

NO. 46013-1-II

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

STATE OF WASHINGTON,
Respondent,

v.

RICKY LYNN TATRO, JR.,
Appellant.

BY *[Signature]*
DEPUTY

STATE OF WASHINGTON

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FILED
COURT OF APPEALS
DIVISION II

APPEAL FROM THE SUPERIOR COURT OF THE STATE
OF WASHINGTON FOR GRAYS HARBOR COUNTY

THE HONORABLE F. MARK MCCAULEY, JUDGE

BRIEF OF RESPONDENT

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RESPONDENT'S COUNTERSTATEMENT OF THE CASE

Procedural Background

The defendant was charged by Information on December 18, 2013, with Theft of a Motor Vehicle, RCW 9A.56.063 (CP 1-2). On February 3, 2014, the defendant appeared before the Honorable Gordon L. Godfrey and executed a Waiver of Right to Jury Trial (RP 2-3-14 page 10-12 CP 3). A bench trial was held before the Honorable F. Mark McCauley on February 12, 2014. The defendant was found guilty. Findings of Fact and Conclusions of Law were entered on February 24, 2014 (CP 4-6). The defendant was sentenced to serve 50 months. The court imposed statutory court costs of \$800.00 and court appointed attorney fees of \$900.00 (CP 7-14).

Factual Background

The facts in support of the charge of Theft of a Motor Vehicle are not in dispute. No issue has been raised concerning either the Findings of Fact, Conclusions of Law, or verdict rendered by the court at the bench trial.

On November 22, 2013, Nicholas Phillabaum had traveled to Aberdeen and parked his car outside the residence of his friend, Krista Bradshaw (CP 7 Finding of Fact 1). The defendant was inside the

residence when he arrived. The defendant asked Mr. Phillabaum for permission to take his car to run an errand to obtain some food for them and medication for Ms. Bradshaw. The defendant drove away and was never heard from again (Finding of Fact 3, CP 9).

The defendant was ultimately arrested on December 4, 2013. The vehicle had yet to be located (Finding of Fact 4, CP 10). The vehicle was found, abandoned, in the village of Taholah by a Quinault Tribal Police Officer on January 4, 2014. Missing from the car were Mr. Phillabaum's wallet and credit cards as well as a semi-automatic pistol (Finding of Fact 5, CP 12).

RESPONSE TO ASSIGNMENTS OF ERROR

The trial court properly assessed costs (Response to Assignment of Error 1)

The Court ordered the following costs and assessments: Crime Victim Assessment \$500.00, Court Costs (filing fee) \$200.00, Attorney Fees \$900.00, and DNA collection fee \$100.00. Restitution was never entered.

To begin with, there are certain mandatory legal financial obligations. The Legislature has divested the courts of any discretion to consider a defendant's ability to pay when imposing these legal financial obligations. As regards the crime victim assessment, the DNA filing fee,

and the criminal filing fee the Legislature has directed expressly that a defendant's ability to pay should not be taken into account when ordering these statutorily mandated costs. State v. Lundy, 176 Wn.App. 96, 101-102, 308 P.3rd 755 (2013). In the case at hand the court imposed the crime victim assessment, RCW 7.68.035, court costs (filing fee), RCW 36.18.020(2)(h) and the DNA collection fee, RCW 43.43.7541. The only financial assessment imposed that was discretionary with the court was the \$900.00 court appointed attorney fees.

A challenge to the imposition of the legal financial obligations, including the attorney fees, is not ripe for review until the State attempts to curtail a defendant's liberty by attempting to enforce collection of the fees. State v. Bertrand, 165 Wn.App. 393, 267 P.3d 571 (2011). The meaningful time to examine a defendant's ability to pay is when the government seeks to collect the obligation. State v. Baldwin, 63 Wn.App. 303, 308-311, 818 P.2d 1116 (1991).

Furthermore, the requirement that a defendant pay attorney fees for court appointed counsel is not an impermissible infringement upon the defendant's right to counsel. The obligation can only be imposed upon a later finding by the court that the defendant, at the time the State is

attempting to enforce the obligation, has the ability to pay. State v. Barklind, 87 Wn.2d 814, 557 P.2d 314 (1976).

This issue has long been settled. RCW 10.01.160 authorizes the trial court to impose costs and attorney fees on a convicted indigent defendant if he is able to pay or will be able to pay. Quite simply, such costs may be ordered as long as the repayment is not mandatory, there is a likelihood that the defendant will be able to pay, the defendant is permitted to petition for remission of the payments and the defendant cannot be held in contempt for violation of the Judgment and Sentence unless there is an intentional refusal to obey the court order or failure to make good faith effort to make payment. See State v. Eisenman, 62 Wn.App. 640, 810 P.2d 55 (1991).

The court is not required to make a specific finding at the time of sentencing that the defendant will have the ability to pay in the future. RCW 10.01.160 regarding the assessment of attorney fees are constitutional and complies with the standards set forth by the United States Supreme Court Fuller v. Oregon, 417 U.S. 40 L.Ed 2d 642 (1974).

This assignment of error must be denied.

CONCLUSION

The judgment of the court must be affirmed.

DATED this 6 day of October, 2014.

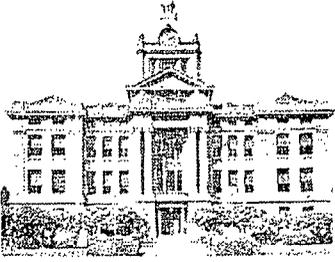
Respectfully Submitted,

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for Grays Harbor County



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GRF/lh



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October 6, 2014

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CLERK OF COURT OF APPEALS DIV II
STATE OF WASHINGTON

RE: *State v. Ricky Lynn Tatro, Jr.*
Court of Appeals No. 46013-1-II

Dear Mr. Ponzoha:

Enclosed is the original and one copy of the Brief of Respondent and Affidavit of Mailing in the above-entitled matter. By cover of this letter, a copy of the Brief of Respondent has also been sent to Lisa Elizabeth Tabbut, Attorney for Appellant.

Very truly yours,

GERALD R. FULLER
Interim Prosecuting Attorney
for Grays Harbor County

GRF/lh

Enclosures

cc: Lisa Elizabeth Tabbut, Attorney for Appellant

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STATE OF WASHINGTON,

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DECLARATION OF MAILING

RICKY LYNN TATRO, JR.,

Appellant.

DECLARATION

I, _____, hereby declare as follows:

On the ___ day of October, 2014, I mailed a copy of the Brief of Respondent to Lisa Elizabeth Tabbut, Attorney at Law, PO Box 1396, Longview, WA 98632-7822 by depositing the same in the United States Mail, postage prepaid.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge and belief.

DATED this ____ day of October, 2014, in Montesano, Washington.
