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SEP 28 2016

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

NO. 33704-9-III (consolidated with No. 32221-1-III)

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

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DAVID R. PRIEST,  
PETITIONER,  
V.  
STATE OF WASHINGTON,  
RESPONDENT

---

PETITIONER'S SUPPLEMENTAL BRIEF

---

DAVID R. PRIEST, #951702  
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PHOTO

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## STATEMENT OF THE CASE

By order of this Court entered on April 25, 2016, pursuant to RAP 16.11(b), this matter was referred back to the Superior Court for a reference hearing to determine: (1) During what, if any dates, has David Priest been an enrolled member of the Confederated Tribes of the Colville Nation? (2) Whether David Priest knowingly had possession of stolen property off the Confedera[d] Tribes of the Colville territory, and if so, what stolen property? Also, if so, when? And (3) Whether David Priest knowingly had possession of stolen motor vehicle off the Confedera[d] Tribes of the Colville territory, and, if so, when?

Pursuant to the foregoing Order, a Reference Hearing was held in the Okanogan County Superior Court before the Hon. Henry A. Rawson on July 6, 2016. The Superior Court entered its Findings of Fact on July 18, 2016 (Erroneously stated on the signature page as June 18, 2016).

On August 10, 2016, this Court ordered that any supplemental briefing relative to the Superior Court's Findings of Fact should be submitted by September 9, 2016, later extended upon motion of the parties to September 28, 2016.

## ASSIGNMENTS OF ERROR

1. In paragraph 9 of the Superior Court's Findings, last sentence, the court states: "A jury has the ability to determine the credibility of statements and whether it makes sense given the facts. Here the jury did not accept the facts of Mr. Priest as relayed to Sgt. Mudgett relative to Garret Elsburg delivering the truck and personal property." The jury in the original trial was only asked to determine whether Mr. Priest possessed the truck and property, which he manifestly did at the time he was arrested. The jury could very easily have believed every word Mr. Priest said about Mr. Elsburg *delivering* the property, and nevertheless found Mr. Priest guilty of *possessing* the property, which is the only offense Mr. Priest was charged with. What the jury's assessment

may have been regarding Mr. Priest's statements about Mr. Elsburg is entirely irrelevant to whether Mr. Priest possessed stolen property at the location where he and the property were found, on Indian land. The reference court's findings do not answer this Court's questions, and are not supported by any facts in the record.

2. In paragraph 10 of the Superior Court's Findings, last sentence, the court states: "All the statements and actions by Priest appeared to be contrary to the evidence and unreasonable given the situation along with the disclosures by Barker and Chavez." Once again, the jury in the original trial was only asked to determine whether Mr. Priest possessed the truck and property where they were found, nowhere else. There is nothing inherently contradictory between Barker and Chavez's statements regarding the truck being stolen and Mr. Priest's statements about receiving the truck from Elsburg, as the jury was never asked to determine that question, and strictly speaking, neither was the reference court. If there is nothing contradictory in the statements, there can't be anything inherently unreasonable. Moreover, the State presented no evidence to the contrary.

3. In paragraph 14 of the Superior Court's Findings, last sentence, the court states: "Therefore the credibility of Mr. David Priest must be called into question, including the truthfulness of any statement given to law enforcement, and the jury found that he 'knowingly' had possession of stolen property and possession of a stolen motor vehicle off the Colville Tribes Reservation between the last two weeks of May 2013 and the first two weeks of June 2013." The jury found nothing of the sort. The jury was never presented with any direct evidence of possession anywhere off the reservation, and was never asked to so find. They were asked to find if Mr. Priest possessed stolen property, and the only evidence they were presented at trial of such possession was on Indian land, and no further evidence was presented to the reference court.

What the reference court seems to be implying is that the jury could have *reasonably inferred* that Mr. Priest also possessed the property off the reservation. That is not the question this court referred to the reference court, that is not a question that was presented to the jury, and, aside from speculations about Mr. Priest's credibility, the reference court cites to no evidence in the record to support such an inference.

## ARGUMENT

**I. This Court should clearly distinguish between the evidence actually presented (or not presented) at the Reference Hearing, on the one hand, and the mere arguments of counsel, on the other.**

This Court asked the Superior Court to address three questions:

1. During what, if any dates, has David Priest been an enrolled member of the Confederated Tribes of the Colville Nation?
2. Whether David Priest knowingly had possession of stolen property off the Confederate[d] Tribes of the Colville territory, and if so, what stolen property? Also, if so, when?
3. Whether David Priest knowingly had possession of stolen motor vehicle off the Confederate[d] Tribes of the Colville territory, and, if so, when?

In sum, this Court directed the reference court to receive such evidence as the parties might present and acknowledge those points where evidence was *not* presented, either at the Reference Hearing or in the trial record. At the Reference Hearing, some evidence was presented and much was not, but the State then went on to make extensive arguments as to the credibility of the evidence presented, effectively distracting the reference court from the fact that State had presented no substantive evidence to refute Mr. Priest, and no supplementary evidence of its own to support its own allegations.

In reviewing the trial record and the transcript of the Reference Hearing, Mr. Priest asks this Court to carefully assess what direct evidence was actually presented, both to the trial jury and to the reference court, what direct evidence was *not* presented, and the extent to which mere arguments over credibility distracted and compromised the reference court's findings.

**II. The State presented no evidence refuting Mr. Priest's testimony regarding his lifelong membership in the Confederated Colville Tribes.**

This Court's question was: During what, if any dates, has David Priest been an enrolled member of the Confederated Tribes of the Colville Nation? Mr. Priest's testimony was: From birth, and continuing through to the present. Reference Transcript: page 33, lines 2-10. The State's direct evidence to the contrary was: Nothing. Reference Transcript: No page, no line. The State's evidence, in lieu of such direct evidence, was in effect: Well, Mr. Priest is a proven liar, so if he said it, he must be lying.

The State's implicit argument is simply insufficient for this Court's purposes. Mr. Priest ought to know as well as anybody, and certainly better than the State, what his Tribal membership status is. If the State had substantive evidence to the contrary, they certainly had sufficient notice to obtain it and present it. Their lack of even an effort to do so is consistent with the absence of any such refuting evidence. In any case, the reference court found that Mr. Priest was an enrolled tribal member at the time of the alleged offense. Findings of Fact, ¶3.

**III. The State presented no actual evidence showing that Mr. Priest possessed the stolen vehicle or any of the stolen property anywhere other than on Tribal land, and presented plausible and unrefuted evidence that a third party brought the property to Mr. Priest.**

This Court's other two questions for the reference court were: (1) Whether David Priest knowingly had possession of stolen property off of the Colville Reservation, and if so, what stolen property? Also, if so, when? And (2) Whether David Priest knowingly had possession of



the stolen motor vehicle off of the Colville Reservation, and, if so, when? These questions break down into the following elements:

1. Did David Priest possess the stolen truck or property OFF the reservation?
2. Did he do so knowingly, which has three levels of application:
  - a. knowing he possessed the truck or property;
  - b. knowing that they were stolen;
  - c. knowing that he was off the reservation; and
3. If he knowingly possessed the truck or property off the reservation, when did he do so?

It is important to remember that the trial jury was never asked to determine whether Mr. Priest possessed the truck or property OFF the reservation, and was never asked to determine whether he actually stole anything. He was charged with, and convicted of, POSSESSION of the stolen truck and property, and the evidence presented at trial was that such possession took place on the reservation. Since possession off the reservation was not an element of the crime presented to the jury, there is no basis for the reference court to determine that the jury so found. Findings of Fact, ¶14. Moreover, the referred question is whether such evidence was or is now in the record, not what the jury found. Thus, what the jury may or may not have inferred on a question not presented to them and not relevant to their decision is irrelevant, much less something that the reference court could properly infer retroactively under any set of circumstances.

What the reference court received was the same evidence presented to the trial court: The truck and the property disappeared from locations off the reservation, and they were found in Mr. Priest's possession on the reservation. The STATE, not Mr. Priest, presented evidence at both the trial and at the reference hearing that a Garret Elsberg brought the truck and the property to him. Reference Transcript, page 19, lines 20-23, page 20, lines 10-12, 17-19. Trial Transcript . The

State presented NO evidence to the contrary, and at the reference hearing ACKNOWLEDGED as much. Reference Transcript, page 22, lines 8-10.

There is nothing inherently implausible about an alleged drug dealer stealing property and bringing it to Mr. Priest, and the reference court does not cite any evidence to the contrary. In fact, at trial the State's witnesses testified that there were numerous warrants for Garret Elsburg for theft. Trial Transcript, Vol. II., p. 121, lines 2-6. More tellingly, at trial the State specifically acknowledged on the record that Garret Elsburg was in fact charged with the actual theft of the property found in Mr. Priest's possession. Trial Transcript, Vol. II, p. 116, lines 19-25, p. 117, line 1. But at the reference hearing the State argued vociferously, and the reference court seems to have accepted the argument without reference to the trial record, that if Mr. Priest said it, it must not be so, and so came to the astonishing conclusion that Mr. Priest's statements about Mr. Elsburg are neither plausible nor reasonable, notwithstanding the State itself had presented those very statements at trial, verified that they were true, and made no effort whatsoever to suggest that Mr. Priest had received the property by any other means than through Mr. Elsburg. *Id. Compare*, Findings of Fact, ¶9, last sentence, ¶10, last sentence, ¶14, last sentence.

Not only did the State verify these statements at trial, but whether they were plausible or not is entirely irrelevant. The fact is, they are the only evidence presented by EITHER side, both at trial and the Reference Hearing, as to how the truck and property got from Mr. Barker's property to the reservation. The jury was never asked to infer that Mr. Priest stole the property, and as the trial transcript shows, the court took specific measures to ensure that the jury could *not* infer such a thing. Trial Transcript, Vol. I, pages 33-44. The State charged him with possession of the items rather than the theft precisely because they had no evidence linking him to the actual

theft other than his simple possession of the items. The reference court was likewise not asked to infer whether Mr. Priest stole the property, but whether any evidence was presented that he possessed the property anywhere other than on the reservation. None was presented, and this Court should so find.

**IV. The State and the trial court went to great lengths to exclude any evidence of theft (i.e., implied possession *off* the reservation) so as not to prejudice that case against Mr. Priest for possession of the stolen truck *on* the reservation.**

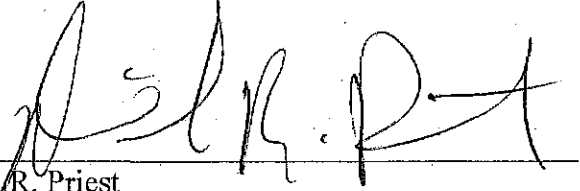
The reference court seems to have conflated the question of whether Mr. Priest possessed the stolen truck and property off the reservation with whether he in fact stole the truck and property. This is not what the reference court was asked to decide. In this respect, the trial transcript is most instructive. Despite its representations at the reference hearing, the State was VERY clear at trial that it was charging Mr. Priest with possession of the truck *at the location where it was found*, and not with stealing the truck *from where it was taken*. The trial court and counsel engaged in extensive discussion as to how to not prejudice the jury with information as to the theft of the truck and goods, which implicitly took place off the reservation, as distinct from their possession, which the State admitted at trial was on the reservation. Trial Transcript, Vol. I, pages 33-44, Vol. II, p. 88, line 7. In sum, not only was no evidence presented at trial that Mr. Priest ever possessed the truck or stolen property off the reservation, but in fact the court went to great lengths to insure that the jury would not infer such possession.

CONCLUSION

The reference court found that Mr. Priest was an enrolled member of the Confederated Tribes of the Colville Reservation at all times relevant to this action. As the Trial and Reference Transcripts make clear, neither the trial court nor the reference court was ever presented with any evidence that Mr. Priest ever possessed the stolen truck or the stolen property anywhere other

than on reservation land. Any doubts about Mr. Priest's credibility as to the evidence that *was* presented should not distract from the fact that any evidence to the contrary *was not* presented by either party.

Respectfully submitted this 26<sup>th</sup> day of September, 2016.

A handwritten signature in black ink, appearing to read "D. R. Priest", written over a horizontal line.

David R. Priest  
Petitioner pro se

CERTIFICATE OF SERVICE

I, David R. Priest, declare that on September \_\_\_\_, 2016, I deposited the copies of the foregoing Petitioner's Supplemental Brief in the internal mail system of the Airway Heights Correctional Center and made arrangements for postage, addressed to:

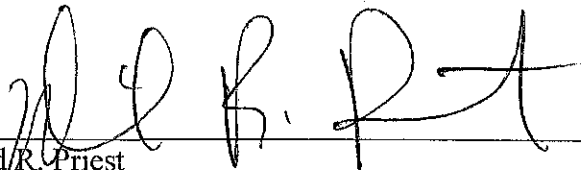
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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED at Airway Heights, Washington, on September 26<sup>th</sup>, 2016.

  
\_\_\_\_\_  
David R. Priest

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

-----  
IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF OKANOGAN  
-----

STATE OF WASHINGTON,	)	
	)	Okanogan County
Plaintiff/Respondent,	)	No. 13-1-00282-3
	)	
vs.	)	Court of Appeals
	)	No. 322211
DAVID RANDALL PRIEST,	)	
	)	Consolidated with
Defendant/Appellant.	)	No. 337049
	)	

-----

VERBATIM REPORT OF PROCEEDINGS

JULY 6, 2016

REFERENCE HEARING

(TRANSCRIBED FROM FTR RECORDING)

-----  
HONORABLE HENRY RAWSON PRESIDING

A P P E A R A N C E S:

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Okanogan County

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1 Q Did you subsequently learn that Mr. Barker -- some of  
2 those items that Mr. Chavez said were not his belonged  
3 to actually Mr. Barker?

4 A I did.

5 Q And were you aware of a previous burglary complaint  
6 that was made -- sorry -- theft or burglary complaint  
7 made in relation to Mr. Barker's property?

8 A Yes.

9 Q Do you know approximately when that report was --

10 A I believe approximately June 9th of 2013.

11 Q Did you have contact with the defendant?

12 A I did.

13 Q What was his demeanor when you first made contact with  
14 him?

15 A He was kind of uncooperative and agitated.

16 Q Did you ask him if he lived there?

17 A I did.

18 Q And what did he say?

19 A He did not live there.

20 Q During your initial contact did he indicate that he  
21 would have the people contact you who may have been  
22 involved with the truck?

23 A Yes.

24 Q Did you stop contact with the defendant at some point  
25 after that initial contact?

1 A I did.

2 Q Did you have contact with him at some point later  
3 during your -- your time at the property?

4 A Yes. Mr. Priest had given some information to  
5 Detective Heyen, who was there with me, and Detective  
6 Heyen said that Mr. Priest would like to talk to me  
7 again, so I went over and talked to him.

8 Q So was this sometime after your first contact?

9 A Yes.

10 Q At that point did Mr. Priest claim or allege that  
11 somebody had brought the truck to him?

12 A He said Garret had brought the truck to him.

13 Q For what purpose?

14 A To repair it.

15 Q Did he say to actually get it working?

16 A Get it working, yes.

17 Q Did he indicate that he knew Mr. Elsberg had been  
18 involved and was wanted for theft and burglaries?

19 A Yes.

20 Q The initial complaint that you received or information  
21 you received, had Mr. Priest been seen standing at or  
22 near the truck earlier the day you arrived?

23 A I was told that he was seen near the truck or working  
24 on his truck with his brother, and I was told that by  
25 Officer Morrison of the Omak Police Department.

1 Q Let me ask, this property you said was actually the  
2 residence of Shelly Priest (as stated). Have you had  
3 knowledge of Mr. Priest bringing stolen property to  
4 that location sometime before this?

5 A To a different location. And I don't know if the name  
6 was Shelly or Cheryl.

7 Q Tell me what you knew about that.

8 A We had a prior case where David was charged with a  
9 crime where he had brought ATVs to 4116 Rocky River  
10 Hud in the past. And that's the residence of Shelly  
11 Priest there.

12 Q So, again, not the defendant's residence?

13 A Not the defendant's residence.

14 Q But on the same -- the same housing project? Or is it  
15 a different one?

16 A It's the same area.

17 Q And the ATVs, were those stolen?

18 A Yes. There is a case number too, if you would like  
19 it.

20 Q And what was that case number?

21 A S1208001.

22 Q Sergeant, the items that we've -- that we discussed  
23 with the Court earlier based on the transcripts, the  
24 items that included a cooler, a strap, a cargo strap,  
25 and a gas can, toolbox, pressure washer, shop vac,

1. mower, were those at -- either in the truck or at the  
2 property when you were there investigating?

3 A Yes, they were.

4 Q And you learned that those items had actually been  
5 taken from Mr. Barker's property where the truck had  
6 been?

7 A Yes.

8 Q So they had come with the truck to the property?

9 A That I don't know. I know that they were there and  
10 some of them were in the truck.

11 Q So if someone else had removed the items or stolen the  
12 items from Mr. Barker, they had not taken those items  
13 out of the truck if they had -- if somebody else had  
14 actually brought --

15 MR. PRINCE: Your Honor, calls for --

16 Q -- the truck to the property?

17 MR. PRINCE: -- speculation. Objection.

18 THE COURT: I'll sustain the objection.

19 Rephrase your question.

20 MR. SLOAN: Thank you.

21 Q (By Mr. Sloan) Did it appear that those items of  
22 property had come from the same location where the  
23 truck had been?

24 A Yes.

25 Q And they had not been removed from the truck, at least

1 some of them hadn't even been taken out of the truck  
2 before they -- it had been brought to that location?

3 A Correct.

4 Q And based on your investigation the vehicle had been  
5 operable up to the point it had been stolen?

6 A I was told it was operable.

7 Q And required a key?

8 A Yes.

9 Q At the time the truck was located approximately a week  
10 later, was it operable?

11 A It was not.

12 Q How was it taken from the scene?

13 A It was towed.

14 Q And who towed it?

15 A The owner, Chavez.

16 Q Now, some of the property we've talked about, some of  
17 that was in the truck. Were there other items that  
18 were -- that were identified that Mr. Barker said were  
19 away from the truck?

20 A I believe there were.

21 Q And were those -- some of those near the trailer where  
22 the defendant was found?

23 A I believe there was a vac and a handcart, at least,  
24 near the trailer.

25 Q And then were there other items near the residence or

1 the driveway?

2 A There were resi-- or items all over the yard.

3 Q Okay. And then specifically some of the items  
4 identified as Mr. Barker's, the power washer and the  
5 Troy-Bilt mower, were those located on -- I guess  
6 towards the front of the house?

7 A I'm not positive where those were located because  
8 Detective Heyen had taken the photos. But I know that  
9 I had seen them there in the yard either on the side  
10 of the garage or in the backyard.

11 Q And, again, this was not the defendant's residence?

12 A Not that I know of, no.

13 Q And did he, in fact, indicate that it was not his  
14 residence?

15 A He told me he did not live there.

16 Q Okay. Did he indicate he lived in the trailer?

17 A He said he did not live in the trailer.

18 Q Thank you. Nothing further.

19 THE COURT: You may cross examine.

20 MR. PRINCE: Thank you, Your Honor.

21

22 CROSS-EXAMINATION

23 BY MR. PRINCE:

24 Q Sir, Mr. Chavez, he was the legal owner of the truck?

25 A He wasn't on any paperwork stating he was the legal

1 owner, but we did track the truck back to him.

2 Q Okay. And just to clarify, he or Mr. Barker had  
3 reported it stolen several days before?

4 A Mr. Barker said it was missing from his property.

5 Q Okay. And that was about June 9th?

6 A That's when the original burglary complaint came in.  
7 I didn't get the information until the 16th of June.

8 Q Okay.

9 A And that's when I called Mr. Barker.

10 Q And the 16th of June, just to clarify, is the same day  
11 you had contact with Mr. Priest?

12 A It is not.

13 Q It is not? What day was that?

14 A The search warrant, it was signed on the 18th.

15 Q Uh-huh.

16 A So I got the information from the Omak Police  
17 Department on the 16th of June.

18 Q Okay.

19 A And started my investigation from there.

20 Q And what day did you have contact with Mr. Priest?

21 A I believe it would have been the 18th, the day that it  
22 was -- the search warrant was signed.

23 Q Okay. And, again, the 18th of June --

24 A June.

25 Q -- 2013?

1 A Yes.

2 Q Okay. And when you had contact with Mr. Priest, that  
3 was at 1109 Lone Pine Hud?

4 A Yes.

5 Q And that was the location that was indicated or  
6 written down in the search warrant, correct?

7 A Yes.

8 Q Okay. That location is located on the Colville Tribal  
9 Reservation?

10 A It is.

11 Q Okay. And when you met Mr. Priest, he was at that  
12 location at 1109 Lone Pine Hud?

13 A Yes.

14 Q Okay. And the truck itself was located there when you  
15 arrived?

16 A Yes.

17 Q Okay. Did you witness the truck off of that property  
18 up to that point?

19 A No.

20 Q Did you witness any of the stolen property that you  
21 observed off that location itself at 1109 Lone Pine  
22 Hud?

23 A No.

24 Q Okay. And was Mr. Priest taken into custody that day  
25 at that location?



1 A No.

2 Q No? Do you recall what date he was taken into custody?

3 A I do not.

4 Q Okay. Now, just to clarify, you yourself, you spoke  
5 with Mr. Priest on the 18th?

6 A Yes.

7 Q Okay. Did you include details about your conversation  
8 with Mr. Priest in the report that you wrote?

9 A I did.

10 Q Okay. Now, Mr. Priest talked to you about a Garret,  
11 correct?

12 A Yes.

13 Q Elsborg is the last name?

14 A He didn't say a last name.

15 Q Okay. He just said Garr-- Garret?

16 A Yes.

17 Q Excuse me. Did Mr. Priest tell you that Garret  
18 brought the truck to the property?

19 A That's what he said.

20 Q Did Mr. Priest tell you that he knew that the truck  
21 was stolen?

22 A He did not say that he knew the truck was stolen.

23 Q Okay. And, again, to clarify, you indicated other  
24 than the truck and the property around the truck that  
25 there was other stolen property located on this

1 premises of 1109 --

2 A Reference this --

3 Q Okay.

4 A -- incident, yes.

5 Q Oh, regarding this incident, okay.

6 No more questions at this time. Thank you.

7 THE COURT: Thank you.

8 Any redirect?

9 MR. SLOAN: Thank you.

10

11

REDIRECT EXAMINATION

12

BY MR. SLOAN:

13

Q Sergeant Mudgett, regarding property stolen from  
14 Barker's property, were there additional -- were you  
15 aware regarding the burglary investigation other items  
16 had been taken that weren't recovered at this scene?

17

A I am not aware of them.

18

Q The property in this case --

19

So you're indicating you weren't aware of  
20 anything being recovered with Garret, this Garret  
21 person, at some point later?

22

A I was not involved in that case at all.

23

Q And you were asked by the defendant's attorney that  
24 the proper-- the truck, the defendant told you that  
25 Garret had brought the truck to him?

1 A Correct.

2 Q And that was to get it basically working?

3 A Yes.

4 Q Was that consistent with your investigation?

5 A It was not.

6 Q And why?

7 A The truck was obviously being disassembled and taken  
8 apart. It had been running prior to it being stolen.

9 Q And some of the stolen property was still with the  
10 truck?

11 A It was still in the truck, yes.

12 Q Thank you. Nothing further.

13 THE COURT: Any recross?

14 MR. PRINCE: No, sir.

15 THE COURT: Thank you.

16 MR. SLOAN: Your Honor, I do have one other  
17 -- one other question. Sorry.

18 THE COURT: Go ahead.

19

20 REDIRECT EXAMINATION (RESUMED)

21 BY MR. SLOAN:

22 Q You were asked the question did Mr. Priest claim to  
23 know the truck was stolen. Let me just ask you: Did  
24 he know this -- well, first off, he initially -- did  
25 he indicate that he would have the people involved

1 contact you?

2 A Yes.

3 Q And did they contact you?

4 A No.

5 Q Was it during the second contact that he first brought  
6 up the name Garret?

7 A Yes.

8 Q Okay. And even in -- in that context, he indicated  
9 he knew that that person was wanted for theft and  
10 burglary?

11 A He mentioned theft, burglary. He said Garret was in  
12 a bad way and he said something about some drugs too.

13 Q So he was obviously aware, even with that person, that  
14 that person had previously been in trouble before your  
15 contact with the defendant this day?

16 A He -- he indicated to me he knew that Garret was  
17 committing these crimes, yes.

18 Q And, again, that was later after he had calmed down  
19 and you recontacted him?

20 A Correct.

21 Q Thank you. Nothing further.

22 THE COURT: In light of the other questions,  
23 any recross?

24 MR. PRINCE: No, sir.

25 THE COURT: Thank you.

1 Is this witness excused?

2 MR. SLOAN: Yes.

3 THE COURT: You may step down. Thank you.

4 Any other witnesses?

5 MR. SLOAN: No, Your Honor.

6 THE COURT: Thank you. Does that conclude  
7 your testimony, is that correct, Mr. Sloan?

8 MR. SLOAN: Correct, Your Honor, yes.

9 THE COURT: Thank you.

10

11 (SOTTO VOCE COMMENTS HEARD.)

12

13 THE COURT: The clerk's asking if all of the  
14 exhibits were admitted. And yes, they were.

15 MR. SLOAN: Thank you.

16 THE COURT: They were offered and admitted.

17 Well, do you have any witnesses, Mr. Prince, at  
18 this time for the defense?

19 MR. PRINCE: Yes, Your Honor. The defense  
20 would call David Priest.

21 THE COURT: Mr. Priest, if you'll come  
22 forward, please. (Undecipherable) your chain.

23

24 DAVID PRIEST, witness herein, being first  
25 duly sworn, was examined and  
testified as follows:

1 THE COURT: Thank you. Have a seat there,  
2 please.

3 For the record, kindly state your full name.

4 THE WITNESS: David R. Priest.

5 THE COURT: Okay. Mr. Priest, I know you've  
6 been brought here from the Department of Corrections,  
7 so you don't (undecipherable) residence.

8 At this time would you turn your attention to  
9 Mr. Prince, please.

10

11

DIRECT EXAMINATION

12

BY MR. PRINCE:

13

Q Mr. Priest, can you spell your last name.

14

A P-R-I-E-S-T.

15

Q Sir, what's your date of birth?

16

A 11-15-68.

17

Q And where were you born?

18

A Omak, Washington.

19

Q Okay. And, Mr. Priest, I'll ask you a question about  
20 your parents. What were your parents' names?

21

A Donna Mae Priest.

22

Q Uh-huh.

23

A And William Virgil Priest.

24

Q And do you have knowledge as to whether or not your  
25 parents were enrolled members of the Confederated

1 Tribes of the Colville Nation?

2 A Yes, I do. My mother's 4/4ths, full-blooded Colville  
3 Indian. And my dad's a non-member.

4 Q Okay. And, sir, are you an enrolled member of the  
5 Confederated Tribes of the Colville Nation?

6 A Yes, I am.

7 Q How long have you been an enrolled member?

8 A Since birth.

9 Q And do you know your enrollment number?

10 A 3994.

11 Q Okay. No further questions.

12

13

CROSS-EXAMINATION

14

BY MR. SLOAN:

15 Q Mr. Priest, let me ask you -- Mr. Priest, have you  
16 been convicted of crimes of dishonesty?

17 A Yes, I have.

18 Q And including a theft 1st degree --

19 A Yes.

20 Q -- 2007?

21 Theft 2nd degree 2007?

22 A I have 13 prior felonies for property crimes. I can't  
23 -- I can't tell you the dates of them all.

24 Q Would that include possession of stolen property  
25 amongst those?

1 A Yeah.

2 Q Taking a motor vehicle without permission?

3 A Yes, sir.

4 Q And multiple residential burglaries?

5 A One residential burglary.

6 Q Okay. Did you have three out of Spokane in 1991?

7 A I had one residential burglary.

8 Q Spokane Superior Court?

9 A Yeah. I got 36 months on my first trip to Washington  
10 State Penitentiary.

11 Q Theft -- multiple theft 2nds?

12 A Yeah.

13 Q Multiple theft 3rds?

14 A Yeah.

15 Q Okay. Thefts -- other thefts of different property?

16 A Yeah.

17 Q Did you bring -- or present to your attorney any  
18 documentation regarding membership?

19 A As of right now, yeah, he's got my enrollment.

20 Q Mr. Priest, the property at the location where you  
21 were found and contacted by law enforcement, that was  
22 not your property?

23 A No, it wasn't.

24 Q Whose was it?

25 A Garret Elsberg.



1 A Nope.

2 Q I think you had commented that the -- the truck was  
3 Garret's?

4 A Garret brought the truck to my sister's.

5 Q That's what you told the law enforcement officer?

6 A Yep.

7 Q But you have no knowledge about the other property?

8 A No.

9 Q Regarding the property itself, that was not your  
10 permanent residence?

11 A No, it wasn't.

12 Q Where did you normally reside?

13 A At 119 South Cedar.

14 Q Where is that?

15 A By the high school in Omak.

16 Q Off the rez?

17 A Off the rez.

18 Q Thank you. No further questions.

19 THE COURT: Mr. Prince?

20 MR. PRINCE: No follow-up.

21 THE COURT: I have a clarification  
22 (undecipherable).

23 No, I -- I take that back.

24 Thank you.

25 Anything further, Mr. Prince?

Court of Appeals No. 322211

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF OKANOGAN

STATE OF WASHINGTON,

Plaintiff,

vs.

DAVID RANDALL PRIEST,

Defendant.

No. 13-1-00282-3

Hon. Christopher E. Culp

December 2 & 5, 2013

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VERBATIM TRANSCRIPT OF PROCEEDINGS  
From Electronic Recording

VOLUME I, Pages 1-59

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1 show the timing of the truck, it being taken at the same  
2 time as -- as the burglary.

3 THE COURT: So I would anticipate him talking about --  
4 his residence or property being burglarized, and --  
5 becoming aware of things being gone, including -- the  
6 pickup -- I'm just anticipating--

7 MR. SLOAN: Pickup. There was--

8 THE COURT: --other items--

9 MR. SLOAN: Yeah. Some of the items -- there was a  
10 couple in the back of the pickup which he identified as his  
11 from the property. There were a couple of other items  
12 sitting around the property where the truck was recovered  
13 that he also identified as being -- his that had been  
14 missing at the time of the burglary.

15 THE COURT: Okay.

16 Mr. Priest is not charged with burglary--

17 MR. SLOAN: Correct.

18 THE COURT: --there's no allegation, no implication,  
19 that he's the one that was involved in the burglary.

20 So, Mr. Castelda, do you have concerns about this?

21 MR. CASTELDA: I do, your Honor. I -- advised Mr. Sloan  
22 that if we're going to -- And I looked at some of the  
23 photographs that Mr. Sloan intended to offer as exhibits,  
24 discussed this with him very briefly. I just learned of it  
25 right around one o'clock when he came in today to the

1 courtroom before you came on the bench.

2 To the extent that under -- Evidence Rule 403 this could  
3 be prejudicial to my client, obviously it not only could  
4 confuse the jury, it could also be prejudicial to him.  
5 He's charged with nothing related to these other items that  
6 Mr. Barker may testify about.

7 So I don't think that Mr. Barker should be discussing  
8 those during the course of this trial. There's no charges  
9 on those items yet. My client has not been charged with  
10 those. It's brought up for the first time today. No  
11 mention of it was made before.

12 My understanding in reading the report was that Mr.  
13 Barker was -- in testimony -- in reading the police  
14 reports, would be limited to the fact that this pickup had  
15 been on his property, at some point in time it had been  
16 moved from his property, and he actually thought it was Mr.  
17 Chavez that removed it from his property. That's in the  
18 report of Off. Mudgett. And I've reviewed that report  
19 extensively in preparation for today's trial. There's  
20 never been any mention of these items today until now. And  
21 I would argue that discussion of those would be prejudicial  
22 at this point in time, also confuse the jury, especially  
23 with no charges pending about this at all.

24 It tends to paint my -- my client in a picture of,  
25 "Well, these items were burglarized from my house so they

1 must be in possession of David Priest somehow, -- somehow  
2 ipso facto related to these items," and -- it is  
3 prejudicial, your Honor. I think it -- And it also  
4 confuses the jury.

5 So I don't think we should get into that today.  
6 Obviously if Mr. Sloan wants to charge my client with that,  
7 that could be done. The statute of limitations has not  
8 run. So, -- But it's not for the purposes of today's  
9 trial. He is charged with one item, possession of a stolen  
10 pickup truck.

11 MR. SLOAN: The other alternative, your Honor, is if --  
12 if -- to address them to be charged, -- state would be in a  
13 position of potentially moving for continuance in order to  
14 amend to add the additional charges. However we weren't  
15 intending to do that.

16 I don't believe there's any prejudice. It's very clear  
17 from -- in the reports that the truck was stolen at some  
18 point from the property of Mr. Barker. The truck was owned  
19 -- He had traded the truck to Mr. Chavez. The reason he  
20 was initially not sure when it was taken is because he --  
21 he thought perhaps Mr. Chavez had come and picked it up.  
22 Mr. Chavez had noticed the truck apparently was gone; he  
23 thought Mr. Barker may have moved it. Once they had a  
24 chance to -- to talk they realized it was stolen. They  
25 then communicated that to Off. Morrison who was the basis

1 of the sheriff's office investigation -- looking for this  
2 stolen truck.

3 THE COURT: I don't have any -- I don't think there's  
4 any quarrel, I'm not hearing anything from Mr. Castelda  
5 about the truck. It certainly is the other items that Mr.  
6 Barker, just today, mentioned--

7 MR. SLOAN: Correct.

8 THE COURT: --and (inaudible) -- allowed to talk about.

9 MR. SLOAN: Correct.

10 THE COURT: And--.

11 Again, we know the defendant's not charged with  
12 burglary. There's no -- It seems to me it's clearly  
13 prejudicial, to suggest that these other items are gone,  
14 and -- because they're gone somehow implies that --  
15 pickup's gone, we know it's gone, according to Mr. Barker.  
16 But the fact that there are other items gone, it seems to  
17 me only increases in the jury's mind the idea that if these  
18 items are gone then the pickup's gone and it's all because  
19 of Mr. -- all because of Mr. Priest.

20 MR. SLOAN: He's -- he's charged with possession of a  
21 stolen motor vehicle. Now--

22 THE COURT: Uh-huh.

23 MR. SLOAN: --(inaudible) alleging that.

24 But it is important because it then confirms the timing  
25 that these items left at the same time from Mr. Barker's



1 property; it wasn't one and then the burglary occurred  
2 later.

3 The burglary was going to come into play anyway because  
4 that's how he came in contact with law enforcement, that's  
5 how Off. Morrison, who then learned about the truck being  
6 missing, began looking for that and saw that vehicle.

7 So, the information is coming in anyway; it's just -- he  
8 was able to identify certain pieces of property that went  
9 along -- that were from his property that -- that traveled  
10 with the truck apparently.

11 THE COURT: Okay.

12 So, police will testify that they received a complaint  
13 of a burglary. Right?

14 MR. SLOAN: Correct.

15 THE COURT: And then at some point in their  
16 investigation they -- they learned the whereabouts of -- of  
17 the vehicle that's involved in the burglary.

18 MR. SLOAN: Correct.

19 THE COURT: Correct?

20 So,--.

21 And that's -- And then possession of the stolen motor  
22 vehicle was the charge.

23 MR. SLOAN: Correct.

24 THE COURT: Is there reason to believe -- I mean, do you  
25 have in your mind a basis to charge Mr. Priest with

1 possession of stolen property for the other items?

2 MR. SLOAN: Based on them being at the property and --  
3 and out and away from the truck, a couple of the items,  
4 yes. It may very well just -- could potentially be a third  
5 degree charge, but -- Obviously he's charged with  
6 possession of the stolen vehicle because of the proximity  
7 to where he was located. The same would apply to the  
8 property. Our intent is -- was to proceed today and not  
9 charge the -- the additional counts. But clearly that  
10 doesn't make it not relevant to the timing of the truck  
11 going, and other -- you know, the property being there that  
12 ties the truck -- and actually was moved in the truck so it  
13 shows the truck was there for some time.

14 THE COURT: All right.

15 So, this is clearly at 403 type of issue. Because  
16 obviously it's relevant. The question is at this stage of  
17 the proceedings, is that substantive or probative value  
18 outweighed by the prejudice to the defendant.

19 And -- and -- it just seems to me clearly that it is.  
20 It's -- I -- What's unfortunate is that you and Mr. Barker  
21 just had a chance to review these pictures, or -- or  
22 whatever it was, and for him to -- to recognize these  
23 things, and to say, "Hey, yeah, that -- that would have  
24 been at my place, too."

25 In other words, had this interview or this conversation

1 taken place a couple of weeks ago, you could have amended  
2 and -- and added a count.

3 MR. SLOAN: Yeah. Well, arguably, the court can permit  
4 amendment up to the -- the end of trial.

5 THE COURT: Uh-huh.

6 MR. SLOAN: So the timing is not the issue. And again,  
7 the fact that the vehicle came from his property, was  
8 stolen from the property, not that -- the defendant is  
9 alleged to have stolen it, but clearly there's no prejudice  
10 in the sense that, yes, it was stolen, it's stolen  
11 property, that's what -- the -- allegations are.

12 THE COURT: That's right.

13 MR. SLOAN: The fact there was property that went along  
14 with that, in the state's position, doesn't really make  
15 that much more prejudicial. And it's not -- prior bad acts  
16 or subsequent bad acts, it's basically part and parcel of  
17 the theft of the vehicle that led to the possession.

18 So, I guess, that's where we're (inaudible) saying it's  
19 -- it's overly prejudicial. It -- It makes more ties,  
20 there's more stuff there, but it doesn't really change --  
21 the nature of how the truck traveled from its location and  
22 ended up near the defendant.

23 And the facts are -- you know, the defendant's position  
24 would be it wasn't his house, it was a relative's house.

25 But obviously when the police go to execute the search

1 warrant, and photograph -- they photographed the property,  
2 so obviously they had concerns but they didn't match that  
3 up -- You know, it's not a surprise there's other -- other  
4 property laying around the place.

5 THE COURT: Okay.

6 MR. SLOAN: So, we believe -- it's not overly  
7 prejudicial in light of the facts of the case. Our intent  
8 would be to proceed without -- charging the other count,  
9 but we think it clearly is relevant in both the timing of  
10 when the truck -- it ties the truck to when it disappeared  
11 more specifically, which was -- time of -- the burglary at  
12 Mr. Barker's house, and that it traveled basically at the  
13 same time ultimately to its end position.

14 Now there was other property recovered in other  
15 locations by Omak P.D., and that's how they obviously  
16 became aware of Mr. Barker's property. But that's not what  
17 we're -- we're concerned about; we're not seeking to get  
18 into those issues.

19 THE COURT: Mr. Castelda, final comment.

20 MR. CASTELDA: Well, your Honor, I do want to point out  
21 that we're not arguing about the burglary. That's not the  
22 issue here today. My concern is, the witness Mr. Barker's  
23 going to be put on the stand, he's going to be showing  
24 these photographs, and he's going to say, "That was stolen  
25 from my property, that was stolen from my property, that

1 was stolen from my property," and "one of the items that  
2 Mr. Sloan mentioned to me, well, that was stolen from my  
3 property; it's in the bed of the pickup truck."

4 Now this is the first time I've heard about this today.  
5 But that certainly could in the minds of the jury, say,  
6 "Oh, these stolen items are there, he's saying they're  
7 stolen," never come up before today. That's prejudicial to  
8 my client.

9 It also confuses them in the fact that he's charged with  
10 possession of the pickup truck. Not possession of these  
11 other items. Not burglary, or theft, or possession in the  
12 third degree of these stolen items. He's only charged with  
13 the pickup truck in itself.

14 These other items are at the property. There's no tie  
15 to those other items to my client at all; I want to remind  
16 the court of that. These are situated -- various points  
17 about the property. Someone else's property.

18 There's no -- I don't -- Mr. Barker can't testify that  
19 Mr. Priest had possession and control of that property and  
20 was managing that property. My client was asleep in a  
21 trailer when the police arrived at the property. That  
22 trailer's back in the back of the property. It's not his  
23 -- not his owned property; he doesn't own the real  
24 property.

25 So I think it confuses the issue. I obviously think

1       it's prejudicial. Yes, it has some probative value; yes,  
2       it is relevant -- most evidence is in fact relevant. But  
3       the purpose of 403 is to limit evidence that can confuse  
4       the jury, be misleading or be prejudicial.

5       And so I think that getting into those other items  
6       specifically -- He can clearly testify that they were  
7       taken; I understand that. I'm not objecting to that. My  
8       objection is pointing them out in the photographs and  
9       saying "These were stolen from my house and they were next  
10      to the truck." It makes my client look more guilty, your  
11      Honor, frankly.

12      And so that's my objection. And I don't think we should  
13      get into that today when he's only charged with the truck.

14      THE COURT (off mic'): Under Evidence Rule 403, which  
15      says, although relevant evidence may be excluded if its  
16      probative value is substantially outweighed by the danger  
17      of unfair prejudice, confusion of the issues or misleading  
18      to the jury or by consideration of undue delay, waste of  
19      time or needless presentation of cumulative -- evidence.

20      These latter provisions are not really applicable.

21      For the record, the evidence would clearly be relevant.  
22      The charge here, possession of a stolen motor vehicle. I  
23      suppose if the witness testifies that his placed was  
24      burglarized and items were taken, and if he's allowed to  
25      testify that other items were taken -- that might somehow

1 be relevant to establish that included in those items was  
2 the pickup.

3 So there isn't any question in my mind that it's  
4 relevant. But the rule, 403, is designed to exclude it if  
5 the probative value of that evidence -- which is not  
6 charged -- is substantially outweighed by the danger of  
7 unfair prejudice, confusion of the issues or it's somehow  
8 (inaudible).

9 Mr. Sloan, I'm sorry, but I'm going to suppress any  
10 mention of -- those other items -- As I understand it  
11 they're in pictures, which you intend to use--

12 MR. SLOAN: Which -- and which were provided in the  
13 initial discovery.

14 THE COURT: Right.

15 MR. SLOAN: Correct.

16 THE COURT: But there's no -- there'd been no indication  
17 that they were stolen from Mr. Barker's place until today--

18 MR. SLOAN: Correct.

19 THE COURT: --as I understand it.

20 MR. SLOAN: Well, -- Yeah. Correct.

21 THE COURT: And -- so now, if they're found in -- in the  
22 possession of the defendant, it seems to me that -- that  
23 substantially adds to the idea, or it could, anyway, in the  
24 jury's mind, that they somehow it makes the defendant more  
25 responsible for -- the one item, the motor vehicle.

1           So, I -- I think there's -- I think there's a danger of  
2           unfair prejudice. I don't want to confuse the jury. The  
3           defendant is not charged with burglary, he's not charged,  
4           apparently, with possession of stolen property; he's  
5           charged with possession of a stolen motor vehicle.

6           So, we're -- we're changing the issues to a certain  
7           extent, at least potentially, and -- and thereby possibly  
8           misleading the jury. So,--

9           MR. SLOAN: And, your Honor--

10          THE COURT: --I'm going to let him testify that his  
11          place was burglarized. Clearly he'll be allowed to testify  
12          that things were taken. He'll identify the pickup, I  
13          assume. But I don't want him in various pictures saying,  
14          "This item was taken, I recognize -- here it is in this  
15          picture," -- 'cause I'm assuming the pictures were taken at  
16          the defendant's residence.

17          MR. SLOAN: It's not his residence, your Honor. It's  
18          his relative's residence. He was found in a nearby travel  
19          trailer.

20          THE COURT: Okay.

21          MR. SLOAN: So that's the basis -- And - I understand  
22          the court's ruling. Our position is, it is relevant to  
23          this crime because it ties the exact date of when it --  
24          went missing; it wasn't taken at a separate time. And that  
25          wasn't questioned in the reports, that there was some



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vs.

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No. 13-1-00282-3

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December 6, 2013

January 13, 2014

October 13, 2014

VERBATIM TRANSCRIPT OF PROCEEDINGS  
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1 the truck at 1109 -- Lone Pine HUD, and he said that he had  
2 also seen Kevin and David Priest standing near the truck.  
3 He had -- That was on the 16<sup>th</sup> of June that he gave me that  
4 information. So I worked on that from there.

5 Q Did he say -- Just to clarify, you said the property was  
6 Lone Pine HUD. Is that tribal property?

7 A That is tribal property.

8 Q And that -- from that information did you get any  
9 information from or about (inaudible) Barker?

10 A I did. I had learned that Mr. Barker had a burglary on his  
11 property, and that possibly the truck was missing from that  
12 burglary. So I researched the burglary report, and  
13 actually didn't see that the truck was listed stolen. So I  
14 called him and he said yeah, that it was missing from his  
15 property and he hadn't realized it. He wasn't exactly sure  
16 when it was taken, some time around the burglary or maybe a  
17 little before.

18 Q Did he provide information about -- ownership of the truck.

19 A He said that he had traded the truck for some hay, to --  
20 Mr. Chavez.

21 Q And had that been some time -- ago?

22 A It had been -- Yeah, some time before the truck was stolen,  
23 maybe a year or two.

24 Q Was it your understanding from him the truck, however,  
25 remained on his property or was left on his property.

1 that.

2 A Not at that time. He -- didn't want to talk to me, so I  
3 just walked away and went back to--

4 Q In your first contact with him did he say anything about  
5 having somebody contact you.

6 A He did. He -- he said something like -- "I will have the  
7 people that did this contact you."

8 Q And was this -- his demeanor during this time, was he  
9 cooperative, or--

10 A Adversarial.

11 Q And in fact, -- we've talked about a couple of comments.  
12 Was he -- staying on point, or was he talking about --  
13 bunch of things.

14 A He was talking about a bunch of things, some past contacts  
15 he and I had had, and -- and stuff like that.

16 Q And he was upset with that.

17 A Yes.

18 Q And upset that you were there.

19 A Yes.

20 Q So, did you stop contact with him at some point?

21 A I did. I walked away and continued with processing of the  
22 scene and the vehicle.

23 Q Okay. Did you -- is that when you brought Mr. Chavez back  
24 to the property?

25 A Yes.

1 Q After working with Mr. Chavez and arranging for the truck  
2 to be removed from the property did you have additional  
3 contact with Mr. Priest.

4 A I did. Det. Heyen told me that -- that David had said  
5 something about somebody else bringing the truck there and  
6 that he wanted to talk to me about it so I went and talked  
7 to him.

8 Q Okay. What was his demeanor at that point?

9 A He was calmed down and -- and giving me information.

10 Q When you say giving you information, he was -- he was  
11 talking more normally?

12 A Yes.

13 Q Okay. And -- how did he describe -- or did he describe the  
14 truck being brought to that property.

15 A He told me a kid named Garret brought the truck to the  
16 property.

17 Q Did he indicate how long that had been.

18 A Couple of weeks.

19 Q And did he indicate what -- what contact or what  
20 information he claimed why the truck was brought to him.

21 A For him to work on. And get ready.

22 Q The name he gave, -- Garret, was this somebody familiar to  
23 you? Or at least--

24 A Yeah. We currently had about six warrants for his arrest  
25 at that time, for Garret. We were looking for him for



1 burglaries and thefts.

2 Q Did Mr. Priest appear to know -- in your conversation with  
3 him about -- Elsberg and what he was involved with?

4 A Yes, he did. In fact he was trying to give me information  
5 on where he might be. He said he might be in Spokane and  
6 that he was -- who he was buying drugs from or -- or  
7 dealing with. He had made some comments about he doesn't  
8 know about -- Garret, he's out of control, or something  
9 like that.

10 Q But he -- did he indicate that -- that he (inaudible) that  
11 the truck was brought and left for him to work on.

12 A Yes.

13 Q (Inaudible) just to conclude, the other property items that  
14 were photographed around the truck were the items that were  
15 taken out of the truck that Mr. Chavez said were not his,  
16 those were left at that time.

17 A They were.

18 Q And at that time you didn't have -- is it fair to say you  
19 had not connected any property there with -- being owned by  
20 anybody else.

21 A Correct.

22 Q Now Mr. Barker, the gentleman who you had -- got  
23 information from confirming the truck initially, did he  
24 come to the scene.

25 A He did not.

1 Q And in this case your warrant was for the truck that was  
2 known to be Mr. Chavez's.

3 A It was.

4 Q And under the warrant did you have authority to take any  
5 other property other than the truck or what may be  
6 associated with the truck.

7 A We would have had to have an extension to the warrant to do  
8 so.

9 Q Meaning another judicial -- another judge approving that.

10 A Correct.

11 Q And at that point in time you were there you didn't have  
12 reason or information enough to know of any other property  
13 belonging to somebody besides Mr. Priest or the -- the  
14 residents.

15 A Correct.

16 MR. SLOAN: Thank you. Nothing further at this time.

17 THE COURT: Mr. Castelda.

18 MR. CASTELDA: Yes. Thank you.

19 CROSS EXAMINATION

20 BY MR. CASTELDA:

21 Q Good morning, Sergeant.

22 A Good morning.

23 Q Your first connection with -- with coming to the property  
24 where this vehicle was located, was that when you executed  
25 the search warrant?

1 A It was not. I took pictures earlier that morning of the  
2 vehicle in the front of the house.

3 Q Okay. And those were -- the ones we saw that were part of  
4 your search warrant application?

5 A Yes.

6 Q Okay. And, the property, did you do any research as to who  
7 actually owned the property?

8 A I did. I called -- Colville Tribe and asked who was  
9 actually residing in that residence and they said Cheryl  
10 Priest. And also in our own computer system it listed her  
11 as the owner of that residence.

12 Q Okay.

13 And when you initially were contacted about this by Off.  
14 Morrison of the Omak P.D., I assume you read his report, or  
15 what -- some of his report as to what he was doing for the  
16 investigation, as to Mr. Barker's personal property?

17 A No. And as a matter of fact I didn't know -- I don't know  
18 what burglaries he was working on, but he just -- he called  
19 me and talked to me on the phone and gave me the  
20 information about seeing the truck. And then I had him  
21 send me a quick email about the address where he saw it,  
22 'cause I was driving and couldn't write anything down at  
23 the time.

24 Q In your report you noted that when you read the burglary  
25 report it didn't mention the truck was being stolen by Mr.

1           Barker.

2    A    That's true.

3    Q    That's true. Okay. So whose burglary report did you read?

4    A    I don't remember which officer -- took that burglary call.

5    Q    Okay. And as part of your investigation, when you started

6           getting into this, is it also true that Mr. Barker had

7           thought that Mr. Chavez had taken the truck.

8    A    He did. He wasn't sure. He knew it was gone. He assumed

9           that the owner came and got it.

10   Q    Okay. Have you ever been able to ascertain as part of your

11           investigation of this case when the truck was actually

12           taken from the Barker property, as far as a time line.

13   A    He said some time around the burglary or two weeks before.

14   Q    Do you know when the burglary was?

15   A    I don't have the date of the burglary.

16   Q    Okay.

17   A    I think it was -- the 9<sup>th</sup> of June. But I don't know for

18           sure.

19   Q    Have any suspects been arrested in relationship to that

20           burglary that you know of.

21   A    I think we have charges on Garret for that.

22   Q    Is that Garret Elsberg?

23   A    Yes.

24   Q    Is that the same Garret Elsberg that Mr. Priest identified

25           as the person who dropped off the -- the pickup?

1 A Yes.

2 Q Okay. And as part of your investigation did you actually  
3 also learn that the legal owners to this vehicle, that is  
4 part of this case today, were a Loren and Pam Dennison?

5 A Correct.

6 Q And that they had never actually -- no one had ever  
7 actually transferred it to -- from Dennisons to anybody  
8 else.

9 A There was no transfer.

10 Q Okay.

11 A Of the title.

12 Q And did you -- did you speak to the Dennisons at all,--

13 A I did.

14 Q --or contact them?

15 A I did.

16 Q And had they even remembered giving the truck to Barker?

17 A Yes.

18 Q Okay. Because in your report it says that -- that no one  
19 knew where the title was, and that Pam said that she does  
20 not even really remember the truck. So did she not really  
21 remember -- What part of the truck didn't she remember?  
22 What are you referring to?

23 A I was asking for the vehicle license number, so that I  
24 could run the registration. She goes, "I don't really  
25 remember the truck," but she knew that she had given it to

1           Barker, that her husband had, or--

2    Q    And that was some sort of a trade?

3    A    No; that one was -- they -- I think they sold that one.

4           The trade was with Chavez.

5    Q    Okay.

6           And -- in your report it says James had told you he

7           received the truck by trade.

8    A    Yes.

9    Q    Okay. So there was a couple trades that happened here.

10           Did anybody ever present you with any sort of paper work to

11           show transfer of ownership at all?

12   A    No.

13   Q    Okay. And then when Mr. Chavez arrived, you let him take

14           the vehicle but he wasn't actually the legal owner at that

15           point in time.

16   A    I could prove that he was the owner because the owners

17           prior to that told me that they had traded the vehicles.

18   Q    Okay. But he didn't have any legal documentation.

19   A    He did not.

20   Q    Okay.

21           Did anyone ever tell you whether -- the last time the

22           truck was actually operated, started and ran?

23   A    No.

24   Q    Mr. Sloan showed you a lot of pictures that were taken by

25           Dep. Heyen at the -- at the scene of that. Did you have an

1 opportunity as part of anything you were doing -- it may  
2 not have been (inaudible), so I know it may not have been  
3 something you did, -- ascertain ownership on the boat, that  
4 Ford Bronco or any of those other items of personal  
5 property there?

6 A I believe Det. Heyen was talking with Mr. Priest about the  
7 boat, 'cause he actually restores boats. So I was -- while  
8 I was doing something at the car they talked about the  
9 boat, and he -- and Mr. Priest said he had actually bought  
10 the boat in Spokane. But we weren't there for anything  
11 else other than the vehicle, so I -- I assume that was  
12 small talk between the detective and Mr. Priest.

13 Q Your focus was just on the vehicle.

14 A Yes.

15 Q Okay.

16 And the -- Who -- who was able to actually find -- come  
17 in contact with Mr. Priest? 'Cause you made the attempt at  
18 the trailer, and you didn't have contact with anybody when  
19 you made your attempt, right?

20 A It was Chief Rodriguez.

21 Q Chief Rodriguez. Okay. And did he explain to you how he  
22 had contact with Mr. Priest? I mean, did he wake him up?  
23 Did Mr. Priest come out of the trailer?

24 A He did explain to me, yes.

25 Q What did -- what did he say?

1 A He said that he knocked and announced on the door -- He did  
2 not know that I had already searched it 'cause they were  
3 around the front of the house, when I went to the back.  
4 And we do that to make sure that somebody doesn't just run  
5 out the front door. So I went around the back, and -- So  
6 he didn't know I had already checked the trailer so he  
7 knocked and announced. He said that he yelled inside,  
8 "Sheriffs, search warrant," that he actually walked inside  
9 the trailer and around the corner, and when he went around  
10 the corner he could see the blankets moving, so then he  
11 called the subject out, told him to uncover himself and it  
12 was David.

13 Q As far as you know did Mr. Priest come out voluntarily?

14 A Oh, yes.

15 Q Okay.

16 And then it was -- at a later point after he'd calmed  
17 down from the initial contact you then had a second contact  
18 with Mr. Priest?

19 A Right.

20 Q And that's when he related to you that Mr. Elsborg had  
21 dropped the truck off for him to work on?

22 A He did.

23 Q Okay. And Mr. Priest had said to you, to your question,  
24 that he did not live there?

25 A I asked him if he lived in the house or in the trailer. He



1 said he did not.

2 Q At the time when you were talking to Mr. Priest about how  
3 he described the truck getting there, the pickup, you were  
4 wanting to arrest Mr. Elsberg for several thefts and  
5 burglaries, were you not?

6 A There were warrants for his arrest, yes.

7 Q There were warrants?

8 MR. CASTELDA: Thank you.

9 THE COURT: Redirect?

10 MR. SLOAN: Thank you.

11 REDIRECT EXAMINATION

12 BY MR. SLOAN:

13 Q You were asked about the property, -- the defendant  
14 basically denying that he lived either in the trailer or  
15 the -- the residence. You indicated earlier the -- owner  
16 was Cheryl Priest. Do you know what the relationship  
17 between she and the defendant are?

18 A Brother-sister.

19 Q And you had information, and we heard from Off. Morrison  
20 about some days prior to this seeing the defendant and  
21 Kevin Priest--.

22 A Right. I believe Kevin Priest is the brother.

23 Q What was the time of day that this search warrant was --  
24 was carried out?

25 A It was -- late afternoon, I believe, somewhere around --

