

62792-9

62792-9

NO. 62792-9-1

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

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STATE OF WASHINGTON,

Respondent,

v.

JEROME TALLEY  
AKA AZIZUDIN SALAHUD-DIN,

Appellant.

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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE JIM ROGERS

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**BRIEF OF RESPONDENT**

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COURT OF APPEALS  
STATE OF WASHINGTON  
DIVISION I  
2009 NOV 16 PM 4:53

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**A. ISSUES PRESENTED**

1. A trial court must consult the parties prior to answering a deliberating jury's question. Was the trial court's error in answering the jury's question without consulting the parties harmless given the court's neutral response to the jury's inquiry and the overwhelming evidence of Talley's guilt at trial?
2. Did the sentencing court properly impose a \$100 DNA collection fee?

**B. STATEMENT OF THE CASE**

**1. PROCEDURAL FACTS**

On October 25, 2007, the State charged the defendant, Jerome Talley aka Azizudin Salahud-Din with Delivery of Heroin in violation of the Uniform Controlled Substances Act. CP 1-5. On December 18, 2007, the State filed an amended information alleging that the crime occurred within 100 feet of a school bus route stop. CP 7-8. In April 2008, a jury trial was held before the Honorable Judge Jim Rogers. Talley was convicted as charged and sentenced within the standard range. CP 31-32; CP 60-68. CP 69-78.

**2. SUBSTANTIVE FACTS**

On October 22, 2007, members of the Seattle Police Department West Precinct were conducting a "buy/bust" operation in the area of Fourth Avenue and Pike Street in downtown Seattle.

1 RP 48-59<sup>1</sup> Officer P.J. Fox was the designated "buy" officer and assigned the role of purchasing street level narcotics. 1 RP 49. Shortly after arriving at that location, a male contacted Officer Fox and asked him if he had any black tar heroin to sell. 1 RP 51. Officer Fox indicated "no", and told the male that he wanted to buy some heroin. 1 RP 51. Upon hearing of Officer Fox's interest in buying heroin, the male suggested that they combine their money to purchase the drugs. 1 RP 52. Officer Fox declined, but told the male that he would give him ten dollars if he could find someone to sell him the drugs. 1 RP 52. Meanwhile, Talley approached the male and Officer Fox. 1 RP 52-53. Officer Fox witnessed the male purchase narcotics from Talley. 1 RP 53. Shortly thereafter, Officer Fox negotiated the sale of forty dollars worth of black tar heroin. 1 RP 54. After completing the sale, Officer Fox gave the "good buy" sign signaling that he had successfully purchased street level narcotics. 1 RP 55. Moments later, both Talley and the male were arrested by other Seattle Police Officers. 1 RP 57.

At trial, the court admitted several exhibits in evidence including a baggie containing the narcotics Talley sold to Officer

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<sup>1</sup> "1 RP" refers to the verbatim report of proceedings from April 16, 2008.

Fox. 1 RP 61-64; 2 RP 35.<sup>2</sup> During deliberations, the jury asked the court about a date receipt attached to exhibit number 2. CP 37. Specifically, the jury asked:

There is a date (8/21/07) on a weight receipt attached to the back of State's Exhibit #2: What does it refer to and can we get clarification?

Without seeking input from either party, the court answered the jury's question as follows:

Please rely upon the evidence presented in court for your deliberations.

CP 38.

C. **ARGUMENT**

**1. THE TRIAL COURT'S ERROR IN ANSWERING THE JURY'S QUESTION WITHOUT SOLICITING INPUT FROM THE PARTIES WAS HARMLESS.**

Talley argues that the trial court error by responding to a jury question without providing either party an opportunity to respond beforehand. Specifically, Talley claims that the court should have not only provided him an opportunity to provide input but also that he was prejudiced by the court's answer to rely on the evidence produced at trial. Although trial courts must provide counsel an

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<sup>2</sup> "2 RP" refers to the verbatim report of proceedings from April, 21, 2008.

opportunity to be present when determining how to respond to a jury's question, here the court answered the jury's question in a neutral manner by instructing them to rely on the evidence produced in court. The court did not offer the jury any other information about the evidence or comment about the case in any way. Because the court's response was proper, Talley cannot establish he was prejudiced by the court's error. Talley's claim should be denied.

Generally, a trial court should not communicate with the jury once deliberations have begun. State v. Caliguri, 99 Wn.2d 501, 508, 664 P.2d 466 (1983). Notwithstanding this prohibition, CrR 6.15(e)(1) outlines the procedure that a court must follow when the jury asks a question about the evidence after deliberations have begun. Specifically, the rule provides in relevant part:

The court shall notify the parties of the contents of the questions and provide them an opportunity to comment upon an appropriate response.

However, violations of CrR 6.15 only amount to error requiring reversal if the reviewing court determines that the error materially affected the outcome of the trial, or deprived the defendant of a fair trial. State v. Calegar, 133 Wn.2d 718, 727, 947 P.2d 235 (1997).

In deciding whether or not error is harmless on appeal, the appellate court determines whether or not the error materially affected the outcome of the trial, or deprived the defendant of a fair trial. Id. A trial court's neutral response to a jury's question is harmless error. State v. Langdon, 42 Wn. App. 715, 718, 713 P.2d 120 (1986).

Here, although the trial court erroneously failed to provide the parties an opportunity to respond to the jury's question, the court's answer to the jury's question was neutral and simply referred the jury back to the evidence presented in court in determining its verdict. Thus, the court's error was harmless and Talley was not prejudiced and his claim should be denied.

During Talley's trial, the State offered exhibit number two in evidence. 2 RP 35. The exhibit contained a plastic baggie of approximately 0.5 grams of black tar heroin. 1 RP 61-63; 2 RP 34-35. Attached to the back of the evidence envelope was a weight receipt dated 8/21/07. CP 37. Seattle Police Officer Fox testified that the exhibit contained the narcotics he purchased from Talley on October 22, 2007. 1 RP 61-63. Mark Strongman of the Washington State Patrol Crime Lab testified that the exhibit contained the narcotics he received from the Seattle Police

Department for the same incident date and that they tested positive for heroin. 2 RP 34-35. None of the State's witnesses testified about the weight receipt nor did Talley cross examine any of the State's witnesses about it. Prior to offering the exhibit, Talley had the opportunity to examine the exhibit and cross examine both witnesses about it's contents or anything else about the exhibit he saw fit. 2 RP 34. Although Talley objected to the admission of exhibit 2 at trial, the basis of his objection was lack of foundation. 1 RP 62-63. The trial court properly overruled the objection and admitted the evidence. 2 RP 35.

Talley now claims that the addition of the superfluous weight receipt to exhibit two was reversible error. Brief of Appellant at 5. Specifically Talley speculates that the jury was confused about the evidence given the inconsistency in the crime date testified to by Officer Fox and the date on the weight receipt on exhibit two. Brief of Appellant 7 -10. However, Talley confuses the issue and fails to articulate how the court's decision to answer to the jury's question could have cured any of the jury's confusion about the date on the weight receipt. Talley's opportunity to address any oddities to exhibit two was available to him at trial and prior to the jury beginning its deliberations. In fact, CrR 6.15 (e)(1) specifically

instructs the trial court to address evidence admitted at trial in a way that is "least likely to be seen as a comment on the evidence, in a way that is not unfairly prejudicial and in a way that minimizes the possibility that the jurors will give undue weight to such evidence". Clearly, the court would have been commenting on the evidence had it indicated in it's answer to the jury that the weight receipt was attached in error or that it related to a different incident.

Talley also argues that the date on the weight receipt improperly lead the jury to believe that he had additional criminal history that was not admitted at trial. Brief of Appellant at 7-8. However, any such argument was invited by Talley himself. 3 RP 159-165.<sup>3</sup> During Talley's direct examination, he testified being stopped by Seattle Police Department Officer Jokela on October 22, 2007. 3 RP 159-165. However, throughout the presentation of the State's case, it was clear that Talley was mistaken as to his contact with Officer Jokela. 3 RP 164-69. Officer Jokela never testified at trial and was not part of the buy bus operation on this date. The prosecutor clarified this during her cross examination of Talley by asking him if he was confusing October 22, 2007, with a different incident. 3 RP 162. Talley was unresponsive and the

prosecutor moved on to a different line of questioning. At no point was there any evidence to suggest that Talley had been arrested by Officer Jokela on 10/22/2007 or that the weight receipt on exhibit two had anything to do with Talley's contact with Officer Jokela on October 22, 2007, or any other day. 3 RP 159-164. In fact, the date on the weight receipt never came up during the entire course of the trial until the jury asked about it during their deliberations. CP 37. Talley's claim that the date somehow confused the jury and mislead them to believe that he had additional criminal history is unsupported by the record at trial.

Talley makes a similar argument about the State's attempt to impeach him with a prior conviction under ER 609. At trial, the State sought to impeach Talley with a prior burglary conviction. 3 RP 164. However, prior to completing the impeachment the court disallowed the State to use the conviction citing Talley's failure to understand the court's prior ruling finding it admissible. 3 RP 166. Again, Talley speculates that the jury connected the State's failed impeachment with the weight receipt on exhibit two and concluded that he must have had additional criminal history or been involved in a previous drug transaction. Talley's argument is flawed and he

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<sup>3</sup> "3 RP " refers to the verbatim report of proceedings dated April, 21, 2008.

fails once again to show how the court's answer to the jury's question contributed to any prejudice. Similar to Talley's mistaken testimony related to Officer Jokela, neither Talley nor the State made any argument throughout the entire course of the trial connecting his prior burglary conviction to the weight receipt on exhibit two. Based on the record at trial, Talley's suggestion that the jury believed that the weight receipt was related to other criminal history or evidence at trial is without merit.

Ultimately, given the complete lack of testimony to the relevance of the weight receipt, it is doubtful that the jury placed any significance on it in deciding its verdict. It is entirely possible that the jury asked the question out of pure curiosity and didn't place any weight on it at all during its deliberations. However, as a general rule, appellate courts should not speculate or inquire into how a jury reaches its verdict. State v. Gay, 82 Wn. 2d 423, 144 P.2d 711 (1914). Instead, courts should encourage an open discussion of the evidence by the jury. Richards v. Overlake Hosp. Med. Ctr., 59 Wn. App. 266, 271-72, 796 P.2d 737 (1990).

Here, unlike other instances where a jury struggled with its verdict, this jury did not ask additional questions about the weight

receipt and none of the jury's other questions related to the heroin, its weight, or exhibit two. CP 29-36. In addition, none of the jury's other questions related to the defendant's history, known or unknown. CP 29-36. Given the overwhelming evidence of guilt, it is unlikely the jury would have reached a different decision had the court permitted the parties an opportunity to provide input on its answer to the jury's question. Because Talley did not suffer prejudice his request for reversal should be denied.

**1. THE SENTENCING COURT WAS REQUIRED TO IMPOSE A \$100 DNA COLLECTION FEE.**

Talley contends that the \$100 DNA collection fee is not mandatory, and therefore either the trial court improperly sentenced him believing the fee was mandatory, or his trial counsel was ineffective for failing to argue the fee was not mandatory. Talley's arguments rest on his belief that the DNA collection fee is permissive, it is not. RCW 43.43.7541 requires the court impose the fee for all sentences occurring after enactment of the statute, regardless of the date of offense or conviction. The statute violates neither the savings clause nor *ex post facto* clause.

The statute under which the DNA collection fee was imposed is RCW 43.43.7541. In pertinent part the statute reads:

*Every sentence* imposed under chapter 9.94A RCW for a crime specified in RCW 43.43.754 must include a fee of one hundred dollars.

RCW 43.43.7541 (emphasis added). This version of the statute took effect on June 12, 2008. See RCW 43.43.7541 (2008 c 97 § 3, eff. June 12, 2008). Talley was convicted on April 22 27, 2008, and sentenced on December 10, 2008.

Talley asserts that because he committed his criminal act in October of 2007, a former version of RCW 43.43.7541 is applicable, a version of the statute that made the imposition of the DNA fee permissive rather than mandatory.<sup>4</sup> Talley's two arguments, based on the savings clause and the *ex post facto* clause, are not persuasive.

**a. The Savings Clause.**

In pertinent part, the savings clause reads as follows:

No offense committed and no penalty or forfeiture incurred previous to the time when any statutory provision shall be repealed, whether such repeal be express or implied, shall be affected by such repeal, unless a contrary intention is expressly declared in

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<sup>4</sup> The former version reads in pertinent part:

Every sentence imposed under chapter 9.94A RCW, for a felony specified in RCW 43.43.754 that is committed on or after July 1, 2002, must include a fee of one hundred dollars for collection of a biological sample as required under RCW 43.43.754, unless the court finds that imposing the fee would result in undue hardship on the offender.

Former RCW 43.43.7541 (2002 c 289 § 4).

the repealing act, and no prosecution for any offense, or for the recovery of any penalty or forfeiture, pending at the time any statutory provision shall be repealed, whether such repeal be express or implied, shall be affected by such repeal, but the same shall proceed in all respects, as if such provision had not been repealed, unless a contrary intention is expressly declared in the repealing act. Whenever any criminal or penal statute shall be amended or repealed, all offenses committed or penalties or forfeitures incurred while it was in force shall be punished or enforced as if it were in force, notwithstanding such amendment or repeal, unless a contrary intention is expressly declared in the amendatory or repealing act, and every such amendatory or repealing statute shall be so construed as to save all criminal and penal proceedings, and proceedings to recover forfeitures, pending at the time of its enactment, unless a contrary intention is expressly declared therein.

RCW 10.01.040.

In short, the savings clause provides that a criminal or penal statute in effect on the date a crime is committed controls unless the amended or new statute declares otherwise. See State v. Kane, 101 Wn. App. 607, 612-613, 5 P.3d 741 (2000). In applying RCW 10.01.040, the Supreme Court does "not insist that a legislative intent to affect pending litigation be declared in express terms in a new statute;" rather, such intent need only be expressed in "words that fairly convey that intention." Kane, 101 Wn. App. at 612 (citing State v. Zornes, 78 Wn.2d 9, 13, 475 P.2d 109 (1970),

overruled on other grounds, United States v. Batchelder, 442 U.S. 114, 99 S. Ct. 2198, 60 L. Ed. 2d 755 (1979)); see also, State v. Grant, 89 Wn.2d 678, 683, 575 P.2d 210 (1978).

In Zornes, the Supreme Court held that a newly enacted drug law controlled cases pending at the time of the enactment of the statute even though the law was not in affect at the time of the commission of the crime. The Zornes, a husband and wife, were convicted under a drug statute pertaining to "narcotic drugs," for their possession of marijuana. The particular amendment to the drug statute enacted while the Zornes' case was pending, stated that "the provisions of this chapter [the narcotic drug statute] shall not ever be applicable to any form of cannabis." Zornes, 78 Wn.2d at 11. The Court found it could be reasonably inferred that the legislature intended the amendment, by use of this language, to apply to pending cases as well as those arising in the future. Zornes, at 13-14, 26.

In Grant, a new statute provided that "intoxicated persons may not be subjected to criminal prosecution solely because of their consumption of alcoholic beverages." Grant, 89 Wn.2d at 682. The policy behind the statute was that alcoholics and intoxicated persons should receive treatment rather than punishment. Grant

was convicted of being intoxicated on a public highway. The Supreme Court held that this new statute applied to Grant's case that was pending at the time of the enactment of the statute. The Court found that the language of the statute (cited above) fairly expressed the legislative intent to avoid the savings statute default rule. Grant, at 684.

Here, the statutory language clearly shows the legislature intended RCW 43.43.7541 to apply to "every sentence" imposed after the effective date of the statute, regardless of the date the offense was committed. In the original version of RCW 43.43.7541, the legislature put in specific language that indicated that the statute applied only to crimes "committed on or after July 1, 2002." In amending the statute, the legislature removed any reference to when the crime was committed. This in itself indicates that the legislature did not intend the date a crime is committed to be a limiting factor. See In re Personal Restraint of Sietz, 124 Wn.2d 645, 651, 880 P.2d 34 (1994) (if the legislature uses specific language in one instance and dissimilar language in another, a difference in legislative intent may be inferred); Millay v. Cam, 135 Wn.2d 193, 202, 955 P.2d 791 (1998) (if the legislature thought such a provision necessary it would have included it within the statute's text).

In addition, the statute specifically says it applies to "[e]very sentence" imposed under the sentencing reform act. The term "every" means "all." See State v. Smith, 117 Wn.2d 263, 271, 814 P.2d 652 (1991); State v. Harris, 39 Wn. App. 460, 463, 693 P.2d 750, rev. denied, 103 Wn.2d 1027 (1985).<sup>5</sup>

Finally, the amendment to the statute pertaining to the DNA collection fee is consistent with, was done in conjunction with, and refers directly to, the amendment to RCW 43.43.754, the statutory provision regarding the actual collection of DNA samples. Under RCW 43.43.7541, the DNA collection fee is mandatory for crimes specified in RCW 43.43.754. The 2008 amendment to RCW 43.43.754 expanded the crimes for which a DNA sample is required to be taken. See RCW 43.43.754 (2008 c 97 § 2, eff. June 12, 2008). The legislature stated, in pertinent part, that [t]his section applies to . . .[a]ll adults and juveniles to whom this section applied prior to June 12, 2008." RCW 43.43.754(6)(a). The former version of RCW 43.43.754 referred to by the 2008 amendment applied to "[e]very adult or juvenile individual convicted of a felony." Former

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<sup>5</sup> See also In re Hopkins, 137 Wn.2d 897, 901, 976 P.2d 616 (1999) ("*Expressio unius est exclusio alterius*, 'specific inclusions exclude implication.' In other words, where a statute specifically designates the things upon which it operates, there is an inference that the Legislature intended all omissions").

RCW 43.43.754(1) (2002 c 289 § 2). Thus, the legislature made it clear that RCW 43.43.7541 and RCW 43.43.754 applied to crimes committed both before and after June 12, 2008. The trial court here properly imposed the mandatory DNA collection fee.

**b. The *Ex Post Facto* Clause.**

The *ex post facto* clause of the federal and state constitutions<sup>6</sup> forbids the State from enacting a law that imposes a punishment for an act that was not punishable when the crime was committed, or that increases the quantum of punishment for the crime beyond that which could have been imposed when the crime was committed. State v. Ward, 123 Wn.2d 488, 496, 869 P.2d 1062 (1994). Not every sanction or term of a criminal sentence constitutes a criminal penalty or punishment, and if a sanction or term is not a penalty or punishment, the *ex post facto* clause does not apply. Ward, 123 Wn.2d at 498-99; Johnson v. Morris, 87 Wn.2d 922, 928, 557 P.2d 1299; In re Young, 122 Wn.2d 1, 857 P.2d 989 (1993).

For example, the legislature's increase of the mandatory victim penalty assessment from \$100 to \$500 was held not to constitute punishment, and thus, imposition of the \$500 amount for

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<sup>6</sup> U.S. Const. Art 1, § 10, cl. 1; WA Const. Art. 1 § 23.

crimes committed before the increase in the amount was not a violation of the *ex post facto* clause. State v. Humphrey, 91 Wn. App. 677, 959 P.2d 681 (1998), reversed on other ground, 139 Wn.2d 53, 62, 62 n.1, 983 P.2d 1118 (1999) (the Supreme Court stating that the assessment was not a "penalty" and "would not, therefore, constitute punishment for the purposes of an *ex post facto* determination").<sup>7</sup>

In determining if a term of sentence imposes a "punishment," courts look first for legislative intent. If the legislature intended the sanction as punishment, then the inquiry stops and the *ex post facto* clause applies. Metcalf, 92 Wn. App. at 178. Talley cannot show a punitive effect here because the legislature clearly did not intend either the collection of the DNA sample, or the imposition of the \$100 collection fee, to be a criminal penalty. As the 2SHB 2713 Final Bill Report states, the purpose of the creation of a DNA

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<sup>7</sup> See also State v. Blank, 80 Wn. App. 638, 640-42, 910 P.2d 545 (1996) (law requiring convicted indigent defendants to pay appellate costs not punishment and did not violate *ex post facto* provisions), cited with approval in, State v. Blank, 131 Wn.2d 230, 250 n. 8, 930 P.2d 1213 (1997); Ward, 123 Wn.2d at 488 (law requiring sex offenders to register was not punishment and did not violate *ex post facto* provisions); In re Metcalf, 92 Wn. App. 165, 963 P.2d 911 (1998) (law requiring deductions from prisoner's wages and funds to pay for cost of incarcerations not punishment and did not violate *ex post facto* provisions); State v. Catlett, 133 Wn.2d 355, 945 P.2d 700 (1997) (law authorizing civil forfeiture of property used to facilitate drug offenses not punishment and did not violate *ex post facto* provisions).

database is to "help with criminal investigations and to identify human remains or missing persons." The fee is simply intended to fund the creation and maintenance of the database. See 2SHB 2713 Final Bill Report; RCW 43.43.7541.

If the legislature did not intend a term to be punitive, courts still examine the effects of the legislation to make sure the effects are not so burdensome as to transform the term into a criminal penalty. Metcalf, at 180; Ward, at 499. The courts will consider seven factors: (1) whether the sanction involves an affirmative restraint on the defendant; (2) whether the term has historically been considered a criminal punishment; (3) whether its enforcement depends on a finding of scienter; (4) whether its imposition promotes the traditional aims of punishment (deterrence and retribution); (5) whether it applies to behavior that is already a crime; (6) whether it is rationally related to a purpose other than punishment; and (7) whether it appears excessive in relation to this other purpose. Metcalf, at 180 (citing Kennedy v. Mendoza-Martinez, 372 U.S. 144, 168, 83 S.Ct. 554, 9 L.Ed.2d 644 (1963)). In order to override a non-punitive legislative intent, the factors "must on balance demonstrate a punitive effect by the clearest proof." Metcalf, at 180-81.

Application of these factors shows that the legislation here does not have the effect of imposing a criminal punishment. It is no different than the victim penalty assessment, found not to be punishment in violation of the *ex post facto* clause. See Humphrey, supra.

First, a sanction "involves an affirmative restraint" only when it approaches the "infamous punishment of imprisonment." Metcalf, at 181. The imposition of a \$100 fee is certainly not analogous to imprisonment.

Second, monetary fees and assessments have historically not been regarded as criminal penalties within the meaning of the second factor. Metcalf at 181.

Third, the imposition of the DNA fee can be imposed only after a person has been convicted, but the fee itself is not triggered by any particular finding of scienter and, thus, it does not violate the third factor. See Metcalf, at 181-82.

Fourth, the imposition of the fee does not have the primary effect of promoting the traditional aims of punishment (deterrence and retribution). Metcalf, at 182; Ward, at 508. It would be difficult to argue the nominal \$100 fee is retributive or could act as a deterrent. Rather, the purpose of the fee is to reimburse the

agency responsible for the collection of DNA samples and to pay to maintain the State database. RCW 43.43.7541.

Fifth, whether the fee applies to behavior that is already a crime depends upon whether it applies specifically to the felony for which the defendant is convicted instead of to the status of having been convicted of a felony. In Metcalf, the Court reviewed a retroactively applied statutory change that required the deduction of funds received by inmates to pay for costs of incarceration. The Court found that this sanction was not "applied to behavior that is already a crime" within the meaning of this factor, because it was triggered by the status of having been convicted of a felony rather than by commission of the felony itself. Metcalf, at 182. Similarly, here the DNA fee is triggered by the status of having been convicted of a felony rather than by anything specific to the behavior that constituted the crime.

The sixth and seventh factors examine whether the sanction has a rational non-punitive purpose and whether the sanction is excessive in relation to that purpose. In the context of fines, courts draw a line between fees or assessments that are primarily intended to reimburse the State and those primarily intended to impose criminal punishment for the purposes of public justice.

Metcalf, at 177-78. Here, the fee is the former. It has the rational non-punitive purpose of reimbursing the State for the costs of collecting the DNA sample and maintaining the database. A nominal fee of \$100 appears proportionate to that purpose.

Based on the above, the \$100 DNA collection fee does not constitute a criminal penalty or punishment. Therefore, imposition of the fee does not violate the *ex post facto* clause.<sup>8</sup>

**D. CONCLUSION**

The trial's court's failure to consult the parties about the jury's question was harmless error and the court properly imposed the \$100 DNA collection fee. Talley's conviction should be affirmed.

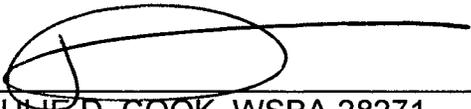
DATED this 16<sup>th</sup> day of November, 2009.

RESPECTFULLY submitted,

DANIEL T. SATTERBERG  
Prosecuting Attorney

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<sup>8</sup> The State will not address the defendant's ineffective assistance of counsel claim. In the event this Court finds the DNA fee is not mandatory, the case should be remanded for the sentencing court to exercise its discretion. It is clear here, the sentencing court believed as the State does, that the fee is mandatory.

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WSBA Office #91002

Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Andrew Zinner, the attorney for the appellant, at Nielsen Broman & Koch, P.L.L.C., 1908 E. Madison Street, Seattle, WA 98122, containing a copy of the Brief of Respondent, in STATE V. JEROME TALLEY AKA AZIZUDIN SALAHUD-DIN, Cause No. 62792-9-I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Sandra Atkousis

Name

Done in Seattle, Washington

November 16, 2009

Date

FILED  
COURT OF APPEALS DIV. #1  
STATE OF WASHINGTON  
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