IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. ALFREDO LOPEZ-CRUZ, Appellant.	)))))))))	No. 66203-1-I DIVISION ONE UNPUBLISHED OPINION FILED: April 30, 2012

Schindler, J. — Alfredo Lopez-Cruz contends his convictions for trafficking in stolen property in the first degree and theft in the first degree violate double jeopardy. Lopez-Cruz also claims the court erred by imposing legal financial obligations without finding that he had the ability to pay. We affirm.

FACTS

The relevant facts are not in dispute. In 2009, Jose Manuel Tapia owned a 1999 Honda Acura Integra that he wanted to sell. Tapia parked the Acura on the street in front of his house with a "For Sale" sign in the car window.

Alfredo Lopez-Cruz is an auto mechanic. In late May 2009, Mateo Cholula-Rivera talked to Lopez-Cruz about the problems with the engine in his 1997 Honda Civic. Cholula-Rivera and Lopez-Cruz discussed various options, including replacing

the engine with engines used in other cars. Lopez-Cruz told Cholula-Rivera that he would try and locate a replacement engine.

On June 11, Tapia noticed that his Acura was not parked in front of his house. Tapia thought that his son had taken the car to Seattle. The next day, Tapia's son told Tapia that he did not have the car. On June 13, Tapia called the Burlington Police Department and reported that the Acura had been stolen.

Cholula-Rivera testified that in late May or early June, Lopez-Cruz called and told him he had found a replacement engine for $1,800. Cholula-Rivera brought his Civic to Lopez-Cruz's sister's house in Sedro-Woolley and paid Lopez-Cruz $1,800 for the engine. On June 17, Lopez-Cruz installed the Honda engine in the Civic. After Lopez-Cruz installed the engine, Cholula-Rivera paid him an additional $500.

On July 6, Tapia's son called the Burlington Police Department to report that around the same time that Tapia's car was stolen, Lopez-Cruz was looking for an engine for a Honda. On July 11, Skagit County Sheriff's Deputy John Hamlin found Tapia's Acura abandoned at a county-owned gravel pit. The car was stripped of its parts and the interior was gutted.

In August, the Burlington Police received a letter from Tapia stating that "[w]ord is that Alfredo 'Freddy' Lopez Cruz is the person who stole my car" and that "Mateo" had recently bought an engine from Lopez-Cruz that was the same kind as the one in Tapia's Acura.

In September, Tapia's daughter spoke with Burlington Police Department Detective Lisa Floyd and said that Mateo lived in an apartment in Sedro-Woolley.

Detective Floyd and Detective Sergeant Scott Butler went to the apartment. Cholula-Rivera answered the door and agreed to let the detectives look at the engine in his Civic. The vehicle identification number (VIN) on the engine block matched the VIN of Tapia's stolen Acura. The detectives impounded the car.

Cholula-Rivera told the detectives that "Freddy" had installed the engine and gave them Freddy's telephone number. The telephone number was the same number the police had on file for Lopez-Cruz.

The State charged Lopez-Cruz with theft of a motor vehicle or in the alternative with taking a motor vehicle without permission in the first degree, Count 1; trafficking in stolen property in the first degree, Count 2; and theft in the first degree, Count 3. Lopez-Cruz entered a plea of not guilty and waived his right to a jury trial.

The State called a number of witnesses, including Cholula-Rivera. Cholula-Rivera testified that when he found out the engine was stolen, he called Lopez-Cruz and asked him whether he had the paperwork for the engine. Lopez-Cruz told him that he did not have the receipts. Cholula-Rivera testified that Lopez-Cruz asked him not to disclose that he had obtained the replacement engine. Cholula-Rivera testified that after the police returned his car, he had to pay to have another engine installed.

Lopez-Cruz testified that he did not take the engine from Tapia's car and did not know that the engine belonged to Tapia. Lopez-Cruz said Cholula-Rivera obtained the engine that he installed in the car.

The court acquitted Lopez-Cruz of theft of a motor vehicle and the alternative charge of taking a motor vehicle without permission in the first degree, Count 1. The

court found Lopez-Cruz guilty of trafficking in stolen property in the first degree, Count 2 and theft in the first degree, Count 3.

The court imposed a standard-range sentence and ordered Lopez-Cruz to pay Cholula-Rivera restitution in the amount of $2,300 as well as $800 in legal financial obligations. The "Judgment and Sentence" states that "the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein."

ANALYSIS

On appeal, Lopez-Cruz argues that his convictions for trafficking in stolen property in the first degree and theft in the first degree violate the prohibition against double jeopardy. Whether the convictions for trafficking in stolen property in the first degree and theft in the first degree violate double jeopardy is a question of law we review de novo. State v. Jackman, 156 Wn.2d 736, 746, 132 P.3d 136 (2006).

The double jeopardy clause of the Fifth Amendment to the United States Constitution and article I, section 9 of the Washington State Constitution protect a defendant against multiple punishments for the same offense. State v. Calle, 125 Wn.2d 769, 775, 888 P.2d 155 (1995).

State v. Freeman, 153 Wn.2d 765, 771-73, 108 P.3d 753 (2005), sets forth the framework for the double jeopardy analysis. Freeman requires us to first look to whether there is either express or implicit legislative intent authorizing cumulative punishment. Subject to constitutional restraints, the legislature has the power to define crimes and assign punishment. Calle, 125 Wn.2d at 776. If the intent is clear and the legislature authorizes "cumulative punishments" under two different statutes, "then

double jeopardy is not offended" and the court's double jeopardy analysis is at an end. Freeman, 153 Wn.2d at 771.

The second step of the double jeopardy analysis is the "same elements" test under Blockburger v. United States, 284 U.S. 299, 304, 52 S. Ct. 180, 76 L. Ed. 306 (1932). But the Blockburger same elements test is a rule of statutory construction that only applies if legislative intent is not clear. If each crime contains an element the other does not, we presume the crimes are not the same for purposes of double jeopardy. Blockburger, 284 U.S. at 304; Calle, 125 Wn.2d at 777. The offenses are the same in law and fact when the " 'evidence required to support a conviction upon one of them would have been sufficient to warrant a conviction upon the other.' " State v. Reiff, 14 Wash. 664, 667, 45 P. 318 (1896) (quoting Morey v. Commonwealth, 108 Mass. 433, 434 (1871)).

In State v. Walker, 143 Wn. App. 880, 181 P.3d 31 (2008), we concluded that trafficking in stolen property in the first degree and theft in the first degree do not violate double jeopardy because the offenses contain different elements. Walker, 143 Wn. App. at 887, 889. To prove trafficking, one must prove an intent "to sell or dispose of another's property to a third party." Walker, 143 Wn. App. at 887. To prove theft, one must prove an intent "to deprive the owner of its property."[1] Walker, 143 Wn. App. at 887.

Here, as in Walker, proof of the two offenses did not rely on the same evidence.

[1] Under RCW 9A.82.050(1), "[a] person who knowingly initiates, organizes, plans, finances, directs, manages, or supervises the theft of property for sale to others, or who knowingly traffics in stolen property, is guilty of trafficking in stolen property in the first degree." In contrast, under the pertinent portion of RCW 9A.56.020(1)(a) and former RCW 9A.56.030(1)(a) (2007), a person is guilty of first degree theft who wrongfully obtains or exerts unauthorized control over property exceeding $1,500 in value with intent to deprive another of the property.

The evidence of trafficking in stolen property is based on selling the Acura engine to Cholula-Rivera. By contrast, the evidence establishing theft in the first degree is based on the intent to deprive Cholula-Rivera of the money. The convictions for trafficking in stolen property in the first degree and theft in the first degree do not violate double jeopardy.

Lopez-Cruz also relies on RCW 10.01.160(3) to argue that the court erred by ordering him to pay costs and penalties because the court did not find that he had present or future ability to pay.

The imposition of fines under RCW 10.01.160 is within the trial court's discretion. State v. Curry, 118 Wn.2d 911, 916, 829 P.2d 166 (1992). The court is not required to enter "formal, specific findings regarding a defendant's ability to pay court costs." Curry, 118 Wn.2d at 916. Because the undisputed evidence showed that Lopez-Cruz worked as an auto mechanic, the court did not abuse its discretion in imposing legal financial obligations.

Affirmed.

WE CONCUR: