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Court of Appeals  
Division I  
State of Washington

NO. 72746-0-I

IN THE COURT OF APPEALS – STATE OF WASHINGTON  
DIVISION ONE

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STATE OF WASHINGTON  
Respondent,

v.

**ISMAEL G. BUCIO,**  
Appellant.

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON, FOR SKAGIT COUNTY

The Honorable Susan K. Cook, Judge

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**BRIEF OF RESPONDENT**

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## **I. SUMMARY OF ARGUMENT**

Ismael Bucio appeals from a conviction and sentence from two counts of residential burglary and a count of assault in the third degree. He contends insufficient evidence exists for one residential burglary because he claims he was only found in possession of a stolen phone. However, within minutes of the burglary the phone and money from the victim's dorm room, the victim electronically tracked his phone from just outside the dorm to where Bucio was found hiding by law enforcement.

Bucio's second challenge is to the community condition that he not use any controlled substances. Given the standard community custody drug condition that is not contested, the State agrees the handwritten condition which does not allow use of lawful prescriptions should be stricken. The case should be remanded for entry of the order striking the condition.

## **II. ISSUES**

1. Where the victim's cell phone stolen in a burglary is tracked shortly after the burglary from just outside the dorm building to the location where the defendant was found hiding in a house a short distance away in possession of the victim's stolen cell phone with the SIM card removed, was there more evidence than

mere possession of stolen property sufficient for a rational trier of fact to find residential burglary?

2. Should this Court order the trial court to strike a community condition that does not permit use of controlled substance issued pursuant to a valid prescription?

### **III. STATEMENT OF THE CASE**

#### **1. Statement of Procedural History**

On June 23, 2014, Ismael Bucio was charged with Residential Burglary of the dwelling of Hwansik Kim alleged to have occurred on June 19, 2014. CP 64. The victim had his phone and wallet stolen from his student apartment. CP 5. He tracked his phone moving away from the apartment to an address. CP 5. Officers went to the house and found Ismael Bucio hiding behind a door with the victim's phone and folded money in his pocket. CP 5.

On July 15, 2014, the information was amended to add two other counts for Residential Burglaries occurring July 7<sup>th</sup> and July 10<sup>th</sup> of other student apartments. CP 7-8, 9-10.

On September 9, 2014, the information was amended to add a charge of Assault in the Third Degree for assault on a police officer during arrest of Bucio on July 10, 2014. CP 2-3, 69.

On November 17, 2014, the case proceeded to trial. 11/17/14 RP 31.<sup>1</sup> During trial, the court dismissed one Residential Burglary count finding there was insufficient evidence to support the charge because there was no evidence that Bucio was in the building on July 7, 2014. 11/19/14 RP 34.

On November 19, 2014, the jury returned verdicts finding Bucio guilty of the remaining two counts of Residential Burglary and Assault in the Third Degree. 11/19/14 RP 83-4.

On November 26, 2014, Bucio was sentenced to 38 months of prison time. CP 52, 60, 11/26/14 RP 96.

On November 26, 2014, Bucio timely filed a notice of appeal. CP 66.

## **2. Summary of Trial Proceedings**

### **i. June 19, 2014**

Hwansik Kim was a resident at Skagit Valley College in June 2014. 11/18/14 RP 52-4. June 19, 2014, was his graduation day. 11/18/14 RP 54. That day Kim returned from checking his transcripts and put his wallet and cell phone down in the dorm room common area. 11/18/14 RP 54-6. Kim

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<sup>1</sup> The State will refer to the verbatim report of proceedings by using the date followed by “RP” and the page number. The report of proceedings in this case are as follows:

9/24/14 RP	3.5 Hearing (in volume with 10/22/14 & 11/17/14)
10/22/14 RP	Motion Hearing in volume with 9/24/14 & 11/17/14)
11/17/14 RP	Trial Day 1 (in volume with 9/24/14 & 10/22/14)
11/18/14 RP	Trial Day 2
11/19/14 RP	Trial Day 3 (in volume with 11/26/14)
11/26/14 RP	Sentencing..

went to his own room to change for about fifteen minutes and when he returned, his cell phone and about \$150 from his wallet were missing. 11/18/14 RP 55-6.

Kim assumed the phone was stolen, so he and his roommate started an online tracking device for his phone. 11/18/14 RP 56. The friend immediately connected to an application to locate the phone. 11/18/14 RP 56. At the same time, Kim called 911. 11/18/14 RP 56-7. Police responded very quickly. 11/18/14 RP 57. Kim borrowed his friend's laptop to track the phone. 11/18/14 RP 57.

At first Kim saw the phone moving on a trail right behind the dorm. 11/18/14 RP 57. The phone went along the trail before going to a parking lot. 11/18/14 RP 57. The phone then went fast as if it were in a vehicle. 11/18/14 RP 58. Around the time police arrived, the tracking stopped at a house. 11/18/14 RP 58. Officers went to the house. 11/18/14 RP 58.

When officers returned, they had Kim's phone which had been locked. 11/18/14 RP 59. Kim did not get his money back. 11/18/14 RP 59. Kim testified he did not know Bucio, had never seen him, given him his phone, loan him money or given him permission to be in the apartment. 11/18/14 RP 59-60.

Lam Ho Ching was a foreign student at Skagit Valley College and roommate to Kim. 11/18/14 RP 7-8. Ching did not know the defendant and never gave him permission to use Kim's phone. 11/18/14 RP 8.

Officer Wenzl of the Mount Vernon Police Department responded to the dorm room burglary at the Skagit Valley College at about 3:15 p.m. on June 19, 2014. 11/17/13 RP 54-5. Hwansk Kim reported his iPhone had been stolen. 11/17/13 RP 55-6. When Wenzl arrived, Kim was tracking the phone location using a tablet using a find your phone application. 11/17/13 RP 57.

Wenzel saw the tracking and that the phone was located within a mile of his location at 2021 Horizons. 11/17/13 RP 58-9. Wenzl tried to get the application started to use his phone to track, but the tracking system became disabled. 11/17/13 RP 59-60. From experience, Wenzl was aware that removal of a SIM card from a phone or turning it off could stop the process. 11/17/13 RP 60. Wenzl went to 2021 Horizons arriving within two minutes. 11/17/13 RP 60. He contacted Brenton Hill at the house. 11/17/13 RP 60. Wenzl was given access to the house. 11/17/13 RP 61.

Wenzl found Bucio hiding behind a door in one of the bedrooms. 11/17/13 RP 61. On Bucio Wenzl found Kim's iPhone, a SIM card removed from the phone and \$91 in cash. 11/17/13 RP 61-4, 11/19/14 RP 15. Wenzl returned the iPhone to Kim. 11/17/13 RP 63.



Brenton Hill testified that he lived at the Horizon's address near the college on June 19, 2014. 11/19/14 RP 8-9. The defendant, Ismael Bucio, came to his house that day asking to use the restroom. 11/19/14 RP 9. About fifteen minutes later, police arrived. 11/19/14 RP 9-11. Hill gave officer written permission to search the house for the defendant. 11/19/14 RP 10. Hill saw officers find Bucio behind a door. 11/19/14 RP 11. Hill had not been to the college that day. 11/19/14 RP 11.

The campus resident director testified that Bucio never was a resident or lived in any of the campus facilities in June or July of 2014. 11/18/14 RP 46-7. Bucio was not an enrolled student. 11/18/14 RP 47.

**ii. July 7, 2014**

Seonghwan Kim was a student at Skagit Valley College. 11/18/14 RP 61-2. He did not know Bucio and had not given him permission to be in his dorm or borrow his laptop. 11/18/14 RP 62. Kim's laptop was taken between twelve and seven one morning. 11/18/14 RP 63. The laptop had been left in his room on a table while he was asleep. 11/18/14 RP 63. His wallet and some cosmetics were also missing. 11/18/14 RP 64. The laptop was unusual because it had Korean writing and used two hundred and twenty volts. 11/18/14 RP 64. About four or five days later, Kim identified his computer at the police station and got it back. 11/18/14 RP 65.

Officer Leighton of the Mount Vernon Police Department responded to a call on July 7, 2015, of a laptop stolen from a dorm room. 11/19/14 RP 16-7. The laptop was stolen while the Korean student, Seonghwan Kim, was sleeping in his room. 11/19/14 RP 17. Three days later, Leighton was contacted by Officer Liukko about the laptop found at the residence of Bucio's mother. 11/19/14 RP 18-9. Leighton recognized a foreign plug and Korean lettering on the laptop. 11/19/14 RP 20.

Leighton contacted Kim who brought in his adaptor and was able to start up the laptop. 11/19/14 RP 21. Kim was able to turn on the laptop and entered a password to open it. 11/19/14 RP 22. Kim also showed Leighton his picture in the laptop. 11/19/14 RP 22-3.

Ismael Bucio's mother, Ofelia Polanco, testified that her son was not allowed at her house. 11/19/14 RP 4. On July 10, 2014, Ms. Polanco found a laptop and amplifier hidden in a barbecue on her back porch. 11/19/14 RP 6-7. She called police immediately and they came the same day to pick it up. 11/19/14 RP 7.

Officer Liukko retrieved the laptop, amplifier and bag from Polanco's residence. 11/19/14 RP 14.

**iii. July 10, 2014**

Sumire Moroto was a student at Skagit Valley College who has been residing in the dormitory. 11/18/14 RP 9-10. Around 9:30 on the morning of

July 10, 2014, she woke up to find the defendant standing near the sink in the dorm room. 11/18/14 RP 12-3. She had not invited Bucio in and asked him what he was doing there. 11/18/14 RP 13. Bucio was wearing necklaces. 11/18/14 RP 13. Bucio claimed to be in the room because the roommate was going to teach him math. 11/18/14 RP 14. The man had no math books. 11/18/14 RP 18. Moroto went to her room and when she returned the man was gone. 11/18/14 RP 14. Moroto texted the roommate, who returned. 11/18/14 RP 15. The roommate's headphones and speaker were missing. 11/18/14 RP 16. Moroto identified Bucio from a picture shown to her by campus security. 11/18/14 RP 15-6, 22-3.

Aichen Tsai was the roommate to Moroto. 11/18/14 RP 83, Tsai did not know Bucio and never gave him permission to be in her apartment or have her headphones. 11/18/14 RP 84. Tsai was in class around 8:00 to 9:00 a.m. when she received texts. 11/18/14 RP 85. Tsai went back to her apartment and found her Beats speaker and headphones were missing. 11/18/14 RP 86. Tsai identified her headphones. 11/18/14 RP 87.

Melissa Gonzales with the Red Cross was at the Skagit Valley College when she saw Bucio at about 7:45 in the morning. 11/18/14 RP 69-70. Gonzales was made aware security was looking for Bucio and was shown his picture. 11/18/14 RP 71-2. Gonzales saw him later and security was called. 11/18/14 RP 72. Gonzales saw security and an officer approach

Bucio who fled. 11/18/14 RP 74. When he fled, he ran into Gonzales, bruising her shoulder. 11/18/14 RP 74. Police caught Bucio outside. 11/18/14 RP 75.

Catherine Watson was the other Red Cross member who had contact with Bucio. 11/18/14 RP 76-7. She first saw him in the morning rummaging through supplies. 11/18/14 RP 77. Watson told Bucio that shelter residents could not be in the area and Bucio said he wanted to help. 11/18/14 RP 77. Bucio asked for diapers and wipes which Watson provided. 11/18/14 RP 78. Bucio walked away. 11/18/14 RP 78. She saw him walk down a hallway toward an exit. 11/18/14 RP 78. Watson walked to see where he went and found him in the office where office supplies were stored. 11/18/14 RP 79. Bucio was rummaging through stuff on a table in an area where the computers were kept. 11/18/14 RP 80. Watson approached and told him to leave following him out the door. 11/18/14 RP 80. Later, Watson noticed her unique water bottle was missing. 11/18/14 RP 80.

Shortly before lunch at about 11:30, Watson saw Bucio in the building and security was contacted. 11/18/14 RP 81. Watson later saw police chasing Bucio. 11/18/14 RP 81. Watson saw her water bottle on the ground that Bucio dropped while running. 11/18/14 RP 81.

Skagit Valley College security officer Alejandro Perez was alerted to Bucio's presence on campus on July 10, 2014. 11/18/14 RP 25-6, 28. Perez

saw Bucio talking to a Red Cross staff member who was present while shelter was being provided to fire victims. 11/18/14 RP 29. Perez saw Officer Johnston approach Bucio who fled. 11/18/14 RP 30-1. Bucio ran into a Red Cross member when he fled. 11/18/14 RP 32. Bucio fled out a door knocking over the campus security director. 11/18/14 RP 33, 40-1. When Perez got outside, Johnston mostly had control of Bucio. 11/18/14 RP 34. Johnston had scrapes or cuts on a knuckle and on his face. 11/18/14 RP 34.

Campus security director William Overby was alerted to Bucio's presence on campus on July 10, 2014. 11/18/14 RP 35-7. Overby was by the gym door when Bucio fled out the door. 11/18/14 RP 39-40. Bucio knocked Overby to the ground. 11/18/14 RP 40. Overby tried to tackle Bucio, but only slowed him briefly. 11/18/14 RP 40-1. Overby saw Bucio forcibly resisting Johnston's efforts to restrain him. 11/18/14 RP 41. Bucio had his legs around Officer Johnston. 11/18/14 RP 41-2. Overby and Perez helped Johnston subdue Bucio. 11/18/14 RP 42.

Overby described the dormitory pods have a common area shared by the residents of the pod who have their own keys. 11/19/14 RP 25-6. Keys for each resident open their own bedroom and the shared common area of the pod. 11/19/14 RP 26-7.

Officer Johnston responded to the call at the Skagit Valley College on July 10, 2014. 11/18/14 RP 96-7. Johnston was aware that Bucio had

been given a trespass notice from the college a week before. 11/18/14 RP 97. Bucio had been seen by employees and Red Cross members. 11/18/14 RP 98. As Johnston was leaving he was alerted that Bucio may be in the gym. 11/18/14 RP 99. Johnston saw Bucio and approached quickly. 11/18/14 RP 100. Bucio immediately fled and Johnston told him he was under arrest and to put his hands behind his back. 11/18/14 RP 100. At that point, Johnston started to grab ahold of Bucio who responded by pushing backwards knocking Johnston back. 11/18/14 RP 101. Bucio then fled with Johnston chasing. 11/18/14 RP 101. Bucio ran into a Red Cross member before running out the door knocking Mr. Overby over. 11/18/14 RP 102. While fleeing, Bucio began to fall and Johnston tackled him to the ground. 11/18/14 RP 104. Bucio tried to wrap up Johnston's legs and push Johnston into a brick wall. 11/18/14 RP 104-5. Johnston was able to bend Bucio over and hold onto his arm and get him onto his stomach. 11/18/14 RP 105-6. Security helped Johnston handcuff Bucio. 11/18/14 RP 106. Johnston sustained a cut to his left wrist and the side of his head. 11/18/14 RP 108-10.

Johnston found Bucio had a knife, cell phone and wallet in his pocket. 11/18/14 RP 106. Bucio was also wearing a silver chain necklace, red rosary necklace and white headphones. 11/18/14 RP 106-7. Johnston was unaware of the evidentiary value of the items at that time and they were left with Bucio's property. 11/18/14 RP 107.

Johnston advised Bucio of his Miranda warnings. 11/18/14 RP 115. Bucio admitted to having been trespassed from the college but claimed he did not think that meant the whole college. 11/18/14 RP 115. He also claimed he ran because he was scared. 11/18/14 RP 115.

Officer Liukko of the Mount Vernon Police Department responded to a call, at about 4:20 p.m. on July 10, 2014, of a burglary involving theft of property from a dorm room at the Skagit Valley College. 11/17/13 RP 33-5. Likko contacted victim Aichen Tsai and her roommate Sumire Moroto. 11/17/13 RP 35. The dorm room was one of many similar rooms with a common area and back bedrooms and bathroom. 11/17/13 RP 40.

Bucio had been arrested earlier on July 10, 2014. 11/17/13 RP 45. During a search of Bucio's property upon booking, white Beats headphones and a red cord for the headphones were located. 11/17/13 RP 45-7. A red Rosary necklace and silver necklace were also located in Bucio's property. 11/17/13 RP 50-2.

The defendant chose not to testify. 11/19/14 RP 28-9.

**iv. Ruling on Motion to Dismiss June 19, 2014, Burglary**

The trial court denied the motion to dismiss the burglary occurring on June 19, 2014. 11/19/14 RP 34, 36. The trial court found there was an extremely short period of time between the theft of the cell phone and the apprehension of Bucio with the phone. 11/19/14 RP 34. Bucio was

apprehended at a residence close to the college. 11/19/14 RP 34-5. Bucio was hiding when apprehended. 11/19/14 RP 35.

The trial court significantly relied upon the fact that immediately upon finding the cell phone missing, the victim started to track the phone and found it moving close by on a trail directly behind the building. 11/19/14 RP 35. The phone moved to a parking lot, following which it moved faster probably because it was in a vehicle, or the person was running. 11/19/14 RP 35. The phone stopped at the location where Bucio was found. 11/19/14 RP 35. The trial court considered this as evidence showing a trail of the person who took the phone directly from the dorm room to where the defendant was located with the phone. 11/19/14 RP 35.

### **3. Sentencing Hearing**

At sentencing, the defendant's mother spoke to the court, and said Bucio had a "really bad drug problem" and he "needs help with his drug problem." 11/19/14 RP 92.

Bucio said: "I really got lost in my addiction." 11/19/14 RP 92. He said that he had a problem and that being in custody helped. 11/19/14 RP 92.

I know that I wasn't in the right state of mind, and I didn't do anything out there to help myself. That's why prison isn't going to be the answer for somebody with a drug problem. And I have a serious drug problem. And I've been working on it, and I've been working with people in here too.

11/19/14 RP 93.



Twelve months of community custody was ordered as required for the conviction for Assault in the Third Degree. 11/19/14 RP 96. RCW 9.94A.701, RCW 9.94A.411(2).

Even after the judge imposed the sentence, the defendant reiterated the significance of his drug addiction.

Your Honor, the only reason that any of this ever happened when I got out was because I was in jail for two weeks, still withdrawing from drugs, and went back out to the streets with nothing. That's why all this stuff happened.

I've been in here for five months now. I'm clean. I got a clear head. There is no reason, no urge to use, to even go back to doing anything on that. I'm saying I feel better. I'm healthy.

11/19/14 RP 97.

I feel so much better now. I just wish you would grant me the opportunity to be out with my family. Please. I beg you. I feel so much better. I look better. You should have seen me when I came in.

11/19/14 RP 99. The court responded:

I'm sure you're better, Mr. Bucio, and I'm sure that's a result of being clean and sober for the amount of time you've been in jail. But what Mr. Weyrich is saying is that someone who has an addiction may believe that they have the power to stop, but frequently they misjudge their ability to do so. And I suspect that that is probably the case for you.

What I am going to do for you is make a finding that the crimes were the result of a chemical dependency, and that will increase the likelihood that you will be able to get drug and alcohol treatment while you are in prison.

11/19/14 RP 99. The standard community custody conditions included the condition to not consume controlled substances without a valid prescription

as authorized under RCW 9.94A.703(2)(c). CP 55 (condition 4.2(B)(4)). Additional conditions included the conditions to consume no alcohol and to undergo evaluation and treatment for substance abuse and fully comply with recommended treatment. CP 55. An additional handwritten condition read: "No use of controlled substances." CP 55.

Bucio did not complain of community custody conditions at the time the judgment and sentence was entered. 11/19/14 RP 100-1.

#### IV. ARGUMENT

**1. Where the defendant was electronically tracked from the burglary to where he was found hiding with the stolen property less than a half hour later, there was sufficient evidence to support the conviction for residential burglary.**

The victim tracked the defendant using his phone from the dorm where his phone was stolen to where the defendant was found hiding with the phone within a half-hour. These facts as described below in more detail are sufficient to establish more than mere possession of stolen property sufficient to establish residential burglary.

Evidence is sufficient to support a conviction if, viewed in the light most favorable to the prosecution, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). "A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom." *Salinas*, 119 Wn.2d at 201. Circumstantial evidence and direct evidence are equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

*State v. McNeal*, 98 Wn. App. 585, 592, 991 P.2d 649 (1999).

In determining whether the necessary quantum of proof exists, the reviewing court need not be convinced of the defendant's guilt beyond a reasonable doubt, but only that substantial evidence supports the State's case. *State v. Fiser*, 99 Wn. App. 714, 718, 995 P.2d 107 (2000), *rev. denied*, 141 Wn.2d 1023, 10 P.3d 1074 (2000). Substantial evidence is evidence that "would convince an unprejudiced, thinking mind of the truth of the fact to which the evidence is directed." *State v. Hutton*, 7 Wn. App. 726, 728, 502 P.2d 1037 (1972). In finding substantial evidence, we cannot rely upon guess, speculation, or conjecture. *Hutton*, 7 Wn. App. at 728, 502 P.2d 1037.

*State v. Prestegard*, 108 Wn. App. 14, 22-3, 28 P.2d 817 (2001). see also *State v. Hughes*, 106 Wn.2d 176, 721 P.2d 902 (1986); *State v. Green*, 94 Wn.2d 216, 616 P.2d 628 (1980).

An additional body of case law has developed regarding the evidence supporting the charge of burglary.

It is, however, also well established that proof of such possession, if accompanied by "indicatory evidence on collateral matters," will support a burglary conviction. *Garske*, 74 Wn.2d at 903, 447 P.2d 167. In *Portee*, we held 25 Wn.2d at pages 253-54, 170 P.2d 326:

"... When a person is found in possession of recently stolen property, **slight corroborative evidence of other inculpatory circumstances tending to show his guilt will support a conviction.** When the fact of possession ... **is supplemented by the giving of a false or improbable explanation of it**, or a failure to explain when a larceny is charged, ... or the giving of a fictitious name, a case is made for the jury."

(First italics ours.) Other circumstances include flight or the presence of the accused near the scene of the crime. *Portee*, at 254, 170 P.2d 326.

*State v. Mace*, 97 Wn.2d 840, 843, 650 P.2d 217 (1982); see also *State v. Rodriguez*, 20 Wn. App. 876, 582 P.2d 904 (1978) (suspect's palm print on employee's side of gun counter was sufficient evidence of guilty circumstances).

As *Mace* and *Rodriguez* provide, evidence of possession of stolen property unless accompanied by other evidence of guilt is insufficient evidence to support a conviction for burglary. *State v. Mace*, 97 Wn.2d 840, 650 P.2d 217 (1982).

However, there only need be slight corroborative evidence of guilt.

‘Sufficiency in Connection with Other Evidence. Possession of recently stolen property, in connection with other evidence tending to show guilt, is sufficient to warrant a conviction. When a person is found in possession of recently stolen property, slight corroborative evidence of other inculpatory circumstances tending to show his guilt will support a conviction. When the fact of possession of recently stolen property is supplemented by the giving of a false or improbable explanation of it, or a failure to explain when a larceny is charged, or the possession of a forged bill of sale, *or the giving of a fictitious name*, a case is made for the jury.’ (Italics ours.)

*State v. Portee*, 25 Wn.2d 246, 253-54, 170 P.2d 326 (1946) (quoting 4 Nichols on Applied Evidence 3664, § 29). In *Portee*, the property that had been stolen in a burglary was pawned in the same afternoon, using a false name, false address and with an improbable explanation. This was sufficient to support the burglary conviction. See also *State v. Garske*, 74 Wn.2d 901, 903, 447 P.2d 167, 168 (1968) (denial of possession, placement of defendant

near scene, no explanation of possession, no surprise on confrontation, grease on pants similar to burglary scene), *State v. Douglas*, 71 Wn.2d 303, 428 P.2d 535 (1967) (improbable explanation of possession of stolen property).

The recent case of *State v. Ehrhardt* presents a scenario similar to the present case since no witness saw the defendant enter any structure. But the defendant's present at the location of the burglary shortly before the burglary was discovered and his possession of stolen property was deemed sufficient to support the conviction.

The State presented undisputed evidence that Ehrhardt was present near the scene of the crime, he was later discovered with a gas can recently stolen from Glaze's property, and items from Glaze's shed had been removed from the shed and piled nearby. This was sufficient evidence to convict Ehrhardt of second degree burglary.

*State v. Ehrhardt*, 167 Wn. App. 934, 943-44, 276 P.3d 332 (2012).

Here, the victim left his phone and wallet in the common area of his dorm room unguarded for about fifteen minutes and when he returned the phone and money were gone. 11/18/14 RP 55-6. The victim called 911 and almost immediately began tracking the phone and found it was moving on a trail right behind the dorm. 11/18/14 RP 56-7. The phone moved along the trail before moving to a parking lot where it began to move more quickly.

11/18/ RP 58. Officers went to the location where the phone stopped moving within about fifteen minutes of the initial call. 11/18/14 RP 57.

Officers found Bucio hiding behind a door in one of the bedrooms. 11/17/13 RP 61. On Bucio Wenzl found Kim's iPhone, a SIM card removed from the phone and \$91 in cash. 11/17/13 RP 61-4, 11/19/14 RP 15. Removal of a SIM card from a phone or turning it off could stop the tracking process. 11/17/13 RP 60. The resident at the house testified Bucio had arrived about fifteen minutes earlier. 11/19/14 RP 9-11. The resident had not been to the college. 11/19/14 RP 11. Bucio was not an enrolled student and did not live in campus facilities. 11/18/14 RP 46-7.

Thus, Bucio was tracked from the dorm to where he was found hiding with the stolen phone within just over fifteen minutes after the burglary occurred. These facts are beyond the slight corroborative evidence necessary to support the burglary conviction.

**2. The handwritten community custody condition requiring no use of controlled substance should be stricken.**

Bucio acknowledged a significant substance abuse issue to the trial court. 11/19/14 RP 92-3, 97, 99. Community custody was imposed as required based upon the conviction for Assault in the Third Degree. CP 55, RCW 9.94A.701, RCW 9.94A.411(2).

The standard community custody conditions included the condition to not consume controlled substances without a valid prescription as authorized under RCW 9.94A.703(2)(c). CP 55 (condition 4.2(B)(4)).

An additional handwritten condition read: “No use of controlled substances.” CP 55.

Bucio raises the issue of this additional handwritten condition for the first time on appeal contending as written it would preclude use of medication for necessary medical treatment. Brief of Appellant at page 6.

Given Bucio does not challenge the standard condition prohibiting use of controlled substances without a valid prescription or the condition requiring Bucio to obtain a substance abuse evaluation and comply with recommended treatment, the handwritten condition requiring “no use of controlled substances” is unnecessary.


This Court should remand the case with the order that the handwritten condition be stricken.

## **V. CONCLUSION**

For the foregoing reasons, this Court must affirm Bucio’s conviction for Residential Burglary, but should remand the case to the trial court to enter an order striking the handwritten condition requiring “no use of controlled substances.

DATED this 29<sup>th</sup> day of October, 2015.

SKAGIT COUNTY PROSECUTING ATTORNEY

By:   
ERIK PEDERSEN, WSBA#20015  
Deputy Prosecuting Attorney  
Skagit County Prosecutor's Office #91059

DECLARATION OF DELIVERY

I, Karen R. Wallace, declare as follows:

I sent for delivery by;  United States Postal Service;  ABC Legal Messenger Service, a true and correct copy of the document to which this declaration is attached, to: Gregory C. Link, addressed as Washington Appellate Project, 1511 Third Avenue, Suite 701, Seattle, WA 98101 . I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Executed at Mount Vernon, Washington this 29<sup>th</sup> day of October, 2015.

  
KAREN R. WALLACE, DECLARANT