

NO. 74206-0

IN THE COURT OF APPEALS – STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON
Respondent,

v.

JOSE CARLOS SANCHEZ-RUIZ,
Appellant.

FILED
Jul 13, 2016
Court of Appeals
Division I
State of Washington

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON, FOR SKAGIT COUNTY

The Honorable DAVE NEEDY, Judge

BRIEF OF RESPONDENT

SKAGIT COUNTY PROSECUTING ATTORNEY
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I. SUMMARY OF ARGUMENT

Jose Sanchez-Ruiz challenges the imposition of a \$100 domestic violence assessment fee for the first time on appeal.

Despite the late challenge, given the costs and efforts associated with the fee raise in this manner, the State respectfully request this Court to order the trial court to strike the imposition of the fee. The State is not seeking appellate costs so they should not be imposed.

II. ISSUES

1. May a defendant challenge the imposition of a domestic violence assessment fee for the first time on appeal?
2. Where the defendant has few means, was likely deported and the State is seeking to strike the domestic violence assessment, should that fee be stricken?
3. Given the State's agreement that the domestic violence assessment be stricken and decision not to seek appellate costs, should this Court decline to impose appellate costs?

III. STATEMENT OF THE CASE

On July 16, 2015, Jose Carlos Sanchez-Ruiz was charged with Domestic Violence Assault in the Second Degree by strangulation or suffocation and Harassment Threats to Kill. CP 60-1 It was alleged that

Sanchez-Ruiz had been upset at his spouse because he believed she was cheating on him. He became assaultive, grabbing her by the thigh, punching her in the eye and grabbing her by the throat. CP 4.

On October 5, 2015, the information was amended to add an aggravating factor that the offenses were domestic violence offenses and occurred within the sight or sound of the offender's minor children. CP 10-11.

On October 5, 2015, the case was tried before a jury. 10/5/15 RP 16.¹ Josefina Pineda testified that she was married to Jose Sanchez-Ruiz for eight years. 10/5/15 RP 37-9. Pineda testified that she and her husband worked in the strawberry harvest until July of 2015. 10/5/15 RP 41-2. Their children went to a migrant school while Pineda and Sanchez-Ruiz worked. 10/5/15 RP 43.

On July 14, 2015, Sanchez-Ruiz went out after he came home from work. 10/5/15 RP 44-6. When he returned after 11:00 p.m., the children were asleep and he confronted Pineda, claiming she was cheating on him. 10/5/15

¹ The State will refer to the verbatim report of proceedings by using the date followed by "RP" and the page number. The report of proceedings in this case are as follows:

9/30/15 RP	Arraignment on Amended Information
10/2/15 RP	Trial Confirmation, in vol. with 10/5, 10/6, 10/7, 10/22 & 10/29
10/5/15 RP	Trial Day 1, in vol. with 10/2, 10/6, 10/7, 10/22 & 10/29
10/6/15 RP	Trial Day 2, in vol. with 10/2, 10/5, 10/7, 10/22 & 10/29
10/7/15 RP	Trial Day 3, in vol. with 10/2, 10/5, 10/6, 10/22 & 10/29
10/22/15 RP	Sentencing, in vol. with 10/2, 10/5, 10/6, 10/7 & 10/29
10/29/15 RP	NCO Hearing, in vol. with 10/2, 10/5, 10/6, 10/7 & 10/22.

RP 46-7, 77. Pineda could smell alcohol on Sanchez-Ruiz. 10/6/15 RP 77, He grabbed her by the thigh, the upper right arm and the neck, before striking her on the right side of her forehead. 10/5/15 RP 49-50. When he grabbed her by the neck, she could not breathe. 10/5/15 RP 50. She testified: “He said if I didn’t have a baby breast feeding that he was going to kill me.” 10/5/15 RP 50. Her child had woken up when Sanchez-Ruiz grabbed her by the neck and Pineda moved her arm. 10/5/15 RP 52-3. Pineda was concerned that Sanchez-Ruiz might kill her based upon the threats. 10/5/15 RP 53-4.

Shortly after that the child began to cry and Pineda breast-fed the child. 10/5/15 RP 54. Sanchez-Ruiz lay down beside the bed and went to sleep. 10/5/15 RP 54. Pineda tried to sleep but could not. 10/5/15 RP 55. The next day Sanchez-Ruiz was grabbing at Pineda. 10/5/15 RP 55. Pineda went to a friend’s house and police were called. 10/5/15 RP 55-6.

Pineda spoke with police and later went to the police department to take pictures of the marks on her arms and legs. 10/5/15 RP 56-8.

The neighbor that Pineda went to testify that Pineda was crying, upset, scared and sad and that police were called. 10/6/15 RP 67-71.

Sedro Woolley Officer Sorsdahl responded and met Pineda on July 14, 2015. Sedro Woolley Officer 87-8. Sorsdahl had the neighbor translate what Pineda said. 10/6/15 RP 88-9. Sorsdahl arrested Sanchez-Ruiz, and identified him in court. 10/6/15 RP 89-90.

Sedro Woolley Officer Holmberg had contact with Pineda at the Sedro Woolley Police Department on July 14, 2015. 10/6/15 RP 82-4. Holmberg took photographs of Pienda's injuries including long marks on both sides of her neck and one shoulder. 10/6/15 RP 85.

Sanchez-Ruiz testified on his own behalf. 10/6/15 RP 94. He said he returned home from work about 2:30 p.m., and showered before going to his cousin's house. 10/6/15 RP 96-8. He returned about 9:00 p.m. to find his children asleep but his wife awake. 10/6/15 RP 98. Sanchez-Ruiz claimed they did not speak to each other. 10/6/15 RP 99. Sanchez-Ruiz pushed Pineda with his right hand in her chest because he asked her something about work and she did not answer. 10/6/15 RP 100, 108-9. Pineda claimed the push was not hard, but she ended up on her back on the bed and they went to sleep. 10/6/15 RP 101. Sanchez-Ruiz denied putting his hands on Pineda's neck or threatening her. 10/6/15 RP 103.

On cross-examination, Sanchez-Ruiz denied drinking while at his cousin's house. 10/6/15 RP 114-5. Sanchez-Ruiz said his wife was angry because he had gone out. 10/6/15 RP 117. He also acknowledged he had gotten into an argument with his wife because he was upset that she was talking to another man. 10/6/15 RP 117-8. He admitted the baby woke up when he pushed his wife and his wife fell into the child. 10/6/15 RP 118-9.

But Sanchez-Ruiz denied putting his hands around his wife's neck. 10/6/15 RP 118.

On October 7, 2015, the jury found Sanchez-Ruiz guilty of Assault in the Second Degree and the two aggravating factors. 10/7/15 RP 156, CP 69-71. The jury found Sanchez-Ruiz not guilty of harassment threats to kill. 10/17/15 RP 156, CP 72.

On October 22, 2015, Sanchez-Ruiz was sentenced to nine months of confinement on the Assault in the Second Degree. CP 51.

At sentencing, the prosecutor did not make a specific record about legal financial obligations other than noting no restitution was sought. 10/22/15 RP 162. The trial court judge indicated:

The Court will sentence you to 9 months in the jail, credit for time served, standard legal financial obligations.

10/22/15 RP 162. Sanchez-Ruiz's counsel did not address legal financial obligations, instead choosing to address visitation issues with the children. 10/22/15 RP 163-6.

At trial evidence was provided that Sanchez-Ruiz was 28 years old and worked at Sakuma Brothers Farms picking strawberries, raspberries and blueberries. 10/5/15 RP 41-2, 60, 10/6/15 RP 94-5. He was married with three children in the United States and one in Mexico. 10/6/15 RP 95. Sanchez-Ruiz said he did know how to drive a car. 10/6/15 RP 109-10.

The trial court imposed legal financial obligations consisting of a \$500 crime victim's assessment pursuant to RCW 7.68.035, a \$100 domestic violence assessment pursuant to RCW 10.99.080, a \$200 criminal fling fee pursuant to RCW 36.18.020(2)(h) and a \$100 DNA collection fee pursuant to RCW 43.43.7541. CP 52-3. No objection was made to imposition of those obligations.

Once the sentencing was complete, Sanchez-Ruiz's counsel sought the appointment of counsel for appeal.

For the record Mr. Sanchez-Ruiz I'll be submitting an order in forma pauperis tomorrow for the appeal. He's indicated he has no income. He's a migrant worker and is out of work right now, out of work several months of the year and has no other source of income.

10/22/15 RP 166. Despite indications a declaration would be provided indicating his financial status, no such document exists in the trial court record.

On October 29, 2015, Sanchez-Ruiz filed a notice of appeal. The notice provided that the defendant:

“seeks review by the designated appellate court of the entry of the Judgment and Sentence entered by the Honorable DAVE NEEDY, Skagit County Superior Court Judge, in the above-entitled cause of action on October 22, 2015, finding the Defendant guilty of Assault in the Second Degree, Domestic Violence.”

CP 66.

On October 29, 2015, defense obtained an order of indigence allowing the appeal to be pursued at public expense. CP 67-8.

A review of jail records by the undersigned prosecutor indicate that following the completion of his sentence, on January 10, 2016, Sanchez-Ruiz was released to immigration custody pursuant to a detainer. The outcome of the immigration proceedings is not known.

IV. ARGUMENT

- 1. Where continued litigation or a factual hearing at the trial court regarding imposition of the domestic violence assessment fee would exceed the fee and the defendant likely has few means, this Court should grant the State's request to strike the imposition of the fee.**

Defendant did not designate any issues for review in the notice of appeal. Instead, for the first time on appeal, Sanchez-Ruiz contends that the domestic violence assessment should not have been imposed because of his inability to pay the legal financial obligations.

The domestic violence assessment is not a "mandatory" fee or assessment.

All superior courts, and courts organized under Title 3 or 35 RCW, may impose a penalty assessment not to exceed one hundred dollars on any adult offender convicted of a crime involving domestic violence. ...

RCW 10.99.080(1). Use of the term “may” indicates the permissive rather than mandatory nature of the assessment. *State ex rel. Purdin v. Gault*, 56 Wash. 140, 143, 105 P. 242, 243 (1909).

The State could argue that Sanchez-Ruiz should be precluded pursuant to RAP 2.5(a) from raising the challenge for the first time on appeal.

A defendant who makes no objection to the imposition of discretionary LFOs at sentencing is not automatically entitled to review. It is well settled that an “appellate court may refuse to review any claim of error which was not raised in the trial court.” RAP 2.5(a). This rule exists to give the trial court an opportunity to correct the error and to give the opposing party an opportunity to respond. *State v. Davis*, 175 Wn.2d 287, 344, 290 P.3d 43 (2012), *cert. denied*, 134 S. Ct. 62 (2013).

State v. Blazina, 182 Wn.2d 827, 832-33, 344 P.3d 680 (2015). The *Blazina* decision was issued on March 12, 2015, and sentencing here occurred October 22, 2015. 10/22/15 RP 161. Defense counsel was or should have been aware of the obligation to challenge the assessment.

RAP 2.5 provides three exceptions to the preclusion of review: (1) lack of trial court jurisdiction, (2) failure to establish facts upon which relief can be granted, and (3) manifest error affecting a constitutional right. None of these situations apply. However the *Blazina* court went on to address the ability to pay under authority or RAP 2.5(a) that indicates “The

appellate court **may** refuse to review an error not raised in the trial court.”

(Bold emphasis added).

This Court may thus choose to address the issue.

The State respectfully urges this Court to strike the assessment, affirm the conviction and remand the case for an order striking the domestic violence assessment. The defendant is a farmworker with four young children who was likely deported after service of his sentence. Striking the assessments would be an appropriate exercise of discretion.

2. Where the State is agreeing to strike imposition of the domestic violence assessment fee and not seeking appellate costs, appellate costs should not be imposed.

Here, the appellate costs to date total \$3,103.35. See Appendix A. Additional costs for transcripts may also be attributed to the case.

Given the State’s position that striking the domestic violence assessment would be appropriate, the State is not seeking to request appellate costs. RAP 14.2. In the absence of a cost bill request, appellate costs cannot be sought.

In the future, the State believes both the defense and the State would be better served by addressing the legal financial obligations in the trial court, or having decided to raise the issue for the first in the appellate court, addressing the matter by way of resolution by way of agreed order than by

briefing of both parties which increase costs. Here over \$3,000 has been spent to address whether a \$100 assessment should have been imposed.

V. CONCLUSION

For the reasons stated above, the State respectfully requests this Court to remand the case to the trial court for an order striking the imposition of the domestic violence assessment fee. The State is not seeking appellate costs in this case, so none should be imposed.

DATED this __13th__ day of July, 2016.

SKAGIT COUNTY PROSECUTING ATTORNEY

By: 
ERIK PEDERSEN, WSBA#20015
Deputy Prosecuting Attorney
Skagit County Prosecutor's Office #91059

DECLARATION OF DELIVERY

I, Karen R. Wallace, declare as follows:
I sent for delivery by: United States Postal Service; ABC Legal Messenger Service, a true and correct copy of the document to which this declaration is attached, to: David B. Koch, addressed as Nielsen Broman Koch PLLC, 1908 E Madison Street, Seattle, WA 98122. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Executed at Mount Vernon, Washington this __13th__ day of July, 2016.



KAREN R. WALLACE, DECLARANT

APPENDIX A



WASHINGTON STATE
OFFICE OF PUBLIC DEFENSE
Appellate Program

Indigent Defense Fund
Cost Summary Request

Use this form to request a summary of the amount paid by the Washington State Office of Public Defense on a case as outlined in RAP 14.3.

TO BE COMPLETED BY REQUESTOR

Request Date: 6/14/2016 Due Date: NEED INFO TO BE INCLUDED IN OUR BRIEF
 Case Name: JOSE SANCHEZ-RUIZ COA No.: 74206-0-1
 Superior Court No.: 15-1-00610-9 County: Skagit
 Requestor Name: Karen R. Wallace, Legal Assistant
 Phone No.: 360/336-9460 Email Address: karenw@co.skagit.wa.us

Email the completed request form to: Michele.young@opd.wa.gov

TO BE COMPLETED BY OPD ACCOUNTING DIVISION

Amount Paid to Date

Counsel Fees:	\$2,997.00
VRP:	\$ 18.60
VRP copy (RAP 10.10(e)):	\$ -0-
Clerk's Papers:	\$ 87.75
Brief Copies:	\$ -0-
TOTAL:	\$3,103.35

If this box is checked either no invoice or only a partial invoice has been received and additional expenses may be incurred.

For cases consolidated with one or more co-defendants, the amount provided here reflects an even distribution of the total cost with the exception of counsel fees.

LMC 6/15/16
Signature of OPD Staff Date

QUESTIONS

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