

No. 41417-1-II

THE COURT OF APPEALS FOR THE STATE OF WASHINGTON  
DIVISION II

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**STATE OF WASHINGTON,**

Respondent,

vs.

**JAMES RAY VAN RENSELAAR,**

Appellant.

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Appeal from the Superior Court of Washington for Lewis County

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**Respondent's Brief**

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I. **COUNTERSTATEMENT OF THE ISSUES**

1. Was the evidence sufficient to convict the defendant of second-degree theft and first-degree trafficking in stolen property?
2. Can a cedar tree owned by the federal government be “property of another” under the theft statute?
3. Is proof of a trespass on public lands irrelevant to proof of theft, if trespass is not an element of the crime of theft?
4. Should the court refuse to consider the argument, raised for the first time on appeal, that concurrent criminal statutes prevented the defendant’s prosecution for first- or second-degree theft, because any such error in this case is not manifest error affecting a constitutional right?
5. Does the existence of the statute defining theft of materials from public lands preclude the State from charging and proving theft in the first or second degrees using another definition of theft?

II. **INTRODUCTION**

James Van Renselaar appeals from his convictions of second-degree theft and first-degree trafficking in stolen property. In early March 2008, he and another man were caught removing a portion of a federally-owned cedar tree from a National Forest. Van Renselaar admitted that they did not have the permit required to take the cedar and that they were taking it to sell to a mill for money. He had already sold over \$500 worth of the stolen cedar to the mill. Van Renselaar now argues, for the first time on appeal, that the State should have prosecuted him under the timber-theft statute, and its failure to do so means that the charges against him

must be dismissed. The State was under no such limitation. The jury convicted Van Renselaar of the two crimes based on sufficient evidence, and the convictions should be affirmed.

### III. STATEMENT OF THE CASE

On March 10, 2008, US Forest Service Officers Robert Tokach and Jeffrey Summers were patrolling the Snoqualmie Baker National Forest, which is in Washington. Verbatim Report Of Proceedings (VRP) (Aug. 17, 2010 AM) at 74, 79, 81.<sup>1</sup> They noticed a car parked off the road with no one around. Glancing into its open window, Tokach saw a piece of cedar and wood-harvesting tools. *Id.* at 80-81. He followed tracks leading away from the car into the timber and heard clunks. He recognized the smell of freshly cut cedar in the air. *Id.* at 81-83. He climbed up a slope and discovered James Ray Van Renselaar and John Glenn throwing blocks of cedar down towards the road. *Id.*; VRP (Aug. 17, 2010 PM) at 18. The wood was freshly cut from a nearby fallen tree. *Id.* at 6; VRP (Aug 17, 2010 AM) at 87.

Tokach knew Van Renselaar from prior cordial contacts. VRP (Aug 17, 2010 AM) at 87. Tokach asked him what they were

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<sup>1</sup> The VRP for the August 17, 2010 appears in two separately paginated volumes, one for the morning and one for the afternoon. These are indicated as AM and PM, respectively.

doing with the cedar and whether they had a permit. *Id.* at 88. Van Renselaar responded, "I guess I fucked up." He said he didn't think he could get a permit for the cedar and he needed money, so he took it without a permit to sell it. *Id.* He pointed out the chainsaw they had used to cut the blocks. *Id.* at 89. He said they had been up there before. VRP (Aug. 17, 2010 PM) at 21.

More wood was missing from the tree than appeared in the pile of blocks the men had been making. Tokach estimated that about half a cord<sup>2</sup> more cedar was missing. VRP (Aug 17, 2010 PM) at 18. He identified the wood as old growth cedar based on his training and experience. VRP (Aug 18, 2010) at 28. Later, Tokach and Summers measured the cedar bolts and the tree from which they had been cut. VRP (Aug 17, 2010 PM) at 7-10. They submitted these figures to another Forest Service employee, who calculated the approximate value of the missing wood, including the blocks found at the scene, at \$2600. *Id.* at 9, 69-74.

Tokach eventually confirmed through Forest Service records that neither Glenn nor Van Renselaar had a permit to take cedar from the National Forest. *Id.* at 11-12. He testified that the trees are owned by the U.S. Department of Agriculture. VRP (Aug. 18,

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<sup>2</sup> A cord is 4 x 4 x 8 feet of wood. VRP (Aug 17, 2010 PM) at 52.

2010) at 28-29. A USFS-issued permit is necessary to harvest trees from National Forest land, even if the tree fell over on its own. VRP (Aug. 17, 2010 AM) at 75, VRP (Aug 18, 2010) at 28. For trees in the Snoqualmie Baker National Forest, permits are rare. VRP (Aug. 17, 2010 AM) at 75. The permits specify when and from what part of the National Forest one may remove trees. *Id.* at 77.

Separate from a federal permit to remove cedar from the National Forest, one can get a county-issued permit to transport cedar—this kind of permit allows a landowner to cut cedar on his or her own property and sell it. *Id.* at 78-79. The permit would specify the property boundaries, where the cedar was coming from on the property, and when it could be taken. *Id.*

Donald Sargent testified that on March 8, 2010, Van Renselaar contacted him for help cleaning up half a cord of cedar bolts. VRP (Aug 18, 2010) at 30-32. Sargent had a county-issued permit allowing him to sell cedar from specified parcels of his own land. *Id.* at 25-27. Sargent had never had a permit to remove timber from the National Forest. *Id.* Van Renselaar told Sargent that he needed to use Sargent's permit to sell the cedar and would pay him for his time. *Id.* at 33, 48. Sargent knew his permit didn't

authorize this. *Id.* But the cedar was the best he had seen in 30 years; it was old-growth cedar. *Id.* at 43, 46. It was better than the cedar that Sargent had seen taken from old logging sites. *Id.* at 47. Sargent admitted “he didn’t really want to know” where it came from. *Id.* 48. Sargent and Van Renselaar went to a mill in Napavine and sold the cedar to the mill owner using Sargent’s permit. *Id.* at 34-35. Sargent received about \$560 for the wood, which he gave to Van Renselaar. *Id.* at 35-36. Van Renselaar gave Sargent \$100 back for his trouble.<sup>3</sup> *Id.*

The mill owner confirmed that the transaction had taken place and recognized the receipt. *Id.* at 52-53. He remembered buying half a cord of cedar from Sargent, on Sargent’s permit, for \$562.03. *Id.* at 54. This was the top price at the time: old growth cedar is scarce. *Id.* at 58. He remembered that another man came with Sargent that day. *Id.* at 54.

The State charged Van Renselaar with first-degree theft and first-degree trafficking in stolen property.<sup>4</sup> Third Amended Information, CP at 57-63. The theft count and jury instructions

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<sup>3</sup> Sargent’s charges from this incident were pled down to a misdemeanor. The terms of his plea deal did not require him to testify against Van Renselaar. VRP (Aug. 17, 2010 PM) at 49.

<sup>4</sup> He was also charged with unrelated counts of driving while his license was suspended.

charged Van Renselaar with wrongfully obtaining property belonging to another, namely, a cedar tree worth in excess of \$1500, with intent to deprive. *Id.*; VRP (Aug. 18, 2010) at 61-62. The jury was also instructed on the lesser-included offense of second-degree theft, with the only difference being that cedar was valued at between \$250 and \$1500.<sup>5</sup> VRP (Aug. 18, 2010) at 62-63. The jury found that only the lesser value was proven beyond a reasonable doubt; it convicted Van Renselaar of second-degree theft and first-degree trafficking in stolen property. *Id.* at 96. The court sentenced Van Renselaar within the standard range, based on his history: 36 months on the trafficking concurrent to 12 months on the theft. *Id.* at 120. This timely appeal followed.

## **ARGUMENT**

### *Summary of Argument*

The State successfully prosecuted the defendant for second-degree theft and first-degree trafficking in stolen property, producing evidence sufficient to convict him of both charges at trial. Mr. Vanrenselaar claims for the first time on appeal that the State should have prosecuted him under the timber-theft statute, RCW

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<sup>5</sup> At the time of the offense, the value cutoff for theft in the first degree was \$1500 and the cutoff for second degree was \$250. Former RCW 9A.56.030-.040 (2008).

79.02.310, and that the State failed to charge, prove, and instruct the jury properly as to this other crime. But, the timber-theft statute does not preclude prosecutions under the first- or second-degree theft statutes because the statutes are not concurrent. Thus, the State was permitted to charge the defendant as it did in this case. The court should affirm his convictions.

**I. THE EVIDENCE WAS SUFFICIENT TO CONVICT THE DEFENDANT OF SECOND-DEGREE THEFT AND FIRST-DEGREE TRAFFICKING IN STOLEN PROPERTY.**

**A. Background And Standard Of Review**

“The test for determining the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found guilt beyond a reasonable doubt. . . . [A]ll reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant. A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom.” *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992) (citations omitted).

**B. There Was Ample Evidence Of Theft: The Defendant Wrongfully Took Federally-Owned Cedar Worth Between \$250-\$1500, With Intent To Deprive, In March 2008 In Washington.**

As charged in this case, the elements of theft in the second degree are that between March 1 and March 10, 2010 in Washington, the defendant wrongfully obtained property of another valued between \$250 and \$1500 within intent to deprive. See RCW 9A.56.040; VRP (Aug. 18, 2010) at 61-63.

The State's evidence showed that on March 10, 2010, Officer Tokach caught Van Renselaar in the act of taking cedar from the Snoqualmie Baker National Forest, which was in Washington. The cedar was federal property that could not be taken without a permit. Van Renselaar admitted that he had no permit and was taking the wood to sell it to a mill because he was unemployed. He was conscious of the wrongfulness of his actions: "I guess I fucked up," he declared. He also said he had been there before. Sargent testified that he helped Van Renselaar clean up and sell old growth cedar two days beforehand for about \$560. Although Sargent "didn't really want to know" the wood's origin, the jury could easily infer that it came from the National Forest. It was about half a cord of wood, which accounted for the wood Tokach

described as missing from the scene. Neither Van Renselaar, Sargent, nor John Glenn had a permit to remove cedar from federal land. In short, the jury could easily conclude that Van Renselaar took \$560 worth of federal property around March 8 from the National Forest in Washington and was poised to take more. He obviously intended to deprive the federal government of the property because he sold it irreversibly. His taking was wrongful by his own admission and by the proven fact that he did not have the necessary permit.

Despite the trial evidence that the U.S. Department of Agriculture owned the cedar in this case, the defense argues that the State cannot show that the trees were the “property of another.” The defense’s factual dispute on this point is irrelevant now that the jury has convicted Van Renselaar, as this court reviews the trial evidence in the light most favorable to the State. *Salinas*, 119 Wn.2d at 201.

Moreover, as a matter of law the cedar was federal property. Unlike wild animals, timber and crops are associated with the land and usually pass with title to it. *Compare, e.g., Kruger v. Horton*, 106 Wn.2d 738, 744, 725 P.2d 417 (1986) (holding that title to timber and crops pass with title to the land), *with State v.*

*Longshore*, 141 Wn.2d 414, 421-26, 5 P.3d 1256 (2000) (observing that wild animals must be reduced to possession to be property). Federally owned land equals federally owned cedar. The State or Federal government can be the “another” in a prosecution for theft. See, e.g., *In re Pers. Restraint of Tortorelli*, 149 Wn.2d 82, 66 P.3d 606 (2003) (theft of State-owned timber in Lake Washington); *State v. Holt*, 52 Wn.2d 195, 324 P.2d 793 (1958) (theft of federal and state surplus property).

Even if the State had not adequately established that the property was the federal government’s, the identity of the owner of stolen property is not an element of theft. *State v. McReynolds*, 117 Wn. App. 309, 335-36, 71 P.3d 663 (Div. 3 2003); *State v. Greathouse*, 113 Wn. App. 889, 901, 56 P.3d 569 (Div. 1 2002); *State v. Easton*, 69 Wn.2d 965, 967-68, 422 P.2d 7 (1966); *Holt*, 52 Wn.2d at 199. The State need only show that the property was not the defendant’s. *Id.* Here it was clear from the defendant’s own admissions that he knew the tree was not his. Similarly, Sargent knew that the cedar was stolen, which is why he testified that he turned a blind eye to its origin when selling it with Van Renselaar. Thus, the evidence was sufficient to show that the cedar tree was the property of another.

Finally, the defense argues that the State failed to prove a willful trespass on public lands as part of this charge. Trespass is not an element of theft by taking. *State v. Smith*, 115 Wn.2d 434, 441, 798 P.2d 1146 (1990). The State did not need to prove trespass to convict in this case, see *id.*, because the State need only prove the elements of a crime to convict.<sup>6</sup> See, e.g., *State v. Deer*, 158 Wn. App. 854, 865, 244 P.3d 965 (2010) (holding that due process does not require the State to prove facts that are not elements of the crime). The State proved those elements in this case, and Van Renselaar's theft conviction should be affirmed.

**C. There Was Ample Evidence Of Trafficking: The Defendant Stole The Cedar To Sell It For Money And Admitted Doing So.**

As charged in this case, the elements of first-degree trafficking in stolen property are that between March 1 and March 10, 2010 in Washington, the defendant knowingly trafficked in stolen property. See RCW 9A.82.050; VRP (Aug. 18, 2010) at 60-61. "Stolen property" means anything valuable obtained by theft,

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<sup>6</sup> The State may have unwittingly proved trespass, in any event. Taking federal cedar without a permit from National Forest land, up an embankment from a road where no path led, may constitute a trespass to land because it is an unauthorized use of the land there. It is certainly a trespass to chattels, which would have been a common law trespass before the distinction between trespass and trespass on the case.

and “trafficking” means to sell or transfer stolen property to another person or to possess it with intent to sell. *Id.*

As described in subsection I.B, above, the evidence in this case showed that Van Renselaar stole cedar from the National Forest in Washington and sold it to a mill on March 8, 2010, with Sargent’s help. This is exactly what Van Renselaar told Tokach he was doing when caught stealing more wood two days later. The evidence of trafficking was overwhelming. The court should affirm Van Renselaar’s conviction on this charge.<sup>7</sup>

**II. THE TIMBER-THEFT STATUTE DOES NOT PRECLUDE THE STATE FROM PROSECUTING UNDER OTHER DEFINITIONS OF THEFT.**

The State charged Van Renselaar under 9A.56.030 and .040, defining “theft” from 9A.56.020(1)(a) as “To wrongfully obtain . . . the property or services of another . . . , with intent to deprive him or her of such property or services.” Van Renselaar points to another statute that defines timber theft more specifically:

Every person who willfully commits any trespass upon any public lands of the state and cuts down, destroys, or injures any timber, or any tree . . . or takes, or removes, or causes to be taken, or removed,

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<sup>7</sup> The defense’s only challenge to this conviction is that without evidence of theft, the trafficking charge fails. The premise is false: there was ample evidence of theft, which the jury believed.

therefrom any wood or timber lying thereon . . . is guilty of theft under chapter 9A.56 RCW.

RCW 79.02.310. For the first time on appeal, he argues that the general theft and timber-theft statutes concurrently proscribe the same conduct, so the State had to proceed under the timber-theft statute. Without proof of a trespass, Van Renselaar maintains, no prosecution lies for theft of public timber. The court should not consider this argument because it does not identify a manifest error affecting a constitutional right. On the merits, the timber-theft statute is not concurrent to the first- and second-degree theft statutes, so no limitation restricted the State from charging and proving that Van Renselaar committed theft in this case.

#### **A. Background And Standard Of Review**

“When a specific statute and a general statute punish the same conduct, the statutes are concurrent and the State can only charge a defendant under the specific statute.” *State v. Wilson*, 158 Wn. App. 305, 313-14, 242 P.3d 19 (Div. 1 2010). Whether two statutes are concurrent is a legal question reviewed de novo. *Id.* at 314. Statutes are concurrent only when every violation of the specific statute will violate the general statute—i.e., when all the elements of the general statute are also elements of the specific

statute. *Id.* This inquiry turns on the elements of the statutes, not on the facts of the particular case. *Id.*

The concurrent-statutes question has two facets. One is of statutory construction. *State v. Shriner*, 101 Wn.2d 576, 581-82, 681 P.2d 237 (1984); *State v. Darrin*, 32 Wn. App. 394, 396-97, 647 P.2d 549 (Div. 2 1982). Limiting prosecutors to the specific statute ensures that charging decisions comport with legislative intent in a given area. *Wilson*, 158 Wn. App. at 314. However, if the legislature did not intend to preclude a general statute's application in a specific context, the concurrent-statutes bar does not apply. *See Darrin*, 32 Wn. App. at 397-98. The other facet of the doctrine is based in constitutional equal protection. *State v. Presba*, 131 Wn. App. 47, 54-55, 126 P.3d 1280 (Div. 1 2005). Statutes that have identical elements but proscribe different penalties may violate equal protection by giving prosecutors unfettered discretion to determine criminal penalties. *See generally City of Kennewick v. Fountain*, 116 Wn.2d 189, 802 P.2d 1371 (1991). But, there is no constitutional problem if "two statutes, although perhaps treating with the same subject matter, create different crimes with different proof requirements." *Darrin*, 32 Wn. App. at 398; *accord Presba*, 131 Wn. App. at 54.

**B. In The Context Of This Case, The Defendant Cannot Raise His Concurrent-Statutes Argument For The First Time On Appeal.**

An appellate court may refuse to hear any claim of error not raised at trial unless it is a manifest error affecting a constitutional right. RAP 2.5(a). Forcing litigants to raise issues at trial serves judicial economy. *State v. O'Hara*, 167 Wn.2d 91, 217 P.3d 756 (2009). It also serves fairness. Van Renselaar did not raise his claim that the State should have proceeded under the timber-theft statute at trial, when the State might have evaluated it and altered its proof accordingly.<sup>8</sup> Indeed, were the court to be persuaded by Van Renselaar's arguments at this point, the State would have no opportunity to correct this alleged deficiency of proof, because double jeopardy would bar retrial. This court should refuse to consider Van Renselaar's concurrent statute argument because it was not a manifest error affecting a constitutional right.

**i. Only the statutory facet of the concurrent-statutes rule is implicated by the facts of this case.**

RCW 9A.56.020(1)(a) defines theft, inter alia, as "[t]o wrongfully obtain . . . the property or services of another . . . , with

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<sup>8</sup> Officer Tokach could have described the park rules and regulations to determine whether Van Renselaar was authorized to be off of the road and up an embankment, where he was found.

intent to deprive him or her of such property or services.” RCW

79.02.310 provides that it is theft if one:

willfully commits any trespass upon any public lands of the state and cuts down, destroys, or injures any timber, or any tree . . . or takes, or removes, or causes to be taken, or removed, therefrom any wood or timber lying thereon, or maliciously injures or severs anything attached thereto, or the produce thereof, or digs, quarries, mines, takes or removes therefrom any earth, soil, stone, mineral, clay, sand, gravel, or any valuable materials.

From the marked difference between these statutes, it is clear that only the statutory concurrent-statutes rule is at issue in this case.

The general theft statute prohibits wrongfully obtaining another’s property with intent to deprive, whereas the timber-theft statute requires a willful trespass and any of several injuries to public resources that do not involve wrongful taking or intent. The statutes have different elements and apply in different situations. There is no danger of unfettered charging discretion in this context, and hence no equal protection claim. *Darrin*, 32 Wn. App. at 398.

**ii. The defendant’s claim does not affect a constitutional right, and so cannot be raised for the first time on appeal.**

To raise his concurrent-statutes argument for the first time on appeal, Van Renselaar must demonstrate that his claimed error

was “truly of constitutional dimension.” *O’Hara*, 167 Wash.2d at 98. But, the due process aspect of that rule is clearly inapplicable because of the statutes involved in this case. At best, Van Renselaar’s argument is that, as a matter of statutory construction, the general theft statute did not apply to him and the timber-theft statute did. This not a constitutional matter.

Van Renselaar attempts to avoid this obstacle by raising several constitutional claims based on the absence of proof under the timber-theft statute. All of these claims assume, as a prerequisite, that the State had to prove the timber-theft statute’s elements rather than the elements of general theft. I.e., the court must rule in Van Renselaar’s favor on the untimely statutory argument *before* it can reach any constitutional issues. Since the court should refuse to consider his statutory argument under RAP 2.5(a), no constitutional issues arise. The defendant’s only freestanding constitutional argument is whether the State proved the crimes charged with sufficient evidence—which was addressed above. Van Renselaar’s should be precluded from raising his nonconstitutional concurrent-statute claim before this court.

**C. The Timber-Theft Statute Is Not Concurrent To The First- And Second-Degree Theft Statutes.**

Van Renselaar also loses on the merits. The timber-theft statute is not concurrent to the first- or second-degree theft statutes. Formally, not every element of first- or second-degree theft appears in the timber-theft statute. Factually, timber theft is based on entirely different circumstances than general theft by taking, so proof of the former does not entail proof of the latter. As a matter of policy, interpreting the timber-theft statute to preempt traditional theft-by-taking prosecutions does not further the goal of safeguarding public resources. The legislature did not intend to prohibit general theft prosecutions in the context of this case.

- i. Formally, although timber theft always constitutes theft, not every violation of the timber-theft statute violates the first- or second-degree theft statutes.**

The question of whether timber-theft and general theft are concurrent arises because of RCW 79.02.310's unusual drafting, which makes any willful trespasser on public lands who inflicts an injury to public timber "guilty of theft under chapter 9A.56 RCW." This is unusual because one who willfully trespasses in a State park and then kicks and breaks a tree limb, for example, is guilty of

theft under the timber-theft statute but in no way committed a traditional theft. But by definition, timber theft under RCW 79.02.310 is always theft.

Nevertheless, not every violation of the timber-theft statute violates the first- or second-degree theft statutes, RCW 9A.56.030–.040. This is because the latter two each have a monetary element that timber-theft lacks. At the time of this case, first-degree theft required “theft of . . . [p]roperty or services which exceed(s) one thousand five hundred dollars in value.” Former RCW 9A.56.030 (2008). Second-degree theft required “theft of . . . [p]roperty or services which exceed(s) two hundred fifty dollars in value but does not exceed one thousand five hundred dollars in value.” Former RCW 9A.56.040 (2008). One could commit timber theft of any property worth less than \$250 and it would not be theft in the first or second degree. This difference in elements means that the statutes are not concurrent. *State v. Chase*, 134 Wn. App. 792, 802-03, 142 P.3d 630 (Div. 1 2006) (“[T]he question is whether *all* violations of the [specific] statute are necessarily violations of the [general] statute. Because they are not, the statutes are not concurrent.”).

A difference in the monetary element alone is enough to prevent statutes from being concurrent. *Chase* addressed whether first-degree theft and rental/leased-property-theft statute were concurrent. *Id.* at 800. The only element that differed between the two charges was their definition of value. Because of this difference in valuation alone, one could commit the theft of rental/leased property without committing first-degree theft and the statutes were not concurrent. *Id.* at 800-803. Similarly, the joyriding and first-degree theft statutes are not concurrent because the first-degree theft statute requires a minimum monetary amount to be stolen and joyriding does not. *State v. Walker*, 75 Wn. App. 101, 106, 879 P.2d 957 (Div. 1 1994). Because timber theft has no minimum monetary requirement and first- and second-degree theft do, the statutes are not concurrent and the State was not barred from charging general theft here.

- ii. **As a factual matter, timber theft and general theft have entirely different elements, and so proof of the former does not always entail proof of the latter.**

More broadly, however, the reason for the concurrent statutes rule is that if the general statute could be used instead of the concurrent statute, it would effectively repeal the specific statute. In *State v. Danforth*, 97 Wn.2d 255, 643 P.2d 882 (1982),

the court considered whether the general escape statute was concurrent to the statute proscribing willful failure to return to work release. The latter was identical to the former except that it required that the defendant *willfully* fail to return to work release, rather than simply know that his action would bring about his escape. *Id.* at 258-59. Allowing proof of general escape would eliminate the legislative requirement that escape from work-release be willful to be punishable; it would effectively repeal the more specific work-release crime. *Id.* This result thwarted legislative intent. The court therefore prohibited prosecutions under the general escape statute in the context of failure to return to work release. *Id.* at 259. *Danforth's* reasoning explains the statutory facet of the concurrent-statute rule, namely, that prosecutors should not be allowed to usurp the legislative intent behind the specific crime by always charging the (identically proven, but less strict) general crime.

The dissimilarity between general theft and timber-theft statutes make *Danforth's* reasoning inapplicable here. The timber theft statute covers a vast amount of behavior that has nothing to do with traditional theft. Any injury to timber by a willful trespasser on public lands will violate the statute, as will injury to produce, or

mining, etc. See RCW 79.02.310. Because the timber-theft statute is in many ways broader than the general theft statute, prosecutions charging general theft-by-taking when its elements are met leave plenty of room for the timber-theft statute's sweep. It is simply not the case that, when confronted with any given violation of the timber-theft statute, a prosecutor will be able to prove general theft. Consequently, there is no worry that prosecutors will encroach upon the legislature's role. This fact makes *Danforth*, and the concurrent-statutes rule, inapplicable.

**iii. The legislative intent of the timber-theft provision was to define theft more broadly on public lands, not to prohibit traditional prosecutions for theft of public timber.**

The foregoing discussion hopefully shows that the legislative intent of the timber-theft statute was not to preclude general theft prosecutions of public timber. The timber-theft statute is too different from the general theft statute for that to be so. Rather, the intent of the statute is to prevent trespass, waste, and damage to public resources, especially cedar. See RCW 79.02.300 (directing the department of natural resources to "investigate all trespasses and wastes upon, and damages to, public lands of the state, and to cause prosecutions for . . . the same"). To this end, the statute

authorizes treble civil damages for timber poaching, RCW 79.02.320, and specifically directs the board of natural resources to protect against cedar theft. RCW 79.02.370. A remedial statute is to be construed in light of its purpose. See *Prezant Assocs., Inc. v. Dep't of Labor & Indus.*, 141 Wn. App. 1, 7-8, 165 P.3d 12 (2007). Moreover, the legislature's will is better served if two statutes can be harmonized and each given meaning. *Darrin*, 32 Wn. App 396 (holding that the specialized forest products statute does not preempt theft prosecutions).

Rather than treat the timber-theft statute as precluding general theft-by-taking prosecutions, it is sensible to believe that the legislature intended to broaden the definition of theft in the public-resources context by enacting the law. In other words, the legislature intended to allow traditional theft prosecutions of public timber, plus prosecutions under the timber-theft statute where the traditional elements of theft could not be proven. The concurrent-statutes rule is, at bottom, a rule of statutory construction. It does not apply here, where it would thwart the legislature's intent to broadly protect public resources.

**D. The Defendant's Contentions Based On The Failure To Conform This Prosecution To The Timber-Theft Statute Are Irrelevant.**

The concurrent-statutes rule did not bar the State from charging the defendant with general theft, as it did in this case. Consequently, Van Renselaar's multiple contentions based on the failure to conform this prosecution to the timber-theft statute are irrelevant. If the State was not precluded from charging theft-by-taking, no proof of trespass was necessary. This means that trespass did not need to be alleged in the information, included in the evidence or the jury instructions, or found by the jury. The only issue is whether the State proved second-degree theft and first-degree trafficking in stolen property through sufficient evidence, which it did. The court should affirm the defendant's convictions.

**CONCLUSION**

The evidence supported Van Renselaar's convictions for second-degree theft and first-degree trafficking in stolen property. The existence of the timber-theft statute did not require State to prove that the defendant willfully trespassed on public lands because the timber-theft and first- and second-degree theft statutes

are not concurrent. The defendant's remaining contentions are therefore irrelevant. His convictions should be affirmed.

RESPECTFULLY SUBMITTED this 27th day of May, 2011.

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