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Division II  
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STATE OF WASHINGTON  
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No. 96020-8

COA #49773-5-II

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

v.

TINA MARIE HUGHES,

Petitioner/Appellant.

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ON REVIEW FROM  
THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON,  
DIVISION TWO  
and  
THE SUPERIOR COURT  
OF THE STATE OF WASHINGTON,  
KITSAP COUNTY

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APPELLANT'S PETITION FOR REVIEW

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A. IDENTITY OF PARTY

Tina M. Hughes, appellant in the court of appeals, Division Two, is the Petitioner.

B. COURT OF APPEALS DECISION

Pursuant to RAP 13.4.(b)(3), Petitioner seeks review of a portion of the unpublished decision of the court of appeals, Division Two, State v. Hughes, \_\_ Wn. App. \_\_ (2018 WL 2437295), issued on May 30, 2018.<sup>1</sup>

C. ISSUES PRESENTED FOR REVIEW

The only question at trial was whether the jury found the Petitioner possessed drugs found in a “compact” in her purse or believed her defense that she had unwittingly possessed them.

Did the court of appeals err and should this Court grant review because Division Two upheld the conviction and found counsel was not prejudicially ineffective in

- 1) failing to object to admission of testimony that the police stopped Petitioner in a “high-risk” traffic stop and arrested her for driving a suspected stolen truck when the state had not charged Petitioner with a crime in relation to that truck, and
- 2) failing to propose a limiting instruction telling jurors not to consider the “high-risk” nature of the arrest or the stolen vehicle allegations as evidence against her client or her client’s credibility, and
- 3) failing to object to an officer declaring his belief that the purse belonged to the defendant and that anything found in someone’s purse was theirs, the crucial question at trial?

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<sup>1</sup>A copy is attached hereto as Appendix A.

D. STATEMENT OF THE CASE

1. Procedural posture

Petitioner Tina M. Hughes was charged with and convicted by jury in Kitsap County superior court with unlawful possession of a controlled substance (methamphetamine). CP 1-6; RCW 69.50.4013; RCW 69.50.206(d)(2). The Honorable Jeffrey Bassett, trial judge, imposed a standard-range sentence and Ms. Hughes appealed. CP 64-86. On May 30, 2018, Division Two of the court of appeals affirmed in part and reversed in part. App. A. This Petition timely follows.

2. Facts relevant to issues on review

A Kitsap County Sheriff's Office patrol deputy stopped the truck Tina Hughes was driving after the officer ran the "plates" on the truck and learned it was suspected to have been stolen. RP 58-61. At jail after Hughes was arrested, a "baggie" was found inside a makeup container in her purse, which was in the truck. RP 93-95. The baggie contained a substance which tested positive for methamphetamine. RP 94-95.

Ms. Hughes denied that the container was hers, explaining that she had left her purse in her truck outside a home while she was inside earlier that day. RP 129-39. She also noted that the purse was on the floor of the trunk in front of a male passenger in the truck earlier that day as well. RP 129-39.

Before trial, the prosecutor argued that the state should be

able to introduce evidence that the defendant was driving a suspected stolen vehicle, even though Hughes was not accused of anything relating to the stealing of the truck. RP 14-15. The prosecutor was concerned that the officer might otherwise look bad for pulling Hughes over. RP 14-15.

Appointed counsel initially said she had thought the state was going to charge Hughes with “the stolen car thing.” RP 16-17. But counsel did not ask for more time to think about the implications of introducing the evidence of the uncharged crime against her client as a result of the state’s charging decision. RP 16-17. Counsel then barely participated in the discussion between the court and prosecutor and did not object when the decision was made that the officer should be allowed to tell the jury Hughes was suspected of driving a stolen truck. RP 18.

Counsel did not request or mention giving a limiting instruction to tell the jury Hughes was not accused of anything in relation to the stolen car. RP 18. Nor did she request any instruction telling jurors that they were not allowed to consider the allegation that the truck the accused was driving was believed to be stolen in any improper way. RP 18.

In opening argument, the prosecutor told the jury the officer had pulled over the truck as a suspected stolen vehicle and that Hughes had been arrested for that crime. RP 55.

A moment later, with the jury out, counsel objected, stating

“there was an agreement that we were going to say that there was an issue with the truck, not that it was a stolen vehicle.” RP 55. As that was not at all the discussion, the court corrected her, “[n]o.” RP 55-56. Counsel then had the court’s ruling - for which she was present - explained to her. RP 55. The prosecutor then reiterated the state’s position that it was important for jurors to know why the car was pulled over so they would not worry the officer was just conducting a “random, harassing stop or something.” RP 55. Counsel made no argument about the prejudice from the uncharged crime and did not ask the court to balance the state’s interest in preventing jurors from thinking police might have conducted an improper stop with the defendant’s constitutional right to a fair trial based on the evidence, rather than prejudicial “other crimes” propensity claims. RP 55.

A little later, in discussing the incident and stopping the truck the officer testified about how dangerous it was when officers stopped a suspected stolen vehicle. RP 62. He stated it is “a high-risk stop.” RP 62. He said, officers “don’t know what’s going to jump out of the car” in such situations. RP 62. He then again repeated the description of the type of stop used for a stolen vehicle - the stop jurors knew had been used with Hughes - as “high risk,” telling jurors how important it was to have multiple officers there for that reason. RP 67. He said police needed an officer “shouting commands,” one “providing security” and a third to “retrieve” suspects as they are “backing up to your patrol car.” RP 67. Counsel stayed mute. RP 62-

67.

A few moments later, when asked why he decided not to get fingerprints on the baggie found in the compact in order to prove who had handled it, the officer declared it unnecessary because, “[t]ypically, when you find something in someone’s wallet or purse, **that’s their property.**” RP 72-73 (emphasis added). Counsel did not object. RP 72-73.

E. ARGUMENT WHY REVIEW SHOULD BE GRANTED

THIS COURT SHOULD GRANT REVIEW UNDER RAP 13.4(b)(3) BECAUSE DIVISION TWO ERRED IN HOLDING THAT TRIAL COUNSEL WAS CONSTITUTIONALLY EFFECTIVE

Under RAP 13.4(b)(3), this Court will grant review if the case presents a significant question of constitutional law under the state or federal constitutions. This case presents the significant constitutional law question of whether appointed trial counsel was so prejudicially ineffective that the court of appeals erred in affirming her conviction for possession of methamphetamine.

Both the Sixth Amendment and the state constitution, Article 1, section 22, guarantee those accused of any crime the right to effective assistance of counsel, even if counsel is appointed because the defendant is in poverty. Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); State v. Mierz, 127 Wn.2d 460, 471, 901 P.2d 286 (1995). Counsel is ineffective if, despite a strong presumption of effectiveness, 1) her representation was



“deficient,” and 2) that deficiency prejudiced her client. See State v. McFarland, 127 Wn.2d 322, 334-35, 899 P.2d 1251 (1995). Ineffective assistance of counsel is a mixed question of fact and law, reviewed de novo. State v. Sutherby, 165 Wn.2d 870, 883, 204 P.3d 916 (2009).

Here, the drugs were found in a compact inside the purse found in Hughes’ car. Ms. Hughes did not deny it was her purse but denied it was her compact or her drugs. The only issue at trial was therefore whether the jury would find Hughes was credible in her claim she had unwittingly possessed the drugs.

In finding that there was no ineffective assistance, Division Two took each of the instances of counsel’s misconduct in isolation. First, it found there was “a legitimate tactical reason” to allow the admission of the evidence that Hughes was arrested for the unrelated crimes involving the stolen truck because otherwise the jury might have speculated the arrest was for “a drug-related offense.” App. A at 6-7. It held there was no ineffective assistance “on this ground.” Id. Next, it conflated the officer’s opinion that the drugs in the purse were Hughes’ property and it was her purse with the idea just that the purse belonged to Hughes, finding that testimony “clearly not prejudicial” because Hughes had said the purse was hers. App. A at 7. It then concluded that Hughes “fails to show ineffective assistance of counsel on this ground.” App. A at 7.

The conclusion of whether counsel was ineffective, however, is based upon the entire record. State v. Thomas, 109 Wn.2d 222,

225-26, 743 P.2d 816 (1987).

More importantly, Division Two improperly applied the presumption that counsel had a legitimate tactical reason for her actions *despite the evidence in the record*. The purpose of presuming counsel is effective is that there is a wide range of acceptable behavior for counsel and even failing tactical decisions are reasonable conduct for an attorney, if made in good faith. Here, the evidence in the record is that counsel *was not making* tactical decisions. First, she assumed the prejudicial evidence of the uncharged crime(s) that the truck was stolen was going to be admitted because she had speculated that her client would be charged with a crime related to that evidence. RP 14-17. That might have been reasonable speculation, however once it became clear there was no charge relating to the stolen truck, counsel did not ask for more time to consider the issue or even participate in the discussion to a discernable degree. RP 14-18.

Indeed, her clear lack of understanding of the court's ruling was made plain when she objected to the prosecutor's discussion of the truck being stolen after opening argument and had to have the court itself explain to her what had happened when *counsel herself had been there*. RP 55-56. She did not then ask for a reconsideration because of that misunderstanding. She did not ask for a limiting instruction. And she did not object when the evidence went evidence further than just uncharged crimes regarding the allegedly

stolen truck, with the officer providing details about just how dangerous police view any stop relating to people involving that allegation and that *they conducted that type of stop with Ms. Hughes*. RP 62-67. Finally, counsel stayed mute when the officer told jurors his belief that anything found inside someone's purse was theirs and no fingerprinting or further investigation was needed, even though the only question at trial was whether the drugs found in Hughes' purse were intentionally or unwittingly possessed. RP 72-73.

This Court should grant review to address the significant constitutional question presented by the court of appeals decision in this case. The accused are entitled to effective assistance of counsel and ineffective assistance compels reversal where, within reasonable probabilities, the outcome would have been different, absent counsel's errors. Strickland, 466 U.S. at 694.

This does *not* require proof the defendant would likely have been acquitted. Strickland, 466 U.S. at 694. A "reasonable probability" is one sufficient to "undermine confidence in the outcome." State v. Crawford, 159 Wn.2d 86, 104-105, 147 P.3d 1288 (2006). Further, as one justice of this Court has noted, it involves a low standard of proof, less than a "preponderance of the evidence." See State v. Riofta, 166 Wn.2d 358, 376, 209 P.3d 467 (2009) (Chambers, J., concurring in dissent). To determine if such a probability exists, the Court asks if it can be confident that counsel's errors had no effect on the verdict. See, e.g., State v. Boehning, 127

Wn. App. 511, 532, 111 P.3d 899 (2005).

Such a conclusion is not possible in this case. The only issue at trial was whether the jury would believe Hughes had unwittingly possessed the drugs found in her purse. Counsel was not acting based upon a reasonable strategic theory; she was simply unprepared, not paying attention during the arguments and ruling and performing below an objective minimum standard of reasonableness. The court of appeals applied the wrong standards and affirmed an unconstitutional conviction gained in a trial at which counsel was not performing her constitutionally mandated role. This Court should grant review under RAP 13.4(b)(3). On review, the Court should hold that Ms. Hughes received ineffective assistance of counsel and should reverse and remand for a new trial at which Ms. Hughes should be provided the constitutionally effective appointed counsel to which she was entitled.

F. CONCLUSION

For the reasons stated herein, this Court should grant review.

DATED this 29th day of June, 2018.

Respectfully submitted,

/s/ Kathryn Russell Selk  
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CERTIFICATE OF SERVICE BY MAIL/EFILING

Under penalty of perjury under the laws of the State of Washington, I hereby declare that I sent a true and correct copy of the attached Petition for Review to opposing counsel at Kitsap County Prosecutor's Office, @kcpa@co.kitsap.wa.us and to Tina Hughes, by depositing in U.S. mail, with first-class postage prepaid at the following address: 200 East Gills Cove Dr., Allyn, WA. 98525.

DATED this 29th day of June, 2018.

/s/ Kathryn Russell Selk  
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May 30, 2018

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

STATE OF WASHINGTON,

Respondent,

v.

TINA MARIE HUGHES,

Appellant.

No. 49773-5-II

UNPUBLISHED OPINION

SUTTON, J. — Tina Marie Hughes appeals her jury trial conviction for unlawful possession of a controlled substance (methamphetamine). She argues that she received ineffective assistance of counsel because her trial counsel failed to object to improper propensity evidence and improper opinion testimony. She also argues that the trial court erred by imposing mandatory legal financial obligations (LFOs) without inquiring into her present and future ability to pay and erred by ordering forfeiture of certain property. We affirm the conviction and the imposition of the mandatory LFOs. But we accept the State’s concession that the forfeiture was improper and remand for the trial court to strike the forfeiture provision from the judgment and sentence.

**FACTS**

**I. BACKGROUND**

On May 27, 2016, Kitsap County Sheriff’s Office Deputy John Bass was on patrol when he noticed a truck that had been reported stolen. Deputy Bass stopped the truck to investigate. When backup arrived, Deputy Bass ordered Hughes, who was the driver, and the male passenger out of the truck. Hughes and the passenger complied. Deputy Bass later released the passenger.

After Deputy Bass placed Hughes in his patrol car, Hughes gave him permission to take her license out of the wallet in her purse. Deputy Bass located the purse in front of the truck's driver's seat. There were no other purses in the truck.

After verifying Hughes's identity with her license, Deputy Bass asked Hughes whether she wanted to take the purse with her to jail or to give it to the passenger. Hughes asked to take the purse with them.

Deputy Bass secured the purse in the patrol car's trunk and took Hughes to jail. While he was transporting Hughes, Deputy Bass asked her if there was anything she should not have. Hughes responded that there was not and that she was not a drug user. During the booking procedure, a jail corrections officer found methamphetamine inside a "makeup container" that was in the purse. RP (Nov. 14-17, 2016) at 95.

## II. PROCEDURE

The State charged Hughes with unlawful possession of a controlled substance (methamphetamine). Hughes pleaded not guilty.

### A. MOTION IN LIMINE

Before trial, the State argued in limine to be allowed to ask Deputy Bass about why he stopped Hughes. The State argued that this evidence should be allowed under the *res gestae* rule and that the evidence was necessary to explain that Deputy Bass "wasn't just pulling [Hughes] over just to pull her over" or that the deputy was not "just harassing someone for no reason." RP (Nov. 14-17, 2016) at 15. Defense counsel responded, "I would probably agree with that in that— I would agree with that, because that is an important part of my witness'[s] and also my client's

case as to why they were originally—why she was originally pulled over.” RP (Nov. 14-17, 2016) at 15.

The trial court ruled that the State could explain that Deputy Bass had stopped Hughes because the truck was listed as a stolen vehicle. But it further ruled that the State could not discuss any additional facts such as the deputy’s inability to reach the owner or the fact that any charges were threatened.

#### B. OPENING STATEMENTS

In its opening statement, the State indicated that Deputy Bass stopped the truck because he had run the license plate and the vehicle had been reported as stolen and that he had arrested and taken Hughes to jail based on this same information. Defense counsel did not object to this statement. In her opening statement, defense counsel did not mention that the vehicle had been reported stolen.

Before calling the witnesses, the State again asked the trial court about what could be said about the vehicle being stolen. The trial court reiterated that the State “could say [the vehicle] was listed as stolen.” RP (Nov. 14-17, 2016) at 56. Defense counsel did not object.

#### C. TESTIMONY

Deputy Bass, the corrections officer who found the drugs in the purse, and the forensic scientist who tested the drugs testified for the State. The witnesses testified as described above.

Deputy Bass testified that (1) the plates on the truck Hughes was driving belonged to a vehicle that had been reported stolen, and (2) when an officer makes a stop of a vehicle reported as stolen, the stop is considered “high risk” and the officer needs to approach the vehicle with caution. RP (Nov. 14-17, 2016) at 62, 67. But Deputy Bass also testified that he had no issues



stopping the truck because the way Hughes had stopped the vehicle did not cause him any concern and that the only reason he treated the stop as high-risk was because the truck had been reported as stolen. Defense counsel did not object to any of this testimony.

Deputy Bass also testified that he did not fingerprint the container with the drugs. When the State asked him why he did not fingerprint this item, the deputy responded,

Typically, when you find something in someone's wallet or purse, that's their property. I'm not going to fingerprint the gun I find on your hip. That's just not common practice.

Typically, if we have a burglary occur and you don't have a suspect, we're not going to fingerprint, because we don't have anything to—we don't have anything to tie it to. But in this case, no.

RP (Nov. 14-17, 2016) at 73. Defense counsel did not object.

On cross-examination, defense counsel questioned Deputy Bass about when and how he initially accessed the purse. During this questioning, Deputy Bass stated, “Well, at that point [Hughes is] under arrest for the possession of the stolen vehicle.” RP (Nov. 14-17, 2016) at 77. Defense counsel did not object to this testimony.

Hughes was the only defense witness. Hughes denied owning the methamphetamine or the container that contained the drugs. She testified that on the day of the arrest, her purse was in the truck unattended for about five hours while people were working on the truck. She also testified that someone had sold her the truck that night and that she was unaware the truck had been reported as stolen. When she found out the truck had been reported as stolen, she thought that “the guy who was selling it to us stole it” or that he was selling her a stolen truck. RP (Nov. 14-17, 2016) at 132. She also testified that she had been driving the truck that night because her friend did not have a driver's license.

D. CLOSING ARGUMENTS, JURY INSTRUCTIONS, AND VERDICT

In its closing argument, the State argued that Hughes possessed the methamphetamine because it was in her purse. The State asserted that Hughes's claim that someone put the drugs in her purse when the purse was unattended did not make sense because she was not likely to have left her purse unattended for hours.

In her closing argument, Hughes argued unwitting possession. She noted that the fact she chose to take the purse with her to jail when she had the chance to leave it behind was inconsistent with her knowing that there were drugs in her purse. She also reminded the jury that she had told the deputy that she did not use drugs.

The trial court instructed the jury on the defense of unwitting possession. The jury found Hughes guilty of unlawful possession of a controlled substance (methamphetamine).

E. SENTENCING

At sentencing, the trial court imposed the following mandatory LFOs: (1) \$500 victim assessment; (2) \$200 filing fee, and (3) \$100 DNA/Biological sample fee. The trial court specifically declined to impose any discretionary LFOs.

In addition, on the judgment and sentence, the trial court marked the box stating: “**FORFEITURE**—Forfeit all seized property referenced in the discovery to the originating law enforcement agency unless otherwise stated.”<sup>1</sup> Clerk's Papers at 70.

Hughes appeals her conviction, the mandatory LFOs, and the forfeiture provision.

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<sup>1</sup> There was no statement regarding what this property was or citation to any statute or case law.

## ANALYSIS

### I. INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM

Hughes first argues that she received ineffective assistance of counsel because defense counsel failed to object (1) to Deputy Bass's testimony about the truck having been reported as stolen, which she characterizes as improper propensity evidence, and (2) to Deputy Bass's testimony about the purse belonging to Hughes, which she characterizes as improper opinion testimony. We disagree.

#### A. STANDARD OF REVIEW

To establish ineffective assistance of counsel, Hughes must show that (1) defense counsel's performance was deficient and (2) this deficient performance resulted in prejudice. *State v. Grier*, 171 Wn.2d 17, 32-33, 246 P.3d 1260 (2011). Performance is deficient if it falls "below an objective standard of reasonableness." *Grier*, 171 Wn.2d at 33 (quoting *Strickland v. Washington*, 466 U.S. 668, 688, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)). Hughes bears the burden of establishing deficient performance and must overcome "a strong presumption that counsel's performance was reasonable." *Grier*, 171 Wn.2d at 33 (quoting *State v. Kylo*, 166 Wn.2d 856, 862, 215 P.3d 177 (2009)). Legitimate trial tactics and strategies generally do not constitute deficient performance. *Grier*, 171 Wn.2d at 33. A failure to demonstrate either deficient performance or prejudice defeats an ineffective assistance of counsel claim. *State v. Emery*, 161 Wn. App. 172, 188, 253 P.3d 413 (2011), *aff'd*, 174 Wn.2d 741, 278 P.3d 653 (2012).

#### B. PROPENSITY EVIDENCE

Hughes argues that defense counsel's performance was deficient because she failed to object to the State's introduction of evidence that Hughes was driving a suspected stolen vehicle.

Hughes further argues that this error was compounded by Deputy Bass's testimony emphasizing the high risk nature of the stop. Hughes contends that this evidence was inadmissible propensity evidence.<sup>2</sup>

The record shows that the trial court admitted the testimony about why Deputy Bass stopped Hughes to explain why Hughes was arrested. And defense counsel agreed with this approach, stating that it was necessary to explain why Hughes was originally pulled over. Hughes does not show that this was not a reasonable tactical decision. Without an explanation for the stop and arrest, the jury could have wondered why Hughes was arrested. Explaining that the stop and arrest was based on information that the truck she was driving had been stolen eliminated the possibility that the jury might assume Hughes was arrested for a drug-related offense. Because there was a legitimate tactical reason to allow this evidence, Hughes fails to establish ineffective assistance of counsel on this ground.

#### C. OPINION ON GUILT TESTIMONY

Hughes further argues that defense counsel's performance was deficient because she failed to object to Deputy Bass's testimony about why he did not fingerprint the packet containing the drugs. She contends that Deputy Bass's testimony was "improper opinion that it was, in fact, her *purse*" and that this testimony was highly prejudicial. Br. of Appellant at 11 (emphasis added).

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<sup>2</sup> "Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith." ER 404(b).

In general, no witness, lay or expert, may “testify to his opinion as to the guilt of a defendant, whether by direct statement or inference.” *State v. Black*, 109 Wn.2d 336, 348, 745 P.2d 12 (1987). Such testimony is characterized as unfairly prejudicial because it “invad[es] the exclusive province of the finder of fact.” *Black*, 109 Wn.2d at 348.

As noted above, in response to the State questioning him about why he did not fingerprint the drug evidence, Deputy Bass explained, “Typically, when you find something in someone’s wallet or purse, that’s their property. I’m not going to fingerprint the gun I find on your hip. That’s just not common practice.” RP (Nov. 14-17, 2016) at 73. Hughes contends that this testimony amounted to opinion testimony that the *purse* the deputy found in the truck was hers (Hughes’s).

This argument is difficult to understand because Deputy Bass’s testimony appears to refer to the packet of drugs, not to the purse. But to the extent that we can construe the challenged testimony as suggesting that Deputy Bass believed the *purse* belonged to Hughes, the testimony was clearly not prejudicial in light of the other evidence. Hughes herself testified that the purse was hers. She asserted only that the purse had been unattended for several hours. Because any potential testimony suggesting that Deputy Bass believed the purse belonged to Hughes was not prejudicial, Hughes fails to show ineffective assistance of counsel on this ground.

## II. MANDATORY LFO’S

Hughes next argues that the trial court erred when it imposed mandatory LFOs without following the requirements of RCW 10.01.160 and *State v. Blazina*, 182 Wn.2d 827, 344 P.3d 680 (2015). We disagree.

The statutory requirement that the trial court consider the defendant's ability to pay applies only to discretionary LFOs. *State v. Clark*, 195 Wn. App. 868, 871-72, 381 P.3d 198 (2016), *review granted in part on other grounds*, 187 Wn.2d 1009 (2017); *State v. Mathers*, 193 Wn. App. 913, 918-19, 376 P.3d 1163, *review denied*, 186 Wn.2d 1015 (2016). Hughes argues that the trial court is required to make findings of fact regarding a defendant's ability to pay before imposing mandatory LFOs citing *State v. Duncan*, 185 Wn.2d 430, 374 P.3d 83 (2016).

But *Duncan* does not require that the trial court enter formal findings, although it acknowledges that findings of fact are a good practice and are helpful on review. 185 Wn.2d at 436-37. *Duncan* does not help Hughes because (1) findings are not required, and (2) Hughes is not asserting a constitutional claim that she is being sanctioned for nonwillful failure to pay, but, rather, is asserting a statutory claim that the trial court violated RCW 10.01.160(3) in imposing the mandatory LFOs. Accordingly, this argument fails.

### III. FORFEITURE

Finally, Hughes argues that the trial court erred in ordering the forfeiture without statutory authority.<sup>3</sup> The State concedes that this was error.

Because the trial court failed to refer to any statutory authority authorizing the forfeiture and the State does not assert there was a statutory basis, we accept the State's concession. *See State v. Roberts*, 185 Wn. App. 94, 96, 339 P.3d 995 (2014) (reversing forfeiture provision in the defendant's judgment and sentence because the State failed to provide statutory authority for the

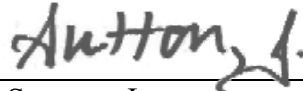
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<sup>3</sup> Hughes also argues that defense counsel provided ineffective assistance of counsel by failing to challenge the forfeiture. Because we accept the State's concession on this issue, we do not address it in the ineffective assistance of counsel context.

forfeiture and the sentencing court lacked statutory authority to order the forfeiture).

Accordingly, we affirm the conviction and the imposition of the mandatory LFO, but we remand for the trial court to strike the forfeiture clause from the judgment and sentence.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

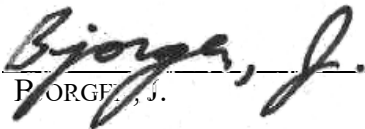


SUTTON, J.

We concur:



WORSWICK, P.J.



GEORGE, J.

# RUSSELL SELK LAW OFFICE

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## Transmittal Information

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 49773-5  
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**Superior Court Case Number:** 16-1-00709-9

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