

NO. 48227-4-II

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

STATE OF WASHINGTON,

Respondent,

vs.

RITA E. MADRIGAL,

Appellant.

BRIEF OF APPELLANT

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ASSIGNMENT OF ERROR

Assignment of Error

1. Trial counsel's failure to object when the state used impeachment as a guise for submitting otherwise unavailable substantive evidence to the jury and when the state argued substantively from that impeachment evidence in closing denied the defendant effective assistance of counsel.

2. The trial court erred when it imposed legal financial obligations upon an indigent defendant without making an individualized inquiry into the defendant's ability to pay.

Issues Pertaining to Assignment of Error

1. Does a trial counsel's failure to object when the state uses impeachment as a guise for submitting otherwise unavailable substantive evidence to the jury and when the state argues substantively from that impeachment evidence in closing deny a defendant effective assistance of counsel?

2. Does a trial court err if it imposes legal financial obligations upon an indigent defendant without making an individualized inquiry into the defendant's ability to pay?

STATEMENT OF THE CASE

Factual History

On June 22, 2015, Mason County Sheriff's Deputies Timothy Ripp and Trevor Severance each responded to Otiel Pena's residence at 2790 Skokomish Valley Road in rural Mason County on the report of an assault, possibly with a knife. RP 68, 73. Once at that address the deputies spoke with Mr. Pena, the defendant Rita Madrigal and their seven-year-old son Nyguel. RP 69-71, 78-80. At the time the defendant was living with Mr. Pena in spite of a no-contact order that prohibited him from having contact with the defendant. RP 39-40, 80. The couple's two and one-half year old child was also present. RP 69-71.

According to the two deputies, Mr. Pena told them that he and the defendant got into an argument out in the area in front of the house near a motor home when he dumped out a tool box. Identification No. 6; RP 48. The deputies claimed that Mr. Pena told them that during the argument the defendant had alternately grabbed a saw and a knife and had cut him on his arm with them. Identification No. 6. According to the defendant's statements to the deputies, during the argument Mr. Pena had twice grabbed her around the throat and that she had grabbed what was at hand to fight him off. RP 78-79. The deputies did see two cuts on the Mr. Pena's arms. RP 74-76.

Based upon these statements the deputies arrested the defendant. RP 78. They did not arrest Mr. Pena for his violation of the no contact order because they wanted to leave him with the two young children. RP 80. While at the scene, one of the deputies filled out a “Domestic Violence Victim’s Statement” during his interview with Mr. Pena. RP 69-71. It is written in English, which Mr. Pena does not write. RP 71-72. The deputy who filled out the form did not have Mr. Pena read it. *Id.* In fact, that Deputy does not even know if Mr. Pena can read English. *Id.* The following quotes a portion of that form:

1. Have you been assaulted. Yes
2. How were you assaulted? (Example: Slapped, Bitten, Grabbed, Pushed, Kicked, Strangled/Choked, Punched with fist, Struck with object - if so, list object*). Knife A Saw
3. Who assaulted you? Rita
4. What is their relationship to you? ex-girlfriend
5. Are (or were) you hurt or injured as a result of the incident?
6. Please describe your injuries. You were cut w/ a knife
7. Were you threatened? Yes If yes, then describe the specific threat. “That I was going to jail.”
8. Were you afraid that the suspect would or will carry out the threat? Yes
9. Were you restrained or kept from leaving against your will? No
10. How were you prevented or restrained from leaving? No
11. Was any property damaged? No Yes
12. How was the property damaged? Rita used a hammer to break lights on vehicle
13. Were you prevented or kept from calling 911 to report this incident? No
14. Were any children present during this incident? yes
15. If so, what are their names/ages? 7 m & 2½ f
16. Where did the incident happen? residence
17. Were you or the suspect using drug or alcohol during this

incident? no

18. Were there any witnesses? If so, please list names. no

19. Please describe the assault in your own words. Otiel was organizing his tools and Rita started an argument over Otiel being on the property. Rita Grabbed a hammer and started hitting items including swinging the hammer and a saw towards Otiel. Rita cut Otiel with the saw on the left arm. Otiel took his 7yr old son and walked down the road. Otiel called 911. Otiel spoke with law over the phone but, did not mention the assault.

Identification No. 6 (underlined portions hand written).

Procedural History

By information filed June 25, 2015, the Mason County prosecutor charged the defendant Rita E. Madrigal with one count of Second Degree Assault under RCW 9A.36.021(1)(c), alleging that the defendant “did intentionally assault another person, to wit: Otiel Pena, with a deadly weapon to wit: a knife; contrary to RCW 9A.36.021(1)(c).” CP 139. The case later came on for trial before a jury with the state calling four witnesses: Otiel Pena, Nyguel Pena, Deputy Timothy Ripp and Deputy Trevor Severance. RP 26, 45, 67, 73.

During his testimony Mr. Pena repeatedly told the jury that he had suffered a head injury and had essentially little memory of the incident on June 22nd. RP 27-40. The prosecutor then had the “Domestic Violence Victim’s Statement” Deputy Ripp filled out marked for identification as Exhibit No. 6. RP 28-29. When shown the form Mr. Pena stated that he did not remember signing it, that he did not remember the incident and that he

did not know if the statements in the form were true. RP 27-31. At this point the prosecutor moved that the form be admitted into evidence as a past recollection recorded. RP 30-31. However, during an unrecorded sidebar, later explained on the record, the prosecutor withdrew his request. RP 61-62. The prosecutor did not renew the motion and Identification No. 6 was never admitted into evidence. CP 70.

In spite of the fact that Identification No. 6 had never been admitted into evidence, the prosecutor read a number of portions of it into the record during his direct examination of Mr. Pena, all without objection from the defense attorney, who had opposed admission of the document. RP 29-35. Specifically, during direct examination the prosecutor called upon Mr. Pena to admit that there was a box on the form indicating that he had said “yes” when asked if he had been assaulted. RP 29-35. The prosecutor then called upon Mr. Pena to admit that the form claimed that he had indicated that he had been assaulted with a “knife.” *Id.* The prosecutor went on to have Mr. Pena admit that the form claimed that he had said that he was organizing his tools, that the defendant had started an argument and that she grabbed a hammer and started hitting items, including swinging the hammer and a saw at him. *Id.* Finally, during direct examination the prosecutor called upon Mr. Pena to admit that the form claimed that he had said that the defendant had cut him with a saw. *Id.* The defense offered no objection to this evidence.

Id.

Following Mr. Pena's evidence the state called the defendant's 7-year-old son Nyguel Pena. RP 45. The defendant's son testified that his mother had indeed grabbed a saw and a knife and used it as a weapon against his father. RP 48-51, 55, 58. However, he also testified that this happened when Mr. Pena twice grabbed his mother around the throat. *Id.* Based upon this evidence, as well as the testimony of one of the two deputies that the defendant had claimed that she had acted in self-defense while Mr. Pena was strangling her, the court granted the defendant's request to instruct the jury on self-defense. RP 78; CP 64-65.

After calling its four witnesses the state rested its case. RP 83. The defense then rested without calling any witnesses. *Id.* At this point the court instructed the jury and the state began its closing argument. RP 91-103, 103-109. During closing argument the prosecutor stated the following to the jury regarding the form the deputy filled out when he interviewed Mr. Pena.

You – you know that – well, Mister – Mr. Pena claimed that he had no memory of what happened. But frankly it's absurd. His claim simply doesn't – doesn't hold water at all. So we had to go through the affidavit that he filled out at the time. And we talked about what was in that during the testimony. We went through it. He said yes, he'd been assaulted by being cut with a knife and a saw. That's exactly what Nigel testified to. That she assaulted him. And he said she was his ex-girlfriend. And I'm sure anybody at that time would have felt that way. That she used a hammer to break the lights of his vehicle. And it happened at his residence.

And then when Deputy Ripp – or excuse me, when Corporal Ripp testified, he testified that he had written it in his terms. He kind of translated him writing it. So he's not talking in the third person here. So Corporal Ripp wrote, and he signed off on, Otiel was organizing his tools and Rita started an argument over Otiel being on the property. Rita grabbed a hammer and started hitting items, including swinging the hammer and a saw towards Otiel. Rita cut Otiel with the saw on the left arm. Otiel took his seven year old son and walked down the road. Otiel called 911. Otiel spoke with the law over the phone, but did not mention the assault.

Otiel came back to the property and started working on the patio. Otiel walked over to his RV and Rita approached him holding a knife. Rita cut Otiel with the knife and screamed at Otiel to leave. Otiel did not fight back at all. Otiel had his 2½ year old daughter in his arms when Rita swung the knife at him.

That statement was given right at the time it all happened, while it was fresh in his memory. Nigel, the seven year old son, got up here and testified essentially to the same thing. She attacked him. Yes, it can happen. Why'd she attack him? Maybe she was having a really bad day.

RP 105-106.

The defense did not object to these statements on the basis that the state was arguing substantively from evidence that, at best, was only admitted as impeachment. RP 105-106.

Following closing the jury retired for deliberation, eventually returning a verdict of guilty. The court later sentenced the defendant within the standard range, and imposed a total of \$1,912.00 in legal financial obligations as follows: \$500.00 victim assessment under RCW 7.68.035, \$100.00 Domestic Violence assessment under RCW 10.99.080, \$200.00

criminal filing fee, \$162.00 Sheriff service fees, \$250.00 jury demand fee, \$600.00 court appointed attorney fee and \$100.00 DNA collection fee. CP 28; RP 137-139. The court imposed these fees over the defendant's argument that she was a single mother without employment or any source of income other than child support. RP 137-138. The following gives the colloquy that occurred between the defendant's counsel and the court on this issue:

THE COURT: . . . The Court will impose the 6 month medium range in this situation. Mr. Jones, I need to inquire as to Ms. Madrigal's ability to pay. Does she have anything that prevents her from earning an income?

MR. JONES: She's not currently employed, your Honor. She does earn child support and is trying to essentially single parent a couple of children, although not during these next six months obviously. And so there is at least some limitation on her ability to pay. It's not a physical or mental disability.

RP 137-138.

After imposition of sentence the defendant filed timely notice of appeal. CP 5-19.

ARGUMENT

I. TRIAL COUNSEL’S FAILURE TO OBJECT WHEN THE STATE USED IMPEACHMENT AS A GUISE FOR SUBMITTING OTHERWISE UNAVAILABLE SUBSTANTIVE EVIDENCE TO THE JURY AND WHEN THE STATE ARGUED SUBSTANTIVELY FROM THAT IMPEACHMENT EVIDENCE IN CLOSING 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 object when the state used impeachment as a guise for submitting otherwise unavailable substantive evidence to the jury and when the state argued substantively from that impeachment evidence in closing. The following sets out these related arguments.

Under ER 607 “the credibility of a witness may be attacked by any party, including the party calling the witness.” However, “a prosecutor may not use impeachment as a guise for submitting to the jury substantive evidence that is otherwise unavailable.” *State v. Babich*, 68 Wn.App. 438, 444, 842 P.2d 1053 (quoting *United States v. Silverstein*, 737 F.2d 864, 868 (10th Cir.1984)), *review denied*, 121 Wn.2d 1015, 854 P.2d 42 (1993). This principle is discussed in detail in *State v. Lavaris*, 106 Wash.2d 340, 721 P.2d 515 (1986).

In *Lavaris* the defendant’s confession to murder was admitted at his

first trial. On appeal the Supreme Court reversed, holding that the trial court had erred when it failed to exclude that confession, which had been obtained unlawfully. On retrial, the state called a witness named Castro who testified to the circumstances leading up to the killing. However, he also testified that he was not at the scene of the crime the night before the murder; that he did not remember seeing anyone at the scene of the killing, and that he had not been present when anyone was killed. The trial court then allowed the state to impeach him with his own prior inconsistent statements which incriminated the defendant. Following his second conviction the defendant appealed, arguing that the trial court had erred when it allowed the state to impeach as a guise for introducing otherwise inadmissible evidence.

However, the Supreme Court affirmed, finding that (1) the substantive evidence of the witness was essential in many areas of the State's case, and (2) the State did not call the witness for the primary purpose of impeaching him with testimony that would have been otherwise inadmissible.

In contrast to the decision in *Lavarvis*, in the case at bar, the substantive value of the evidence that the state elicited from Mr. Pena was slight. Further, any substantive value was far outweighed by the state's primary purpose in calling him, which was to impeach him with a prior statement and then argue substantively from that impeachment. A careful review of the first part of the state's closing argument reveals that this is

precisely what the state did in this case, which was to argue substantively from the impeachment evidence the state introduced during Mr. Pena's testimony. The first part of that argument went as follows:

You – you know that – well, Mister – Mr. Pena claimed that he had no memory of what happened. But frankly it's absurd. His claim simply doesn't – doesn't hold water at all. *So we had to go through the affidavit that he filled out at the time. And we talked about what was in that during the testimony. We went through it. He said yes, he'd been assaulted by being cut with a knife and a saw.* That's exactly what Nigel testified to. That she assaulted him. And he said she was his ex-girlfriend. And I'm sure anybody at that time would have felt that way. That she used a hammer to break the lights of his vehicle. And it happened at his residence.

RP 105 (emphasis added).

This first paragraph reveals precisely why the state called Mr. Pena as a witness, which was to impeach him with the prior statement and then argue substantively from it. In so arguing the state denied the defendant a fair trial.

As was pointed out in the preceding Statement of the Case, the defense had argued against the admission of Mr. Pena's statement to the police. Given this opposition to this statement, as well as its prejudicial effect, there was no possible tactical reason to refrain from objecting to the state's improper use of this evidence. As a result, trial counsel's failure to object to the state calling Mr. Pena principally to impeach him as well as trial counsel's failure to object when the state argued substantively from this

impeachment evidence fell below the standard of a reasonably prudent attorney. In addition, given the evidence that the defendant acted in self-defense, it is likely that (1) had counsel objected to the state principally calling Mr. Pena to improperly elicit impeachment evidence, and (2) had counsel objected to the state improperly arguing that evidence substantively, that the result in the proceeding would have been different. Thus, trial counsel's failures to object denied the defendant effective assistance of counsel under Washington Constitution, Article 1, § 22, and United States Constitution, Sixth Amendment. As a result this court should reverse the defendant's conviction and remand for a new trial.

II. THE TRIAL COURT ERRED WHEN IT IMPOSED LEGAL FINANCIAL OBLIGATIONS UPON AN INDIGENT DEFENDANT WITHOUT MAKING AN INDIVIDUALIZED INQUIRY INTO 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.

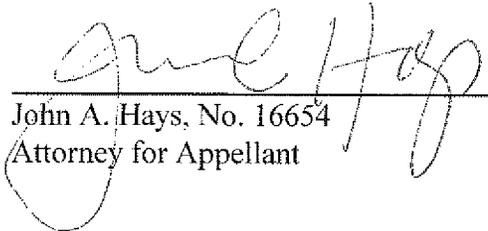
In the case at bar the record reveals that the trial court did not make "an individualized inquiry in to the defendant's current and future ability to pay" before it imposed legal financial obligations. As a result, this court should reverse the imposition of all discretionary legal financial obligations.

CONCLUSION

Trial counsel's failure to object when the state used impeachment as a guise for submitting otherwise unavailable substantive evidence to the jury and trial counsel's failure to object when the state argued substantively from that impeachment evidence in closing denied the defendant effective assistance of counsel under Washington Constitution, Article 1, § 22, and United States Constitution, Sixth Amendment. As a result, this court should reverse the defendant's conviction and remand for a new trial. In the alternative, this court should vacate the imposition of discretionary legal financial obligations based upon the trial court's failure to make an individualized inquiry in to the defendant's current and future ability to pay.

DATED this 19th day of February, 2016.

Respectfully submitted,



John A. Hays, No. 16654
Attorney for Appellant

APPENDIX

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, 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.

RCW 10.01.160

(1) The court may require a defendant to pay costs. Costs may be imposed only upon a convicted defendant, except for costs imposed upon a defendant's entry into a deferred prosecution program, costs imposed upon a defendant for pretrial supervision, or costs imposed upon a defendant for preparing and serving a warrant for failure to appear.

(2) Costs shall be limited to expenses specially incurred by the state in prosecuting the defendant or in administering the deferred prosecution program under chapter 10.05 RCW or pretrial supervision. They cannot include expenses inherent in providing a constitutionally guaranteed jury trial or expenditures in connection with the maintenance and operation of government agencies that must be made by the public irrespective of specific violations of law. Expenses incurred for serving of warrants for failure to appear and jury fees under RCW 10.46.190 may be included in costs the court may require a defendant to pay. Costs for administering a deferred prosecution may not exceed two hundred fifty dollars. Costs for administering a pretrial supervision other than a pretrial electronic alcohol monitoring program, drug monitoring program, or 24/7 sobriety program may not exceed one hundred fifty dollars. Costs for preparing and serving a warrant for failure to appear may not exceed one hundred dollars. Costs of incarceration imposed on a defendant convicted of a misdemeanor or a gross misdemeanor may not exceed the actual cost of incarceration. In no case may the court require the offender to pay more than one hundred dollars per day for the cost of incarceration. Payment of other court-ordered financial obligations, including all legal financial obligations and costs of supervision take precedence over the payment of the cost of incarceration ordered by the court. All funds received from defendants for the cost of incarceration in the

county or city jail must be remitted for criminal justice purposes to the county or city that is responsible for the defendant's jail costs. Costs imposed constitute a judgment against a defendant and survive a dismissal of the underlying action against the defendant. However, if the defendant is acquitted on the underlying action, the costs for preparing and serving a warrant for failure to appear do not survive the acquittal, and the judgment that such costs would otherwise constitute shall be vacated.

(3) The court shall not order 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.

(4) A defendant who has been ordered to pay costs and who is not in contumacious default in the payment thereof may at any time petition the sentencing court for remission of the payment of costs or of any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may remit all or part of the amount due in costs, or modify the method of payment under RCW 10.01.170.

(5) Except for direct costs relating to evaluating and reporting to the court, prosecutor, or defense counsel regarding a defendant's competency to stand trial as provided in RCW 10.77.060, this section shall not apply to costs related to medical or mental health treatment or services a defendant receives while in custody of the secretary of the department of social and health services or other governmental units. This section shall not prevent the secretary of the department of social and health services or other governmental units from imposing liability and seeking reimbursement from a defendant committed to an appropriate facility as provided in RCW 10.77.084 while criminal proceedings are stayed. This section shall also not prevent governmental units from imposing liability on defendants for costs related to providing medical or mental health treatment while the defendant is in the governmental unit's custody. Medical or mental health treatment and services a defendant receives at a state hospital or other facility are not a cost of prosecution and shall be recoverable under RCW 10.77.250 and 70.48.130, chapter 43.20B RCW, and any other applicable statute.

COURT OF APPEALS OF WASHINGTON, DIVISION II

**STATE OF WASHINGTON,
Respondent,**

vs.

**RITA E. MADRIGAL,
Appellant.**

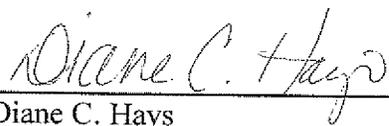
NO. 48227-4-II

**AFFIRMATION
OF SERVICE**

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. Timothy Higgs
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Dated this 19th day of February, 2016, at Longview, WA.



Diane C. Hays

HAYS LAW OFFICE

February 19, 2016 - 3:51 PM

Transmittal Letter

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Case Name: State v. Rita Madrigal

Court of Appeals Case Number: 48227-4

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: _____

Answer/Reply to Motion: _____

Brief: Appellant's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: _____

Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

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Petition for Review (PRV)

Other: _____

Comments:

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