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Division III
State of Washington
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IN THE COURT OF APPEALS OF THE STATE OF
WASHINGTON
DIVISION III
No. 35940-9-III

STATE OF WASHINGTON,

Plaintiff/Respondent,

vs.

LAURENCE JAMAL MAYO,

Defendant/Appellant

Respondent's Brief

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A. RESPONSE TO ASSIGNMENTS OF ERROR

- a. With regard to the claim of insufficiency of the evidence as to count seven the State asserts that this issue is moot as a result of the State's stipulation to the Mr. Mayo's argument in what is identified in Issue 2 of the Mr. Mayo's brief.
- b. With regard to the issue regarding Mr. Mayo's right to a unanimous jury verdict the State is stipulating to the argument made by Mr. Mayo and further stipulates to remand of Count 7 to the Superior Court for a new trial.
- c. With regard to the issue of legal financial obligations the State stipulates to the argument made by Mr. Mayo and requests the matter be remanded for resentencing.
- d. With regard to the issue of imposing costs on Mr. Mayo the State would not be seeking any costs and, further, as the State has conceded the issues raised by Mr. Mayo and is no longer the substantially prevailing party the issue is moot.

B. STATEMENT OF THE CASE

The State agrees with and stipulates to the Statement of the Case set forth by Mr. Mayo in his brief.

C. ARGUMENT

- a. The issue raised by Mr. Mayo regarding whether or not there was sufficient evidence to convict him of Count 7 is moot as a result of the State's stipulation to Mr. Mayo's other argument.

The State is stipulating that the jury instructions as provided by the trial court to the jury did not meet the requirements necessary to provide Mr. May with a unanimous jury verdict. As a result Count 7 should be remanded for a new trial. Therefore, this issue is moot and the State, while not conceding the issue, will not address it further.

- b. The State concedes that the charged offense is an alternative means offense and that the jury instructions provided by the trial court to the jury did not include adequate language to ensure that Mr. Mayo received a unanimous jury verdict and as a result Count 7 should be remanded for a new trial.

The State concedes that the crime of Unlawful Possession of Fictitious Identification under RCW 9A.56.320(4), which Mr. Mayo was convicted of in Count 7, is an alternative means

offense. The State agrees with the case law on this issue as provided by Mr. Mayo in his briefing.

The question of whether or not an individual received a unanimous jury verdict is constitutional in nature and may be raised for the first time on appeal. Wash.Const. Art. 1, § 21; State v. Ortega-Martinez, 124 Wn.2d 702, 881 P.2d 231 (1994); State v. Handyside, 42 Wn.App. 412, 711 P.2d 379 (1995). Here, Mr. Mayo was convicted of an offense in Count 7 that included three different alternative means of commission.

In situations where there are alternative means of committing an offense jury unanimity is achieved if the jury finds that the element was proven beyond a reasonable doubt and there is sufficient evidence to prove each alternative means that the jury was to consider. State v. Armstrong, 188 Wn.2d 333, 394 P.3d 373 (2017). The trial court refused to provide a definition for identity theft due to the court specifically ruling that identity theft did not apply to the facts that were presented at trial. (RP. 212-215). However, the alternative means of identity theft was left in the final instructions presented to the jury. (CP 141-183). As a result there was not, and could not be, sufficient evidence to

prove the alternative means of identity theft beyond a reasonable doubt.

As correctly stated by Mr. Mayo, if there is “insufficient evidence to support *any* of the alternative means, a “particularized expression” of jury unanimity is required.” State v. Woodlyn, 188 Wn.2d 157, 392 P.3d 1062 (2017). In this case, the State concedes that there was not a “particularized expression” of unanimity such as a special verdict form to determine what alternative means the jury relied upon to convict the defendant.

Without the presence of anything to determine which alternative means of committing Count 7 the jury relied upon it is impossible to determine if Mr. Mayo obtained a unanimous jury verdict. Such a situation requires that the conviction on that count be reversed and remanded to the Superior Court.

- c. The State concedes that the court costs imposed on Mr. Mayo were imposed without adequate inquiry into his ability to pay and should be remanded to Superior Court for resentencing.

The State concedes that the trial court was required to do an “adequate individualized inquiry” into Mr. Mayo’s ability to pay the legal financial obligations prior to them being imposed. State

v. Blazina, 182 Wn.2d 827, 344 P.3d 680 (2015). That review did not take place. Further, there is no indication that the Superior Court considered the fact that Mr. Mayo had prior felony criminal history when determining whether or not to impose the DNA fee. The matter should be remanded to the Superior Court to conduct the financial inquiry into Mr. Mayo's present or future ability to pay the \$200 filing fee and determine if he previously paid a DNA fee negating his requirement to pay it in this case.

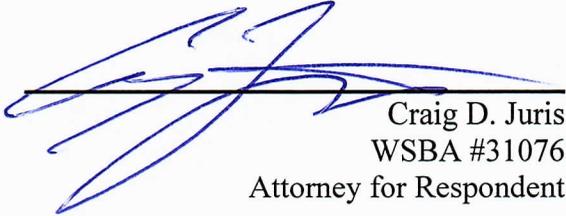
- d. The State is not asking costs to be assessed to Mr. Mayo in this matter and based on the preceding concessions the State is not the substantially prevailing party.

Due to the concessions made by the State and the anticipated remand of this case to the Superior Court on those issues the State is not the substantially prevailing party. Therefore, this issue is moot.

D. CONCLUSION

For the reasons stated, the matter should be remanded to the Superior Court for a new trial on Count 7 as well as resentencing on the legal financial obligations that were imposed.

Dated this 13th day of February, 2019,



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Attorney for Respondent

PROOF OF SERVICE

I, Craig D. Juris, do hereby certify under penalty of perjury that on 13th day of February, 2019, I mailed to the following by U.S. Postal Service first class mail, postage prepaid, or provided e-mail service by prior agreement (as indicated), a true and correct copy of Respondent's Brief:

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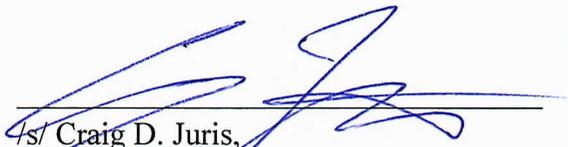
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