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Court of Appeals
Division II
State of Washington
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COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

ISIDRO LYNN APODACA, JR.,

Appellant.

On Appeal from the Pierce County Superior Court
Cause No. 18-1-00510-0
The Honorable Michael Schwartz, Judge

OPENING BRIEF OF APPELLANT

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I. ASSIGNMENTS OF ERROR

1. The trial court erred when it refused to include Isidro Apodaca's proposed instruction regarding abandonment of property.
2. Isidro Apodaca's Judgment and Sentence contains a cost provision that is no longer authorized by the legal financial obligation statutes.

II. ISSUES PERTAINING TO THE ASSIGNMENTS OF ERROR

1. Was Isidro Apodaca denied his constitutional right to have the jury instructed on his theory of the case when the trial court refused his proposed instruction on abandoned property, where the evidence supported his claim that he believed the property was abandoned and where that belief would negate an essential element of the possession of a stolen vehicle charge? (Assignment of Error 1)
2. Should Isidro Apodaca's case be remanded to the trial court to amend the Judgment and Sentence by striking an interest accrual provision that violates a recent amendment to the legal financial obligation statutes? (Assignment of Error 2)

III. STATEMENT OF THE CASE

A. PROCEDURAL HISTORY

The State charged Isidro Lynn Apodaca, Jr. with one count of unlawful possession of a stolen vehicle. (CP 2) A jury convicted Apodaca as charged. (2RP 288; CP 48)¹ The trial court imposed a term of confinement totaling 57 months. (2RP 299; CP 60) The court found that Apodaca was indigent and waived all discretionary costs and fines. (2RP 300; CP 58-59) Apodaca timely filed a Notice of Appeal. (CP 73)

B. SUBSTANTIVE FACTS

William Marks lives in an apartment complex in Kent, Washington. (2RP 170-71) When he left his apartment to go to work on the morning of February 1, 2018, he found that his green 1999 Honda Civic was no longer in the space where he had parked it the night before. (2RP 173, 180) Marks called the police to report that the Honda had been stolen. (2RP 173)

Keola Ceridon is an asset protection officer at the Bonney Lake Target store. (2RP 187) On February 2, 2018, while he was monitoring the store's surveillance cameras, he noticed a male and

¹ The trial transcripts labeled volumes I and II will be referred to by their volume number (#RP). The remaining transcripts will be referred to by the date of the proceeding.

a female standing in the parking lot next to a green Honda Civic. (RP 189, 190, 191) The male individual appeared to be poking a long object thru the window of the Honda. (2RP 190-91) After the man managed to open the car door, he and the woman got in and drove away. (RP 191, 192-93) Ceridon found this activity suspicious, so he called the police to report what he had seen. (2RP 191)

Officer Brian Vansickle was dispatched to the area to investigate. (2RP 205) He soon saw a green Honda Civic parked in a shopping center lot across the street from Target. (2RP 207, 209) Officer Vansickle ran the license plate and confirmed that the Honda had been reported stolen. (2RP 210) He stopped near the Honda and saw a female in the passenger seat and saw a male matching the suspect's description exit the driver's door and walk away. (2RP 211)

Officer Vansickle contacted, detained and cuffed the man, Isidro Apodaca. (2RP 205, 212) Apodaca immediately asked the Officer to let the female passenger go because "[s]he didn't know the vehicle was stolen." (2RP 213) Apodaca also explained that he came across the car by the side of the road in Kent. (2RP 214-15) He told Officer Vansickle that he probably should not have

taken it but he was cold. (2RP 215) Officer Vansickle found a file and a set of shaved keys in Apodaca's pocket. (2RP 215) Shaved keys can be used to start vehicles. (2RP 216)

The Honda had significant damage that was not present when Marks last saw the car the night before it was taken. (2RP 174, 177-78) The steering column was heavily damaged, the ignition had been punched in, plastic was removed from the dashboard, and there were several dents in the bumpers. (2RP 177-78, 181, 236)

IV. ARGUMENT & AUTHORITIES

A. APODACA WAS ENTITLED TO AN ABANDONED PROPERTY JURY INSTRUCTION BECAUSE THE FACTS SUPPORTED THE INSTRUCTION AND BECAUSE WITHOUT IT APODACA WAS UNABLE TO FULLY ARGUE HIS THEORY OF THE CASE.

The trial court's refusal to give Apodaca's proposed abandoned property jury instruction was an abuse of discretion and denied Apodaca his right to present a defense. The Sixth Amendment to the United States Constitution and art. 1, § 22 of the Washington Constitution grant criminal defendants the right to present a defense. *See Washington v. Texas*, 388 U.S. 14, 23, 87 S. Ct. 1920, 1925, 18 L. Ed. 2d 1019 (1967); *State v. Hudlow*, 99 Wn.2d 1, 14-15, 659 P.2d 514 (1983).

A defendant is also entitled to jury instructions that allow him to argue his theory of the case. *State v. Redmond*, 150 Wn.2d 489, 493, 78 P.3d 1001 (2003). Sufficient evidence must support the instruction. *Redmond*, 150 Wn.2d at 493. This Court reviews a trial court's refusal to give a requested jury instruction for an abuse of discretion where the refusal is based on factual reasons. *State v. Walker*, 136 Wn.2d 767, 772, 966 P.2d 883 (1998).

The State charged Apodaca with possession of a stolen vehicle. (CP 2) RCW 9A.56.068(1) states that a person is guilty of this crime if he or she "possess[es] ... a stolen motor vehicle." To support a conviction, the State must prove that: (1) the defendant "knowingly received, retained, possessed, concealed, or disposed of a stolen motor vehicle;" (2) that the defendant "acted with knowledge that the motor vehicle had been stolen;" and (3) that the defendant "withheld or appropriated the motor vehicle to the use of someone other than the true owner." WPIC 77.20; WPIC 77.21; RCW 9A.56.140(1).

Apodaca told Officer Vansickle that he found the Honda on the side of the road. (RP 215) After both sides rested, Apodaca proposed the following instruction: "Abandoned property is not the property of another. Property is abandoned when the owner

intentionally gives up possession of the property.” (CP 18) Apodaca wanted to argue to the jury that the State had not proved that he acted with knowledge that the property was stolen, because he found the Honda abandoned on the side of the road. (RP 248-49) The trial court declined because it did not believe there were sufficient facts from which to argue that the car was abandoned. (RP 249)

The trial court misunderstood the defense position. Apodaca did not claim the Honda had in fact been abandoned by its true owner. His position was that he believed it had been abandoned, which would have negated the knowledge elements of the crime (knowingly possessing a vehicle he knew to be stolen). And there was sufficient proof of this belief, which was introduced through Apodaca’s statements to Officer Vansickle.

Without this instruction, Apodaca was not able to fully argue his theory of the case, which was that he did not know the vehicle he possessed was stolen. The trial court abused its discretion when it denied Apodaca this instruction based on a faulty understanding of Apodaca’s theory and the facts of the case.

B. APODACA'S JUDGMENT AND SENTENCE CONTAINS AN INTEREST ACCRUAL PROVISION THAT IS NO LONGER AUTHORIZED BY THE LEGAL FINANCIAL OBLIGATION STATUTES.

Apodaca was sentenced on September 7, 2018. The trial court found that Apodaca did not have the financial resources to pay discretionary fees. (2RP 300; CP 58-59) So the trial court imposed only the mandatory \$500.00 crime victim assessment fee. (2RP 300; CP 58-59) The Judgment and Sentence also includes a boilerplate provision stating that “[t]he financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full[.]” (CP 59)

Engrossed Second Substitute House Bill 1783, 65th Leg., Reg. Sess. (Wash. 2018) (House Bill 1783) amended the legal financial obligation (LFO) system in Washington State. As part of those amendments, House Bill 1783 eliminated interest accrual on the nonrestitution portions of LFOs. Laws of 2018, ch. 269, § 1; *State v. Ramirez*, 191 Wn.2d 732, 747, 426 P.3d 714 (2018). House Bill 1783's amendments were effective as of June 7, 2018.

The portion of the amendments pertaining to interest accrual amended RCW 10.82.090. That statute now provides, in relevant part, that “[a]s of June 7, 2018, no interest shall accrue on nonrestitution legal financial obligations.” RCW 10.82.090(1).

Apodaca was sentenced after June 7, 2018, but the trial court failed to strike the improper interest accrual language. (CP 59) Apodaca's case should therefore be remanded to the trial court to amend the Judgment and Sentence so the interest accrual provision can be stricken.

V. CONCLUSION

Apodaca was entitled to have the jury instructed on his theory of the case because there was sufficient evidence that supported his theory. Apodaca's conviction should be reversed and his case remanded for a new trial. And the trial court must strike the interest provision from the Judgment and Sentence.

DATED: January 30, 2019



STEPHANIE C. CUNNINGHAM

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Attorney for Isidro Lynn Apodaca, Jr.

CERTIFICATE OF MAILING

I certify that on 01/30/2019, I caused to be placed in the mails of the United States, first class postage pre-paid, a copy of this document addressed to: Isidro Lynn Apodaca, DOC# 388411, Coyote Ridge Corrections Center, P.O. Box 769, Connell, WA 99326-0769.



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