NO. 71813-4-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

CHAD HURN,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE DEAN S. LUM

BRIEF OF RESPONDENT

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A. ISSUES PRESENTED

1. Was the trial court within its discretion to allow evidence of Hurn's prior bad acts under ER 404(b), when those acts were relevant to prove the charges against Hurn and were not unduly prejudicial?

2. Was the trial court within its discretion to deny Hurn's motion to sever the factually intertwined counts, when the evidence on all counts was comparably strong, most of the evidence was cross-admissible, and the trial court properly instructed the jury to decide each count separately?

3. Was the evidence sufficient to support Hurn's conviction for Assault in the Second Degree, where the record shows that Hurn had previously threatened the victim, warned her that he had a loaded gun, told her that he was "not fucking around," and then shot the gun out of the sunroof while the victim was in the car?

4. Did the trial court correctly determine that Hurn did not unequivocally invoke his right to counsel by presenting officers with an inscrutable form document that referred only to the *arresting officer's* Miranda rights and only clearly asserted his "right" to "personal time and property"?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

By amended information, the State charged Chad Hurn with Assault in the Second Degree, Unlawful Possession of a Firearm in the First Degree, Possessing a Stolen Firearm, three counts of Possession of a Stolen Vehicle (PSV), Making or Having Vehicle Theft Tools, three counts of Identity Theft in the Second Degree, Tampering With a Witness, Communication with a Minor for Immoral Purposes (CMIP), and Intimidating a Witness. CP 118-22. Before trial, Hurn moved to sever the counts into three "clusters" of charges to be tried in three separate trials. CP 113-17; RP 198-214. The State opposed severance. CP 123-32. Following careful analysis, the trial court denied the motion. RP 214-19. Hurn renewed his motion to sever during trial, and the trial court adhered to its ruling. RP 1007, 1744, 1829-30.

A jury found Hurn guilty as charged and found that Hurn was armed with a firearm during the second-degree assault. CP 290-303; RP 1978-79. The trial court imposed an exceptional sentence totaling 252 months, including the mandatory 36-month firearm enhancement. CP 751-66, 793-95.

2. SUBSTANTIVE FACTS

On February 19, 2013, around 1:16 a.m., twenty-year-old Karla Barnhardt accepted a ride from a friend to deliver her ex-boyfriend's belongings to his new residence and obtain heroin from him. RP[1] 882-83, 901-02. When she was dropped off, Barnhardt realized that she had the wrong address. RP 902. Her friend was rushing for a ferry and could not take her to the correct location. RP 902. Stranded with bags of her ex-boyfriend's belongings, Barnhardt called Hurn for help. RP 903.

Hurn, 35 years old, lived nearby and arrived about five minutes later with a girl who was approximately 15 years old. RP 904; CP 173. Hurn was driving a silver, two-door Acura with a sunroof, which Barnhardt had never seen before. RP 904, 916. It was not the car he usually drove, which was a red Jeep Cherokee. RP 904. Barnhardt loaded her bags into the car and sat down. RP 906. When she told Hurn she did not want to go home, but to her ex-boyfriend's place, Hurn demanded money for the ride. RP 907. Barnhardt had no money, and although she indicated that her friend would pay him, Hurn refused to give her a ride. RP 907. Barnhardt begged not be stranded in the middle of the night, but

[1] The Verbatim Report of Proceedings consists of 27 volumes of consecutively-paginated transcripts. The State refers to this record by page number alone.

Hurn told her to "get the fuck out of the car" and started throwing her bags out of the car. RP 907. As Barnhardt was trying to get her things together to get out of the car, Hurn pulled out a gun, said "I'm not fucking around," and shot the gun through the open sunroof. RP 907-08. Terrified, Barnhardt rushed out of the car, which then sped off. RP 910.

Barnhardt sat on the sidewalk, sobbing loudly. RP 911. A neighbor was awoken the gunshot and crying and called 911. RP 1063. Police responded within a few minutes. RP 911, 1070.

Officer San Miguel[2] arrived at the scene and observed Barnhardt sitting on the curb with several large bags, looking distraught. RP 704. Barnhardt identified herself as "Destiny Coral" and initially denied hearing or having anything to do with a shot being fired. RP 709, 711. Eventually, Barnhardt reported what had happened, but never gave Officer San Miguel her true name. RP 710, 711, 948.

Officer San Miguel collected a single shell casing from the middle of the road. RP 711, 713. Barnhardt told the officer where Hurn lived generally, and they drove around until they found his apartment complex. RP 727. Officer San Miguel broadcast the

[2] At the time of the incident, Officer San Miguel was known as Officer Mabry. RP 695.

address over the radio. RP 728. Officer Willet responded to the address and stopped Hurn near the silver Acura and red Jeep Cherokee. RP 776, 782. Officer San Miguel brought Barnhardt to the scene, and Barnhardt positively identified Hurn. RP 734.

Officer Willet arrested Hurn and drove him to the precinct for processing. RP 779, 783. During the arrest, Hurn asked Willet to retrieve from his wallet a piece of paper entitled "Notice to Arresting Officer With Miranda Warning." RP 86-88; Pretrial Ex. 6 (attached). The document purported to identify its bearer as a "Civil Rights Investigator" who "does not waive any of his rights, including the right to personal time and property, at any time." Pretrial Ex. 6. The document also advised the arresting officer that "[a]fter you have given your name, badge number, rank and proof of agency, you will have the right to remain silent. ..." Pretrial Ex. 6. Hurn insisted the officer sign the document as the "Belligerent Claimant." RP 87; Pretrial Ex. 6. Officers were confused as to the meaning of the document, but concluded it was not an invocation of the right to counsel or the right to silence. RP 87, 94-95, 106-08, 111, 115, 154. Nevertheless, Officer Willet fully advised Hurn of his rights and did not question him substantively at the scene. RP 88. Hurn

stated that he understood his rights and did not ask for counsel or articulate a preference to remain silent. RP 89-90, 134, 136.

At the precinct, Officer Willet inventoried Hurn's belongings while Hurn was in a holding cell five or six feet away. RP 783-84. Hurn was able to see and hear the officer from his cell. RP 783-84. In Hurn's wallet, Officer Willet found an IRS tax refund check in the amount of $3,526 made out to Alexander Gregory. RP 738, 784. When Willet showed the check to Officer Heller, Hurn spontaneously blurted out, "I found that!" RP 784-85, 801-03.

The investigation continued with warrant searches of Hurn's home, the silver Acura, and Hurn's property at the jail. In a laptop case at Hurn's home, detectives located a silver .25 caliber pistol, which was later found to have fired the casing that Officer San Miguel found. RP 832-33, 838, 842-44, 1397. Detectives learned that the pistol had been reported stolen along with the blue Jeep Wrangler in which it had been stored. RP 1324-26. Detectives also discovered a number of forged Washington State identification cards, some bearing Hurn's photo with other names and others bearing the photo of 15-year-old BB with other names. RP 836-37, 1502. One of the forged driver's licenses with Hurn's picture had the name Alexander Gregory; another had the name Igor Zanine.

RP 837. Additionally, detectives found a social security card and driver's license in the name of Lance Elliott. RP 1500, 1656. In the silver Acura, which police determined had been stolen from Adhanom Legesse, police found a bag of stolen mail belonging to 25 different people including Gregory and Legesse, several loose license plates, a stolen checkbook in the name of Dustin Gentry, and multiple shaved keys used for auto theft. RP 834-37, 846-48, 958-61, 1485-87, 1502.

Detectives eventually located 15-year-old BB, who said she was with Hurn when he stole the Acura, the blue Jeep, a blue Subaru, and other cars. RP 1233-34, 1237, 1242-43. BB stated that Hurn used shaved "jiggler" keys to access the cars and swapped license plates on the stolen cars to avoid detection. RP 1230-31, 1236. BB stated that she and Hurn also stole mail from mailboxes and recalled that Hurn was excited to cash a stolen IRS check. RP 1221-24. BB also described going to a Verizon store with Hurn, where they presented forged ID cards in obtaining a service contract, two iPhones, and a mobile hotspot ("Jetpack") in the name of Igor Zanine. RP 1029, 1247, 1249, 1250-51, 1435.

BB described her relationship with Hurn. She had met him while trying to buy methamphetamines. RP 1200. The two began

to spend time and use drugs together almost every day. RP 1206, 1210. Although Hurn was a married man in his thirties and knew that BB was only 15, he frequently made sexual comments to her, rubbed her thigh while he gave her driving lessons, and had once bitten her bottom. RP 1252-60. He was angry when he found out that BB had a boyfriend. RP 1263. As with Barnhardt, Hurn threatened BB when he was angry. RP 1212, 1214. "He threatened to shoot me, he threatened to kill me, he threatened my life multiple times. He showed up at my window and I opened the window and there was a gun in my face." RP 1212. He also hit the girl. RP 1214-16.

At trial, Legesse testified that his 1997 two-door Acura was stolen in February 2013. RP 1034. Police recovered the car two months later. RP 1041. When Legesse retrieved it, he noticed passenger side body damage that had not been there when it was stolen. RP 1042. Different license plates had been mounted. RP 1042. There was a lot of property inside the car that had not been there when it was stolen, including an orange safety vest, loose license plates, a checkbook, a knife, a gun holster, credit cards, a Verizon Jetpack, a bag of mail belonging to others, a set of

shaved keys, and items associated with Alexander Gregory. RP 1046-47, 1050-60.

Lance Elliott testified at trial that he had given Hurn his driver's license, social security card, and bank statements when hiring Hurn's ineffective "Rent-a-Pad" apartment locating service. RP 1012. When detectives searched Hurn's home, they found a forged driver's license and social security card in Elliott's name. RP 1015-16, 1500, 1656, 1663.

Igor Zanine also testified at trial. RP 1023. He did not know Hurn and did not give him permission to use his identity. RP 1024. Police found a forged driver's license and social security card in Zanine's name in the laptop bag in Hurn's apartment. RP 837. Hurn used these documents to open a Verizon cell phone account. RP 1029, 1247-48, 1433-35, 1441.

Joey Otten testified that her blue Jeep Wrangler was stolen in February 2013. RP 1324. Otten kept her .25 caliber pistol in a locked gun safe in the Wrangler. RP 1339-40. She testified that when she recovered the Wrangler, the console box had been damaged and the lock destroyed. RP 1340. Detectives found Otten's pistol in the search of Hurn's home and confirmed that it was the gun that Hurn shot out of the Acura's sunroof. RP 832-33,

838, 842-44, 1397. A partial palm print lifted from inside the Wrangler was a positive match for Hurn. RP 1079-82.

Dustin Gentry's blue Subaru Impreza was also stolen in February 2013. RP 1606-07. Gentry's checkbook was in the car when it was stolen. RP 1609-10. This checkbook was later found in the silver Acura. RP 1475, 1510-11. A check from the book had been made out to Rebecca Fisher, the name on one of the forged driver's licenses bearing BB's picture. RP 1510-11.

One of Hurn's fellow inmates, Jaylyn Johnson, testified at trial that Hurn asked for his help in ensuring that BB did not show up for trial. RP 1553. Hurn knew Johnson's uncle, believed that the uncle "knows a lot of different ways," and suggested that he might "drug her or just whatever, just make sure she does not show up to court." RP 1553. Hurn told Johnson that if BB showed up and he was convicted, "he has a lot of people on the outside" and "that she'd not be walking around," which Johnson interpreted to mean "she would be ... not walking, as in like dead, killed." RP 1566. Johnson actually knew BB through a girlfriend and warned her about Hurn's threats. RP 1554, 1564. Concerned for her well-being, Johnson also reported the threats to a detective he trusted. RP 1569-70.

C. ARGUMENT

1. THE TRIAL COURT PROPERLY EXERCISED ITS DISCRETION IN ADMITTING ER 404(b) EVIDENCE.

Hurn contends that the trial court erred by admitting evidence of prior bad acts under ER 404(b). Specifically, Hurn argues that the trial court erred by admitting evidence that he had stolen cars and mail, regularly used drugs, threatened and hit BB, and made sexual advances toward Barnhardt. Because all of this evidence was admissible for non-propensity purposes, the trial court did not abuse its discretion.

ER 404(b) generally prohibits the use of evidence of other crimes to prove the character of the person in order to show action in conformity therewith. ER 404(b). Such evidence "may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." Id. To justify the admission of prior acts under the rule, there must be a showing that the evidence serves a legitimate purpose, is relevant to prove an element of the crime charged, and the probative value of the evidence outweighs its prejudicial effect. Id. at 184. Evidence is relevant if it has a

tendency to make the existence of any consequential fact more or less probable than it would be without the evidence. ER 401.

Appellate courts review decisions on the admission of evidence for abuse of discretion. State v. Magers, 164 Wn.2d 174, 181, 189 P.3d 126 (2008). Abuse of discretion exists only when the trial court's decision is manifestly unreasonable or based upon untenable grounds or reasons. Id.

a. Mail And Car Thefts.

Hurn first argues that there was no relevant purpose to admit BB's testimony that she went "mailboxing" with Hurn on three or four occasions and was with him when he stole cars, including the three cars Hurn was accused of illegally possessing. RP 1221-22, 1230-42. Hurn contends that because he was not charged with theft, the evidence that he stole cars and mail was not relevant. He is mistaken.

The State charged Hurn with three counts of Possession of a Stolen Vehicle relating to Legesse's silver Acura, Otten's blue Jeep, and Gentry's blue Subaru. RP 119-20. To prove those charges, the State had to establish that the cars in question were actually stolen and that Hurn knew it. RCW 9A.56.068; CP 257-60. BB's testimony that Hurn stole the cars was relevant to prove both of

these elements. Further, since Hurn had claimed that he was only borrowing the Acura, this connection was necessary to rebut the potential defense that he did not know the car was stolen. CP 173 (copy of Pretrial Ex. 12).

The State also charged Hurn with Making or Having Vehicle Theft Tools. CP 120. That charge required the State to prove that Hurn made or possessed "any vehicle theft tool ... under circumstances evincing an intent to use or employ ... in the commission of motor vehicle theft, or knowing that the same is intended to be so used[.]" RCW 9A.56.063(1); CP 262-63. BB's testimony that Hurn used "jiggler keys" to steal cars was thus relevant to prove that Hurn possessed such tools, knew they were intended to be used to steal cars, and intended to use them for that purpose.

BB's testimony that she and Hurn stole from mailboxes was similarly relevant to prove the three counts of Identity Theft in the Second Degree. Identity theft requires proof that the defendant knowingly possessed identification or information of another person with intent to commit a crime. RCW 9.35.020; CP 265, 267, 269,

271. As the trial court properly concluded, BB's testimony that she and Hurn stole mail from mailboxes, and thereby obtained an IRS check that Hurn intended to cash, was relevant to establish Hurn's intent to commit a crime when he possessed fraudulent driver's licenses in the name of the IRS check's recipient and others. CP 787 (Conclusion of Law ("CL") 2).

Hurn points out that not all of this evidence was relevant to all of his charges. Brief of Appellant at 9-11. But he cites no authority for the proposition that evidence must be relevant to all charges to be admissible. As indicated above, the evidence that Hurn stole cars and mail was relevant to prove elements of identity theft, possession of stolen vehicles, and making or having vehicle theft tools. There was no abuse of discretion.

b. Threats And Violence Against BB And Threats And Sexual Advances Toward Barnhardt.

Hurn next contends that the trial court erred in admitting evidence that he had threatened BB, had pointed a gun at her, and had hit her. He also argues that the court erred in allowing Barnhardt to testify that Hurn threatened and made inappropriate sexual advances toward her.

The court concluded that Hurn's treatment of BB was relevant for several purposes: to explain why BB initially withheld information from police about the nature and extent of Hurn's alleged criminal activity[3] and sexual misconduct, to explain the context of their relationship, and to allow the jury to assess her overall credibility on the stand. CP 787-88 (CL 3). The court concluded that evidence of Hurn's treatment of Barnhardt was relevant to the question whether or not Barnhardt reasonably feared imminent harm when Hurn fired a gun two feet from her head. CP 788 (CL 4). Additionally, the court found that the same evidence was relevant to explain the relationship and dynamic between Hurn and Barnhardt and in assessing Barnhardt's credibility. CP 788.

Hurn challenges the notion that evidence of his mistreatment of BB and Barnhardt is admissible to show the context of the relationship. He argues that State v. Gunderson, 181 Wn.2d 916, 337 P.3d 1090 (2014), limits the admissibility of such evidence to circumstances in which "the State first established 'why or how the witness's testimony is unreliable.'" Brief of Appellant at 13. He

[3] Hurn erroneously asserts that the trial court found this evidence relevant to explain why BB minimized *her own* criminal activity. Compare Brief of Appellant at 12 with CP 788 (CL 3).

asserts that, because "the State did not provide any specific basis to conclude [BB's] testimony was unreliable," her testimony about the dynamic of their relationship was irrelevant. With respect to Barnhardt, Hurn argues that such evidence is not relevant "except in limited circumstance[s] where the witness's statements are internally contradictory," and asserts that "no circumstances existed to put Ms. Barnhardt's credibility at issue beyond that of any other witness." Brief of Appellant at 16. Hurn's reliance on Gunderson is misplaced.

In Gunderson, the State charged the defendant with domestic violence felony violation of a court order based upon an altercation between the defendant and his ex-girlfriend. 181 Wn.2d at 918. The ex-girlfriend testified that no assault had occurred, and the State was permitted to impeach that testimony with evidence of Gunderson's prior domestic violence against her. Id. The supreme court held that, because the victim gave no conflicting statements about Gunderson's conduct, evidence of his past abuse had very little impeachment value, which was substantially outweighed by the potential prejudice. Id. at 924-25.

In this case, both BB and Barnhardt did give inconsistent statements, and their credibility was the sole focus of Hurn's defense.[4] Barnhardt falsely identified herself to Officer San Miguel and initially denied that any shooting had occurred. During cross examination, Hurn's counsel elicited from Barnhardt further inconsistent statements pertaining to how long before the shooting she had used heroin. RP 939-40. As the defense repeatedly emphasized, BB did not initially tell police about Hurn's sexual advances or about his pointing a gun at her through her bedroom window. RP 1261, 1268. Additionally, BB was inconsistent in her report that Hurn had bitten her bottom, at one point saying it happened in one location and at another point saying that it had happened elsewhere. RP 1273-74. Since BB and Barnhardt had both made inconsistent and contradictory statements about their involvement with Hurn, their testimony about his mistreatment of them was not barred by Gunderson.

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[4] In his opening statement, Hurn's attorney asserted that BB and Barnhardt were both drug addicts with a history of crimes involving dishonesty who lie when it suits their purposes. RP 690-92. Hurn's closing argument continued that theme, arguing that "the State has no choice but to rely upon the good word of Karla Barnhardt who has a problem with telling the truth" and that Barnhardt "flip-flopped on key facts," and suggesting that she invented the assault "to get even" and only "stuck with the story because if she didn't, she might go to jail and jail means withdrawal." RP 1934-37. He also argued that BB lied regularly, required leading questions on direct because she "can't remember her lines," and emphasized that she did not report Hurn's sexual misconduct in her first interview with police. RP 1944-45.

In State v. Baker, this Court held that evidence of the dynamics of a hostile relationship between the defendant and victim was relevant to assessing the credibility of a victim, even if she never recants. 162 Wn. App. 468, 474-75, 259 P.3d 270 (2011). This is so because such evidence helps the jury to understand why the victim failed to report or minimized prior assaults. Id. Similarly here, evidence that Hurn abused and intimidated Barnhardt and BB through physical violence and verbal threats was relevant to explain why Barnhardt initially denied having been assaulted and did not want to testify (RP 899), and why BB minimized Hurn's criminal conduct and failed to report any sexual misconduct when she first spoke with police. As in Baker, the jury was entitled to evaluate BB's and Barnhardt's credibility with full knowledge of the dynamics of their relationships with Hurn. See id. at 475; State v. Grant, 83 Wn. App. 98, 920 P.2d 609 (1996) (where victim's credibility is a central issue at trial, jury entitled to evaluate credibility with full knowledge of the dynamics of a relationship marked by domestic violence and the effect such a relationship has on the victim).

Further, the evidence of Hurn's treatment of BB and Barnhardt was not admitted solely for credibility purposes. As the trial court concluded, the evidence relating to Hurn's prior

mistreatment of Barnhardt was also clearly relevant to prove the second-degree assault charge, a hotly contested essential element of which was Barnhardt's reasonable apprehension of harm. CP 788 (CL 4). Hurn argues that prior acts evidence is not admissible for that purpose. He is mistaken.

In Magers, a plurality decision, the supreme court affirmed the trial court's admission of the defendant's prior misconduct on two theories: first, that the prior bad acts were relevant to an assault charge because "reasonable fear of bodily injury" was a material issue in the case; and second, that the prior misconduct was relevant to assessing the recanting victim's credibility. 164 Wn.2d at 181-82, 186. The lead opinion affirmed on both theories. The concurrence would not have admitted the evidence to show the victim's reasonable fear because, in its view, the State did not need to prove that the victim was afraid. Id. at 194 (Madsen, J., concurring). Rather, the State needed only to prove that "a reasonable person under the same circumstances would have a reasonable fear of bodily injury." Id. There is no authority cited for that proposition, nor is there any explanation of why prior acts of violence toward a victim would not be among the "same circumstances" the jury was entitled to consider. In any event, the

concurrence found it "[m]ore important[]" that the State had not offered the evidence for that purpose, but instead to explain why the domestic violence victim recanted. Id. Likewise, the dissent pointed out that the reason for admitting the prior bad acts evidence was "primarily" to explain the victim's inconsistent statements and focused entirely on that purpose (although the dissent noted in passing that the Court of Appeals had "correctly" held that the evidence was inadmissible under either theory). Id. at 196-99.

In this case, the State was required to prove that Hurn's conduct "in fact create[d] in another a reasonable apprehension and imminent fear of bodily injury." CP 241. The State explicitly offered the other acts evidence to prove that element, and the trial court expressly admitted the evidence for that purpose. CP 788, 818-19. Since Magers, this Court has continued to hold that prior bad acts evidence is admissible to show the victim's state of mind as an essential element of assault. State v. Johnson, 172 Wn. App. 112, 121, 297 P.3d 710 (2012), rev'd in part on other grounds, 180 Wn.2d 295, 325 P.3d 135 (2014). This Court should adhere to that position and affirm the admission of the other acts evidence here.

The evidence of Hurn's prior mistreatment of BB was also relevant to Hurn's motive with respect to the charges of

Communicating with a Minor for Immoral Purposes, Intimidating a Witness, and Tampering With a Witness. Evidence of a hostile relationship between the defendant and a victim is admissible to show motive. Baker, 162 Wn. App. at 473-74. For purposes of ER 404(b), motive "goes beyond gain and can demonstrate an impulse, desire, or any other moving power which causes an individual to act." Id. (quoting State v. Powell, 126 Wn.2d 244, 259, 893 P.2d 615 (1995)). Evidence that Hurn had threatened, hit, and pointed a gun at BB, as well as evidence of her personal knowledge of his criminal activity, was relevant to demonstrate his motive and intent with respect to the tampering and intimidation charges.

c. Regular Drug Use.

Hurn also contends that the trial court erred by allowing BB and Barnhardt to testify that Hurn frequently provided and used drugs with them. The trial court concluded that this evidence was integral to show the nature of the relationships between each of the young women and Hurn, to assess their credibility, and to prove intent with respect to the CMIP charge, and was also relevant to motive and intent for committing the property crimes. CP 788 (CL 5). The court further found that the probative value of this

evidence "far outweighs" any prejudicial effect, a finding that Hurn does not challenge. CP 789.

Hurn argues that the evidence that he regularly provided and used drugs with BB and Barnhardt is not "integral" in showing the relationship between the women and Hurn. But the evidence showed that Hurn met each of these witnesses in the context of seeking or selling drugs and that Hurn's activity with both of them involved getting them high and then making sexual advances toward them. RP 884-85, 891, 1200, 1272. He provided 15-year-old BB drugs on nearly a daily basis and took her with him to commit numerous property crimes. BB testified that she was addicted to these drugs; thus, the fact that Hurn was providing them helps to explain why she participated in the string of mail and car thefts and why she did not fully report Hurn's criminal offenses when she first spoke with police. Further, the fact that BB was using drugs when she witnessed Hurn stealing mail and cars was important for the jury's evaluation of her testimony about those events. State v. Russell, 125 Wn.2d 24, 83, 882 P.2d 747 (1994) ("It is well settled in Washington that evidence of drug use is admissible to impeach the credibility of a witnesses if there is a

showing that the witness was using or was influenced by the drugs at the time of the occurrence which is the subject of the testimony").

d. Any Error Was Harmless.

Because the trial court identified relevant, non-propensity purposes for evidence of Hurn's prior bad acts, it did not abuse its discretion and should be affirmed. But even if the trial court erred in admitting the prior acts evidence, this Court should affirm because any error was harmless. The erroneous admission of ER 404(b) evidence requires reversal only if the error, within reasonable probability, materially affected the outcome of the trial. State v. Stenson, 132 Wn.2d 668, 709, 940 P.2d 1239 (1997). It is Hurn's burden to establish this prejudice. State v. Barry, No. 89976-2, 2015 WL 3511916 at *2 (June 4, 2015) (under non-constitutional harmless error standard, the accused cannot avail himself of error as a ground for reversal unless it has been prejudicial). To demonstrate the requisite prejudice, Hurn relies on no more than a comparison of the number of pages of Barnhardt's testimony that had to do with the assault and the number of pages of her testimony that had to do with past events. This falls well short of the showing necessary to justify reversal. This Court should affirm.

2. THE TRIAL COURT PROPERLY REFUSED TO SEVER THE COUNTS.

Hurn next contends that the trial court erred by refusing to sever the Communication with a Minor for Immoral Purposes count from the remaining charges for trial. This claim should be rejected.

Separate trials are not favored in Washington, and a defendant seeking severance of an offense must establish that a joint trial would be so manifestly prejudicial as to outweigh the concern for judicial economy. State v. Grisby, 97 Wn.2d 493, 506, 647 P.2d 6 (1982); State v. Israel, 113 Wn. App. 243, 290, 54 P.3d 1218 (2002). The decision of the trial court not to sever counts is reversible only upon a showing of manifest abuse of discretion. State v. Kalakosky, 121 Wn.2d 525, 537, 852 P.2d 1064 (1993) (citing State v. Bythrow, 114 Wn.2d 713, 717-18, 790 P.2d 154 (1990)). Thus, to prevail on appeal, a defendant must prove that "no reasonable person would have decided the issue as the trial court did." Russell, 125 Wn.2d at 78.

To determine whether to sever charges to avoid prejudice to a defendant, a court considers "(1) the strength of the State's evidence on each count; (2) the clarity of defenses as to each count; (3) court instructions to the jury to consider each count

separately; and (4) the admissibility of evidence of the other charges even if not joined for trial." State v. Sutherby, 165 Wn.2d 870, 884-85, 204 P.3d 916 (2009). The absence of one particular factor does not mean that offenses must be severed. For example, severance is not required just because evidence of separate counts may not be cross-admissible. Bythrow, 114 Wn.2d at 720. Hurn acknowledges that these four criteria govern the analysis, but fails to apply them to this case.

First, the State produced strong evidence on each of the charges. Barnhardt's testimony concerning Count 1, the second-degree assault, was corroborated by the witness who called 911, Officer San Miguel's testimony about Barnhardt's demeanor and statements at the scene, and by the shell casing, which was found to have been fired by the stolen .25 caliber pistol later found in Hurn's possession. The same evidence, plus testimony by the pistol's owner that it was stolen, proved Counts 2 and 3 (unlawful possession and possessing a stolen firearm).

Evidence supporting Counts 4-6 (PSV) included testimony by each car's registered owner about the thefts and BB's testimony that she was with Hurn when Hurn stole the cars. Evidence that Hurn had the pistol that had been stored in Otten's Jeep Wrangler

and that his palm print was found inside that car further supported Count 4. Barnhardt's testimony that Hurn was driving the stolen Acura at the time of the assault, the recovery of the Acura from behind Hurn's apartment, and the copious evidence of other crimes discovered inside the Acura was strong evidence supporting Count 5. Count 6, pertaining to possession of Gentry's stolen Subaru, was further supported by the evidence that Gentry's checkbook, which had been in the Subaru, was found in the Acura.

BB's testimony that Hurn used "jiggler keys" to steal cars with her, plus the numerous shaved keys discovered in the Acura, in Hurn's apartment, and in Hurn's belongings at the jail was more than sufficient to prove Count 7 (Making or Having Vehicle Theft Tools). The second-degree identity theft charges, Counts 8-10, were strongly supported by the forged driver's licenses bearing Hurn's image and the names of Gregory, Elliott, and Zanine, by Hurn's possession of Gregory's IRS check and BB's testimony that Hurn intended to cash it, and by evidence that Hurn used Zanine's identity at the Verizon store.

Count 11 (Tampering With a Witness) was supported by a recorded jail call in which Hurn instructed his wife to contact BB and warn her that whatever she said would "come back on her," and by

BB's testimony that Hurn's wife did contact her. RP 1262, 1552, 1680, 1918. Count 12 (CMIP) was strongly supported by BB's testimony, which was corroborated by Detective Stangeland's observations of BB's demeanor during their interview (RP 1712), as well as by the similarities in Hurn's conduct toward Barnhardt. Finally, Johnson's testimony about Hurn's attempts to make sure BB did not testify provided strong evidence of Count 13 (Intimidating a Witness). Because the evidence of all counts was comparably strong, this factor does not favor severance.

Second, the joinder of all charges did not put Hurn in the position of presenting inconsistent or contradictory defenses. Although Hurn asserted in his motion that his defenses to the three proposed clusters would differ, he did not explain why, and Hurn's actual defense to every charge was general denial. The likelihood that joinder of counts will confuse a jury as to the accused's defenses is very small when the defense is identical on each charge. Russell, 125 Wn.2d at 64. Thus, this factor does not favor severance either.

Third, the trial court properly instructed the jury to decide each count separately and not to allow the verdict on one count to control the verdict on any other. CP 231. "Juries are presumed to

follow instructions absent evidence to the contrary." State v. Dye, 178 Wn.2d 541, 556, 309 P.3d 1192 (2013). There is no indication that the jury had difficulty with or defied this instruction.

Finally, because the crimes and investigations were so factually intertwined, much of the evidence would have been cross-admissible. In this respect, it is important to note that Hurn did not simply move to sever the CMIP count from all others; rather, Hurn asked that court to group the charges against him into three "clusters" for three separate trials. CP 113-17. Hurn requested that the CMIP charge be tried together with the charges for Possession of a Stolen Firearm (Otten's .25 caliber pistol), Tampering With a Witness, Intimidating a Witness, and Theft of a Motor Vehicle (a charge later amended to PSV) (relating to Otten's Jeep). CP 115. He argued that the trial court should sever that group of offenses from two other clusters, one of which included the Assault in the Second Degree, Unlawful Possession of a Firearm, and PSV (relating to the Acura). CP 115. The third cluster would have another count of PSV (relating to the blue Subaru), Possession of Vehicle Theft Tools, and the three counts of Identity Theft in the Second Degree. CP 115-16.

Even if the trial court had granted Hurn's motion to try the cluster containing the CMIP charge apart from the remaining counts, a substantial amount of evidence would still be cross-admissible because BB's testimony was essential to charges within each of Hurn's proposed clusters. BB witnessed Hurn steal the mail that led to the identity theft charges, heard him say he was going to cash the tax refund check, witnessed Hurn creating the fake IDs, and went with Hurn as he presented Zanine's identification to obtain a Verizon cell phone account. She witnessed Hurn steal all three cars he was accused of possessing, using the vehicle theft tools he was accused of possessing, and she saw him pry open the Jeep's gun safe and carry the .25 caliber pistol he found there. Her testimony was also relevant to the second-degree assault charge, in that Barnhardt testified that BB was in the car at the time (BB's denial of this was part of Hurn's defense). BB's testimony was necessary to try each of Hurn's proposed clusters of charges, and her credibility was crucial. One fact that significantly undermined her credibility, in the defense's view, was the fact that she failed to report the conduct underlying the CMIP charge when she first spoke with police. Thus, evidence concerning the CMIP charge would have been admissible in trials

of the other two clusters of charges. The significant cross-admissibility of the evidence of the numerous charges weighs strongly against severance.

In any event, Hurn cannot prove prejudice. Generally, a defendant can be prejudiced by joinder of offenses in one of three ways: (1) the defendant may be embarrassed or confounded in presenting separate defenses; (2) the jury may use the evidence of one of the crimes charged to infer a criminal disposition on the part of the defendant from which is found his guilt of the other crime or crimes charged; or (3) the jury may cumulate the evidence of the various crimes charged and find guilt when, if considered separately, it would not so find. Bythrow, 114 Wn.2d at 718.

Here, Hurn argues that failure to sever the CMIP count from the rest of the case was inherently prejudicial because CMIP is a sex offense and because the charge allowed the State to introduce evidence that Hurn regularly used drugs and committed crimes with BB, threatened and hit her, and made inappropriate sexual advances toward her. Brief of Appellant at 22. But as argued above, that evidence had relevance beyond proving the CMIP charge and would have been admissible in separate trials.

State v. Townson, 29 Wn. App. 430, 628 P.2d 857 (1981), is instructive. There, the defendant was charged with ten counts, including burglary, forgery, theft, possession of stolen property, rendering criminal assistance, and CMIP. Id. at 431. The evidence showed that the defendant had used teenage boys to assist him in committing various crimes and that he threatened one of the boys if the boy did not have sex with him. Id. at 431-32. This Court held that the trial court properly refused to sever the counts because all of the crimes, including the CMIP, were "sufficiently connected together." Id. at 432. Likewise, Hurn used BB to assist him in committing many of the charged crimes, and his relationship with her included frequently propositioning her for sexual activity. The CMIP charge was properly joined with the other counts.

In order to support a finding that the trial court abused its discretion in denying severance, the defendant must be able to point to specific prejudice. Bythrow, 114 Wn.2d at 720 (citing Grisby, 97 Wn.2d at 507). Defendants seeking severance "must not only establish that prejudicial effects of joinder have been produced, but they must also demonstrate that a joint trial would be so prejudicial as to outweigh concern for judicial economy." State v. Kalakosky, 121 Wn.2d 525, 539, 852 P.2d 1064 (1993). Hurn

must prove that if the counts were tried separately, there was a reasonable probability that he would have been acquitted. See In re Davis, 152 Wn.2d 647, 711, 101 P.3d 1 (2004); State v. Watkins, 53 Wn. App. 264, 273, 766 P.2d 484 (1989). Hurn has not met that burden here. This Court should affirm.

3. SUFFICIENT EVIDENCE SUPPORTS HURN'S ASSAULT CONVICTION.

Hurn contends that the State failed to prove the essential element that he intended to put Barnhardt in apprehension of harm when he fired a gun out of the sunroof while he ordered her out of his car. Brief of Appellant at 24. This argument fails.

A challenge to the sufficiency of the evidence admits the truth of the State's evidence and all inferences that can reasonably be drawn therefrom. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Evidence is sufficient to support a finding of guilt if, after viewing the evidence in the light most favorable to the State, a rational trier of fact could find the essential elements of the crime beyond a reasonable doubt. State v. Rose, 175 Wn.2d 10, 15, 282 P.3d 1087 (2012).

To convict Hurn of second-degree assault, the State had to prove that he assaulted Barnhardt with a deadly weapon. CP 118,

240, 245; RCW 9A.36.021(1)(C). "Assault" was defined for the jury as "an act done with the intent to create in another apprehension and fear of bodily injury, and which in fact creates in another a reasonable apprehension and imminent fear of bodily injury even though the actor did not actually intend to inflict bodily injury." CP 241.

Hurn argues that the evidence did not establish that he intended to put Barnhardt in apprehension of harm because he did not point the gun directly at her and because Barnhardt testified she thought Hurn fired the weapon to "show off." Brief of Appellant at 25. In fact, Barnhardt testified that "he pulled the gun kind of maybe to show off in front of the little girl, ... that he meant business and ... he was just somebody that people don't fuck with or to scare me." RP 908 (emphasis added). She also testified that while Hurn did not point the gun at her, "he made sure it was clear that I saw that he had the gun[.]" RP 922. And the evidence demonstrated that Barnhardt was scared. Barnhardt testified that she was terrified and began crying and screaming when Hurn pulled out the gun. RP 909. Hurn ordered her out of the car and warned her that "he had rounds in the gun and he's not fucking around." RP 922. When he fired the gun, it was only two feet from

Barnhardt's head. RP 922. Even though he had shot out of the sunroof and not directly at her, Barnhardt was afraid to turn her back on him because she believed he might shoot her in the back. RP 909-10.

Other evidence corroborated Barnhardt's testimony that she was afraid. Richard McKinney, who called 911, testified that he heard uncontrollable sobbing after the gunshot. RP 1069. Officer San Miguel testified that when she encountered Barnhardt minutes later, Barnhardt was upset and "possibly in shock." RP 710.

Viewed in the light most favorable to the State, this evidence is more than sufficient to support the inference that Hurn intended to, and did in fact, place Barnhardt in apprehension of harm. This Court should reject Hurn's claim to the contrary.

4. THE TRIAL COURT PROPERLY DENIED HURN'S MOTION TO SUPPRESS SOME OF HIS STATEMENTS.

Hurn contends that a document he provided indicating that he "demands his rights at all times and does not waive any of his rights, including the right to personal time and property, at any time" was sufficient to unequivocally invoke his right to counsel and bar any further interrogation until counsel was provided. Brief of Appellant at 27. His argument fails because the document he

provided at the time of his arrest contains no unequivocal invocation of the right to counsel.

a. Facts.

When Officer Willet detained Hurn, Hurn asked the officer to retrieve a document from his wallet. CP 779 (Finding of Fact ("FF") 6). The form document represented that Hurn was a "Civil Rights Investigator." CP 779 (FF 7); Pretrial Ex. 6. The form also advised the arresting officer holding the form that the arresting officer had the right to remain silent and to have counsel present. CP 779 (FF 7); Pretrial Ex. 6. The form also included nearly a full page of small font "demands," such as the demand that Hurn not be arrested unless the arresting officer personally witnessed the "arrestable act," that the officers carry an arrest warrant, that the officers refrain from taking his "personal property, including his personal photograph or fingerprints," that he be given "a phone call forthwith to contact my outside counselor friend," and that the form be signed by the "sui juris Belligerent Claimant." CP 779 (FF 7); Pretrial Ex. 6. In the background of Officer Willet's in-car video recording, several of the officers can be heard discussing what the document meant. CP 780 (FF 8). The officers did not substantively question Hurn at the scene. CP 780 (FF 8).

Officer Willet arrested Hurn. CP 780 (FF 10). He advised Hurn he was being audio recorded and then read him his Miranda[5] rights. CP 780 (FF 10). When asked if he understood his rights, Hurn said, "yes," and was placed in Willet's patrol car. CP 780 (FF 10).

At the North Precinct, Officer Willet was inventorying Hurn's belongings and counting his money when he discovered in Hurn's wallet a U.S. Treasury Tax Refund check in the amount of $3,526 that belonged to Alexander Gregory. CP 780 (FF 12). When Officer Willet showed the check to Officer Heller, Hurn, who was in a holding cell where he could see the officers, spontaneously blurted out, "I found that!" CP 780 (FF 13). Hurn does not challenge admission of this spontaneous statement.

Approximately 9 hours later, at 11 a.m., Detective Stangeland met with Hurn to attempt to obtain a statement from him. CP 780 (FF 14). The detective readvised Hurn of his Miranda rights. CP 780 (FF 15). Hurn said he understood his rights and spoke with Detective Stangeland. CP 780 (FF 15). Hurn then made a number of inculpatory statements and eventually stated, "I want my attorney present during any kind of questioning with you,

[5] Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

his name is Peter Connick." CP 780-82 (FF 16-28). Although Detective Stangeland did not question him further, Hurn went on to volunteer additional statements that were ultimately excluded. CP 781-82 (FF 21, 23, 27); CP 784 (CL 3(b)).

Following a suppression hearing, the trial court concluded that Hurn's form did not unequivocally invoke his right to remain silent or his right to counsel. CP 782 (CL 1(b)). The court further concluded that Hurn was properly advised of and validly waived his rights. CP 782 (CL 1(c)).

b. Because Hurn Did Not Unequivocally Invoke His Right To Counsel, The Trial Court Properly Admitted The Pre-Invocation Portion Of His Statement.

Both the federal and state constitutions guarantee that no person shall be compelled to give evidence against himself. See U.S. Const. amend. V, XIV; Wash. Const. art. I, § 9. This privilege against self- incrimination precludes the use of any involuntary statement against an accused in a criminal trial. Mincey v. Arizona, 437 U.S. 385, 398, 98 S. Ct. 2408, 57 L. Ed. 2d. 290 (1978). A custodial statement is voluntary, and therefore admissible, if made after the defendant has been advised of his rights, including the right to remain silent, and then knowingly, voluntarily, and

intelligently waives those rights. Miranda v. Arizona, 384 U.S. 436, 444, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966); State v. Athan, 160 Wn.2d 354, 380, 158 P.3d 27 (2007). A waiver is voluntary if "it was the product of a free and deliberate choice rather than intimidation, coercion, or deception." Moran v. Burbine, 475 U.S. 412, 421, 106 S. Ct. 1135, 89 L. Ed. 2d 410 (1986).

In reviewing a trial court's ruling on the admissibility of a confession pursuant to CrR 3.5, the appellate court must accept unchallenged findings of fact as verities on appeal. State v. Broadaway, 133 Wn.2d 118, 131, 942 P.2d 363 (1997). Challenged findings of fact are also verities if they are supported by substantial evidence in the record. Id. "Substantial evidence exists where there is a sufficient quantity of evidence in the record to persuade a fair-minded, rational person of the truth of the finding." State v. Hill, 123 Wn.2d 641, 644, 870 P.2d 313 (1994) (citation omitted). Conclusions of law that follow from the trial court's findings of fact are reviewed de novo. State v. Armenta, 134 Wn.2d 1, 9, 948 P.2d 1280 (1997); State v. Johnson, 128 Wn.2d 431, 443, 909 P.2d 293 (1996).

"It is well established that Miranda rights must be invoked unambiguously." State v. Piatnitsky, 180 Wn.2d 407, 413, 325 P.3d

167 (2014) (citing Davis v. United States, 512 U.S. 452, 459, 114 S. Ct. 2350, 129 L. Ed. 2d 362 (1994); State v. Radcliffe, 164 Wn.2d 900, 194 P.3d 250 (2008)). This bright-line inquiry is objective; thus, an invocation must be sufficiently clear "that a reasonable police officer in the circumstances would understand the statement to be a request for an attorney." Davis, 512 U.S. at 459. Upon such an unequivocal request, questioning must cease unless counsel is actually present. Id. at 458; Piatnitsky, 180 Wn.2d at 412. "But if a suspect makes a reference to an attorney that is ambiguous or equivocal in that a reasonable officer in light of the circumstances would have understood only that the suspect might be invoking the right to counsel, our precedents do not require the cessation of questioning." Davis, 512 U.S. at 459 (emphasis in original). Neither do the officers need to clarify whether the suspect meant to invoke Miranda. Davis, 512 U.S. at 461-62; State v. Cross, 180 Wn.2d 664, 682, 327 P.3d 660 (2014). "To be unequivocal, an invocation of Miranda requires the expression of an objective intent to cease communication with interrogating officers." Piatnitsky, 180 Wn.2d at 412.

Hurn argues that his form was an unequivocal invocation of his right to counsel. For this proposition, he relies on the erroneous

assertion that "officers at the scene of the arrest" thought Hurn meant to invoke his right to counsel, citing CP 780 and RP 81. He argues that the trial court's conclusion that his form was ambiguous means that "the officers on the scene who understood this as an invocation were unreasonable[.]" Brief of Appellant at 27. But there is no evidence that any of the officers believed that Hurn was invoking his right to counsel. Presumably Hurn is referring to Officer Spaulding, who is heard on the in-car video recording opining that Hurn's document was an attempt to invoke his right to silence. CP 780 (FF 8). But as Officer Spaulding testified, he did not actually read the document and relied on its title, which included the word "Miranda." CP 780; RP 282-85. Once the officer read the document in its entirety, he no longer believed that Hurn was attempting to invoke his right to silence. CP 780 (FF 8); RP 285. Indeed, Officer Spaulding testified that Hurn never invoked either his right to silence or his right to counsel, even though the officers were discussing the meaning of his document within his hearing. RP 285-88.

Hurn also relies on State v. Grieb, 52 Wn. App. 573, 761 P.2d 970 (1988), for the proposition that the statement "does not waive any of his rights" is unambiguous. That case is easily

distinguishable from this one. There, the suspect was advised of his rights and immediately and repeatedly stated, "I don't wanna waive my rights." 52 Wn. App. at 573-74. In this case, Hurn presented his document to police before he was advised of his rights. CP 779. Unlike in Grieb, therefore, Officer Willet had no context with which to interpret the lengthy, small-font document that purported to demand "all his rights" but specified only the "right to personal time and property." Pretrial Ex. 6. Additionally, the document, while mentioning Miranda, does so only in the context of advising the arresting officer of the officer's right to remain silent and to "have counsel present during any interrogation or civil disclosure." Pretrial Ex. 6. Officer Willet understandably did not interpret this as an invocation of Hurn's right to counsel; he accordingly provided Hurn with the appropriate warnings, which Hurn stated he understood, but did not invoke.

In Piatnitsky, our supreme court held that a suspect's statement that "I don't want to talk right now" followed by a statement that he would write it down, was at best an equivocal invocation of the right to remain silent. 180 Wn.2d at 413. The puzzling preprinted form Hurn presented in this case is no less ambiguous. The trial court properly concluded that Hurn did not

unequivocally invoke either his right to remain silent or his right to counsel by presenting the document.

D. CONCLUSION

For all the foregoing reasons, the State respectfully asks this Court to affirm Hurn's convictions.

DATED this 1st day of July, 2015.

Respectfully submitted,

DANIEL T. SATTERBERG
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Appendix

NOTICE TO ARRESTING OFFICER
WITH MIRANDA WARNING

NOTICE IS HEREBY GIVEN: The man or woman you have placed under arrest and have in your custody is working in the capacity of a Civil Rights Investigator. He demands all his rights at all times and **does not waive any of his rights**, including the right to personal time and property, **at any time**.

You are hereby **Noticed and Warned** that from the time you detained him or her your actions have been scrutinized. **Every illegal and/or unlawful action you take will be documented for civil and criminal prosecution forthcoming under USC Title 18, Title 28 and Title 42 §1983.** This NOTICE is made in good faith.

AS TO CRIMINAL PROSECUTIONS: After you have given your name, badge number, rank and proof of agency, **you will have the right to remain silent. Anything you say from that point forward can and will be used against you in the form of criminal affidavits and civil sanctions. You have the right to have counsel present during any interrogation or civil disclosure.**

DEMANDS TO BE MET BY ARRESTING OFFICER
TO AVOID CIVIL AND CRIMINAL PENALTIES.

1. WARRANTLESS ARREST: You are not to arrest me unless you have seen me commit an arrestable act or omission or have exigent circumstances to cause the arrest. If you are arresting me without a warrant you must **immediately** take me before a judicial officer of competent jurisdiction, to determine whether the arrest was **lawful**, or if there was **probable cause** for the arrest, pursuant to **clearly established law**. This Demand must be met **prior to booking**. The Supreme Court has held that the courts are open twenty-four hours a day, seven days a week, three hundred sixty-five days a year. If you do not comply with this Demand **you can and will be sued.**

2. If you improperly arrest me without a warrant in your possession, or with a warrant that does not comply with the Fourth Amendment requirements, you can and will be sued, in your INDIVIDUAL capacity .

3. ARREST UPON WARRANT: The arrest warrant **must be in your possession.** It must be supported by an **affidavit** and **probable cause statement attached to the warrant**, as subscribed in the Fourth Amendment. The arrest shall not be based upon hearsay, unless supported by a warrant accompanied by a bona fide affidavit. Said warrant and affidavit must be based upon **first hand knowledge** of the affiant charging me with a felony or other infamous crime. I must be allowed **the right to face my accuser**. If you **deny me** that right it will be a Sixth Amendment violation, and if you act **unreasonably** in your investigation or use **excessive force**, it will be a Fourth Amendment violation, both of which violate **clearly established law** (stare decisis).

4. If it is later determined that the arrest was invalid you can and will **be held liable for false arrest and sued**, in your OFFICIAL capacity.

5. You may not take **any** of my property or **wrongfully convert** any of my property, such as my personal photograph or my fingerprints, **without written authority** and only after an adversary proceeding which complies completely with Fifth and Fourteenth Amendment **due process rights**, concluded with a **signed order** by a judicial officer of competent jurisdiction ordering the taking of said property

6. I must be given a phone call **forthwith** to contact my outside counselor friend.

7. I must be given **pencil, paper** and **adequate access to a law library**, to prepare my "habeas corpus."

IF YOU IGNORE THESE WARNINGS, it will show **bad faith** on your part and constitute **prima facie evidence** of your deliberate indifference to **Constitutionally mandated rights**. A copy of this instrument **will be** prima facie evidence of your bad faith. You are a **Public Servant**, and as such you are expected to treat me with due respect

This NOTICE has been submitted upon the demand of a **driver license**, a **registration, proof of insurance**, or any other **State issued privilege permit or license** and therefore is a **mandatory part** of the official record of any ensuing action and **MUST** be introduced as prima facie evidence in said action.

IT SHOULD BE NOTED that **willful suppression of evidence** is a **felony**. Any cause for action will result in a lawsuit under **USC Title 18, Title 28 and Title 42 § 1983.**

Subscribed and affirmed on_____, 200__

_____, sui juris
Belligerent Claimant

PROOF OF SERVICE

Presented on_____, 200__ to officer_____, Badge # _____

_____, sui juris
Belligerent Claimant

Certificate of Service by Electronic Mail

Today I directed electronic mail addressed to Greg Link [greg@washapp.org], attorney for the appellant, Chad Hurn, containing a copy of the Brief of Respondent, in STATE v. HURN, Cause No. 71813-4-I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

C. Brame
Name

7/1/15
Date

Done in Seattle, Washington