

No. 63810-6-I

COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE

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In re the Personal Restraint Petition of

WAYNE ALLEN NEWLUN,

Petitioner.

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SUPPLEMENTAL BRIEF OF PETITIONER

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A. ISSUE PRESENTED

Under the statute in effect at the time of Wayne Newlun's offenses, multiple convictions for identity theft based on multiple uses of a single means of identification from a single individual violated the Double Jeopardy Clause. Newlun was convicted three times of identity theft for using "Guy Randal's" driver's license three times. Must two of the convictions be vacated as violating double jeopardy?

B. STATEMENT OF THE CASE

1. Snohomish County Cause Number 06-1-00241-0. On January 26, 2006, Wayne Newlun was charged in Snohomish County Cause Number 06-1-00241-0 with one count of first degree identity theft, four counts of forgery, and two counts of unlawful possession of a personal identification device. Snohomish County Response to PRP, Exhibit 5. The identity theft charge alleged that on November 16, 2005, Newlun "did knowingly obtain, possess, use and transfer a means of identification and financial information" of **Guy Randall**, "with the intent to commit, aid and abet" the crime of first degree theft.<sup>1</sup> Id.

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<sup>1</sup> The identity theft charge in Snohomish County Cause Number 06-1-00241-0 alleged in full:

That the defendant, on or about the 16th day of November,

On June 30, 2006, Newlun pled guilty to all of the crimes charged. Snohomish County Response to PRP, Exhibit 7. In the guilty plea statement, as to the identity theft charge, Newlun admitted that he "knowingly possessed a means of identification and financial information belonging to Guy Randall with the intent to commit or abet the crime of First Degree Theft." Id. at 8.

The guilty plea expressly incorporated the allegations contained in the affidavit of probable cause. Id. at 10, 12. The affidavit, filed on the same date as the information, alleged that on October 31, 2005, someone broke into the vehicle belonging to Doreen and Guy Randall and stole bank documents, identification, and checks. Snohomish County Response to PRP, Exhibit 6. The affidavit further alleged that Newlun later presented "Guy Randall's ID," with Newlun's picture on it, at a Lowe's Home Improvement store in Bellevue for the purpose of renting a car. Id. at 2. The car,

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2005, did knowingly obtain, possess, use and transfer a means of identification and financial information of a person, to-wit: identification belonging to Guy Randall, with the intent to commit, aid and abet a crime, to-wit: First Degree Theft, and the defendant or an accomplice used such person's means of identification and financial information to obtain credit, money, goods, services, and other things having an aggregate value totaling more than \$1,500.00; proscribed by RCW 935.020(1) and (2), a felony; and the crime was aggravated by the following circumstance: the crime involved multiple victims and multiple incidents per victim, as provided by RCW 9.94A.535(2)(d).

Snohomish County Response to PRP, Exhibit 5.

valued at \$19,000, was not returned and was reported by the store as stolen. Id.

The allegations in the affidavit of probable cause were "taken from police reports and witness statements provided by the Everett and Bothell Police Departments." Id. at 1. One of those witness statements was provided by Jonathan Graham, a loss prevention employee of the Bellevue Lowe's. Petitioner's Reply to Snohomish County's Response to PRP, Appendix B. In the statement, Graham explained that the piece of identification used by the theft suspect was a "WA State driver's license" in the name of "Guy Randal." Id. The police report also included a photocopy of "Guy Randal's" driver's license used by the suspect. Petitioner's Reply to Snohomish County's Response to PRP, Appendix A.

The trial court accepted the guilty plea and entered a judgment and sentence on August 14, 2006, convicting Newlun of the seven crimes as charged. Snohomish County Response to PRP, Exhibit 8. The court imposed an exceptional sentence, finding that due to Newlun's multiple current offenses, together with his high offender score, some of the current offenses would otherwise go unpunished. Snohomish County Response to PRP, Exhibit 13 at 16-17; see RCW 9.94A.535(2)(c). The court imposed

a standard-range sentence but ordered it be served consecutively with Newlun's sentences on two other Snohomish County cause numbers (06-1-00223-1 and 06-1-00648-2), which were sentenced on the same date. Snohomish County Response to PRP, Exhibit 8 at 7.

2. Snohomish County Cause Number 06-1-00648-2. On March 20, 2006, Newlun was charged in Snohomish County Cause Number 06-1-00648-2 with one count of second degree identity theft and one count of forgery. PRP, Appendix B. The identity theft charge alleged that on December 14, 2005, Newlun "did knowingly obtain, possess, use and transfer a means of identification and financial information" of **Guy Randal**<sup>2</sup> with "the intent to commit, aid and abet" the crime of forgery.<sup>3</sup> Id.

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<sup>2</sup> As explained in Snohomish County's response to the PRP, the name "Guy Randal" is spelled differently in the informations for the two cause numbers. In 06-1-00648-2, the name is spelled "Randal" but in 06-1-00241-0, it is spelled "Randall." The State believes the difference in spelling is merely a scrivener's error and that the correct spelling is "Randal." Snohomish County Response to PRP at 3 n.1. Newlun has no reason to dispute that belief.

<sup>3</sup> The identity theft charge in Snohomish County Cause Number 06-1-00648-2 alleged:

That the defendant, on or about the 14th day of December, 2005, did knowingly obtain, possess, use and transfer a means of identification and financial information of a person, to-wit: Guy Randal, with the intent to commit, aid and abet a crime, to-wit: forgery; proscribed by RCW 9.35.020(1) and (3), a felony.

PRP, Appendix B.

On June 30, 2006, Newlun pled guilty to the two offenses as charged. Snohomish County Response to PRP, Exhibit 11. In the guilty plea statement, as to the identity theft charge, Newlun admitted that he "knowingly possessed a means of identification and financial information of Guy Randal with the intent to commit or abet the crime of forgery." Id. at 6.

The guilty plea expressly incorporated the allegations contained in the affidavit of probable cause. Id. at 6, 9. The affidavit of probable cause alleged that on December 14, 2005, Newlun attempted to buy some groceries at a Safeway store in Lynnwood. Snohomish County Response to PRP, Exhibit 10. He presented a personal check drawn on the bank account of "Pavlina Selezneva" and "Valeriy Akulov," with the name "Guy Randal" printed above their names, and "a driver's license with the name Guy Randal" as identification. Id.

The trial court accepted the guilty plea and entered a judgment and sentence on August 14, 2006. Snohomish County Response to PRP, Exhibit 12. The court imposed a standard-range sentence, to run consecutively with the sentence on cause number 06-1-00241-0. Id. at 7.

3. King County Cause Number 06-1-10264-5 SEA. On December 6, 2006, Newlun was charged in King County Cause Number 06-1-10264-5 SEA with one count of second degree identity theft. PRP, Appendix C; King County Response to PRP, Appendix B. The information alleged that on December 19, 2005, Newlun "did knowingly obtain, possess, use or transfer a means of identification or financial information, to-wit: the name, date of birth, and driver's license number" of **Guy Michael Randal**, "with the intent to commit, or to aid or abet, any crime."<sup>4</sup> PRP, Appendix C.

On January 5, 2007, Newlun pled guilty to the charge. King County Response to PRP, Appendix C. In the guilty plea statement, Newlun admitted that on December 19, 2005, he "did knowingly possess & attempt to use the name, date of birth &

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<sup>4</sup> The identity theft charge in King County Cause Number 06-1-10264-5 SEA alleged:

That the defendant WAYNE ALLEN NEWLUN in King County, Washington on or about December 19, 2005, did knowingly obtain, possess, use or transfer a means of identification or financial information, to-wit: the name, date of birth, and driver's license number of another person, living or dead, to-wit: Guy Michael Randal, with the intent to commit, or to aid or abet, any crime and obtained an aggregate total of credit, money, goods, services, or anything else of value that was less than \$1500 or obtained no credit, money, goods, services or anything of value.

Contrary to RCW 9.35.020(1)(3), and against the peace and dignity of the State of Washington.

PRP, Appendix C.

driver's license number of Guy Michael Randal" with the intent to commit a crime. Id. at 9.

The guilty plea expressly incorporated the allegations contained in the certificate for determination of probable cause. Id. at 15. The certificate for determination of probable cause alleged that on December 19, 2005, Newlun entered a Money Tree in Seattle and attempted to cash two checks, one drawn on the bank account of "Heather McKey" and the other drawn on the bank account of "Prudential Financial Computer Shareholder Services," using "a Washington State driver license in the name of Guy Michael Randal" as identification. Id. at 13.

The trial court accepted the guilty plea and entered a judgment and sentence on January 29, 2007. King County Response to PRP, Appendix A. The court imposed a standard-range sentence to be served concurrently with the sentences for the three Snohomish County cause numbers discussed above. Id. at 4.

4. Direct appeal and PRP. Newlun filed an appeal challenging his exceptional sentence, which this Court affirmed. State v. Newlun, 142 Wn. App. 730, 176 P.3d 529 (2008), rev.

denied, 165 Wn.2d 1007, 198 P.3d 513 (2008). The mandate issued on February 18, 2009. PRP, Appendix D.

On July 16, 2009, Newlun filed a personal restraint petition (PRP) in this Court. He argued his three convictions for identity theft based on the use of a single person's (Guy Randal's) identification violated his constitutional right to be free from double jeopardy under State v. Leyda, 157 Wn.2d 335, 138 P.3d 610 (2006). He also argued that his guilty plea in Snohomish County Cause Number 06-1-00241-0 was involuntary, and that the State had breached the plea agreement. In response, both the Snohomish County and King County prosecutors argued Newlun waived his right to raise the double jeopardy claim, because the violation could not be established from the record. This Court dismissed the PRP as to Newlun's claims that the plea was involuntary and that the prosecutor breached the plea agreement. But the Court determined the double jeopardy claim had potential merit, referred the case to a panel of judges, and appointed counsel to represent Newlun.

C. ARGUMENT

TWO OF MR. NEWLUN'S THREE CONVICTIONS FOR IDENTITY THEFT OF "GUY RANDAL" MUST BE VACATED, BECAUSE NEWLUN COMMITTED ONLY ONE "UNIT OF PROSECUTION" FOR THE CRIME

1. Mr. Newlun is entitled to relief by way of a PRP. A

person filing a PRP is entitled to relief if he is under an unlawful restraint as defined in RAP 16.4. A person is under a "restraint" where the person is confined as a result of a judgment or sentence in a criminal case. RAP 16.4(b). Mr. Newlun is presently confined as a result of his criminal judgment and sentences and is therefore "restrained" for purposes of RAP 16.4.

A restraint is "unlawful" where "[t]he conviction was obtained . . . in violation of the Constitution of the United States or the Constitution . . . of the State of Washington." RAP 16.4(c)(2). Where a constitutional error is alleged, the petitioner must show that the error occurred and that it actually prejudiced him. In re Pers. Restraint of Lord, 152 Wn.2d 182, 188, 94 P.3d 952 (2004). Prejudice is established where the petitioner shows he was punished multiple times for the same offense in violation of the Double Jeopardy Clause. In re Pers. Restraint of Borrero, 161 Wn.2d 532, 536, 167 P.3d 1106 (2007) (citing In re Pers. Restraint of Orange, 152 Wn.2d 795, 804, 100 P.3d 291 (2004)). Multiple

convictions in violation of double jeopardy constitute "punishment," even where no additional sentence is imposed. State v. Gohl, 109 Wn. App. 817, 822, 37 P.3d 293 (2001) (citing Ball v. United States, 470 U.S. 856, 865, 105 S.Ct. 1668, 84 L.Ed.2d 740 (1985); In re Pers. Restraint of Davis, 142 Wn.2d 165, 171, 12 P.3d 603 (2000)).

Therefore, if Newlun was convicted multiple times for the same offense, prejudice is established and the petition must be granted.

2. Newlun's multiple convictions for using "Guy Randal's" driver's license violated the Double Jeopardy Clause.

a. Newlun did not waive his right to challenge his convictions by pleading guilty. Double jeopardy claims are not waived by pleading guilty, as long as the violation is clear from the record on review. State v. Knight, 162 Wn.2d 806, 811-12, 174 P.3d 1167 (2008).

Generally, a guilty plea insulates a defendant's conviction from collateral attack. Id. at 811 (citing Tollett v. Henderson, 411 U.S. 258, 267, 93 S.Ct. 1602, 36 L.Ed.2d 235 (1973)). Since guilty pleas bypass trial, they waive constitutional rights that inhere in a criminal trial, such as the right to a trial by jury, the protection against self-incrimination, and the right to confront one's accusers.

Knight, 162 Wn.2d at 811 (citing Florida v. Nixon, 543 U.S. 175, 187, 125 S.Ct. 551, 160 L.Ed.2d 565 (2004)). "[A] counseled plea of guilty is an admission of guilt so reliable that, where voluntary and intelligent, it *quite validly* removes the issue of factual guilt from the case." Knight, 162 Wn.2d at 811 (quoting Menna v. New York, 423 U.S. 61, 62 n.2, 96 S.Ct. 241, 46 L.Ed.2d 195 (1975) (per curiam) (emphasis in Menna)). Thus, constitutional protections surrounding the determination of factual guilt are generally irrelevant because a guilty plea ensures the defendant is in fact guilty of the crime charged. Knight, 162 Wn.2d at 811 (citing Menna, 423 U.S. at 62 n.2).

But claims that "go to 'the very power of the State to bring the defendant into court to answer the charge against him' are not waived by guilty pleas." Knight, 162 Wn.2d at 811 (quoting Blackledge v. Perry, 417 U.S. 21, 30, 94 S.Ct. 2098, 40 L.Ed.2d 628 (1974)). The Double Jeopardy Clause precludes the State from "haling a defendant into court on a charge" and therefore double jeopardy claims are not waived by pleading guilty. Knight, 162 Wn.2d at 811 (quoting Menna, 423 U.S. at 62).

Where multiple convictions result from a guilty plea, the double jeopardy claim must be clear from the record on review.

Knight, 162 Wn.2d at 811-12 (citing United States v. Broce, 488 U.S. 563, 575-76, 109 S.Ct. 757, 102 L.Ed.2d 927 (1989) (guilty plea prevents defendant from expanding record to prove two convictions arose from a single unit of prosecution)). If the double jeopardy violation is clear from the record, a petitioner is entitled to relief. Knight, 162 Wn.2d at 812.

Here, as discussed below, the double jeopardy violation is clear from the record on review, and therefore Newlun is entitled to relief despite his guilty pleas.

b. At the time of Newlun's offenses, multiple convictions of identity theft based on multiple uses of a single means of identification of a single individual violated the Double Jeopardy Clause. The Double Jeopardy Clause of the Fifth Amendment to the United States Constitution provides: "Nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb." Article I, section 9 of the Washington Constitution provides, "No person shall . . . be twice put in jeopardy for the same offense." The state constitutional prohibition against double jeopardy offers the same scope of protection as its federal counterpart. State v. Gocken, 127 Wn.2d 95, 107, 896 P.2d 1267 (1995).

The proper interpretation and application of the Double Jeopardy Clause is a question of law reviewed de novo. Knight, 162 Wn.2d at 810 (citing State v. Womac, 160 Wn.2d 643, 649, 160 P.3d 40 (2007)).

The double jeopardy provisions of the United States and Washington State Constitutions preclude convicting a defendant more than once under the same criminal statute if only one "unit" of the crime has been committed. State v. Leyda, 157 Wn.2d 335, 342, 138 P.3d 610 (2006). Where a defendant is convicted of violating the same statute multiple times, the double jeopardy question is what the Legislature intended as the punishable act under the statute, that is, the "unit of prosecution" for the crime. Id.

At the time Newlun committed his offenses in 2005<sup>5</sup>, the identity theft statute provided: "No person may knowingly obtain, possess, use, or transfer a means of identification or financial information of another person, living or dead, with the intent to commit, or to aid or abet, any crime." Former RCW 9.35.020(1)

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<sup>5</sup> The Legislature amended the identity theft statute in 2008 and expressly rejected the Supreme Court's holding in State v. Leyda, 157 Wn.2d 335, regarding the unit of prosecution for the crime. See S.B. 5878, 60th Leg., Reg. Sess. (2008). The new statute took effect June 12, 2008, and therefore does not apply to Newlun's offenses. Id.

(2004).<sup>6</sup> A person who violated the statute and "obtain[ed] an aggregate total of credit, money, goods, services, or anything else of value in excess of one thousand five hundred dollars in value"

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<sup>6</sup> The statute provided in full:

(1) No person may knowingly obtain, possess, use, or transfer a means of identification or financial information of another person, living or dead, with the intent to commit, or to aid or abet, any crime.

(2) Violation of this section when the accused or an accomplice uses the victim's means of identification or financial information and obtains an aggregate total of credit, money, goods, services, or anything else of value in excess of one thousand five hundred dollars in value shall constitute identity theft in the first degree. Identity theft in the first degree is a class B felony punishable according to chapter 9A.20 RCW.

(3) Violation of this section when the accused or an accomplice uses the victim's means of identification or financial information and obtains an aggregate total of credit, money, goods, services, or anything else of value that is less than one thousand five hundred dollars in value, or when no credit, money, goods, services, or anything of value is obtained shall constitute identity theft in the second degree. Identity theft in the second degree is a class C felony punishable according to chapter 9A.20 RCW.

(4) A person who violates this section is liable for civil damages of five hundred dollars or actual damages, whichever is greater, including costs to repair the victim's credit record, and reasonable attorneys' fees as determined by the court.

(5) In a proceeding under this section, the crime will be considered to have been committed in any locality where the person whose means of identification or financial information was appropriated resides, or in which any part of the offense took place, regardless of whether the defendant was ever actually in that locality.

(6) The provisions of this section do not apply to any person who obtains another person's driver's license or other form of identification for the sole purpose of misrepresenting his or her age.

(7) In a proceeding under this section in which a person's means of identification or financial information was used without that person's authorization, and when there has been a conviction, the sentencing court may issue such orders as are necessary to correct a public record that contains false information resulting from a violation of this section.

was guilty of first degree identity theft. Former RCW 9.35.020(2) (2004). A person who violated the statute and "obtain[ed] an aggregate total of credit, money, goods, services, or anything else of value that [wa]s less than one thousand five hundred dollars in value, or when no credit, money, goods, services, or anything of value [wa]s obtained" was guilty of second degree identity theft. Former RCW 9.35.020(3) (2004).

In Leyda, the Supreme Court determined that the unit of prosecution for the crime of identity theft was "any one act of either knowingly 'obtain[ing], possess[ing], us[ing], or transfer[ring] a means of identification or financial information of another person . . . with the intent to commit, or to aid or abet, any crime.'" Leyda, 157 Wn.2d at 337-38 (quoting former RCW 9.35.020(1) (2004)).

Thus,

once the accused has engaged in any one of the statutorily proscribed acts against a particular victim, and thereby committed the crime of identity theft, the unit of prosecution includes any subsequent proscribed conduct, such as using the victim's information to purchase goods after first unlawfully obtaining such information.

Id. at 345.

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Former RCW 9.35.020 (2004).

Identity theft, the Supreme Court explained, "is a crime committed against each person whose identity has been stolen." Id. at 346. Under former RCW 9.35.020(1) (2004), the unit of prosecution turned on each means of identification or financial information of each separate individual that the accused possessed, obtained, used, or transferred with the intent to commit a crime. Id. at 346 n.9. Thus, there was no constitutional violation if the State charged an accused with a different count for using, possessing, transferring, or obtaining a different individual's means of identification or financial information. Id. Similarly, separate crimes could be charged where the accused possessed, obtained, used, or transferred multiple means of a single individual's financial information or identification with the requisite intent. Id. at 346 n.9. But where the accused obtained and used a single means of identification of a single individual, only one unit of the crime occurred under the former statute, even if the accused used the means of identification multiple times. Id. at 346-47.

Although multiple uses of a single individual's means of identification could not be charged as multiple offenses, multiple uses could lead to an increased penalty for the crime. Id. at 347-48. The degree of the crime is determined by the "aggregate"

economic value of what the accused obtained while using the information or identification. Id. at 347; former RCW 9.35.020(2), (3) (2004). Thus, under the former statute, where a single means of identification was used multiple times, the degree of the crime was determined by aggregating the total amount of value obtained through the multiple uses, not by separating each use into a separate transaction and aggregating the total value obtained during that particular transaction. Leyda, 157 Wn.2d at 348.

c. Newlun committed only one unit of the crime of identity theft despite his multiple uses of "Guy Randal's" driver's license. Once the statutory unit of prosecution is determined, an analysis is necessary to decide whether, under the facts of the case, more than one unit of prosecution is present. Leyda, 157 Wn.2d at 350. As stated above, any double jeopardy violation must be clear from the record on review. Knight, 162 Wn.2d at 812. Where the conviction results from a guilty plea, the record on review includes police reports that are referenced in the plea. State v. Knight, 134 Wn. App. 103, 110, 138 P.3d 1114 (2006), aff'd, 162 Wn.2d 806, 174 P.3d 1167 (2008).

Here, it is clear from the record that Newlun committed only one unit of the crime of identity theft in regard to "Guy Randal,"

because he used only a single means of Randal's identification—his driver's license.

In Snohomish County cause number 06-1-00241-0, the affidavit of probable cause alleged that Newlun presented "Guy Randall's ID" at a Lowe's Home Improvement store in Bellevue on November 16, 2005, for the purpose of renting a car. Snohomish County Response to PRP, Exhibit 6. The police statement provided by the Lowe's employee explained that the identification used was a "WA State driver's license" in the name of "Guy Randal." Petitioner's Reply to Snohomish County Response to PRP, Appendix B. The police report also included a photocopy of "Guy Randal's" driver's license used by the suspect. Petitioner's Reply to Snohomish County Response to PRP, Appendix A. These allegations were expressly incorporated into the guilty plea. Snohomish County Response to PRP, Exhibit 6 at 1; Snohomish County Response to PRP, Exhibit 7 at 10, 12.

Similarly, in Snohomish County cause number 06-1-00648-2, the affidavit of probable cause alleged that on December 14, 2005, Newlun attempted to buy some groceries at a Safeway store by presenting a personal check and "a driver's license with the name Guy Randal" as identification. Snohomish County Response

to PRP, Exhibit 10. These allegations were expressly incorporated into the guilty plea. Snohomish County Response to PRP, Exhibit 11 at 6, 9.

Finally, in King County cause number 06-1-10264-5 SEA, Newlun admitted that he knowingly possessed and attempted to use Guy Randal's driver's license number with the intent to commit a crime. King County Response to PRP, Appendix C at 9. The certificate for determination of probable cause alleged that Newlun tried to cash two checks using "a Washington State driver license in the name of Guy Michael Randal" as identification. Id. at 13. These allegations were expressly incorporated into the guilty plea. Id. at 15.

Thus, under Leyda, Newlun committed the crime of identity theft the moment he "obtained" Guy Randal's driver's license with the intent to commit, or to aid or abet, a crime. Leyda, 152 Wn.2d at 351; former RCW 9.35.020(1) (2004). He did not violate the statute each of the three times he used or attempted to use the piece of identification. Id. Although the prosecutor was permitted to aggregate the total value of goods obtained by using that identification, in order to determine the degree of the crime, the prosecutor was not permitted to file three separate charges. Id. To

the contrary, Newlun committed only a single course of illegal conduct that amounted to one count of identity theft. Id.

3. The convictions violating double jeopardy must be vacated. Vacating convictions that violate double jeopardy is the appropriate remedy for double jeopardy violations. Knight, 162 Wn.2d at 810 (citing Womac, 160 Wn.2d at 658-60). Vacating an offending conviction is the proper remedy even when the conviction was entered pursuant to an indivisible plea agreement. Knight, 162 Wn.2d at 808; State v. Martin, 149 Wn. App. 689, 698, 205 P.3d 931 (2009). "Correctly understood, the plea agreement has no bearing on the ability of the court to vacate a conviction entered pursuant to the guilty plea itself, because the plea itself need not be disturbed." Knight, 162 Wn.2d at 812.

Thus, Newlun's latter two convictions for identity theft in regard to Guy Randal's identification must be vacated, and he is entitled to be resentenced based on one count of identity theft in the first degree. Leyda, 157 Wn.2d at 351.

#### D. CONCLUSION

Newlun's multiple convictions for identity theft based on multiple uses of "Guy Randal's" driver's license violated the Double Jeopardy Clause and his petition must therefore be granted. The

offending convictions—from Snohomish County Cause Number 06-1-00648-2 and King County Cause Number 06-1-10264-5 SEA—must be vacated. Because all of the convictions from the three Snohomish County cause numbers were sentenced on the same date in the same proceeding, and the trial court imposed an exceptional sentence based upon a consideration of all of the convictions combined, Newlun is entitled to be resentenced on all three cause numbers.

Respectfully submitted this 16th day of February, 2010.

  
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**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE**

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IN RE THE PERSONAL RESTRAINT PETITION OF	)	
	)	
WAYNE NEWLUN,	)	NO. 63810-6-I
	)	
	)	
Petitioner.	)	

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**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 16<sup>TH</sup> DAY OF FEBRUARY, 2010, I CAUSED THE ORIGINAL **SUPPLEMENTAL BRIEF OF PETITIONER** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

- |   |                   |                                     |
|---|-------------------|-------------------------------------|
| [X] ANN MARIE SUMMERS<br>KING COUNTY PROSECUTING ATTORNEY<br>APPELLATE UNIT<br>KING COUNTY COURTHOUSE<br>516 THIRD AVENUE, W-554<br>SEATTLE, WA 98104 | (X)<br>( )<br>( ) | U.S. MAIL<br>HAND DELIVERY<br>_____ |
| [X] MARY KATHLEEN WEBBER, DPA<br>SNOHOMISH COUNTY PROSECUTOR'S OFFICE<br>3000 ROCKEFELLER<br>EVERETT, WA 98201  | (X)<br>( )<br>( ) | U.S. MAIL<br>HAND DELIVERY<br>_____ |
| [X] WAYNE NEWLUN<br>283750<br>COYOTE RIDGE CORRECTIONS CENTER<br>PO BOX 769<br>CONNELL, WA 99326-0769   | (X)<br>( )<br>( ) | U.S. MAIL<br>HAND DELIVERY<br>_____ |

**SIGNED** IN SEATTLE, WASHINGTON THIS 16<sup>TH</sup> DAY OF FEBRUARY, 2010.

X \_\_\_\_\_ 

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STATE OF WASHINGTON  
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