

**FILED**

SEP 29, 2015

Court of Appeals  
Division III  
State of Washington

32756-6-III

IN THE COURT OF APPEALS  
FOR THE STATE OF WASHINGTON  
DIVISION III

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STATE OF WASHINGTON,

Respondent,

v.

GARY L. STODDARD,

Appellant.

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APPEAL FROM THE SUPERIOR COURT  
OF SPOKANE COUNTY

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**BRIEF OF RESPONDENT**

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## **I. APPELLANT'S ASSIGNMENTS OF ERROR**

1. The record does not support the finding Mr. Stoddard has the current or future ability to pay the imposed legal financial obligations.
2. The trial court erred when it ordered Mr. Stoddard to pay a \$100 DNA-collection fee.

## **II. ISSUES PRESENTED**

1. Did the defendant fail to preserve any legal financial obligation (LFO) issue for appeal; are the LFOs imposed in his case mandatory financial obligations that are exempt from the inquiry required for discretionary LFOs under RCW 10.01.160(3)?
2. Does the \$100 DNA fee imposition statute, RCW 43.43.7541, violate the due process clause?

## **III. STATEMENT OF FACTS**

Defendant was convicted of first degree murder and first degree kidnapping. CP 135-41. He received a sentence of 440 months including enhancements. CP 238. At sentencing, the trial court summed up the trial as follows:

I don't know how many murder trials I have had in 21 years, probably many more than 21, and I don't ever forget any of them. Usually they're a little longer, but they kind of stick with you. And I have to tell you, sir, that Mr. Steinmetz, there is truth to what he says, that I've had cases that were much more gorry (sic). I've had cases involving multiple victims. I have had cases involving guns and knives and just about anything you can think of. I can't think of another case that was more execution-like than this one. I

can't. It's just cold-blooded. That seems like even a trite phrase to say. It wasn't done in a heat of passion as many of the crimes we see are. It wasn't done with an argument of self-defense as many of them I see are. The thought of a grown man chasing what amounted to a little girl across a lawn at night, she had a handcuff on, shooting her, is more than I can forget ever. It's horrible. I don't know what kind of person does that. I think you are one of the more dangerous people I've ever seen, because you're smart and you're in control of yourself, and I think what you did was very purposeful and that's a very frightening thing. I think you represent an extreme danger to the public.

CP 1186-87.

The trial court imposed the agreed amount of restitution, \$18,159.22, payable to Crime Victim's Compensation (CVC) fund. CP 233. The trial court also ordered the mandatory \$500 crime victim assessment, the mandatory \$200 criminal filing fee, and the mandatory \$100 DNA fee. CP 234, 240-41.

#### **IV. ARGUMENT**

A. THE DEFENDANT FAILED TO PRESERVE ANY LEGAL FINANCIAL OBLIGATION (LFO) ISSUE FOR APPEAL; THE LFOS IMPOSED IN HIS CASE ARE MANDATORY FINANCIAL OBLIGATIONS, AND, THEREFORE, EXEMPT FROM INQUIRY UNDER RCW 10.01.160(3), AND, IN ANY EVENT, THE TRIAL COURT PROPERLY DETERMINED THAT THE DEFENDANT HAS AN ABILITY TO PAY HIS LFOS.

The defendant failed to object to the imposition of his legal financial obligations. (LFOs). He concedes this on appeal. Appellant's Br. at 7. Therefore, he failed preserve the matter for appeal. RAP 2.5. In its consideration of the issue in *State v. Blazina*, 182 Wn.2d 827, 344 P.3d 680 (2015), the Washington Supreme Court determined that the LFO issue is not one that can be

presented for the first time on appeal because this aspect of sentencing is not one that demands uniformity. 182 Wn.2d at 830. No constitutional issue is involved. “Here, the error is not constitutional in nature and thus the unpreserved error cannot be reached under a RAP 2.5(a)(3) analysis.” *Blazina*, 182 Wn.2d at 840, (Fairhurst, J. concurring). And, as set forth later, the statutory violation existing in *Blazina* applied to discretionary LFOs, not mandatory LFOs. However, the *Blazina* court exercised its discretion in favor of accepting review due to the nationwide importance of LFO issues, and to provide guidance to our trial courts. *Id.* at 830. That guidance has been provided. *Blazina* was decided after the September 2014 sentencing in the instant case. RP 1179-96. There is no nationwide or statewide import to this present case, and review should not be granted where the defendant failed to object and thereby give the trial court the ability to make further inquiry as to his ability to pay, if necessary. Statewide appellate procedural rules are of more import in the present case.

It is a fundamental principle of appellate jurisprudence in Washington and in the federal system that a party may not assert on appeal a claim that was not first raised at trial. *State v. Strine*, 176 Wn.2d 742, 749, 293 P.3d 1177, 1180 (2013). This principle is embodied federally in Fed. R. Crim P. 51 and 52, and in Washington under RAP 2.5. RAP 2.5 is principled as it “affords the trial court an opportunity to rule correctly upon a matter before it can be presented on appeal.” *State v. Strine*, 176 Wn.2d at 749 (quoting *New Meadows Holding Co. v. Wash.*

*Water Power Co.*, 102 Wn.2d 495, 498, 687 P.2d 212 (1984)). This rule supports a basic sense of fairness, perhaps best expressed in *Strine*, where the Court noted the rule requiring objections helps prevent abuse of the appellate process:

[I]t serves the goal of judicial economy by enabling trial courts to correct mistakes and thereby obviate the needless expense of appellate review and further trials, facilitates appellate review by ensuring that a complete record of the issues will be available, ensures that attorneys will act in good faith by discouraging them from “riding the verdict” by purposefully refraining from objecting and saving the issue for appeal in the event of an adverse verdict, and prevents adversarial unfairness by ensuring that the prevailing party is not deprived of victory by claimed errors that he had no opportunity to address.

BENNETT L. GERSHMAN, TRIAL ERROR AND MISCONDUCT § 6–2(b), at 472–73 (2d ed. 2007) (footnotes omitted).

*State v. Strine*, 176 Wn.2d at 749-50.

Therefore, policy and RAP 2.5 favor not allowing review of this statutory,<sup>1</sup> non-constitutional LFO issue.

Secondly, the LFOs ordered are mandatory LFOs. CP 234 (top of page); CP 240-41. The \$500 crime victim assessment, \$100 DNA (deoxyribonucleic acid) collection fee, and \$200 criminal filing fee are mandatory legal financial obligations, each required irrespective of the defendant’s ability to pay. *State v. Lundy*, 176 Wn. App. 96, 102,308 P.3d 755 (2013). To the extent that the trial court imposed mandatory LFOs, there is no error in the defendant’s sentence.

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<sup>1</sup> Assuming the RCW 10.01.160(3) applied to mandatory fees.

RCW 10.01.160(3) requires that the court make an individualized determination of the defendant's ability to pay *discretionary* LFOs at the time of sentencing.

The restitution was all owed to the CVC. The trial court had a statutory obligation to order restitution.<sup>2</sup> The trial court committed no error when it followed the dictate of that statute.

**B. THE COURT DNA FEE IMPOSITION STATUTE, RCW 43.43.7541. DOES NOT VIOLATE THE DUE PROCESS CLAUSE.**

The court DNA fee imposition statute, RCW 43.43.7541, mandates the imposition of a fee of one hundred dollars in every sentence imposed for a

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<sup>2</sup> See *State v. McCarthy*, 178 Wn. App. 290, 313 P.3d 1247 (2013):

Subsection (7) demands that the trial court “order restitution in *all* cases where the victim is entitled to benefits under the crime victims’ compensation act.” RCW 9.94A.753(7) (emphasis the court’s). The section does not expressly identify what losses the court may impose on the accused, but the language urges that any benefits paid by the compensation fund be imposed upon the defendant. “The very language of the restitution statutes indicates legislative intent to grant broad powers of restitution.” *Davison*, 116 Wn.2d at 920, 809 P.2d 1374. The defendant’s reimbursement of the crime victims’ fund, under a loose rather than strict standard of causation, furthers the goal of the defendant facing the consequences of his conduct. See *Enstone*, 137 Wn.2d at 680, 974 P.2d 828. To a limited extent, restitution also promotes the worthy objective of protecting the public purse. See *Dick Enters., Inc. v. King County*, 83 Wn. App. 566, 569, 922 P.2d 184 (1996).

*McCarthy*, 178 Wn. App. at 300-01.

felony.<sup>3</sup> The defendant claims this statute violates the *substantive* due process clause. As to this argument, that RCW 43.43.7541 violates substantive due process, the defendant sets forth the correct standard of review: “Where a fundamental right is not at issue, as is the case here, the rational basis standard applies.” Appellant’s Br. at 15, citing *Nielsen v. Washington State Dep’t of Licensing*, 177 Wn. App. 45, 52-53, 309 P.3d 1221 (2013). “To survive rational basis scrutiny, the State must show its regulation is rationally related to a legitimate state interest. *Id.*” Appellant’s Br. at 15.

Applying this deferential standard, this court assumes the existence of any necessary state of facts which it can reasonably conceive in determining whether a

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<sup>3</sup> RCW 43.43.7541 provides:

Every sentence imposed for a crime specified in RCW 43.43.754 must include a fee of one hundred dollars. The fee is a court-ordered legal financial obligation as defined in RCW 9.94A.030 and other applicable law. For a sentence imposed under chapter 9.94.A RCW, the fee is payable by the offender after payment of all other legal financial obligations included in the sentence has been completed. For all other sentences, the fee is payable by the offender in the same manner as other assessments imposed. The clerk of the court shall transmit eighty percent of the fee collected to the state treasurer for deposit in the state DNA database account created under RCW 43.43.7532, and shall transmit twenty percent of the fee collected to the agency responsible for collection of a biological sample from the offender as required under RCW 43.43.754.

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).<sup>4</sup>

The DNA fee imposition statute is rationally related to a legitimate state interest. These fees help support the costs of the legislatively enacted DNA identification system, supporting state, federal and local criminal justice and law enforcement agencies by developing a multiuser databank that assists these agencies in their identification of individuals involved in crimes and excluding individual who are subject to investigation and prosecution. *See*, RCW 43.43.753 (finding “that DNA databases are important tools in criminal investigations, in the exclusion of individuals who are subject of investigations or prosecutions...”). The legislation is supported by a legitimate financial justification. As this court recently held in *State v. Thornton*, 353 P.3d 642, 643 (No. 32478-8-III, 2015 WL 3751741 (Wash. Ct. App. June 16, 2015):

The language in RCW 43.43.7541 that “[e]very sentence imposed for a crime specified in RCW 43.43.754 must include a fee of one hundred dollars” plainly and unambiguously provides that the \$100 DNA database fee is mandatory for all such sentences. *See State ex*

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<sup>4</sup> *See also Parrish v. W. Coast Hotel Co.*, 185 Wash. 581, 597, 55 P.2d 1083 (1936) (statute must be unconstitutional “beyond question”), *aff’d*, 300 U.S. 379, 57 S.Ct. 578, 81 L.Ed. 703 (1937); *Nebbia v. New York*, 291 U.S. 502, 537–38, 54 S.Ct. 505, 78 L.Ed. 940 (1934) (every possible presumption is in favor of a statute’s validity, and that although a court may hold views inconsistent with the wisdom of a law, it may not be annulled unless “palpably” in excess of legislative power); cited with approval, *Amunrud*, 158 Wn.2d at 215.

*rel. Billington v. Sinclair*, 28 Wn.2d 575, 581, 183 P.2d 813 (1947) (word “must” is generally regarded as making a provision mandatory); *see also State v. Kuster*, 175 Wn. App. 420, 424, 306 P.3d 1022 (2013) (DNA collection fee is mandated by RCW 43.43.7541). The statute also furthers the purpose of funding for the state DNA database and agencies that collect samples and does not conflict with DNA sample collection and submission provisions of RCW 43.43.754(1) and (2). The court thus properly imposed the DNA collection fee under RCW 43.43.7541 for Ms. Thornton’s felony drug conviction.

*State v. Thornton*, 353 P.3d at 643.

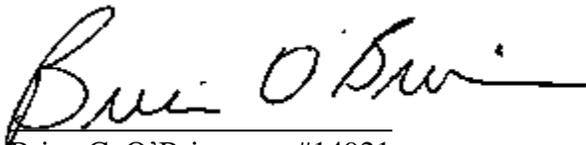
Therefore, there is a rational basis for the legislation. The order follows the operation of the statute. There is no abuse of discretion in the trial court ordering that which is required by law.

#### V. CONCLUSION

For the reasons stated above the trial court’s sentencing orders regarding defendant’s legal financial obligations should be affirmed.

Dated this 22<sup>nd</sup> day of September, 2015.

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CERTIFICATE OF MAILING

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I certify under penalty of perjury under the laws of the State of Washington, that on September 29, 2015, I e-mailed a copy of the Brief of Respondent in this matter, pursuant to the parties' agreement, to:

David N. Gasch  
gaschlaw@msn.com

9/29/2015

(Date)

Spokane, WA

(Place)

Kim Cornelius

(Signature)