

No. 46093-9-II

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

vs.

**Jason Hernandez,**

Appellant.

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Pierce County Superior Court

Cause No. 13-1-02943-1

The Honorable Judge Garold Johnson

**Appellant's Supplemental Brief**

Jodi R. Backlund  
Manek R. Mistry  
Skylar T. Brett  
Attorneys for Appellant

**BACKLUND & MISTRY**  
P.O. Box 6490  
Olympia, WA 98507  
(360) 339-4870  
backlundmistry@gmail.com

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### **SUPPLEMENTAL ASSIGNMENT OF ERROR**

The Information failed to allege that Mr. Hernandez “withheld or appropriated” a stolen vehicle.

### **SUPPLEMENTAL ISSUE**

Under *State v. Satterthwaite*, an Information charging a violation of RCW 9A.56 must allege that a person “withheld or appropriated” the property at issue. This was not alleged and cannot be inferred by a fair construction of the Information. Must the conviction be reversed for a constitutionally deficient charging document? *State v. Satterthwaite*, COA No. 45732-6-II, -- Wn. App. --, -- P.3d -- (March 10, 2015).

## **SUPPLEMENTAL FACTS AND PRIOR PROCEEDINGS**

The state charged Jason Hernandez with Unlawful Possession of a Stolen Vehicle, specifying:

That [defendant], in the State of Washington, on or about the 24<sup>th</sup> day of July, 2013, did unlawfully and feloniously knowingly possess a stolen motor vehicle, knowing that it had been stolen, contrary to RCW 9A.56.068 and 9A.56.140, and against the peace and dignity of the State of Washington.  
CP 1.

### **ARGUMENT**

**I. THE INFORMATION FAILED TO ALLEGE THAT MR. HERNANDEZ “WITHHELD OR APPROPRIATED” THE VEHICLE, SO *STATE V. SATTERTHWAITE* REQUIRES REVERSAL.**

The Court of Appeals recently decided *State v. Satterthwaite*. *State v. Satterthwaite*, COA No. 45732-6-II, -- Wn. App. --, -- P.3d – (March 10, 2015). In that case, the court reversed the defendant’s conviction for a charge of possession of a stolen motor vehicle. *Id.*

*Satterthwaite* involved a deficiency in the charging language. The charge did not allege that the defendant “withheld or appropriated” the vehicle. *Id.* The charge against Mr. Hernandez suffers from the same deficiency.<sup>1</sup> CP 1.

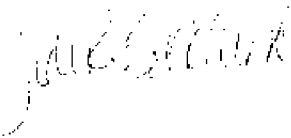
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<sup>1</sup> Mr. Hernandez did not object to the deficiency in the trial court. However, this doesn’t change the analysis: even construing the document liberally, the necessary elements do not appear in any form, nor can they be found by any fair construction. *Satterthwaite*.

Because “withhold or appropriate” is an essential element of the charge, and because it is not found in the Information, the conviction for Unlawful Possession of a Stolen Vehicle must be reversed. Id.

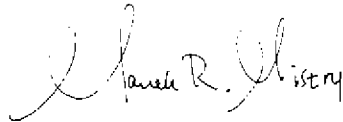
Respectfully submitted on March 24, 2015.

**BACKLUND AND MISTRY**



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Jodi R. Backlund, WSBA No. 22917  
Attorney for the Appellant



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Manek R. Mistry, WSBA No. 22922  
Attorney for the Appellant



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Skylar T. Brett, WSBA No. 45475  
Attorney for Appellant

## CERTIFICATE OF SERVICE

I certify that on today's date:

I mailed a copy of Appellant's Supplemental Brief, postage prepaid, to:

Jason Hernandez/DOC#342332  
Cedar Creek Corrections Center  
PO Box 37  
Littlerock, WA 98556

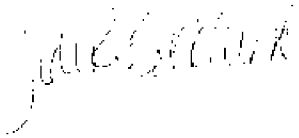
With the permission of the recipient(s), I delivered an electronic version of the brief, using the Court's filing portal, to:

Pierce County Prosecutor  
PCpatceef@co.pierce.wa.us

I filed the Appellant's Supplemental Brief electronically with the Court of Appeals, Division II, through the Court's online filing system.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Olympia, Washington on March 24, 2015.



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Jodi R. Backlund, WSBA No. 22917  
Attorney for the Appellant

## BACKLUND & MISTRY

March 24, 2015 - 3:03 PM

### Transmittal Letter

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Court of Appeals Case Number: 46093-9

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Brief: Supplemental Appellant's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

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Hearing Date(s):

Personal Restraint Petition (PRP)

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