

FILED

AUG 12, 2015
Court of Appeals
Division III
State of Washington

No. 32582-2-III

IN THE COURT OF THE APPEALS
OF THE STATE OF WASHINGTON

DIVISION III

THE STATE OF WASHINGTON, Respondent

v.

CRYSTAL R. PURCELL, Appellant.

BRIEF OF RESPONDENT

MATT L. NEWBERG
Prosecuting Attorney
WSBA #36674

P. O. Box 820
Pomeroy, WA 99347
(509) 843-3082

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
I. ISSUES	1
I. <u>Whether Defendant was denied effective assistance of counsel?</u>	1
II. <u>Whether the trial court erred in imposing legal financial obligations?</u>	1
III. <u>Whether the \$100 DNA collection fee is constitutional?</u>	1
II. STATEMENT OF THE CASE	2
III. ARGUMENT	3
I. <u>Trial Counsel was not deficient in his representation of the Defendant, nor was Defendant unduly prejudiced by Counsel’s performance.</u>	3
II. <u>Defendant’s challenge to imposition of legal financial obligations is not ripe for challenge.</u>	11
III. <u>The \$100 DNA collection fee is legal.</u>	15
IV. CONCLUSION	19

TABLE OF AUTHORITIES

State Supreme Court

<u>State v. McFarland</u> , 127 Wn. 2d 322, 899 P.2d 1251 (1995).....	3, 4
<u>State v. Hendrickson</u> , 129 Wn. 2d 61, 917 P.2d 563 (1996)	3, 4
<u>State v. Nichols</u> , 161 Wn. 2d 1, 162 P.3d 1122 (2007)	4, 6
<u>In re Pers. Restraint of Rice</u> , 118 Wn. 2d 876, 828 P.2d 1086 (1992).....	4
<u>State v. Grier</u> , 171 Wn. 2d 17, 246 P.3d 1260 (2011).....	5
<u>State v. Walker</u> , 136 Wn. 2d 678, 965 P.2d 1079 (1998).....	7
<u>State v. Reichenbach</u> , 153 Wn. 2d 126, 101 P.3d 80 (2004).....	7, 8
<u>Bustamante–Davila</u> , 138 Wn. 2d at 981, 983 P.2d 590 (1999).....	7
<u>Miller v. Campbell</u> , 164 Wn. 2d 529, 192 P.3d 352 (2008).....	9
<u>Arkison v. Ethan Allen, Inc.</u> , 160 Wn. 2d 535, 160 P.3d 13 (2007).....	10
<u>State v. Blazina</u> , ___ Wn.2d. ___, (filed Mar. 12, 2015)	13
<u>State v. Ward</u> , 123 Wn. 2d 488, 869 P.2d 1062 (1994).....	16
<u>Amunrud v. Bd. of Appeals</u> , 158 Wn. 2d 208, 143 P.3d 571 (2006).....	17
<u>DeYoung v. Providence Med. Ctr.</u> , 136 Wn.2d 136, 960 P.2d 919 (1998).....	17

State Court of Appeals

State v. Staten, 60 Wn.App. 163,
802 P.2d 1384 (Div. I, 1991) 4

State v. Howland, 66 Wn.App. 586,
832 P.2d 1339 (Div. II, 1992) 4

State v. Cotten, 75 Wn.App. 669,
879 P.2d 971 (Div. II, 1994) 8

King v. Clodfelter, 10 Wn.App. 514,
518 P.2d 206 (Div. I, 1974) 10

Anfinson v. Fedex Ground Pckg Sys., Inc., 159 Wn. App. 35,
244 P.3d 32 (Div. I, 2010) 10

State v. Baldwin, 63 Wn.App. 303,
818 P.2d 1116 (Div. I, 1991) 12, 13

State v. Curry, 62 Wn.App. 676,
814 P.2d 1252 (Div. I, 1991) 12

State v. Lundy, 176 Wn. App. 96,
308 P.3d 755 (Div. II, 2013) 13

State v. Kuster, 175 Wn.App. 420,
306 P.3d 1022 (Div. III, 2013) 13, 18

State v. Smits, 152 Wn.App. 514,
216 P.3d 1097 (Div. I, 2009) 14

State v. Brewster, 152 Wn.App. 856,
218 P.3d 249 (Div. I, 2009) 16

Jones v. King County, 74 Wn.App. 467,
874 P.2d 853 (Div. I, 1994) 16

State Statutes/Session Laws

RCW 9.94A.760 11

RCW 10.01.160..... 12, 13, 14

RCW 7.68.035..... 12

RCW 43.43.7541..... 12, 15, 16, 18

RCW 36.18.020..... 12

RCW 69.50.430..... 13

LAWS OF 2002, ch. 289, § 1 16

LAWS OF 2008, ch. 97, § 1 16

RCW 43.43.754..... 17

RCW 43.43.753..... 17

United States Supreme Court

Strickland v. Washington, 466 U.S. 668,
104 S.Ct. 2052 (1984); 5

F.C.C. v. Beach Commc'ns, Inc., 508 U.S. 307,
113 S.Ct. 2096, (1993)..... 17

Court Rules

RAP 2.5..... 13

I. ISSUES

- a. Was Defendant Denied Effective Assistance of Counsel?
- b. Did the Trial Court Err By Imposing Legal Financial Obligations?
- c. Is the mandatory DNA collection fee unconstitutional?

II. STATEMENT OF THE CASE

On 12/31/13, Crystal Purcell's male companion was stopped for a traffic violation while driving Ms. Purcell's car in Garfield County, Washington. At the time of the stop, Ms. Purcell was riding in the passenger seat of the vehicle. RP 6. The driver of the vehicle was ultimately arrested on an outstanding warrant. *Id.* After verifying the car was registered to Ms. Purcell, the officer had the driver wait by his patrol car while he returned to Ms. Purcell's car to speak with her. RP 7-8. While explaining to Ms. Purcell that the driver was being arrested, and offering assistance for her and her vehicle (as her driver's license was suspended), the officer noticed a small one by one and a half inch canister hanging from the ignition keyring. RP 8-9. The officer asked Ms. Purcell if he could look at the canister. RP 9. Ms. Purcell removed the key from the ignition and handed the canister/keyring to the officer. RP 9. The officer then opened the canister and dumped out the contents, which consisted of a few pills. RP 10. The officer suspected and later confirmed several of the pills were controlled substances requiring a prescription. RP 10-11. Ms. Purcell was charged with two counts of Unlawful Possession of a Controlled Substance.

This criminal matter proceeded to bench trial on June 4, 2014. At trial Ms. Purcell proffered a defense which was a combination of

legal possession (ie-that she had a valid prescription) and/or unwitting possession. See RP *generally*. At the conclusion of the bench trial, Ms. Purcell was found guilty of possession of a controlled substance, morphine, as well as possession of a controlled substance, oxycodone. CP 2.

As part of the Defendant's sentence, the Court imposed discretionary costs of \$750 and mandatory costs of \$1,800, for a total Legal Financial Obligation (LFO) of \$2,550. CP 6-7.

This appeal followed. CP 15-16.

III. ARGUMENT

A. Trial Counsel was not deficient in his representation of the Defendant, nor was Defendant unduly prejudiced by Counsel's performance.

Defendant argues that she was denied effective assistance of counsel at the trial court level. To prevail on her claim of ineffective assistance of counsel, the Defendant must meet both prongs of a two-prong test. *State v. McFarland*, 127 Wn. 2d 322, 334–35, 899 P.2d 1251 (1995). She must first establish that her counsel's representation was deficient. *State v. Hendrickson*, 129 Wn. 2d 61, 77, 917 P.2d 563 (1996). Second, the Defendant must show that the

deficient performance resulted in prejudice such that “there is a reasonable probability that, but for counsel's errors, the result of the trial would have been different.” *Hendrickson*, 129 Wn. 2d at 78. This Court employs a strong presumption that counsel's representation was effective. *McFarland*, 127 Wn. 2d at 335. To show deficient representation, the defendant must show that it fell below an objective standard of reasonableness based on all the circumstances. *McFarland*, 127 Wn. 2d at 334–335. “In assessing performance, ‘the court must make every effort to eliminate the distorting effects of hindsight.’” *State v. Nichols*, 161 Wn. 2d 1, 8, 162 P.3d 1122 (2007) (quoting *In re Pers. Restraint of Rice*, 118 Wn. 2d 876, 888, 828 P.2d 1086 (1992)). “If an ineffective assistance claim can be resolved on one prong of this test, the court need not address the other prong.” *State v. Staten*, 60 Wn.App. 163, 171, 802 P.2d 1384 (Div. I, 1991).

Defendant argues her lawyer was ineffective because he did not move to suppress the drug evidence by challenging the scope of the defendant's consent to search the keychain/canister.

Trial Counsel's performance was not deficient. To show deficient performance, the Defendant has the “heavy burden of showing that her attorney ‘made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.’” *State v. Howland*, 66 Wn.App. 586, 594, 832 P.2d 1339

(Div. II, 1992) (quoting *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)). To rebut the strong presumption that counsel's performance was effective, the defendant bears the burden of establishing the absence of any "conceivable legitimate tactic explaining counsel's performance." *State v. Grier*, 171 Wn. 2d 17, at 33, 246 P.3d 1260 (2011).

There is a strong presumption of effective representation. This presumption requires the defendant bear the burden of showing a lack of a legitimate strategic or tactical reason for not moving to suppress the search of the keychain. In this case, the Defendant is unable to meet such a burden. The defendant was pursuing a combination defense that she unwittingly possessed the drugs, and although she was unaware the drugs were there, her possession was legal by way of prescription.

At trial, Defense counsel elicited testimony from the primary prosecution witness as well as the Defendant, that the Defendant was very cooperative with law enforcement and showed no reluctance in giving the Deputy the canister for inspection. RP 15, 26. This testimony was used in in furtherance of their theory of unwitting possession. Defense counsel argued that if the Defendant had known the drugs were located in the key chain, she would not have willingly handed the keychain and drugs to the Deputy for inspection.

RP 15.

The Defense also anticipated being able to provide valid prescription evidence which would authorize the Defendant's possession of the subject pills. As noted in the defense line of questioning, the Defendant had an extensive medical history. RP 26-32. This medical history was arguably the basis for the possession as well as its legal justification.

The Defense had a legitimate trial strategy: 1) provide proof of a prescription allowing for the Defendant's lawful possession of the drugs; and/or 2) claim unwitting possession as the Defendant was unaware of the drugs presence at the time of contact with law enforcement. Unfortunately the Defendant was unable to provide proof of her valid prescriptions at trial short of her testimony, and the Court weighed the remaining evidence in favor of the State.

When arguing ineffective assistance of counsel, the burden is on the defendant to show deficient performance. *Nichols*, 161 Wn. 2d at 14. The Defendant has failed to meet such a burden. Because trial counsel anticipated the production of a valid prescription and believed in the alternative theory of unwitting possession, his performance was not deficient. Therefor the Court need not consider possible prejudice.

If, however, this Court does find the Defendant has met her burden of proving trial counsel was deficient, the Defendant must also

show that the deficient performance resulted in prejudice such that there is a reasonable probability that, but for counsel's errors, the result of the trial would have been different. The Defendant cannot show such prejudice.

In other words, had defense counsel moved to suppress the search of the keychain/canister, would the court have likely suppressed the evidence? In this case, the answer is no.

The Defendant argues in hindsight, that the deputy exceeded her consent in the search of the keychain/canister. It is clear that "consent" to search is an exception to the warrant requirement. *State v. Walker*, 136 Wn. 2d 678, 682, 965 P.2d 1079 (1998). It is the State's burden to establish that consent to search was lawfully given. *Id.* In order to meet this burden, three requirements must be met: (1) the consent must be voluntary, (2) the person consenting must have the authority to consent, and (3) the search must not exceed the scope of the consent. *Id.* As conceded by the Defendant, consent was voluntarily given and the Defendant had the authority to consent to the search of the keychain. The only issue now being argued is that the Deputy exceeded the scope of Ms. Purcell's consent.

A consensual search may go no further than the limits for which the consent was given. *State v. Reichenbach*, 153 Wn. 2d 126, 133, 101 P.3d 80 (2004) *citing Bustamante–Davila*, 138 Wn. 2d at

981, 983 P.2d 590 (1999). Any express or implied limitations or qualifications may reduce the scope of consent in duration, area, or intensity. *Reichenbach*, 153 Wn. 2d at 133, *citing State v. Cotten*, 75 Wn.App. 669, 679, 879 P.2d 971 (Div. 1994).

However, in the case at hand, there were no express or implied limits as to the search of the keychain/canister, an obvious container. When the Deputy asked if he could look at the keychain/canister, the Defendant removed the keys and keychain from the ignition of the car and then handed them to the Deputy. RP 9. The Defendant did not verbally limit the consent in any way and was present during the search allowing her the ability to speak-up at any time she wished to limit the Deputy's actions. As stated at trial, the Defendant was cooperative with law enforcement and was not reluctant to let him look at the keychain as the Defendant did not believe the canister contained any items. RP 26. In fact, the Defendant knew she could have refused the request and/or limit the search, as she testified that had she known there were drugs in the canister she would have protested the search. RP 33.

The Deputy did not exceed the scope of the consent provided by Ms. Purcell. Had this matter been argued prior to trial, the record could have been more fully developed allowing the court to focus on the issue of scope of consent. But based on the information in the

record now before us, it is not probable that the court would have suppressed the evidence. Because it is not likely the trial court would have suppressed the evidence, the Defendant cannot show that trial counsel's performance resulted in prejudice such that there is a reasonable probability that, but for counsel's errors, the result of the trial would have been different.

The State further argues that the Defendant should not now be allowed to argue that her consent to look at the keychain/canister included an implied limitation. Judicial Estoppel should preclude the Defendant from making such a claim. Judicial estoppel should preclude a party from asserting one position in a court proceeding and later seeking an advantage by taking an inconsistent position. *Miller v. Campbell*, 164 Wn. 2d 529, 539, 192 P.3d 352 (2008). Determining whether to apply judicial estoppel focuses on three factors: (1) whether a party's current position is inconsistent with an earlier position, (2) whether judicial acceptance of an inconsistent position in the later proceeding will create the perception that the party misled either the first or second court, and (3) whether the party asserting the inconsistent position will obtain an unfair advantage or impose an unfair detriment on the opposing party if not estopped. *Id.* Ms. Purcell's recent claim that she impliedly limited the Deputy's search of the keychain is contrary to her trial testimony as stated above. If the

Court believes the Defendant's most recent claim, the Defendant will have misled the trial court in order to bolster her claim of unwitting possession. Lastly, the State will suffer an unfair detriment, as this issue as to the scope of the consent would have been more fully developed at the trial court level had the issue been raised.

"The purpose of judicial estoppel is to bar as evidence statements and declarations by a party which would be contrary to sworn testimony the party has given in the same or prior proceedings ." *King v. Clodfelter*, 10 Wn.App. 514, 519, 518 P.2d 206 (1974). A second purpose of the doctrine is to "preserve respect for judicial proceedings." *Arkison v. Ethan Allen, Inc.*, 160 Wn. 2d 535, 538, 160 P.3d 13 (2007) (internal quotations omitted).

While the third factor may not carry great weight in favor of judicial estoppel, the other two factors strongly favor application of estoppel. Ms. Purcell's trial testimony is very clearly in conflict with the argument she makes on appeal. If this court were to accept the new position it would create the perception that either the judge was misled at trial or this court was misled in this action. These factors require application of estoppel in this proceeding.

It is one thing to argue conflicting legal theories over the course of proceedings. *Anfinson v. Fedex Ground Package Sys., Inc.*, 159 Wn. App. 35, 62–63, 244 P.3d 32 (Div. I, 2010), *review granted*, 172 Wn.

2d 1001, 258 P.3d 685 (2011). However, the integrity of the judicial system depends upon factual consistency. A party cannot seek a ruling from one court based on an asserted statement of facts and then seek a ruling from a second court based on the facts being directly contrary to those asserted by the party in the first instance. Absent an intervening development in the evidence, the party is misleading one or more courts. Estoppel is necessary in such circumstances to prevent fraud and maintain the integrity of the judicial process.

For all of the reasons stated, Defendant's claim of ineffective assistance of counsel should fail.

B. Defendant's challenge to imposition of legal financial obligations is not ripe for challenge.

For the first time on appeal, the Defendant contends that the trial court erred in finding that she had the ability to pay legal financial obligations without conducting any inquiry into her financial circumstances.

Whenever a person is convicted in superior court, the court may order the payment of legal financial obligations as part of the sentence. RCW 9.94A.760(1). Courts may impose costs as part of the

legal financial obligations if a defendant has or will have the ability to pay. RCW 10.01.160(3). Before making such a finding, the trial court must “[take] into account the financial resources of the defendant and the nature of the burden” imposed by the LFOs. *State v. Baldwin*, 63 Wn.App. 303, 312, 818 P.2d 1116 (Div. I, 1991). This court reviews a trial court's determination of an offender's financial resources and ability to pay for clear error. *Id.*

Three of the LFOs at issue in the Defendant's sentence are mandatory. The \$500 victim assessment is required by RCW 7.68.035, irrespective of ability to pay. *State v. Curry*, 62 Wn.App. 676, 681, 814 P.2d 1252 (Div. I, 1991), *aff'd*, 118 Wn.2d 911, 829 P.2d 166 (1992). The \$100 DNA (deoxyribonucleic acid) collection fee is required by RCW 43.43.7541. And the \$200 criminal filing fee is required by RCW 36.18.020(2)(h). Because these LFOs are mandatory, they do not require the trial court to consider the Defendant's ability to pay.

The legislature divested courts of the discretion to consider a defendant's ability to pay mandatory legal financial obligations including restitution, victim assessments, DNA fees, and criminal filing fees by expressly directing that a defendant's ability to pay should not be taken into account, and, thus, trial court did not have jurisdiction to consider defendant's current or likely future ability to pay restitution,

victim assessment, DNA collection fee, or the criminal filing fee. *State v. Lundy*, 176 Wn. App. 96, 308 P.3d 755 (Div. II, 2013).

A \$1,000 mandatory drug penalty was also included pursuant to RCW 69.50.430. This fine is not to be deferred or suspended unless the court finds the Defendant to be indigent. RCW 69.50.430. The court made no such finding.

The only discretionary LFO imposed in this case was the \$750 appointed counsel recoupment fee. The only “cost” as referenced by RCW 10.01.160 and *Baldwin, supra*, is this court appointed attorney recoupment.

Our Supreme Court has recently decided that each appellate court must make its own decision to accept discretionary review on unchallenged LFOs. *State v. Blazina*, ___ Wn.2d. ___, (filed Mar. 12, 2015).

The State argues this Court should follow its previous decisions and decline to allow the Defendant to challenge for the first time on appeal, the finding regarding her ability to pay, *See: State v. Kuster*, 175 Wn.App. 420, 425, 306 P.3d 1022 (Div. III, 2013). *See also* RAP 2.5(a). The issue presented is not ripe for review. The Defendant may petition the court at any time for remission or modification of the payments on the basis of manifest hardship. RCW 10.01.160(4); *Baldwin*, 63 Wn.App. at 310–11, 818 P.2d 1116. The initial imposition

of court costs at sentencing is predicated on the determination that the defendant either has or will have the ability to pay. RCW 10.01.160(3). Because this determination is somewhat “speculative,” the time to examine a defendant's ability to pay is when the government seeks to collect the obligation. *State v. Smits*, 152 Wn.App. 514, 523–24, 216 P.3d 1097 (Div. I, 2009). The Defendant may challenge the trial court's imposition of “costs” when the government seeks to collect them.

For these reasons, the Court should not consider the challenge to imposition of a public defender recoupment for the first time on appeal.

However, if this court wishes to review the record, it is clear that the court had sufficient information to make the determination that the defendant had the present and/or future ability make minimal payments on legal financial obligations.

During trial, the Defendant admitted to buying non- necessities like alcohol and that she was gambling at a casino during her travels just prior to being contacted by law enforcement. RP 38-39. Defendant also admitted to owning multiple vehicles and that she just recently purchased her vehicle as well as one for her daughter. RP 6 & 40. Ms. Purcell admitted to renting multiple storage units to store her belongings in different geographic areas, allowing her to travel to

be with her kids. RP 40-41, 44. At sentencing Ms. Purcell admitted to having previously been employed by Goodwill and the Salvation Army; that she was receiving social security income; and that she was working as an unofficial home health care worker. RP 43, 48, 60 & 62. Ms. Purcell did indicate she was already making payments on fines imposed on two other cases. RP 64-65.

It is clear that the court had sufficient information about the Defendant's assets, earnings, and other financial obligations when it ordered Ms. Purcell to pay the \$2,550 at \$25 per month commencing 60 days after her release from custody. CP 7.

C. The \$100 DNA collection fee is constitutional.

The Defendant argues the mandatory \$100 DNA collection fee, pursuant to RCW 43.43.7541, is unconstitutional in that it violates substantive due process.

In challenging this mandatory fee, the Defendant concedes that a fundamental right is not at issue and therefore the rational basis test would apply to the subject statute. Additionally, the Defendant concedes that the collection of DNA samples of known criminal offenders and the funding of such a program is a legitimate state interest. The issue then before this court is whether imposition of a

DNA collection fee is rationally related to the State's purpose.

Although the Defendant has conceded a legitimate State interest, this court should first look to the legislature's purpose in adopting the law. *State v. Brewster*, 152 Wn.App. 856, 218 P.3d 249 (Div. I, 2009) *citing* *State v. Ward*, 123 Wn. 2d 488, 499, 869 P.2d 1062 (1994). The DNA collection fee serves to fund the collection of samples and the maintenance and operation of DNA databases. *Brewster* *citing* RCW 43.43.7541. The legislature has repeatedly found that DNA databases are important tools in criminal investigations, in the exclusion of individuals who are the subject of investigation or prosecution, and in detecting recidivist acts. *Brewster* *citing* LAWS OF 2002, ch. 289, § 1; LAWS OF 2008, ch. 97, § 1. The databases also facilitate the identification of missing persons and unidentified human remains. *Id.*

The question now is whether the imposition of a mandatory \$100 collection fee is rationally related to the legitimate state interest(s) in the DNA collection program.

In applying the substantive due process test, this court should give deference to legislative policy decisions. *Jones v. King County*, 74 Wn.App. 467, 479, 874 P.2d 853 (Div. I, 1994) In doing so, this court "assume[s] the existence of any necessary state of facts which the court can reasonably conceive in determining whether a rational

relationship exists between the challenged law and a legitimate state interest.” *Amunrud v. Bd. of Appeals*, 158 Wn. 2d 208, 222, 143 P.3d 571 (2006). The regulation may only be struck down if there is no rational connection between the challenged statute and a legitimate government objective. *Id.* (emphasis mine). Indeed, the deferential rational basis standard may be satisfied even where the “legislative choice ... [is] based on rational speculation unsupported by evidence or empirical data.” *DeYoung v. Providence Med. Ctr.*, 136 Wn.2d 136, 148, 960 P.2d 919 (1998) (alterations in original) (quoting *F.C.C. v. Beach Commc'ns, Inc.*, 508 U.S. 307, 315, 113 S.Ct. 2096, 124 L.Ed.2d 211 (1993)).

RCW 43.43.754 requires a DNA sample be taken from all persons convicted in this state of a felony (and other defined crimes). As stated in RCW 43.43.753 the purpose is to create a DNA database which will aid in criminal investigations, including the identification of suspects, the exclusion of individuals who are the subject of investigations, and in detecting recidivist acts. The collection of a \$100 fee from all persons convicted of a felony offense is logically connected to this program as these individuals will be required to submit to a biological sample (DNA) collection. Costs are incurred and funding is necessary for the: process of collecting the sample; transferring it to the designated lab for testing and processing; input of

the information into the State's database; as well as maintenance of said database. RCW 43.43.7541 requires eighty percent of the fee collected go to the DNA database account and twenty percent of the fee goes to the agency responsible for collection of the biological sample from the offender. It is reasonable to require those convicted of felony criminal offenses to have to carry some of the burden in paying for the tools used to investigate, track, and solve criminal offenses.

It is clear that the imposition of the \$100 DNA collection fee is rationally related to the cost of creating and operating the Washington State Offender DNA database.

Lastly, this court has held that monetary assessments that are mandatory may be imposed on indigent offenders at the time of sentencing without raising constitutional concern because “[c]onstitutional principles will be implicated ... only if the government seeks to enforce collection of the assessments at a time when [the defendant is] unable, through no fault of his own, to comply,” and “[i]t is at the point of enforced collection ..., where an indigent may be faced with the alternatives of payment or imprisonment, that he may assert a constitutional objection on the ground of his indigency.” *Kuster*, 175 Wn.App. at 424.

V. CONCLUSION

In conclusion, the Defendant's conviction should be affirmed. The Defendant was not denied effective assistance of trial counsel. While a Defendant is entitled to competent representation, she is not guaranteed a perfect lawyer. The trial court did not err in imposing legal financial obligations, and if it had, the challenge is not yet ripe for challenge. Lastly, the \$100 DNA collection fee is constitutional.

Dated this 12 day of August, 2015.

Respectfully submitted,



MATT L. NEWBERG, WSBA #36674
Attorney for Respondent
Prosecuting Attorney
P.O. Box 820
Pomeroy, Washington 99347
(509) 843-3082

