not necessarily biased against the defendant in that case, neither was Judge Wulle biased against Norris due to his viewing of the photographs in Norris' case. Though obscene in the extreme, the record shows Judge Wulle remained impartial and went to great lengths to provide Norris with a fair trial.

The State agrees with Norris that judges "are held to a higher standard." Am. Br. Of Appellant at 26. It is clear from the outcome of this case, that Judge Wulle held himself to this higher standard and put his own personal feelings aside and decided the case based on the evidence and the law. At sentencing on this matter, Judge Wulle expressed the outrageousness of Norris' crimes. 3RP at 103. He expressed the heinous nature of what Norris did to his victims and indicated he believed Norris deserved a life sentence. *Id.* A life sentence was within the court's discretion to give. However, being fair to Norris and to all the parties, the judge sentenced Norris to the agreed recommended sentence. *Id.* Norris received exactly what he bargained for: a 35 years to life sentence. *Id*; CP 128.

This case is similar in nature to *State v. Gamble*, 168 Wn.2d 161, 225 P.3d 973 (2010). In *Gamble*, the judge in defendant Alexander's case mentioned he was disturbed by the facts of the case as they involved a father's abuse of his child. 168 Wn.2d at 188. The Supreme Court found "nothing improper in the court's remarks at the time and in the context in which they were made." *Id.* The trial court judge in Norris' case did essentially the same thing the judge in defendant Alexander's case did in *Gamble, supra*. The facts of Norris' case are disturbing. Even more disturbing than hearing or reading the facts would be watching the videos

and seeing over a hundred photographs depicting Norris raping and molesting two young children. It was reasonable for the trial judge to have an emotional reaction to viewing such depictions. Though the trial court's repeated commentary on the subject was ill-advised, those comments alone do not vitiate the fairness this judge showed Norris throughout the proceedings. As Judge Wulle stated,

> I have bent over backwards, if I can steal a phrase from Mr. Harvey, to do everything I can to make sure Mr. Spencer (sic) has adequate representation—excuse me, Mr. Norris has adequate representation, has the opportunity to be heard on the issues and everything I could think of to make sure it was fair to him.

3RP at 25. Judge Wulle did not violate the appearance of fairness doctrine and Norris received a fair trial.

In further support that Norris received a fair trial by an impartial judge is the fact that he waived his right to a jury trial and agreed to allow the trial court to hear the case, knowing that the judge had made the comments about the evidence, and knowing the judge's comments regarding homosexuality. This choice to have Judge Wulle sit as the finder of fact shows Norris and his defense attorney did not truly believe that Judge Wulle was biased against Norris. This evidences the fact that "a reasonably prudent, disinterested observer would conclude" that Norris received a fair, impartial and neutral trial as Norris himself could not have

believed the judge to be biased against him if he was willing to allow the court to hear the case instead of a jury. *See State v. Bilal*, 77 Wn. App. 720, 722, 893 P.2d 674 (1995) (quoting *State v. Ludenburg*, 67 Wn. App. 749, 754-55, 840 P.3d 228 (1992)).

All the facts and circumstances taken in context of the entire posture of the case show that Norris received a fair trial, his constitutional rights were not violated and the trial judge was fair and impartial. Norris was properly convicted of all the crimes and received a sentence to which he agreed. Norris' claims that the trial judge was biased against him and he should receive a new trial are without merit.

II. THE STATE AGREES AND CONCEDES NORRIS' SENTENCE ON COUNT 9 IS IMPROPER

Norris alleges the trial court exceeded its sentencing authority in sentencing him to a term above the maximum penalty for Child Molestation in the Second degree as charged in Count 9. The State agrees and this court should remand for resentencing on Count 9.

RCW 9A.20.021(1) provides the maximum sentence for a class B felony is 10 years. Child Molestation in the Second Degree is a Class B felony. RCW 9A.44.086(2). In Norris' case, the court imposed a sentence of 420 months on Count 9, a class B felony. This sentence clearly exceeds the statutory maximum sentence and exceeded the trial court's sentencing

authority. The appropriate remedy in such a situation is to vacate the improper portion of the sentence and remand for resentencing on that portion. *State v. Eilts*, 94 Wn.2d 489, 496, 617 P.2d 993 (1980). Therefore, the State agrees this Court should reverse Norris' sentence on Count 9, Child Molestation in the Second Degree, and remand for resentencing with directions to ensure the sentence does not exceed the maximum 10 year available sentence.

III. THE STATE AGREES AND CONCEDES THAT NORRIS' TOTAL SENTENCE ON COUNT 8 EXCEEDS THE STATUTORY MAXIMUM SENTENCE

Norris alleges the trial court exceeded its sentencing authority in sentencing him to a combined term of prison and community custody above the maximum penalty of 10 years for Count 8. The State agrees and this court should remand for resentencing on Count 8.

Count 8 is also a conviction for child Molestation in the Second Degree, a Class B felony. CP 127. Child Molestation in the Second Degree, as a class B felony, has a maximum sentence of 10 years. RCW 9A.20.021(1); 9A.44.086(2). By imposing a prison sentence of 120 months and community custody of 36 months, the trial court exceeded its sentencing authority in giving Norris a sentence above the statutory maximum for this crime. A defendant's prison term and community custody term together cannot exceed the statutory maximums sentence.

See State v. Winborne, 167 Wn. App. 320, 329, 273 P.3d 454, *rev. denied*, 174 Wn.2d 1019 (2012).

This case should be remanded for resentencing on Count 8 to ensure that Norris does not receive a sentence above the statutory maximum for Child Molestation in the Second Degree.

IV. THE TRIAL COURT PROPERLY FOUND NORRIS HAD THE ABILITY TO PAY AND PROPERLY IMPOSED LEGAL FINANCIAL OBLIGATIONS

Norris argues the trial court improperly found he had a current or future ability to pay towards his legal financial obligations. However, the trial court had sufficient facts upon which to base such a finding. The trial court's finding was proper and should be affirmed.

Norris does not distinguish between mandatory and discretionary legal financial obligations in his arguments. This distinction is important. For mandatory legal financial obligations, the legislature has divested courts of the discretion to consider a defendant's ability to pay when imposing these legal financial obligations. The legislature has directed expressly that a defendant's ability to pay should not be taken into account for victim restitution, victim assessments, DNA fees and criminal filing fees. *See, e.g., State v. Kuster*, 175 Wn. App. 420, 306 P.3d 1022 (2013). Norris' total financial obligations are outlined on pages 7 and 8 of his judgment and sentence. CP 148-49. The $500.00 victim assessment is

required by RCW 7.68.035(1)(a), the $100.00 DNA collection fee is required by RCW 43.43.7541, and the $200.00 filing fee is required by RCW 36.18.020(2)(h) irrespective of the defendant's ability to pay. *See State v. Curry*, 62 Wn. App. 676, 680-81, 814 P.2d 1252 (1991), *aff'd*, 118 Wn.2d 911, 829 P.2d 166 (1992); *State v. Thompson*, 153 Wn. App. 325, 336, 223 P.3d 1165 (2009).

For the discretionary legal financial obligations, such as court costs and fees, the trial court must consider the defendant's present or likely future ability to pay. *Curry*, 118 Wn.2d at 915-16. RCW 10.01.160, the statute codifying our State's court costs and fee structure does not "require[] a trial court to enter formal, specific findings regarding a defendant's ability to pay [discretionary] court costs." *Id.* at 916. This finding may be reviewed on appeal under the clearly erroneous standard. *State v. Bertrand*, 165 Wn. App. 393, 404, n. 13, 267 P.3d 511 (2011) (quoting *State v. Baldwin*, 63 Wn. App. 303, 312, 818 P.2d 1116 (1991), *modified by* 837 P.2d 646 (1992)). A trial court's finding is "clearly erroneous" when "review of all the evidence leads to a 'definite and firm conviction that a mistake has been committed.'" *Schryvers v. Coulee Cmty. Hosp.*, 138 Wn. App. 648, 654, 158 P.3d 113 (2007) (quoting *Wenatchee Sportsmen Ass'n v. Chelan County*, 141 Wn.2d 169, 176, 4 P.3d 123 (2000)). There was evidence in the record in Norris' case to support a finding that he has the likely future ability to pay towards his

legal financial obligations. The trial court did not clearly err in making this finding and it should not be disturbed.

The trial court was aware of facts contained in the pre-sentence investigation report. This report shows Norris had a bachelor's of science degree in allied health and medical technology. CP 302. He spent most of his adult life working in the area of medical technology. *Id.* He was working at the time of his arrest in this case. *Id.* Though Norris is correct in pointing out in his brief that he has declared bankruptcy in the past, he fails to mention that this was due to his own problems managing money and not a lack of ability to earn money, and that the foreclosure on his home was due to his arrest and incarceration in this case. *Id.* The State's burden in establishing whether a defendant has the present or likely future ability to pay discretionary legal financial obligations is a low one. *See e.g., State v. Baldwin*, 63 Wn. App. at 312. In *Baldwin*, the court upheld the finding of ability to pay based on one statement contained in a presentence report that the defendant described himself as employable and should be held accountable for legal financial obligations. *Baldwin*, 63 Wn. App. at 311.

As in *Baldwin*, the fact of Norris' employability is sufficient to support the trial court's finding of his ability to pay. Based on the fact that immediately prior to being arrested on his current offense Norris had been employed shows that he is employable and should be held accountable for the legal financial obligations imposed by the court. The State met the

burden of establishing Norris' ability to pay. Norris' allegation that the finding of ability to pay was entered without factual support is without merit.

Even if this court finds that the trial court's finding was clearly erroneous, the remedy is simply that the trial court must make a finding at a later time of Norris' ability to pay prior to collecting any of the discretionary legal financial obligations. In *State v. Bertrand, supra,* the Court of Appeals held the trial court's finding that the defendant had the ability to pay was clearly erroneous because the trial court did not 'take into account the financial resources of the defendant and the nature of the burden' imposed by LFOs…." *Bertrand*, 165 Wn. App. at 404 (citing *State v. Baldwin*, 63 Wn. App. at 312). However, even though it was erroneous for the trial court to make that finding, and the Court of Appeals reversed that finding, the Court of Appeals did not strike or reverse the imposition of legal financial obligations. *Bertrand,* 165 Wn. App. at 405. The Court held in *Bertrand, supra*, that the trial court must make a determination at a later time that the defendant is able to pay before any of the financial obligations may be collected. *Id.* at fn 16. The more appropriate and "meaningful time to examine the defendant's ability to pay is when the government seeks to collect the obligation." *Baldwin*, 63 Wn. App at 310 (citing *State v. Curry*, 62 Wn. App. at 680).

Norris' argument that the finding of the trial court of his ability to pay should be vacated is without merit. The finding was based on evidence within the record below and this evidence met the low threshold of proof required to show Norris has a future ability to pay. The trial court's finding of his ability to pay should be affirmed.

D. CONCLUSION

The State agrees that this case should be remanded for resentencing on Counts 8 and 9. The trial judge was not biased or prejudiced against Norris and the trial court properly found Norris has the present ability to pay. Apart from the sentences on counts 8 and 9, the trial court should be affirmed in all respects.

DATED this 28th day of October, 2013.

Respectfully submitted:

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