

COURT OF APPEALS
DIVISION TWO
OF THE STATE OF WASHINGTON

FILED
COURT OF APPEALS
06 SEP -1 PM 12:01
STATE OF WASHINGTON
BY [Signature]
DEPUTY

STATE OF WASHINGTON)
)
 Respondent,)
)
 v.)
)
 Nathan Hermann)
 (your name))
)
 Appellant.)

No. 34161 - 1 - II

STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

I, Nathan Hermann, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

Additional Ground 1

Please see attachment:

"I would like to have a note on the record that was not allowed"
clerk paper for issues,

Additional Ground 2

CERTIFICATE OF MAILING

I certify that I mailed
1 copies of SAG
brief to T. Doyle
& M. Cobble
9/27/06 [Signature]
Date Signed

If there are additional grounds, a brief summary is attached to this statement.

Date: 8-29-06

Signature: [Signature]

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STATE OF WASHINGTON

NO. 34161 -1- II BY _____

DEPUTY

COURT OF APPEALS, DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

NATHAN W. HERMANN,

Appellant,

APPEAL FROM THE SUPERIOR COURT

FOR MASON COUNTY

The Honorable James B. Sawyer II, Judge

Cause No. 05-1-00202-6

STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW

NATHAN W. HERMANN

D.O.C.#792817

Washington State Penitentiary
1313 North 13th Ave.
Walla Walla , WA. 99362

GROUND 1

Statutory interpretation is a matter of law that is reviewed de novo. State v. Keller, 143 Wn.2d 267,276, 19 P.3d 1030 (2001).

The Pro-se Defendant, Hermann, challenges RCW 9A.82.050, on three (3) grounds: 1) The legislation itself is being applied too broadly; 2) the legislature's intent is misapplied; 3) insufficient evidence in Hermann's case.

RCW 9.A.82.050 states that (1) "[A] person who knowingly initiates, organizes, plans, finances, directs, manages, or supervises the theft of property for sale to others, or knowingly traffics in stolen property in the first degree."

First, the Defendant contends that the first part of the statute above "seems to be very descriptive in describing operative actions (initiates, plans, finances, directs, manages,

or supervises), ending with the element that the actions must arrive at "[f]or sale to others."

Hermann will dispute later in this argument if he "sold" anything, but first the vague alternative description that ends the statute must be dealt with: "[O]r knowingly traffics in stolen property in the first degree."

This alternative means is murky and ambiguous at best. Instead of installing specific elements, it repeats the name of the crime, "trafficking."

In summary, it designates a definition used in Hermann's conviction, being his pawn contract stated that "this is not a "sale."
See Sales Receipt.

The broadness of the term "transfer" is where the rubber meets the road. Did the legislature intend for any "transfer" of a stolen good to be trafficking? How far can the state go in using the word "transfer" to obtain this type of conviction?

Combine the "[f]or sale to others" language with the fact that the statute falls within the RCW concerning "profiteering," and may it please the court that we see a glimmer of what the legislature and the codifier envisioned. Moreover, it would seem that the common mind would expect the crime of trafficking to be much more of an "ongoing" enterprise than a "single" theft, with no sale and/or "profiteering" involved.

Here, this case was premised on a pawn slip and the testimony of a pawn shop worker. neither produces any evidence that Hermann ever gave up any rights to the property, inter alia, to the contrary, the pawn shop slip, which is an actual contract, is very specific that Hermann still remained the owner of this property. The law of contracts is very specific, Co. v. Williams, 129 Wn.2d 565,569, 919 P.2d 594 (1996): "[A] courts' purpose in interpreting a contract is to ascertain the parties intent."

The "contract" question is simply interpreted: There was no "sale." Adding strength to the pro-se defendants' argument is the fact that the pawn shop gives the choice of either "buying" or loaning." Defendant chose [not] to sell the jewelry; therefore, Mens Rea is established. The rule of Lenity would apply. In re Winship, 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970), "[E]very element must be proven."

The state should not be able to overbroaden statute in order to stack convictions. If no "sale" occurred, this combination "theft" and "trafficking" is too close in nature without a more specific definition of what must happen to the stolen goods. A sale is different than a transfer, because although something may be transferred, there still lacks an additional element to qualify as a sale.

Neither is a loan considered a transfer

if the contract specifically states transfer of ownership does not apply. Most important is the fact a loan is not a "sale".

STATE .V. GOODMAN 150 Wn 2d 774, 781, 83 P.3d 410 (2004),

"We review a challenge to the evidence by considering the evidence in the light most favorable to the state, affording it all reasonable inferences and asking whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt".

GROUND TWO

During trial Hermanns' trial counsel conceded to the crime of theft. Under the STRICKLAND test this mistake satisfies both prongs of the ineffectiveness analysis. It was a violation of Hermanns 6th Amendment right to a trial by jury. See article III, section 2, cl.3, See also In re Winship 397 U.S. 358, 368 (1970).

(Due process requires that jury find beyond a reasonable doubt every fact necessary to constitute a crime).

Although past courts have determined that some similar behavior by trial attorney's can be found to be "strategic" or tactical, this case is unique, because not only did counsel concede the crime of theft, but his action was intrinsic to also conceding the second offense of trafficking. the trafficking offense only has two essential elements. One is that the property or object be stolen. the second is that it be trafficked. If the trial counsel concedes to the crime of theft, then it is a manifest showing that he also concedes to half of the trafficking charge.

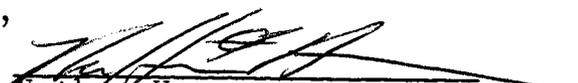
Interesting to this argument is the nexus between this and the first argument of defendants statements of additional grounds. If this Court finds that the pawn was sufficient evidence to prove that defendant trafficked, then it is a long leap to assume it would be a sound tactical decision to concede the only other element to convict. Otherwise put, if counsel realized that the "pawn slip" was going to be used to satisfy the second element, why would he "reasonably" concede to the first?

Conclusion.

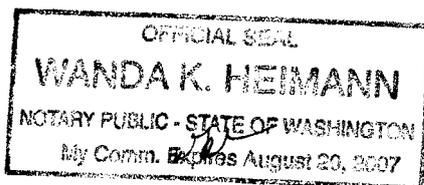
Appellant requires that the original decision be reversed. In the event that the Court finds the insufficient evidence argument persuasive, it should be remanded to the trial Court for a new trial. In the alternative event that this court rules that there is an issue with the legislative intent, this matter should be reversed with prejudice.

It should also be noted that appellant requested his clerk paperwork to enable him to have a full meaningful pro-se review.

Respectfully,


Nathan Hermann.
DOC# 792817

Subscribed and sworn to before me this 28th day of August 2006



Wanda K Heimann
Notary Public in and for the
State of Washington, Residing
at Walla Walla Washington.
My Commission Expires: 8/20/07.

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AFFIDAVIT OF SERVICE
BY MAILING

Nathan Hermann

I, Nathan Hermann, being first sworn upon oath, do hereby certify that I have served the following documents:

STATEMENT OF ADDITIONAL GROUNDS

By APPELLANT (10 pg's)

Upon: COURT OF APPEALS
DIVISION TWO
DAVID Ponzoha, Clerk
950broadway, suite300
Tacoma, WA. 98402-3636

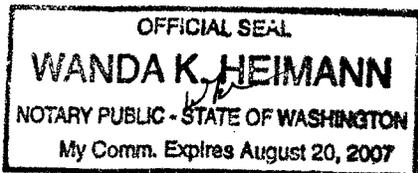
By placing same in the United States mail at:

WASHINGTON STATE PENITENTIARY
1313 NORTH 13TH AVENUE
WALLA WALLA, WA. 99362

On this 28th day of August, 2006.

Nathan Hermann
Name & Number Nathan Hermann #792817

SUBSCRIBED AND SWORN to before me this 28th day of August, 2006.



Wanda K. Heimann
Notary Public in and for the State of
Washington. Residing at Walla Walla,
WA. My Commission Expires: 8/20/07