

NO. 62751-1-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

VENIAMIN P. PURIS,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE MICHAEL HEAVEY, JUDGE

**BRIEF OF RESPONDENT**

DANIEL T. SATTERBERG  
King County Prosecuting Attorney

JOHN R. ZELDENRUST  
Senior Deputy Prosecuting Attorney  
Attorneys for Respondent

King County Prosecuting Attorney  
W554 King County Courthouse  
516 Third Avenue  
Seattle, Washington 98104  
(206) 296-9000

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**A. ISSUES PRESENTED**

1. In making the discretionary determination of whether a defendant is prejudiced by the joinder of multiple counts in a single trial, one of the factors the court must consider is whether the additional counts would be cross-admissible in a trial on the original charges. In this case, the trial court determined that the proposed joinder of three counts of possession of stolen property with the original counts of possession of a stolen vehicle and possession of stolen property was proper under a theory of res gestae, because all offenses occurred at the same time, the additional counts completed the story of the original offenses, and provided an immediate context for them in both time and place. Did the trial court abuse its discretion in granting the State's motion to join all counts in a single trial?

2. Where defense counsel's conduct can be characterized as a legitimate trial strategy, a defendant cannot rely on the conduct to establish ineffective assistance of counsel. On the first day of trial in this case, the trial judge disclosed that he knew one of the alleged victims; following inquiry by defense counsel, the judge stated that it would not impact his rulings in the case, and counsel elected not to file an affidavit of prejudice against the trial judge.

Was defense counsel's decision a matter of legitimate trial strategy, precluding Puris's claim of ineffective assistance of counsel?

**B. STATEMENT OF THE CASE**

**1. PROCEDURAL FACTS**

On February 26, 2008, the King County Prosecuting Attorney charged Veniamin P. Puris by information with one count of Possession of a Stolen Vehicle, contrary to RCW 9A.56.068 and 9A.56.140 (Count 1), and one count of Possession of Stolen Property in the Second Degree (stolen access device), contrary to RCW 9A.56.160(1)(c), RCW 9A.56.140(1) and 9A.56.010(1) (Count II). CP 1-2.

On August 5, 2008, the King County Prosecuting Attorney filed a motion to amend the information (CP 93), which Puris opposed (CP 89). Following a hearing on August 6, 2008, the court granted the State's motion to amend. 2RP 9.<sup>1</sup>

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<sup>1</sup> The Verbatim Report of Proceedings consists of seven volumes and will be referred to as follows:

- 1RP August 5, 2008 (CrR 3.5/3.6 hearings)
- 2RP August 6, 2008 (Pre-trial motions)
- 3RP October 22, 2008 (Pre-trial motions)
- 4RP October 23, 2008 (trial)
- 5RP October 27, 2008 (trial)
- 6RP October 28, 2008 (trial)
- 7RP November 28, 2008 (Sentencing)

The State then filed an Amended Information, dated August 6, 2008, which contained the original two counts and an additional three counts of Possession of Stolen Property. CP 25. Counts III and IV each charged Puris with Possession of Stolen Property in the Second Degree (access devices), and Count V charged Puris with Possession of Stolen Property in the Third Degree (license plate), contrary to RCW 9A.56.170 and 9A.56.140(1). CP 25-27.

The case was tried to a jury in October 2008. The jury found Puris guilty on Counts I, II and III, and not guilty on Counts IV and V. CP 38-42.

Puris appealed to this Court. CP 80-88.

## **2. SUBSTANTIVE FACTS**

The City of Redmond Police Department has a unit known as the Pro-Act Team, which consists of plainclothes officers specializing in auto theft and related crimes. 4RP 6-7. On November 28, 2007, Redmond Police Detective Jeff Howerton and five other Pro-Act team members were in Federal Way, Washington, conducting a mobile-surveillance of an auto theft suspect. 4RP 7-9.

Howerton rode in an unmarked car with Redmond Police Officer John Barnett. 4RP 10. Other members of the surveillance team traveled in separate unmarked cars. Id. They included Detective Nate Sanger, Lieutenant Douglas Krueger, Officer Joaquin Lapana, and Officer James Paulsen, all with the City of Redmond Police Department. 4RP 7-8.

Shortly before 7:00 p.m., Howerton and Barnett lost contact with their suspect. 4RP 10-11. They drove to Pacific Highway South and started checking some of the hotels and motels for the suspect's vehicle. 4RP 11.

In the parking lot of the Federal Way Motel they noticed a white Dodge pickup truck. 4RP 15, 123. The truck caught their attention because it was brand new, it did not have a front license plate, and it was backed into a parking stall. 4RP 15. In Detective Howerton's experience, this created some suspicion that the vehicle may be stolen. See 4RP 15-16.

To determine the vehicle's status, Officer Barnett approached the back of the truck to get the license plate number. 4RP 17. The rear license plate was missing; in its place was a dealer tag. Id. There was a temporary license in the truck's rear window. Id.

After reporting his observations to Howerton, Barnett returned to the truck to get the vehicle identification (VIN) number from the dashboard. 4RP 18. They ran the truck's VIN number through the Department of Licensing and learned that it had been reported stolen. 4RP 19, 125.

Howerton and Barnett contacted the other members of the Pro-Act team and placed the truck under surveillance. 4RP 19, 125. A short time later, the team gathered and positioned themselves nearby. Id.

At about 8:30 p.m., the officers observed a person – later identified as defendant Veniamin Puris – approaching the truck. The truck's parking lights flashed when Puris was about 15 feet away, indicating he had used a remote entry “fob key” to unlock the doors. 4RP 22, 44, 126. Detective Sanger gave the arrest signal. 4RP 44, 126. As Puris opened the truck door, Howerton and Barnett converged on the scene and placed him under arrest. 4RP 23-24, 126-27.

Sanger searched Puris and found a wallet in his jacket pocket. 4RP 47. The wallet contained Puris's identification, a

Citibank Mastercard<sup>2</sup> with the name R. J. Barnecut, a Chevron gas card with the name R. J. Barnecut, a gas receipt from Midway Shell (showing purchase with Citibank Mastercard), a pawn slip containing Puris's name, a Home Depot card, and a business card from VRS Siding Company. 4RP 51, 54-56. Sanger transported Puris to the Redmond Police station, and the truck was impounded there also. 4RP 63, 129.

Sanger and Lipana interviewed Puris on the evening of his arrest.<sup>3</sup> 4RP 63. Puris told the officers he had been staying in the Federal Way Motel for the past four days. 4RP 66, 70. He said he got the truck from a friend named Nick on two separate occasions. 4RP 66-69. Puris was unable to provide any contact information for Nick, and told the officers he did not know Nick's last name. 4RP 67-68.

Puris said he first picked up the truck from Nick at 10:00 a.m. two days before, on November 26, 2007, and dropped it off at 8:00 p.m. that same day. 4RP 68-69. On November 28, Puris said

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<sup>2</sup> The Citibank Mastercard is referred to as the "Shell card" in the jury instructions. CP 62.

<sup>3</sup> Although Puris did not testify at trial, his interview statements were presented to the jury through Detective Sanger. 4RP 63-65.

he met Nick at the Iron Horse Casino at 1:00 p.m., where he picked up the truck again. Id.

When asked about the wallet, Puris initially stated that it was his. He then changed his story, stating that he found it on the floorboard of the truck, picked it up and put it in his jacket. 4RP 71. Puris said that he then placed his identification in the wallet, and was going to ask Nick who it belonged to. 4RP 72.

Sanger asked Puris about the gas receipt and credit cards found inside the wallet – particularly the Citibank credit card connected with the receipt – and whether he had used the credit cards. Id. Puris denied using them. Id. He admitted that the business card and pawn slip were his. Id.

The gas receipt from Midway Shell showed a purchase of gasoline and a car wash at 1:53 a.m. on November 28, 2007. 4RP 73. Puris denied making the purchase. Id. Sanger testified that on November 29, he contacted Midway Shell and arranged to view the station's video surveillance from the date and time of the purchase. 4RP 74. On the video, Sanger observed Puris purchasing gas for the stolen Dodge truck, retrieving the receipt, and placing it in his wallet. 4RP 75.

Officer Barnett processed the Dodge truck for evidence on November 29<sup>th</sup> after securing permission from its true owner, Beau Worley. 4RP 129-30; 6RP 6-8. Barnett found checkbooks belonging to an individual named Mathew Fotheringham, a license plate that belonged to Leisa and David Rall, a temporary license tag taped to the truck's back window, and various electronic items and paperwork. 4RP 129-74. Worley confirmed that these items were not his. 6RP 9. Worley also testified that his truck was stolen on November 12, 2007, and that he had not given anyone permission to use it. 6RP 6-7.

Mathew Fotheringham said that his own truck had been stolen on November 26, 2007, and that his checkbooks and paystubs were inside. 4RP 189-90. Fotheringham did not know the defendant, and had not given anyone permission to take his paystubs or checkbooks. 4RP 191. Sanger also contacted the Ralls concerning the license plate. 4RP 78.

The jury found Puris guilty of possessing the stolen Dodge truck (Count 1), possessing the Chevron card stolen from R. J. Barnecut (Count II), and possessing the stolen Citibank Mastercard (Count III), which also belonged to Barnecut. CP 38-40, 58, 61, 62. Puris was found not guilty of possessing the stolen Fotheringham

checkbooks (Count IV), and the Ralls's license plate (Count V).

CP 41-42, 63, 66.

**C. ARGUMENT**

**1. THE TRIAL COURT PROPERLY EXERCISED ITS DISCRETION IN ALLOWING THE STATE TO AMEND THE INFORMATION.**

Puris claims that the trial court abused its discretion in allowing the State to file an amended information adding three counts of possession of stolen property. He argues that the evidence supporting the additional counts was not cross-admissible as to the original two counts and therefore amounted to propensity evidence. He contends that the lack of cross-admissibility and the sheer multiplicity of counts unfairly prejudiced his ability to secure an acquittal on the most serious count of possession of a stolen vehicle (Count I).

Puris concedes, however, that he had adequate notice of the pre-trial amendment and that the additional counts were subject to joinder under CrR 4.3. Moreover, the additional counts were cross-admissible under several theories, and the trial court did not abuse its discretion in allowing the amendment.

a. Waiver Of Severance.

Where a defendant's pretrial motion to sever offenses is overruled, he or she may renew the motion on the same ground at or before the close of the evidence. CrR 4.4(a)(2). Severance is waived by failure to renew the motion. Id. In this case, Puris opposed joinder prior to trial (2RP 4-5), but did not renew his motion at the close of the evidence. See 6RP 13-19, 29. He therefore waived severance. Nonetheless, the State will address Puris's substantive arguments.

b. Law Governing Joinder And Severance.

Under CrR 2.1(d), the trial court may permit amendment of an information at any time before the verdict if the substantial rights of the defendant are not prejudiced. Under CrR 4.3(a), two or more offenses may be joined in one charging document, with each offense stated in a separate count, when the offenses are of the same or similar character, or are based on the same conduct or series of acts connected together.

Puris concedes that under CrR 4.3(a), Counts I and II were properly joined with Counts III, IV and V. See Appellant's Opening Brief, at 10. The offenses were of the "same or similar character"

because they all involved possession of stolen property, and all offenses arose from the same incident. See Appellant's Opening Brief, at 10-11.

Offenses properly joined under CrR 4.3(a) may be severed, however, if the court determines that severance "will promote a fair determination of the defendant's guilt or innocence of each offense." CrR 4.4(b); State v. Bythrow, 114 Wn.2d 713, 717, 790 P.2d 154 (1990). The trial court's failure to sever counts is reversible only upon a showing of manifest abuse of discretion. Bythrow, 114 Wn.2d at 717. Defendants seeking severance have the burden of demonstrating that a trial involving both counts would be so manifestly prejudicial as to outweigh the concern for judicial economy. Bythrow, 114 Wn.2d at 718.

Joinder should never be used in such a way as to unduly embarrass or prejudice a defendant or deny him a substantial right. State v. Russell, 125 Wn.2d 24, 62, 882 P.2d 747 (1994). Prejudice may result from joinder if the defendant is embarrassed in the presentation of multiple separate defenses, or if use of a single trial invites the jury to cumulate evidence to find guilt or infer a criminal disposition. Id.

In determining whether the potential for prejudice requires severance, a trial court must consider (1) the strength of the State's evidence on each count; (2) the clarity of defenses as to each count; (3) court instructions to the jury to consider each count separately; and (4) the admissibility of evidence of the other charges even if not joined for trial. Russell, 125 Wn.2d at 63.

In this case, the trial court properly exercised its discretion in evaluating these factors and in determining that joinder of all counts was appropriate. See 2RP 7-9. The strength of the State's evidence on each count was roughly the same.<sup>4</sup> Puris's defense on all counts was consistent – lack of knowledge that the items were stolen. The trial court instructed the jury to consider each count separately. CP 53.

Puris's claim of prejudice focuses on the final factor – cross admissibility of the evidence. The trial court ruled that evidence of the additional charges would be admissible in a trial on the original charges under a theory of res gestae. 2RP 9.

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<sup>4</sup> Puris claims the evidence on the additional counts was stronger given their relative simplicity, making it more likely that the jury would convict on the more serious charge of possession of a stolen vehicle (Count I). See Appellant's Opening Brief, at 14-15. Any alleged imbalance due to the simplicity of the added counts was minimized, however, by Puris's less-than-credible explanation that he borrowed the truck from an individual he barely knew and for whom he could provide no contact information – not even a last name. 4RP 66-70.

c. The Joined Counts Were Cross-Admissible Under A Theory Of *Res Gestae*.

Under the *res gestae* or "same transaction" exception to ER 404(b)<sup>5</sup>, evidence of other crimes or bad acts is admissible to complete the story of a crime or provide the immediate context for events close in both time and place to the charged crime. State v. Lillard, 122 Wn. App. 422, 432, 93 P.3d 969 (2004).

Puris was arrested in a stolen truck (Count I) with a stolen credit card in his wallet belonging to R. J. Barnecut (Count II). Puris had another stolen credit card in his wallet, also belonging to Barnecut (Count III), which Puris had used hours before his arrest to purchase gas for the stolen truck. The truck had no front or rear license plate, but a license plate belonging to Leisa and David Rail was found inside (Count V), and an altered temporary license was taped to the back window. 4RP 135-36, 175.

Given this set of circumstances, the trial court reasonably determined that evidence of Counts III and V was admissible to "complete the story" surrounding Counts I and II, and provide an

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<sup>5</sup> ER 404(b) states that "[e]vidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident."

immediate context for those charges. See Lillard, 122 Wn. App. at 432. Count IV, the stolen checkbooks belonging to Mathew Fotheringham, while not as intertwined with Counts I and II as the other evidence, was "close in both time and place" with the original counts, see id., and arguably added some context to them as well.

d. The Joined Counts Were Cross-Admissible To Show Knowledge.

Additionally, Puris denied knowing that the truck (Count I) and Barnecut Chevron card (Count II) were stolen.<sup>6</sup> See CP 9; 2RP 7. The fact that he used the Barnecut Citibank card (Count III) to put gas in the truck was relevant to the knowledge elements of Counts I and II – particularly where he denied using the Citibank card. 4RP 73. His possession of a license plate belonging to someone else (Count V) was also relevant to his knowledge that the truck was stolen. The same is true for his possession of the Fotheringham checkbooks (Count IV), which had been stolen along

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<sup>6</sup> Knowledge was an essential element on all counts. Count I alleged Possession of a Stolen Vehicle; Counts II, III and IV alleged Possession of Stolen Property in the Second Degree (access devices); and Count V alleged Possession of Stolen Property in the Third Degree (license plate). CP 25-27. RCW 9A.56.140(1) defines "possessing stolen property" as "knowingly to receive, retain, possess, conceal, or dispose of stolen property knowing that it has been stolen and to withhold or appropriate the same to the use of any person other than the true owner or person entitled thereto."

with Fotheringham's own truck on November 26, 2007. 4RP 190.

The evidence was therefore relevant to a disputed element of Counts I and II (knowledge), and was not propensity evidence under ER 404(b).<sup>7</sup>

e. The Joined Counts Were Cross-Admissible To Show Common Scheme Or Plan.

The State also alleged Counts III, IV and V were part of a “common scheme or plan” with the other charged offenses. CP 26-27; Supp. CP \_\_\_\_ (sub 44A). Evidence of misconduct may be admissible “where several crimes constitute parts of a plan in which each crime is but a piece of the larger plan....”. See State v. Lough, 125 Wn.2d 847, 855, 889 P.2d 487 (1995) (giving example of prior theft to acquire tool or weapon to commit later crime). Here, Puris’s possession and use of the Citibank credit card, and his possession of the license plate and checkbooks, were logically connected to his possession and use of the stolen truck, and furthered his commission of that offense. Therefore, evidence of

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<sup>7</sup> While the trial court did not expressly rely on this basis for joinder at trial (2RP 9), this court may affirm the trial court on any ground the record supports. State v. Michielli, 132 Wn.2d 229, 242-43, 937 P.2d 587 (1997).

Counts III, IV and V was admissible as part of a common scheme or plan.<sup>8</sup>

f. Puris Cannot Demonstrate Prejudice.

Even if Puris were correct that evidence of the joined counts would not be cross-admissible in a trial on the original counts, joinder was proper in this case. To show that the trial court abused its discretion in granting joinder, Puris must be able to point to specific prejudice. See State v. Bythrow, 114 Wn.2d 713, 720, 790 P.2d 154 (1990). His trial was relatively short, the issues were straightforward, and the jury could reasonably have been expected to compartmentalize the evidence. See Bythrow, 114 Wn.2d at 721. The trial court instructed the jury to decide each count separately (CP 53), and it appears that they did so, finding Puris not guilty on Counts IV and V. CP 41-42.

Assuming the evidence was stronger on some counts than on others, Puris's concern over the "snowball effect" of the cumulative counts is unwarranted. See Appellant's Opening Brief, at 14. Even where evidence of one crime is particularly weak, the principal issue is whether the jury was likely to have been confused.

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<sup>8</sup>See note 7, *supra.a.supra*.

See United States v. Johnson, 820 F.2d 1065, 1071 n.6 (9<sup>th</sup> Cir. 1987). This brief trial had simple issues, and the jury deliberated for less than a day. See 6RP 68, 78. There is no indication that the jury was confused.

g. Any Prejudice From Joinder Was Outweighed By Concerns For Judicial Economy.

Finally, even if Puris could demonstrate some prejudice from joinder, he still must show that a joint trial would be so prejudicial as to outweigh concern for judicial economy:

Foremost among these concerns is the conservation of judicial resources and public funds. A single trial obviously only requires one courtroom and judge. Only one group of jurors need serve, and the expenditure of time for jury voir dire and trial is significantly reduced when the offenses are tried together. Furthermore, the reduced delay on the disposition of the criminal charges, in trial and through the appellate process, serves the public. We find these considerations outweigh the minimal likelihood of prejudice through joinder of the charges in this case.

Bythrow, 114 Wn.2d at 723 (footnote omitted).

The reasoning of Bythrow applies here. As the State noted at trial, many of the witnesses required on the original counts would also be called for the additional counts (2RP 6), and the expenses of a single trial would be doubled if the counts were tried

separately. The trial was brief, the issues were simple, and the jury could reasonably be expected to compartmentalize the evidence. The risk of prejudice was minimal, and did not outweigh the strong concern for judicial economy.

h. The Authorities Cited By Puris Do Not Support Severance In This Case.

Puris relies on State v. Hernandez, 58 Wn. App. 793, 794 P.2d 1327 (1990), rev'd on other grounds in State v. Kjorsvik, 117 Wn.2d 93, 812 P.2d 86 (1991), for the proposition that differences in the strength of the evidence and lack of cross-admissibility between counts required severance. See Appellant's Opening Brief, at 17. In Hernandez, the court found the joinder of three separate robberies on different dates was improper, rejecting the State's claim of cross-admissibility to prove the identity of the assailant. The method employed in the commission of the robberies was not so unique that proof the defendant committed one crime created a high probability that he committed the others. Hernandez, 58 Wn. App. at 798-99.

The offenses in this case, however, were all alleged to have occurred at the same time, and the strength of the evidence was

roughly the same. And unlike the facts of Hernandez, the basis for cross-admissibility here are valid theories of res gestae, knowledge, and common scheme or plan, not an invalid identity theory.

Puris also cites State v. Ramirez, 46 Wn. App. 223, 227, 730 P.2d 98 (1986), where the State argued that evidence supporting two counts of indecent liberties was cross-admissible to show intent and absence of mistake or accident. Because neither of these elements was a material issue for the jury, however, the court rejected this argument, holding that the two counts should not have been joined for trial. Ramirez, 46 Wn. App. at 226-28.

The rationale of Ramirez does not apply in this case. The issue here was Puris's knowledge that the items he possessed were stolen – and this was a material issue for the jury to consider. Moreover, Ramirez was a sexual misconduct case, where particular scrutiny of admission of prior acts is warranted due to the high potential for prejudice. See Ramirez, 46 Wn. App. at 227. Similar concerns are not present here.

Puris suggests that the trial court failed to adequately consider whether evidence of the additional counts was relevant to a material, non-propensity issue under ER 404(b), and whether the danger of unfair prejudice of the evidence was outweighed by the

probative value. See Appellant's Opening Brief, at 17-18. He is mistaken. The trial court expressly addressed the danger of undue prejudice in light of the relevant factors. See 2RP at 8-9. And an alleged failure to articulate the balance between probative value and unfair prejudice is harmless where it does not impact the outcome of the trial, see State v. Carleton, 82 Wn. App. 680, 686, 919 P.2d 128 (1996), as is the case here.

## **2. PURIS FAILS TO SHOW INEFFECTIVE ASSISTANCE OF COUNSEL.**

Puris contends that his trial counsel was ineffective for failing to timely file an affidavit of prejudice against the trial judge. He claims an affidavit was warranted because the trial judge knew R. J. Barnecut, the individual whose credit cards Puris was charged with unlawfully possessing in Counts II and III. Trial counsel's decision not to file an affidavit of prejudice was a legitimate strategic decision, however, and cannot serve as the basis for an ineffective assistance of counsel claim.

To prevail on a claim of ineffective assistance of counsel, a defendant must establish both ineffective representation and resulting prejudice. State v. McNeal, 145 Wn.2d 352, 362, 37 P.3d

280 (2002). To establish ineffective representation, the defendant must show that counsel's performance fell below an objective standard of reasonableness. Id. To establish prejudice, a defendant must show that but for counsel's performance, the result would have been different. Id.

There is a strong presumption that trial counsel's performance was adequate, and exceptional deference must be given when evaluating counsel's strategic decisions. Id. If trial counsel's conduct can be characterized as legitimate trial strategy or tactics, it cannot serve as a basis for a claim that the defendant received ineffective assistance of counsel. Id.

On the first day of trial, the trial judge informed the parties that he knew Mr. Barnecut well enough "to say hello to him."  
1RP 4. Defense counsel later asked the Judge about his relationship with Mr. Barnecut, and whether it would impact his ability to hear the case:

MS. WALLACE: In regards to your relationship with Mr. Barnecut, could you explain that further? And then the ultimate question is: Do you think that will impact your ability to hear this case? Because he is an alleged victim in this case.

THE COURT: Like I say, I know him from – I used to be a legislator. He was a gas station owner. I used his restroom once. He's a long-time figure, not

a public figure, but in West Seattle. I know him to say "Hi, how are you?" I don't think it would impact how I make any decisions in this case.

MS. WALLACE: Okay. Thank you.

1RP 7.

The court subsequently ruled that Puris's statements to the arresting officers were admissible under CrR 3.5 (1RP 42), and denied Puris's motion to suppress under CrR 3.6 (1RP 84). It was not until the following day that defense counsel asked the trial judge to recuse himself due to his acquaintance with R. J. Barnecut.

2RP 3. The court stated that because it had already ruled on the CrR 3.5 and 3.6 motions, an affidavit of prejudice was not appropriate. 2RP 4.

As the record shows, defense counsel specifically questioned the court about the relationship with Barnecut, and accepted the court's statement that the relationship would not impact its rulings in the case. Defense counsel's decision not to file an affidavit of prejudice was a legitimate trial strategy. See State v. King, 24 Wn. App. 495, 503, 601 P.2d 982 (1979) (decision to file an affidavit of prejudice is clearly a matter of strategy). It therefore cannot serve as the basis for an ineffective assistance claim.

Further, Puris cannot show that but for counsel's decision not to file an affidavit of prejudice, the result of the trial would have been different. He therefore fails to show prejudice.

**D. CONCLUSION**

For the foregoing reasons, the State respectfully requests that defendant Veniamin Puris's conviction for possession of a stolen vehicle (Count 1) and two counts of possession of stolen property (Counts II and III) be affirmed.

DATED this 2<sup>nd</sup> day of October, 2009.

Respectfully submitted,

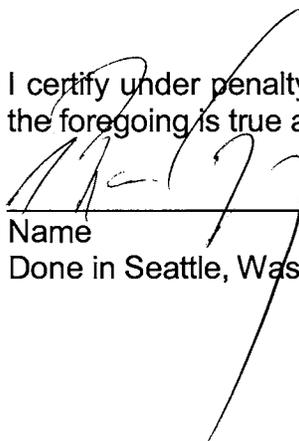
DANIEL T. SATTERBERG  
King County Prosecuting Attorney

for By: Abigail A. Doyle #18887  
JOHN R. ZELDENRUST, WSBA #19797  
Senior Deputy Prosecuting Attorney  
Attorneys for Respondent  
Office WSBA #91002

Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to **Oliver Davis**, the attorney for the appellant, at **Washington Appellate Project**, 1511 Third Avenue, Suite 701, Seattle, WA 98101, containing a copy of the **Brief of Respondent**, in **STATE V. VENIAMIN PURIS**, Cause No. **62751-1-I**, in the Court of Appeals for the State of Washington, Division I.

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

  
\_\_\_\_\_  
Name

Done in Seattle, Washington

10/02/09  
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Date

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STATE OF WASHINGTON  
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