

IN THE SUPREME COURT OF THE STATE OF NEVADA

JARED ANDREW FEDERIZO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51342
FILED

FEB 04 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of willfully endangering a child as a result of child neglect, a gross misdemeanor. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge. The district court ordered appellant Jared Andrew Federizo to pay a fine of \$1,000, pay attorney fees in the amount of \$250, and pay a \$25 administrative assessment fee. In addition, the district court ordered Federizo to submit to DNA testing and to pay a \$150 DNA analysis fee.

On appeal, Federizo claims that the district court erred by ordering him to submit to DNA testing and pay the DNA analysis fee because the conviction was for a gross misdemeanor and did not fall within the purview of NRS 176.0913. Federizo further argues that the order to submit to DNA testing constituted an unreasonable search in violation of the Fourth Amendment of the United States Constitution.

NRS 176.0913 requires DNA testing for certain enumerated offenders. Respondent concedes that DNA testing was not mandatory for Federizo under NRS 176.0913, but argues that the district court retained discretion to order DNA testing as part of the judgment of conviction.

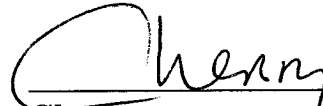
Respondent further argues that, if the district court did err by ordering Federizo to submit to DNA testing and pay a DNA analysis fee, the error was harmless and Federizo's substantial rights were not affected.

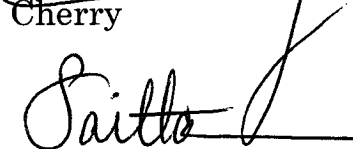
We conclude that the district court erred in ordering Federizo to submit to DNA testing and pay a DNA analysis fee. NRS 176.0913 does not require DNA testing for a gross misdemeanor conviction of willfully endangering a child as a result of child neglect. Even assuming, without deciding, that the district court retained discretion to require DNA testing and payment of a DNA analysis fee, the record before this court indicates that Federizo was not informed that he may be subject to such a requirement.¹ Accordingly, we conclude that the error was not harmless, and we reverse the imposition of the DNA testing and payment of the DNA analysis fee. On remand, the district court shall amend the judgment of conviction to remove the requirement that Federizo submit to DNA testing and pay the DNA analysis fee. Further, if Federizo has already submitted a DNA sample and/or paid the DNA analysis fee, the district court shall order that any DNA samples or results obtained pursuant to the judgment entered in this matter be destroyed and the analysis fee be returned.


Having reviewed Federizo's contention and concluded that it has merit, we

¹Although the parties have not provided this court with a copy of the transcript of the plea canvass, the signed guilty plea agreement did not inform Federizo that he may be subject to DNA testing and payment of the DNA analysis fee.

ORDER the judgment of conviction AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.²


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Connie J. Steinheimer, District Judge
Washoe County Alternate Public Defender
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

²In light of this order, we deny respondent's motion to dismiss this appeal as moot.