

NO. 47135-3-II

**COURT OF APPEALS OF THE STATE OF WASHINGTON,
DIVISION II**

STATE OF WASHINGTON,

Respondent,

vs.

PATRICK FICK,

Appellant.

BRIEF OF APPELLANT

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ASSIGNMENT OF ERROR

Assignment of Error

1. The trial court erred when it refused to suppress evidence the police obtained after a warrantless search of a backpack the police knew that the defendant had hidden from their view.

2. Trial counsel's failure to move to suppress the search of backpack on the basis that the affirmation given in support of the warrant did not establish probable cause denied the defendant effective assistance of counsel.

3. The trial court erred when it imposed legal financial obligations upon an indigent defendant without addressing the defendant's ability to pay.

Issues Pertaining to Assignment of Error

1. Does a trial court err if it refuses to suppress evidence the police obtained after a warrantless search of a backpack the police knew that the defendant had hidden from their view and in which the police knew that the defendant maintained a reasonable expectation of privacy?

2. Does a trial counsel's failure to move to suppress the search of a backpack on the basis that the affirmation given in support of the warrant did not establish probable cause deny that defendant effective assistance of counsel if the affidavit given in support of the warrant only notes the presence of "spoons, pipe and needles" in the place to be searched without giving any further indication that any of these items were or had been used to store or ingest illegal drugs?

3. Does a trial court err if it imposes legal financial obligations upon an indigent defendant without addressing that defendant's ability to pay?

STATEMENT OF THE CASE

Factual History

At about 1:30 or 2:00 am on October 2, 2013, Skamania County Deputy Sheriff Summer Scheyer was on routine patrol near the intersection of Wind River Road and Fredrickson Street in the City of Carson when she saw the defendant walking down the road carrying a black back pack. RP 12/7/14 23-26.¹ At the time she was aware that there was an active warrant for his arrest. RP 12/7/14 26-28. As a result, she pulled her patrol vehicle up to him, jumped out, grabbed his hand or arm and told him he was under arrest. *Id.* The defendant responded by twisting away and running down Fredrickson Avenue. *Id.* Deputy Scheyer pursued him for a few seconds but gave up the chase “for officer safety reasons” when he went around the corner on Second Street in a dark area. *Id.* She then returned to her patrol car and called for a tracking dog. RP 12/7/14 29-30

About 20 minutes after Deputy Scheyer returned to her vehicle Skamania County Sheriff’s Deputy Rus Hastings arrived with his dog and

¹The record on appeal includes three volumes of verbatim reports. The first includes transcriptions of the hearing from 10/16/14, the suppression motion from 11/24/14, the readiness hearing from 12/4/14, and the sentencing hearing held on 1/15/15. The second and third volumes include the verbatim reports of the jury trial held on 12/7/14 and 12/8/14 respectively. Although the same transcriptionist prepared each volume, she began each separate hearing or trial day with a new page one. As a result, all of the verbatim reports are referred to herein as “RP [date] [page #].”

began tracking the defendant. RP 12/7/14 29-30, 60-62. Eventually Deputy Hastings' dog lost the defendant's scent. RP 12/7/14 32, 62-66. However, at one point on his return to his starting point Deputy Hastings' dog ran into some bushes and pulled out a backpack, which Deputy Hastings believed had the defendant's scent on it. RP 12/7/14 64-65. This was about one and one-half to two hours after the defendant had fled. RP 12/7/1432. After the dog pulled the backpack out of the bushes Deputy Hastings called Deputy Scheyer to the scene. RP 12/7/14 30-31. Once she arrived Deputy Scheyer identified the backpack the dog had pulled out of the bushes as the one the defendant was wearing when he ran away from her. *Id.* She later provided an affidavit given in support of her request for a warrant to search the backpack that stated the following:

On 10/02/2013, I observed Patrick Fick walking south on Wind River Road, near Fredrickson Street. I knew Fick had two Felony warrants and went out to contact him. As I contacted Fick, I saw he was wearing a black, Dakine backpack. I advised Fick he had warrants and grabbed his arm to handcuff him. Fick spun around and began running up Fredrickson. I chased after him and watched as he turned onto Second Street. I terminated the foot pursuit for officer safety purposes and lost sight of him. I requested K9 response and Deputy Russ Hastings arrived on the scene a short time later.

Deputy Hastings and I searched the Carson area with K9 Arai, but were unable to locate Fick. As Deputy Hastings backtracked to the point Fick was last observed, K9 Arai dove off the road and into some bushes on Second Street. He began biting at something and pulled a backpack into view. I responded to Deputy Hastings' and K9 Arai's location and saw the backpack was the one belonging to Fick. Having safety concerns regarding the backpack's contents, I opened

it and searched it for weapons and or other immediate dangers. I did not locate any obvious weapons or other immediate threats. However, during this search, I observed a spoon, pipe, and needles in the backpack. Knowing these items were associated with drug / narcotic activity, I sealed the backpack for a search warrant. Deputy Chadd Nolan secured the back pack and transported it to the Skamania County property room for storage.

CP 37-38.

Based upon this information, Deputy Scheyer later obtained a search warrant, searched the backpack and found a piece of folded tinfoil with methamphetamine in it, a piece of folded tinfoil with oxycodone in it, and two homemade firecracker type devices. RP 12/7/14 33-42. Deputy Scheyer then called out the bomb squad, who neutralized the two firecrackers and verified that one had contained a small amount of fireworks powder. RP 12/7/14 34, 77-80. Deputy Scheyer later sent the folded tinfoil pieces to the Washington Crime Laboratory where a forensic scientist tested both substances and determined that one contained methamphetamine and one contained oxycodone. RP 12/7/14 94-98.

Procedural History

By information filed August 21, 2014. the Skamania County Prosecutor charged the Defendant Patrick Fick with once count of possession of methamphetamine, one count of possession of oxycodone, possession of explosives without a license and use of drug paraphernalia. CP 1-3. The defense thereafter filed a motion to suppress all items seized following both

searches of the backpack, arguing that (1) the initial search was made without a warrant, and (2) the state could not overcome the presumption of invalidity for the warrantless search because the officer safety exception to the warrant requirement cited by Deputy Scheyer did not apply in this case. CP 29-31, 32-41.

The state responded by arguing, *inter alia*, that the defendant did not have a privacy interest in the backpack under either the state or federal constitutions because he had abandoned it prior to Deputy Hastings' dog finding it and pulling it out of the bushes. CP 42-59. On November 24, 2014, the parties appeared before the court and presented their arguments on the issue. RP 11/24/14. After argument the court denied the motion, finding that (1) the defendant had abandoned the backpack, and (2) the defendant therefore had no privacy interest in the backpack and did not have standing to object to the validity of either search. RP 11/24/15 7. As of the date of this brief the Superior Court Docket in this matter does not show that the state ever presented or prepared any findings of fact or conclusions of law in support of the court's oral ruling on the motion to suppress.

This case came on for jury trial on December 7th and 8th of 2014 with the state calling six witnesses: Deputy Scheyer, Deputy Hastings, a third deputy who helped look for the defendant, a forensic scientist who tested the drugs, the bomb squad officer who verified that one of the two homemade

fireworks devices contained powder and a state official who testified that the defendant was not licensed to possess explosives. RP 12/7/14 23, 60, 67, 74, 83, 87. Following the presentation of this evidence the state rested. RP 12/7/14. The defense then rested without calling any witnesses and the court instructed the jury without objection from either party. RP 12/7/14 100; RP 12/8/14 1-15, 15-29.

After argument from the parties in this case the jury retired for deliberation, eventually returning guilty verdicts on each count. RP 12/8/14 56-57; CP 164-167. On January 15, 2015, the court sentenced the defendant within the standard range and ran that sentence concurrent with the sentence in Skamania County Cause No. 14-1-00077-2 imposed on the same day by the same court. CP 177-191. The court also ordered the defendant to pay the following legal-financial obligations:

\$500.00	Victim Assessment
200.00	Criminal Filing Fee
1,500.00	Court Appointed Attorney's Fees
1,000.00	Fine under RCW 69.50
500.00	Drug Enforcement Fund under RCW 9.94A.760
200.00	Crime Lab Fee under RCW 43.43.690
<u>100.00</u>	<u>DNA Collection Fee</u>
\$4,000.00	Total

CP 184-185.

The verbatim report of the sentencing hearing is devoid of any discussion by either party or the court concerning the defendant's ability to

pay any of these legal financial obligations. RP 1/115/15 1-5. Following imposition of this sentence the defendant filed timely notice of appeal. CP 192-205.

ARGUMENT

I. THE TRIAL COURT ERRED WHEN IT REFUSED TO SUPPRESS EVIDENCE THE POLICE OBTAINED AFTER A WARRANTLESS SEARCH OF A BACKPACK THE POLICE KNEW THAT THE DEFENDANT HAD HIDDEN FROM THEIR VIEW.

Under Washington Constitution, Article 1, § 7 and United States Constitution, Fourth Amendment warrantless searches are per se unreasonable. *State v. Simpson*, 95 Wn.2d 170, 622 P.2d 1199 (1980). As such, the courts of this state will suppress the evidence seized as a fruit of that warrantless search unless the prosecution meets its burden of proving that the search falls within one of the various “jealously and carefully drawn” exceptions to the warrant requirement. R. Utter, *Survey of Washington Search and Seizure Law: 1988 Update*, 11 U.P.S. Law Review 411, 529 (1988). However, prior to the application of this rule a defendant must first have standing to object to the search. *State v. Hinton*, 179 Wn. 2d 862, 319 P.3d 9 (2014).

To have standing to object to a governmental search, a defendant must demonstrate a personal privacy interest in the place or item searched. *Minnesota v. Carter*, 525 U.S. 83, 119 S.Ct. 469, 142 L.Ed.2d 373 (1998); *State v. Carter*, 127 Wn.2d 836, 904 P.2d 290 (1995). Thus, under certain circumstances law enforcement officers may search voluntarily abandoned property without violating an individual’s rights under Washington

Constitution, Article 1, § 7. or United States Constitution, Fourth Amendment, if that act of abandonment constitutes a relinquishment of that individual's reasonable expectation of privacy. *State v. Evans*, 159 Wn.2d 402, 150 P.3d 105 (2007); *State v. Reynolds*, 144 Wn.2d 282, 287, 27 P.3d 200 (2001). As this court explained in *State v. Hamilton*, 79 Wn.App. 870, 320 P.3d 142 (2014), just what does or does not constitute an abandonment of property and relinquishment of a reasonable expectation of privacy depends upon two factors.

“A defendant's privacy interest in property may be abandoned voluntarily or involuntarily.” *Evans*, 159 Wn.2d at 408, 150 P.3d 105. Whether a defendant voluntarily has abandoned property for purposes of the abandonment exception is based on a combination of act and intent. *Evans*, 159 Wn.2d at 408, 150 P.3d 105. “Intent may be inferred from words spoken, acts done, and other objective facts, and all the relevant circumstances at the time of the alleged abandonment should be considered.” *State v. Dugas*, 109 Wn.App. 592, 595, 36 P.3d 577 (2001). “The issue is not abandonment in the strict property right sense but, rather, ‘whether the defendant in leaving the property has relinquished her reasonable expectation of privacy so that the search and seizure is valid.’ ” *Evans*, 159 Wn.2d at 408, 150 P.3d 105 (internal quotation marks omitted) (quoting *Dugas*, 109 Wn.App. at 595, 36 P.3d 577).

State v. Hamilton, 179 Wn.App. at 884-85 (footnote omitted).

One factor to be considered when determining whether property has been abandoned is whether or not the defendant disclaimed ownership of the property. For example, in *State v. Evans*, 159 Wn.2d 402, 150 P.3d 105 (2007), the Washington Supreme Court held that a defendant's denial of

ownership of a briefcase in the backseat of his truck did not constitute a voluntary abandonment of briefcase sufficient to deny him standing to object to the seizure of that briefcase because he had an expectation of privacy in the truck. *See also Robles v. State*, 510 N.E.2d 660 (Ind. 1987), (defendant's statement that the bag he checked in with the airline was not his did not constitute abandonment because he still had a reasonable expectation of privacy as the person transporting the bag); *State v. Casey*, 59 N.C.App. 99, 296 S.E.2d 473 (1982) (the defendant's statement that the bags he was carrying in the airport were not his did not constitute abandonment because he had actual possession and control of the bags).

In cases in which a defendant leaves property in a public place the court's generally find a voluntary abandonment and relinquishment of any privacy interest in the property. In *State v. Hamilton*, *supra*, this court explained the following on this issue:

Another critical factor courts consider when determining whether abandonment has occurred is the status of the area where the searched item was located. Generally, no abandonment will be found if the searched item is in an area where the defendant has a privacy interest. Conversely, abandonment generally will be found if the defendant has no privacy interest in the area where the searched item is located.

State v. Hamilton, 179 Wn. App. at 885-86 (citations omitted).

In this analysis it is critical to note that the court does not say that a voluntary abandonment will "always" be found "if the defendant has no[]

privacy interest in the area where the searched item is located.” Rather, the court gives this as a general rule. As the Supreme Court explains in *State v. Evans*, ultimately the issue of voluntary abandonment is one of intent “inferred from words spoken, acts done, and other objective facts, and all the relevant circumstances at the time of the alleged abandonment.”

With these principles in mind, a review of the facts in the case at bar do not support an inference of voluntary abandonment. First, in this case there were no words spoken by the defendant to support a conclusion of voluntary abandonment. Second, in the case at bar the property involved was not a baggie of drugs or an item small enough to fit in one’s hands. Rather, it was a backpack, an item that the officer could readily associate with the defendant and which had value exceeding the value of its contents. Third, and most important, the circumstances surrounding the defendant’s placement of the backpack militate strongly against a conclusion that he was voluntarily abandoning the item. Instead of leaving it by the roadside or throwing it in a field he intentionally hid it in an area in an attempt to conceal it, demonstrating an intent to retrieve it at a later time. The following addresses this factor.

In this case Deputy Hastings statements to Deputy Scheyer reveal that while returning back on his original path to his vehicle after the unsuccessful track his dog dove into the bushes in search of an item that Deputy Hastings

could not see. Indeed, he did not know what the item was until the dog was able to pull it out of the bushes. Deputy Scheyer stated the following about this event in the affidavit she gave in support of the search warrant.

Deputy Hastings and I searched the Carson area with K9 Arai, but were unable to locate Fick. As Deputy Hastings backtracked to the point Fick was last observed, K9 Arai dove off the road and into some bushes on Second Street. He began biting at something and pulled a backpack into view.

CP37-38.

The conclusion this evidence supports is that the defendant intentionally and carefully hid the backpack with the intent of later retrieving it. But for the dog picking up his scent his plan probably would have been successful. This evidence strongly supports the conclusion that while the defendant hid the backpack in an area in which he had no privacy interest, his intent was not to voluntarily abandon it. Thus, in the case at bar the trial court erred when it orally found that the defendant did not have a privacy interest in the backpack. Consequently, the trial court erred when it denied the defendant's motion to suppress.

II. TRIAL COUNSEL'S FAILURE TO MOVE TO SUPPRESS THE SEARCH OF THE BACKPACK ON THE BASIS THAT THE AFFIRMATION GIVEN IN SUPPORT OF THE WARRANT DID NOT ESTABLISH PROBABLE CAUSE DENIED THE DEFENDANT EFFECTIVE ASSISTANCE OF COUNSEL.

Under both United States Constitution, Sixth Amendment, and Washington Constitution, Article 1, § 22, the defendant in any criminal

prosecution is entitled to effective assistance of counsel. The standard for judging claims of ineffective assistance of counsel under the Sixth Amendment is “whether counsel’s conduct so undermined the proper functioning of the adversary process that the trial cannot be relied on as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668, 686, 80 L.Ed.2d 674, 104 S.Ct. 2052 (1984). In determining whether counsel’s assistance has met this standard, the Supreme Court has set a two part test.

First, a convicted defendant must show that trial counsel’s performance fell below that required of a reasonably competent defense attorney. Second, the convicted defendant must then go on to show that counsel’s conduct caused prejudice. *Strickland*, 466 U.S. at 687, 80 L.Ed.2d at 693, 104 S.Ct. at 2064-65. The test for prejudice is “whether there is a reasonable probability that, but for counsel’s errors, the result in the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Church v. Kinchelse*, 767 F.2d 639, 643 (9th Cir. 1985) (citing *Strickland*, 466 U.S. at 694, 80 L.Ed.2d at 698, 104 S.Ct. at 2068). In essence, the standard under the Washington Constitution is identical. *State v. Cobb*, 22 Wn.App. 221, 589 P.2d 297 (1978) (counsel must have failed to act as a reasonably prudent attorney); *State v. Johnson*, 29 Wn.App. 807, 631 P.2d 413 (1981) (counsel’s ineffective assistance must have caused prejudice to client).

In the case at bar, the defendant claims ineffective assistance based upon trial counsel's failure to argue in his suppression motion that Deputy Scheyer's affirmation given in support of the search warrant failed to establish probable cause. The following addresses this argument.

Under Washington Constitution, Article 1, § 7, and United States Constitution, Fourth Amendment, search warrants may only be issued upon a determination of probable cause. *State v. Thein*, 138 Wn.2d 133, 977 P.2d 582, 585 (1999); *Andresen v. Maryland*, 427 U.S. 463, 96 S.Ct. 2737, 2748, 49 L.Ed.2d 627 (1976). In order for the judge, rather than the requesting officer, to make that determination, the affidavit must state the underlying facts and circumstances so that the judge can make a "detached and independent evaluation of the evidence." *Id.* "Probable cause exists if the affidavit in support of the warrant sets forth facts and circumstances sufficient to establish a reasonable inference that the defendant is probably involved in criminal activity and that evidence of the crime can be found at the place to be searched." *Id.*

In 2001, Judge Morgan of Division II of the Court of Appeals emphasized that there is no probable cause to search unless the facts in the affidavit prove two nexuses. *State v. Johnson*, 104 Wn. App. 489, 17 P.3d 3 (2001). First, there must be a "a nexus between criminal activity and the item to be seized." Second, there must be "a nexus between the item to be seized

and the place to be searched.” *Id.* This means that all search warrant affidavits “must contain facts from which the issuing magistrate can infer (1) that the item to be seized is probably evidence of a crime. and (2) that the item to be seized will probably be in the place to be searched when the search occurs.” *Id.*

When a search warrant is challenged, the reviewing court performs a *de novo* evaluation of the warrant and affidavit, examining them in a commonsense manner. *State v. Perez*, 92 Wn.App. 1, 963 P.2d 881 (1998). Although the reviewing court is to give deference to the issuing judge, it must find the warrant invalid if the information on which the warrant is based is not sufficient to establish probable cause. *Id.*

In the case at bar the affidavit Deputy Scheyer gave in support of the warrant claimed the following:

Deputy Hastings and I searched the Carson area with K9 Arai, but were unable to locate Fick. As Deputy Hastings backtracked to the point Fick was last observed, K9 Arai dove off the road and into some bushes on Second Street. He began biting at something and pulled a backpack into view. I responded to Deputy Hastings’ and K9 Arai’s location and saw the backpack was the one belonging to Fick. Having safety concerns regarding the backpack’s contents, I opened it and searched it for weapons and or other immediate dangers. I did not locate any obvious weapons or other immediate threats. However, during this search, ***I observed a spoon, pipe, and needles in the backpack.*** Knowing these items were associated with drug / narcotic activity, I sealed the backpack for a search warrant. Deputy Chadd Nolan secured the back pack and transported it to the Skamania County property room for storage.

CP 37-38 (emphasis added).

The only claim of potential criminality revealed in this search warrant affidavit was the statement that the deputy “observed a spoon, pipe, and needles in the backpack.” The problem with this claim is that spoons, pipes and needles are not contraband. They are used on a daily basis by thousands of law abiding citizens and each item may be readily purchased at local stores and shops. A spoon that had a bent end with burnt residue in it and soot underneath would potentially be drug contraband as would a glass pipe with burnt residue appearing to be methamphetamine or a used needle with brown residue in it. However, the officer in this case did not make any such claims to raise her suspicion to a more likely than not conclusion that these items were drug paraphernalia or evidence of the presence of illegal drugs.

In the case at bar there was no possible tactical reason for counsel to refrain from arguing that Deputy Scheyer’s affidavit did not establish probable cause. Counsel had already brought a motion to suppress and the defendant would have suffered no possible negative consequences had this argument been added. Thus, in this case the defendant’s attorney fell below the standard of a reasonable prudent attorney when he failed to move to suppress the search of the backpack on the argument that the affirmation given in support of the warrant did not establish probable cause to search.

In this case there should also be little argument that this error, if it was

an error, caused prejudice. The only evidence supporting the four possession charges was the evidence that came out of the backpack during the execution of the search warrant. Thus, had counsel successfully argued that the search warrant affidavit did not establish probable cause, the state would have been left with no evidence to support the prosecution and would have been forced to dismiss. As a result, trial counsel's failure to argue that the affidavit given in support of the warrant failed to establish probable cause denied the defendant effective assistance of counsel under Washington Constitution, Article 1, § 22, and United States Constitution, Sixth Amendment. Consequently, this court should reverse the defendant's convictions and remand for a new trial.

III. THE TRIAL COURT ERRED WHEN IT IMPOSED LEGAL FINANCIAL OBLIGATIONS UPON AN INDIGENT DEFENDANT WITHOUT ADDRESSING THE DEFENDANT'S ABILITY TO PAY.

A trial court's authority to impose legal financial obligations as part of a judgment and sentence in the State of Washington is limited by RCW 10.01.160. Section three of this statute states as follows:

(3) The court shall not sentence a defendant to pay costs unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose.

RCW 10.01.160(3).

Although the court need not enter written findings and conclusions in regards to a defendant's current or future ability to pay costs, the court must consider this issue and find either a current or future ability before it has authority to impose costs. *State v. Eisenman*, 62 Wn.App. 640, 810 P.2d 55, 817 P.2d 867 (1991). In addition, in order to pass constitutional muster, the imposition of legal financial obligations and any punishment for willful failure to pay must meet the following requirements:

1. Repayment must not be mandatory;
2. Repayment may be imposed only on convicted defendants;
3. Repayments may only be ordered if the defendant is or will be able to pay;
4. The financial resources of the defendant must be taken into account;
5. A repayment obligation may not be imposed if it appears there is no likelihood the defendant's indigency will end;
6. The convicted person must be permitted to petition the court for remission of the payment of costs or any unpaid portion; and
7. The convicted person cannot be held in contempt for failure to repay if the default was not attributable to an intentional refusal to obey the court order or a failure to make a good faith effort to make repayment.

State v. Curry, 118 Wn.2d 911, 915-16, 829 P.2d 166 (1992).

The imposition of costs under a scheme that does not meet with these requirements, or the imposition of a penalty for a failure to pay absent proof

that the defendant had the ability to pay, violates the defendant's right to equal protection under Washington Constitution, Article 1, § 12, and United States Constitution, Fourteenth Amendment. *Fuller v. Oregon*, 417 U.S. 40, 40 L.Ed.2d 642, 94 S.Ct. 2116 (1974).

In the case at bar the trial court summarily imposed legal financial obligations without any consideration of the defendant's ability to pay those obligations. Thus, the trial court violated RCW 10.01.160(3), as well as the defendant's right to equal protection under Washington Constitution, Article 1, § 12, and United States Constitution, Fourteenth Amendment. As a result, this court should reverse the imposition of legal-financial obligations and remand for consideration of the defendant's ability to pay.

In this case the state may argue that this court should not address this issue because the defendant did not preserve the statutory error at the trial level and the argument does not constitute a manifest error of constitutional magnitude as is defined under RAP 2.5(a). However, in *State v. Blazina*, 182 Wn.2d 827, 344 P.3d 680 (2015), the Washington Supreme Court took the opportunity to review the pervasive nature of trial courts' failures to consider each defendant's ability to pay in conjunction with the unfair penalties that indigent defendant's experience based upon this failure. The court then decided to deviate from this general rule precluding review. The court held:

At sentencing, judges ordered *Blazina* and *Paige-Colter* to pay LFOs

under RCW 10.01.160(3). The records, however, do not show that the trial judges considered either defendant's ability to pay before imposing the LFOs. The defendants did not object at sentencing. Instead, they raised the issue for the first time on appeal. Although appellate courts will normally decline to hear unpreserved claims of error, we take this occasion to emphasize the trial court's obligation to consider the defendant's ability to pay.

We hold that RCW 10.01.160(3) requires the record to reflect that the sentencing judge made an individualized inquiry into the defendant's current and future ability to pay before the court imposes LFOs. This inquiry also requires the court to consider important factors, such as incarceration and a defendant's other debts, including restitution, when determining a defendant's ability to pay. Because the records in this case do not show that the sentencing judges made this inquiry into either defendant's ability to pay, we remand the cases to the trial courts for new sentence hearings.

State v. Blazina, at 11-12.

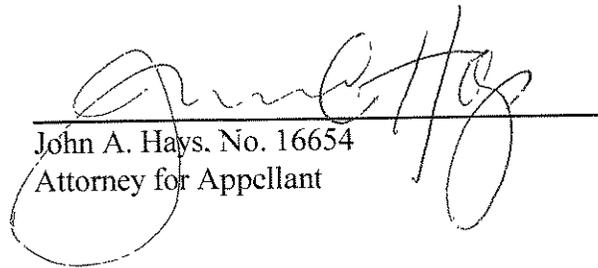
In this case the record reveals that the trial court imposed a 24 months prison sentence concurrent with a 56 months prison sentence in another cause number on a 28-year-old indigent defendant and then imposed legal financial obligations without any consideration of the defendant's ability to pay. See CP 89-103 in *State v. Fick*, No. 47138-8-II. Appellant argues that this case would also be appropriate for this court to exercise its discretion and to review the issue of legal-financial obligations.

CONCLUSION

The trial court erred when it denied the defendant's motion to suppress evidence the police search without a warrant or valid exception to the warrant requirement. In the alternative, the trial court erred when it imposed discretionary legal-financial obligations without considering the defendant's ability to pay.

DATED this 7th day of July, 2015.

Respectfully submitted,



John A. Hays, No. 16654
Attorney for Appellant

APPENDIX

**WASHINGTON CONSTITUTION
ARTICLE 1, § 7**

No person shall be disturbed in his private affairs, or his home invaded, without authority of law.

**WASHINGTON CONSTITUTION
ARTICLE 1, § 12**

No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations.

**WASHINGTON CONSTITUTION
ARTICLE 1, § 22**

In criminal prosecutions the accused shall have the right to appear and defend in person, or by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to meet the the witnesses against him face to face, to have compulsory process to compel the attendance of witnesses in his own behalf, to have a speedy public trial by an impartial jury of the county in which the offense is charged to have been committed and the right to appeal in all cases: Provided, The route traversed by any railway coach, train or public conveyance, and the water traversed by any boat shall be criminal districts: and the jurisdiction of all public offenses committed on any such railway car, coach, train, boat or other public conveyance, or at any station of depot upon such route, shall be in any county through which the said car, coach, train, boat or other public conveyance may pass during the trip or voyage, or in which the trip or voyage may begin or terminate. In no instance shall any accused person before final judgment be compelled to advance money or fees to secure the rights herein guaranteed.

**UNITED STATES CONSTITUTION,
FOURTH AMENDMENT**

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons and things to be seized.

**UNITED STATES CONSTITUTION,
SIXTH AMENDMENT**

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

**UNITED STATES CONSTITUTION,
FOURTEENTH AMENDMENT**

All persons born or naturalized in the United State, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

COURT OF APPEALS OF WASHINGTON, DIVISION II

STATE OF WASHINGTON,
Respondent,

NO. 47135-3-II

vs.

**AFFIRMATION
OF SERVICE**

PATRICK FICK,
Appellant.

The under signed states the following under penalty of perjury under the laws of Washington State. On the date below, I personally e-filed and/or placed in the United States Mail the Brief of Appellant with this Affirmation of Service Attached with postage paid to the indicated parties:

1. Mr. Adam Kick
Skamania County Prosecuting Attorney
P.O. Box 790
Stevenson, WA 98648
kick@co.skamania.wa.us
2. Patrick Fick, No.309594
Stafford Creek Corrections Center
191 Constantine Way
Aberdeen, WA 98520

Dated this 7th day of July, 2015, at Longview, WA.



Diane C. Hays

HAYS LAW OFFICE

July 07, 2015 - 3:30 PM

Transmittal Letter

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Case Name: State v. Patrick Fick

Court of Appeals Case Number: 47135-3

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- Letter
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Sender Name: Diane C Hays - Email: jahayslaw@comcast.net

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