Form 7. Statement of Additional Grounds for Review
[Rule 10.10(a)]

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

State of Washington

Respondent,

v.

Frank Nelson,

Appellant.

Court of Appeals Cause No. 71852-5-I

STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW

I Frank Nelson, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

Additional Ground I

ISSUE NO. 1. See Attached: (1-A).

ISSUE NO. 2. See Attached: (2-B)

ISSUE NO. 3. See Attached: (3-C)

~~(See ATTACHED 1-A)~~

Additional Ground II

~~(See ATTACHED 2-B)~~

If there are additional grounds, a brief summary is attached to this statement.

Date: 4-9-2015 Signature: Frank Nelson

ISSUE NO. ONE

The State presented "Alternative means" when it altered the "Traffic" definition in Jury instruction NO.6, from the original in RCW 9A.82.010(19).

The state presented alternative means for Trafficking in stolen property when it altered the "Traffic" definition to mean Something other than Traffic in only The First of the Two clauses of that definition.

The State based it's Case for Felony Traffic on The Attempted Sell of a "Stolen" mountain bike to the alleged victim in this Case, Cam Ta, on Thursday Night, January 30, 2014, at the Texaco gas station on 128th St in Everett, WA.

After finding what he believed was his stolen bike, the defendant's ad, posted on Craigslist for $100 dollars Cam Ta Contacted the police asking them to get him his bike back.

The officer (tracker) investigating the possible Sell of a stolen bike, using a "Ruse", Set up a buy with the defendant through Cam Ta, whereby the officer would make Contact with the Seller, determine if the bike was Ta's, Stolen one, Then Seize the bike, Returning it to Ta and Arrest the Seller. And that's exactly what happened.

The police Seized the bike prior to any Transaction between Nelson and Ta, and gave the bike to Ta at the Scene. This was from the beginning to its end, an Attempted Sell. Period.

But the prosecuting Attorney believed he Could still obtain a felony Conviction by prosecuting a Case for "Felony Trafficking" based on the agreement made by Nelson and Ta to meet at the Texaco.

It was the "Concrete steps" toward Selling the bike, Nelson's Clear intention to "Sell", and the Agreement to Sell Mr. Ta the bike at that Texaco on January 30, 2014, for which the state Tried the defendant on the Charge of Trafficking in Stolen property -- Second degree. RCW 9A.82.055(1).

But the Evidence Shows this was an Attempted Sell. A "Transfer of possession" Never transacted between Nelson and Ta.

"Trafficking in Stolen property involves a Second, Seperate Category: "TRANSFER POSSESSION OF PROPERTY" KNOWN TO BE STOLEN, defined Seperately in the definition Section of the Statute". (State v. Lindsey. Wash. App. DIV. 2. 2013).

The Definition of a word Can be Critical in the Law Webster's II New Riverside University Dictionary, gives the following Definitions:

Define" (v): To State the precise meaning of (a word or Sense of a
efinition (n): 2) The Statement of the meaning of a word, phrase, or
Expression.

This Definition of "Definition" is important because the state based it's case for Felony Traffic on an incorrect definition of the word "Sale"(n), rather than ~~the~~ "Sell"(v).
Blacks Law Dictionary, 8th ed, gives these definitions; (Please Note: The state erred in relying on the last in the list of Definitions):

Sell" (v). To Transfer (property) by Sale.

Sale" (n)①. The Transfer of (property) for a price.

Sale" (n)②. The Agreement by which such a transfer takes place
The four Elements are: ① parties competent to contract, ② mutual assent, ③ a thing capable of being transfered, ④ a price paid or (Promised).
(Blacks Law. 8th ed.).
As will be shown, it is The Agreement upon which the State Tried it's Case.
The following Testimony by Camra is The State Case for Trafficking, on January 30, 2014;

Q", direct by Grant. (P. 25, 24 UBR).
Grant- Q: Why did you contact the person posting the ad
P.25- after you'd already contacted the police?

-18 A: The police instructed me.- (objection, hearsay).

"A" direct (cont').

P.26. -1 A: The police, obviously, it was a woman when I reported it, told me, instructed me to call the number pretending I went to buy the bike.

-4 Q: Did you?

-5 A: Yes, I did call.

...

-13 Q: Why did you offer $120?

-14 A: Because I worry he might be selling to other people or maybe he has no interest in my offer. So I told him $20 higher to get him interested to sell to me so I buy some time to be there.

-18 Q: So you guys agreed on a price?

-19 A: Yes, we did. And then he told me to meet at the gas station.

-21 Q: What gas station?

-22 A: Tesaco gas station on 128th. (Ex. direct. UBR P.25, STATE) closing. P. 108. UBR):

-7. "And what does he do on that evening of January
-8. 30, 2014? Sets up a buy from Cam, the victim.

XXX

"He talks to Cam and sets up a buy. A buy that's going to happen in about 30 minutes for more than the actual asking price. Establishes where they're going to meet, where he's going to sell this. He in fact agreed to sell it and he agreed to sell it for 120 bucks to Cam." (STATE'S CLOSING. P.108 IN STATE) (Closing. P.111).

"There is no doubt that the defendant in fact Trafficked in that property. You have a Jury instruction to tell you what trafficking is. "To Sell". "To possess with intent to sell." That's what he was doing. When he hang-up the phone with Cam to meet at the Texaco, it Sold. I'm meeting you here, here's the price. Done Deal. That's what his intent was. His intent was to get money, put it in his pocket and walk away". (State's Closing. P.111 UNK).

Clearly, the state has based it's accusation of "Trafficking Stolen property -- Second degree" on The Agreement to Sell, for a price promised, Rather than on an actual Sell, or on a Transfer of possession, to Another person, for a price paid.

But the Legislature defines "Trafficking" in RCW. 9A.82.010(19) by the Acts which Constitute "Traffic" as To Sell, transfer, Distribute, Dispense, or otherwise Dispose of Stolen property, TO ANOTHER PERSON, o

To buy, receive, possess, or obtain control of, stolen property, with the intent, to sell, transfer, distribute, dispense, or otherwise dispose of the property, TO ANOTHER PERSON. (RCW. 9A.82.010(19)).

Seen here, the interreliance of the two clauses on eachother for their meaning is plain. There is a continuing theme through both clauses, The 'End Game' of both being the disposal of the property TO ANOTHER PERSON.

But as the Evidence Shows, that didn't happen here. The State presented Evidence ONLY for the "Attempted Sell", while relying on the wrong definition of "Sell" for it's Case of "Felony Traffic".

Because the Legislature's definition of "Traffic", the RCW calls for a "Transfer of property" from one person TO ANOTHER PERSON, a felony Conviction for trafficking in stolen property could not be had; not with the Evidence the State possessed.

The FIX, or Cure by the state was simply to Redefine "Traffic" in order to fit the State's Trial Strategy of this Case. The state redefined "Traffic" to mean Something other than traffic.

First, the State severed the two clauses of the 'TRAFFIC' definition in RCW 9A.82.010(19), electing On the first clause upon which to try and rest it's Case. Then the prosecutor altered the wording

of that elected first claus to read: To "Traffic" mean "To Sell, Transfer, Distribute, Dispense, or otherwise Dispose of stolen property, OF ANOTHER PERSON".

The State altered the wording from, "To sell, stolen property, TO ANOTHER PERSON"; into, "To Se stolen property, OF ANOTHER PERSON".

This change was made in the Traffic definition because (obviously) the bike was not Sold to Cam Fe, or, To ANOTHER PERSON.

The alteration of this one word was critical, changing the entire meaning of the definition to mean Something other than Trafficking in stolen property, as defined by the legislature; as interpreted by the Supreme Court. (State v. Lindsey; State v. Owens

But the issue raised here isn't the State's altering of the definition of "Traffic": per-se, But the state's decission to reintroduce the previously severed, and unaltered Second Claus - And the rejoining of these Two, now, Dissimillar Clauses. Because (alone) the Second Claus remained true to the original in RCW 9A.82.010(19); Still Correctly describing "Traffic" as it wa intended by the Legislature.

" Or, To buy, Recieve, Possess, or obtain stolen property with the intent, To Sell, Transfer, Distribute, dispense, or otherwise Dispose of the property, To ANOTHER PERSON". (RCW 9A.82.010(19).

Footnote No. 2. (state brief).p. 6, of that; the State Remarks;

②. "Nothing in the Record Supports the Defendant's presumption that the State's proposed Jury instruction regarding the definition of "traffic" was Recognition of "Alternative means"..."

But this statement is untrue. the record, as was demonstrated here, Can be interpreted in no other way but that the state presented "alternative means", even "Alternative Crimes". By severing the two clauses of the "TRAFFIC" Definition in RCW 9A.82.010(19); and by the altering of only the first clause of that definition to mirror the state's incorrect definition of the word Sale(1); to the re-introduction and the re-joining of the unaltered second clause to the altered first clause

There was method and reason behind the State's actions here — when the state re-joined these two clauses, it left the first clause altered while not altering the second to mirror the first, as was the intent of the Legislature, because the State WANTED the two clauses to mean different things.

The state was accusing Nelson of (somehow) obtaining possession of the bike, with the intention of Selling it, TO ANOTHER PERSON (TRAFFIC), while at the same time the state was accusing Nelson in the altered first clause of making an agreement to sell for a promised, or agreed price — (NOT TRAFFIC). These are

Alternative Acts; Alternative means.

One Clause is Trafficking in stolen property as it was defined by the legislature; whereas the other Clause is ... Something else, something Not Trafficking. Not as it was written by our legislature - and not as it was interpreted by our Supreme Court.

Conclusion

The Alteration of only one of the two Clauses in the "TRAFFIC" Definition, RCW 9A.82.010(19), and for the demonstrated reasons for the changes, these two definitional Clauses define more than just two Alternative means, or acts. These two dissimilar clauses now define two Seperate Crimes. Both describe Crimes, but only one of them describe "Traffic".

And because (unbelievably) no one objected to the state's changes at trial, This definition, presented in States proposed Jury instruction No. 6 has become the Law of the Case. (State v. Owens. Supreme Ct. 2014).

The State presented Alternative means in its Jury instruction No. 6. And so the State should have required the Jury's unanimity on which means it found proved - As Clearly No "Sell" was proved.

(2-13.

Issue No. Two

"Nothing in the Record Supports the Defendants presumption that the State's proposed Jury instruction regarding the definition of "Traffic" was recognition of "Alternative Means"..." (STATE'S RESPONCE BRIEF. P.6).

But this statement is simply NOT TRUE. Besides the Seperate issues of Attempt, and in-Correct definitions Employed by the State in it's Case, The Record presents further Evidence of the State's Recognition of "Alternative Means" in regard to proposed Jury instruction NO.6, and the Necessary Submission of a lesser included offense instruction for Attempt in Jury instruction NO. 9 & 10; which, Can Only apply to the Single Act Committed on January 30, 2019 - The Attempted Sell of a mountain bike to Cam Ta, at the Tracs.

There are many Disputed facts in this Case, But undisputed was the Fact that the defendant was in possession of this Bike intending to Sell, indeed, Attempting to Sell it to Cam Ta on Thursday night, January 30, 2019, at the Tracs on 128th. Nor is it a disputed Fact that the officer investigating the Crime Seized the bike prior to any physical transaction between Nelson and Ta.

The Fact that the State obtained a Felony Conviction for "Trafficking in stolen property", based on an Agreement to Sell for a price promised, Rather

then on an Actual Sell for a price paid, is a Separate Issue, in and of itself. But the fact remains, This Act of "Trafficking" for which the defendant is charged in the information, the only act Supported by Evidence to have occured on the date charged in the information, was an Attempted Sell of a Giant Mountain Biker on (or about) January 30, 2014.

These Facts require Certain Due Process Considerations - Chief among them is the requirement that, based on the presented Evidence in this Case, A lesser included offense instruction must be given to the Jury Regarding "Attempt".

Jurors, J): "In Criminal Trials Juries are given the option of Convicting defendants on "Lesser included offenses" when warranted by the Evidence... (A Jury must be allowed to consider a lesser included offense when the Evidence, viewed in a light most favorable to the defendant, raises the inference that the defendant Committed the lesser Crime INSTEAD of the greater Crime." State v. Fernandez-Medina, 141 Wa. 2d. 2000). If a Jury Could Rationally find a defendant guilty of the lesser offense and Not the greater offense, the Jury MUST be instructed on the lesser offense." (State v. Hernandez. Wa. Supreme Court. NO. 90154-6. 201

Initially the State secured the Two clauses of the definition in RCW. 9A.82.010(19); Electing, Then Altering the first Claus to support the state's theory of an Attempted Sell Amounting to an Actual Sell. But it was for This Act, The "Sell", for which the State tried the defendant, and upon which the state rested its Case for "Felony Traffic".

During the trial ~~Recess~~ following the resting of its Case, the State Submitted a Jury instruction, NO. 6, regarding the "Traffic" definition, which Contained Both Clauses - The First, Altered Claus: "To Sell;... Stolen property of another person"; and the unaltered Second Claus: "To buy, receive, possess, or obtain stolen property, with the intent, To Sell... the property to another person". The State explains to the Court, "I included the exact Language of the Entire Definition. So that would be the State's new proposed NO. 5". (NO. 6), (Colloquy. P. 69

The State's decision to reintroduce the previously Secured Second Claus, and to re-Join it with the Altered first Claus, was Certainly not based on the Evidence it had presented prior to this decision. Immediately following this Act by the State, Defense requested the inclusion of the Lesser included offense instructions Concerning "Attempt". These instructions were adopted by the Court with the Agreement of the State.

This was due to the fact that the Evidence in this Case required the inclusion of the Attempt instruction.

RP 13: "A defendant is entitled to an instruction on a Lesser included offense if the two Prongs of the (State v. Workman) test are met: under the LEGAL Prong, Each element of the lesser offense must be a necessary Element of the offense charged; and under the FACTUAL Prong, the Evidence Presented in the Case must Support an inference that ONLY the lesser offense was Committed to the EXCLUSION of the Charged offence". RCW. 10.61.006. (State v. Henderson. Supreme Court Case NO. 90154-6. 2015).

The defendant was charged with having Committed an Act of "Trafficking in Stolen property" on January 3 2014. The only Act Supported by Evidence as having occured on that day was the "Attempted Sell" to Cam at the Texaco - The Evidence presented for this ACT on January 30, 2014, Perfectly meets the two prongs of the "Workman" test.

Both, The State's proposed definition of Sell, And the "Evidence Supported" Attempted Sell, occurred on Thursday Night, January 30, 2014, at the Texaco gas station on 128th St, in Everett, WA - Both involve the same Actors, And both are based on an agreement to Sell made over the phone between Nelson and TG: The Legal Prong is met. But the Evidence shows the Sell Never occured. Instead,

The Police Seized the bike from Nelson and "Returned it to Cam at the Scene. So the Factual Prong is also met for this Act.

But Now if this is Part of the unaltered Second definitional Claus Submitted in State's proposed instruction no. .

"To buy, Recieve, Possess, or obtain stolen property, with the intent to Sell, Transfer, Distribute, Dispense, or otherwise Dispose of the property, To Another person".

None of the Acts listed in this Second definitional Claus are Supported by Presented Evidence to have occurred on, (or about), January 31, 2014. The Actors involved are unknown, as are the possible dates and Locations where the Acts occured. The Legal prong of the "Workman" test Can not be met for this Claus.

Furthermore, the Factual Prong must also be Satisfied by Evidence Supporting the Act, or Acts Presented in this Second Claus as having been Committed to the Exclusion of the charged offense. This is So because the lesser offence must arrise out of the Same Act or Transaction Supporting the Charged Crime. This Just isn't possible with any of the Acts listed in the Second Claus. Simply put - "It was no more possible for Nelson to have Sold a bike to Cam 5q after it was Seized by Police, than it was for him to Attempt to possess

a bike in his possession".

The Act by which Nelson is accused of having "Recklessly Trafficked" in stolen property on January 3 2014, is an Essential Element which must be proved by presented Evidence Establishing that Fact.

The ONLY Act Supported by Evidence as having occurred on January 30, 2014, is the "Attempted Sell to Cam Ta at the Fences. For this reason a lesser included offense instruction was Required.

However, None of the Acts listed in the alleged Second Class was supported by any presented Evidence as having occurred on the date accused in the information (January 30, 2014).

Furthermore, based on the same Case Evidence, it was Simply not possible for Nelson to have "Attempted" to buy, Receive, possess, or obtain property already in his possession.

For These Reasons, based on the presented Evidence in the Case, the inclusion of the lesser offense instruction was "mens specific", meaning it only applied to the first Class; while it could in no way apply to the Second.

For these reasons, The inclusion of the Attempt instruction, in regard to States Jury instruction NO. 6. The "Traffic" definition, is a Clear indication of Recognition of Alternative means by the State in this Case.

ISSUE NO. ~~TWO~~. THREE

A "TRANSFER OF POSSESSION OF STOLEN PROPERTY" did not occur on the date Alleged in the information.

The Prosecutors information "Charges and accuses the Defendant with "Recklessly" trafficking in a Stolen mountain bike on January 30, 2014.

"Due process clause requires that State prove Every Fact necessary to Establish Charged Crime" (USCA. Const. Am. 14.

The Alleged Date of the Act Constituting the Crime Charged is an Essential Element, and as such must be proved by Evidence Establishing that Fact.

The State Arrested, Booked, PC^ed, Charged, arraigned 3.5^ed, Elected the Act, Tried and Rested it's Case for Felony Trafficking, on the "Attempted Sell" of a Gio mountain Bike to Cam Ta, on Thursday Night, January 30, 2014, at the Tesaco Gas station on 128th St, in Everett, Wa. (PERIOD). The State offered Evide for No other Act as having occured on that date, esp. "Possess with intent to Sell". The Record is Clea

The States entire Case for "Felony Traffic" Can be Summed-up in the Testimony of Cam Ta, "the victi and the Explination of the States Case, and it's evidence as argued by the prosecuter in his Closing.

Ta", direct by Grant. (p. 25, 26. VBR).

25 -14. Q: Why did you contact the person posting the ad after you'd already contacted the police?..

26 -1. A: The police... Told me, instructed me to call the number pretending I wanted to buy the bike.

-4. Q: Did you?

-5. A: yes, I did call...

-13. Q: Why did you offer $120?

-14. A: Because I worry he might be selling to other people or maybe he has no interest in my offer. So I told him $20 higher to get him interested to sell to me So I can buy some time to be there.

-18. Q: So you guys agreed on a price?

-19. A: yes, we did. And then he told me to meet at the gas station.

-21. Q: what gas station?

-22. A: Texaco gas station on 12th.
(Cam Ta, direct by Grant. P. 25, 26. VBR).

STATE) "And what does he do that evening of January 3 2014? Sets up a buy from Cam, the victim"...

"He talkes to Cam and sets up a buy. A buy that's going to happen in about 30 minutes for more than the actual asking price. Establishes where they're going to meet, when he's going to sell this. He in fact agreed to sell it and he agree to sell it for 120 bucks to Cam." (closing. P.108. VDR).

"But Cam doesn't... isn't the one who's there at the gas station when Mr. Nelson is standing near the bike. He's first contacted by officer (Hacker). (P.10

acker", cross by Rancourt. (P.C4).

P.C4 -10 Q: And once Mr. Ra got a hold of you, you enlisted the help of other officers; correct?

A: yes.

Q: And you went on a MISSION to RETRIEVE the bike that Mr. Ra believed was his stolen ~~bike~~ bike?

A: To investigate and if I reached probable Cause that that was his stolen bike, to RETRIEVE it for ~~me~~ him. (P.C4. VDR).

acker", Direct by Grant. (P.55, 56).

55 -24. Q: Let me ask you about that bike... what did you do with the bike that day?

56 -2. A: That day?

tracker", (Cont).

P.56 -3 Q: yes.

A: After the investigation?

Q: yes.

A: I returned it to mr. Fa at the scene (Hacker. P.55,56. VOIR).

Clearly the transaction didn't occur, OR was even possible No Exchange for money; No "TRANSFER of possession" between Nelson and Fa. The State relied on a agreement to Sell, for a price Promised; Rather than on an actual Sell, for a price paid to Constitute the Act of Trafficking on January 30, 2014.

"There is No DOUBT that the defendant in fact Trafficked in that property. You have a Jury instruction to tell you what Trafficking is. To Sell. To possess with intent to Sell. That's what he was doing. When he hung up the phone with Cam to meet at the Terrace, it Sold. I'm meeting you here, here's the price. Done Deal. That's what his intent was. His intent was to get money, put it in his pocket and walk away". (states closing. P.111. VOIR).

Here the State explains to the Jury that Nelson was in possession of the bike, intending to sell it.

These statements made by the prosecutor Explain The whole of the State's Case for Felony Trafficking. Here, the State describes Perfectly an "ATTEMPTED SELL" to Cam Ta, and in NO way described Any other Act of Trafficking on January 30, 2014; unless you Consider his description of Nelson Being in possession of the bike intending to Sell, indeed, Attempting to Sell - But this is not "Felony Trafficking". Further, This is the only mention made by the State throughout the Trial Concerning the possession of the Bike with intent to Sell it, on January 30, 2014.

"TRAFFICKING IN STOLEN PROPERTY", by any act listed in RCW 9A.82.010(19) Simply DID NOT occur on Thursday January 30, 2014, at that Tesoro Station, and yet this "Sell" is the only incident for which the State possesses, or presented Evidence. - The Evidence, and the Record is Clear - The only Act Supported by Sufficient Evidence as having occured on (or about) January 30, 2014, is THE ATTEMPTED SELL By Nelson to Cam Ta at that Tesoro gas station on 128th, But this is NOT "Felony Trafficking". (Period).

The State told the Jury that Instruction NO 5 what the state had to prove. "That's it." "Three things". Element NO. 1 in the "To Convict" instruction is that The defendant trafficked in stolen property on, (or about), January 30, 2014. As for the Second

Elements, "That the Defendant Acted Recklessly;
"Recklessness" was established through "knowledge
And knowledge was established by a demonstr
-ed "mens Rea", or "guilty mind". "He's guilty",
because he "Acted Guilty". This, for the state, and
the Jury too, was enough to establish Recklessn
through "Guilty knowledge", knowledge the bike he
was there to sell on January 30, 2017 was
Stolen property.

Evidence was presented for the "Attempted
Sell" at the Texaco station on January 30, 2014.
And Nelson's reaction to police Contact did
demonstrate a "guilty mind", "mens Rea", at the
Attempted Sell—

"Everything he did on January 30, 2014, from
first Lying to police, from taking the phone out,
to Concealing his identity, was knowledge", (State
Closings. P. 112. VBR).

Nelson explained his actions were due to h
hiding from a warrent and his unmedicated
psychi disabilities— So the State offers a few
possibilities of how Nelson may have learned
of the bikes Stolen Status — Theories unsupp-
-orted by any Evidence ~~by Evidence~~ beyond his
initial reaction to police... but theories none-
The-Less.

"I'm not accusing Mr. Nelson of Stealing that bik
I'm not. I'm accusing him of trafficking that

stolen bike. Whether or not he stole it, he was there when Someone stole it, he bought it from a friend who stole it, he knew it was stolen". (Closing, p. 126. VOR)

This statement does offer theories of knowledge, But it also makes clear the fact that the State Just doesn't know how, or when Nelson obtained the bikes possession.

Even though the defendant told the prosecuter he also intended a possible re-Sell of the bike when he purchased the bike from his friend, "Jim Jay", a week or So prior to the incident with Tq, ~~at the Texaco on January 30, 2014~~, the State Never presented this admission, or a theory to tie-it-in with the Trafficking Charged in the information as having occured on January 30, 2014.

It's interesting that although the "mens Rea", or "guilty knowledge" demonstrated at the "Sell" on January 30, 2014, was Sufficient to prove, (circumstantially,) "knowledge", and So "Recklessness, The state still made an effort to explain how he could have known the bike was stolen property; But by the Same token, although the state believed the evidence it presented was Sufficient to prove the "Sell" of that Stolen bike to Cam Tq at the Texaco on January 30, 2014, it did, in no way, offer Theories, or Evidence of the bike having been possessed in one of the ways in the Definition On January 30th, 2014.

No one ever suggested to the Jury that Nelson purchase from his friend Jim Day, may have occurred on January 30, the day of the "Sell". A Evidence, and Testimony only indicates an earli date of one or two weeks prior- So "Trafficking in stolen property" by the "Transfer of possession of stolen property" did not occur, nor was Sufficient Evidence presented to support a finding that it di occur by any act listed in the "Traffic" definition in RCW 9A.82.010(19) on (or about) January 30, 201

Finally, Nelson was "charged and accused" with a act of Trafficking in stolen property on January 30, 2014, And No other Date- Because the Date to the Crime is an "Essential Element" and must be proved by Presented Evidence Sufficient to establish that Fact...

... Simply put; The State must prove that on, (or about), January 30, 2014, Frank Nelson either Sold a "Stolen" mountain bike to Cam 9 at the Texaco gas station, or that he obtained the bike in one of the ways listed, with the intention to "Sell", on January 30, 2014: But Clearly, the Sell did not occur at the Texaco as the state claims, and Just as Clearly, the State makes known to the Jury that it doesn't know when, or really even from where Nelson did obtain the bike. Certainly NOT on January 30, 2014.

And as for the State's implied argument in its respo brief; That both the "Sell", and the "Possess with intent to Sell", were not seperate Acts of trafficki But simply a Single Act of Continuing Criminal Conduct - for the furtherance of a Criminal goal - This Argument Just doesn't work for this Case.

These Two Acts, were Committed on different Dates and at Seperate locations - And so even these Two Acts were, as the State implies, a Single Criminal Act, or single Act of Criminal Conduct - This Single Act could still have to Culminate with Some Act of Trafficking occuring on January 30, 2014, Because That's what the defendant is Charged with.

But here, the State is saying it doesn't matter when, or where the bike's possession was obtained - That date need not be Established, becau That Act only Continued to the Act Charged on January 30, 2014 - making it one Continuous Act But Some Act listed in the Definition must hav Actually occurred on the Date Charged in the Information - And the EVIDENCE SHOWS the only Act presented by the State as having occured on (or about) January 30, 2014, was the "Attempted Sell" of a Mountain Bike to Cam Fa at the Traces Chevy Station on 128th St. in Everett Wa. (period).

Conclusion:

Nelson was convicted of a single Act of Trafficking in stolen property in the Second degree because the States Attorney, Mr. Coe Told the Jury that "when Mr. Nelson hung-up the phone with Cam to meet at the Fleas, it Sold The State told the Jury that a misdemeanor "attempted Sell" of a "stolen" mountain bike was actually a Felony Sale, and the Jury believed him. After all, no one told them any different Nelson was charged in the information with felony Traffic when he Recklessly Trafficked a Giant mountain bike on January 30, 2014 - The Evidence Clearly does not support any Act of Trafficking - including the Sell - as having occurred on the date Charged.

For this reason this Conviction should not be Affirmed.

Frank J. Nelson
#840009.

Airway Heights, Wa.
4-9-2015