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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By_____

30836-7-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, APPELLANT

v.

TOMMY J. VILLANUEVA, RESPONDENT

APPEAL FROM THE SUPERIOR COURT

OF SPOKANE COUNTY

REPLY BRIEF OF APPELLANT

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I.

ISSUES PRESENTED

1. Interpretation of a statute is a question of law triggering *de novo* review. The State alleges that the trial judge misinterpreted RCW 9A.16.110 when it awarded costs that Villanueva incurred prior to being charged because the plain language of the Statute indicates that it applies only to those defendants "charged with a crime." Should this Court review the trial judge's interpretation of RCW 9A.16.110 *de novo*?

2. By its own language, RCW 9A.16.110 reimburses a defendant for costs incurred when he is placed in "legal jeopardy" and charged with a crime. Cases interpreting the statute indicate that a defendant may recover those costs accrued during the "prosecution process." The trial judge, however, awarded costs to Villanueva that he incurred prior to being placed in legal jeopardy, charged with a crime, or involved in the prosecution process. Should the trial judge's award be reversed?

II.

ARGUMENT

A. THE PROPER STANDARD OF REVIEW IN THIS CASE IS *DE NOVO*.

Villanueva argues that this court must defer to the trial judge's award of fees in this case for lost wages. He is incorrect. The State is not challenging a discretionary ruling by the trial judge in applying the self-defense statute; rather, the State is alleging that the trial judge misinterpreted the statute altogether when it awarded costs that Villanueva incurred prior to the time charges were filed against him and the prosecution process commenced. This Court's review is therefore *de novo*.

B. THE PLAIN LANGUAGE OF THE STATUTE, AS WELL AS THE CASES INTERPRETING IT, INDICATE THAT ONLY COSTS INCURRED IN THE "PROSECUTION PROCESS" MAY BE RECOVERED.

The trial court's authority to award costs after a successful showing by the defendant that he acted in self-defense derives from RCW 9A.16.110. That statute provides in relevant part:

> When a person **charged with a crime**... is found not guilty by reason of self-defense, the state of Washington shall reimburse the defendant for all reasonable costs... **involved in his or her defense**.

RCW 9A.16.110(2) (emphasis added). As noted in the State's opening brief, the statute clearly triggers only when a defendant is "charged with a crime."

This conclusion is supported by further language in the statute providing that no defendant "shall be placed in legal jeopardy" for acting in defense of self or property. Even interpreting the term broadly, "legal jeopardy" cannot attach to a defendant prior to the filing of criminal charges, nor has it ever been held to do so. *See State v. Fontainilla*, 128 Wn.2d 492, 500, 909 P.2d 1294 (1996) (holding that legal jeopardy attaches when either a jury is empaneled or when evidence is presented to a judge in a bench trial). The court in *State v. Jones* followed the plain language of the statute when it noted that the defendant could incur those costs generated in the "prosecution process." *State v. Jones*, 92 Wn. App. 555, 561-62, 964 P.2d 398 (1998). Similarly, in *State v. Anderson*, the court noted that a defendant could only recover those earnings a defendant "**would have** received but for being **prosecuted**." *State v. Anderson*, 72 Wn. App. 253, 261, 863 P.2d 1370 (1993), *review denied*, 124 Wn.2d 1010, 879 P.2d 292 (1994).

In short, there is no single appellate case interpreting RCW 9A.16.110 upholding an award of costs incurred by a defendant prior to the filing of criminal charges.

III.

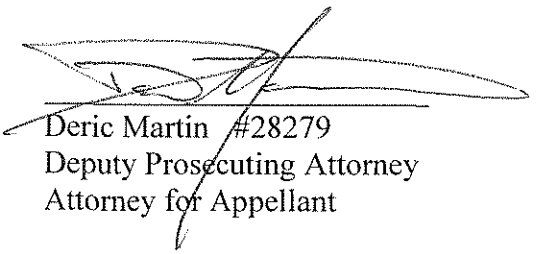
CONCLUSION

Like the trial judge, Villanueva has misinterpreted RCW 9A.16.110 as authorizing an award of costs incurred prior to charging and unrelated to the

prosecution process. The trial judge's award of such costs should therefore be reversed.

Dated this 12 day of February, 2013.

STEVEN J. TUCKER
Prosecuting Attorney



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