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STATE OF WASHINGTON  
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DEPUTY

NO. 41539-9-II  
IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION II

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STATE OF WASHINGTON,  
Respondent,

v.

ALLEN K. DUPUIS,  
Appellant.

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APPEAL FROM THE SUPERIOR COURT OF THE STATE  
OF WASHINGTON FOR GRAYS HARBOR COUNTY

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THE HONORABLE DAVID L. EDWARDS, JUDGE

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BRIEF OF RESPONDENT

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H. STEWARD MENEFFEE  
Prosecuting Attorney  
for Grays Harbor County

BY: Gerald R Fuller  
GERALD R. FULLER  
Chief Criminal Deputy  
WSBA #5143

OFFICE AND POST OFFICE ADDRESS  
County Courthouse  
102 W. Broadway, Rm. 102  
Montesano, Washington 98563  
Telephone: (360) 249-3951

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**RESPONDENT'S COUNTER STATEMENT OF THE CASE**

The defendant was charged by Information on August 25, 2009, with Taking or Riding in a Motor Vehicle Without the Owner's Permission., RCW 9A.56.075 (CP 1-2). The defendant pled guilty to that offense on November 1, 2010 (CP 7-15). The sentencing court made a finding, pursuant to RCW 46.20.285, that the defendant had used a motor vehicle in the commission of the offense. The facts, as set forth in the declaration in support of the warrant of arrest, are undisputed (CP 3-5).

**RESPONSE TO ASSIGNMENTS OF ERROR**

RCW 46.20.285 authorizes the revocation of the defendant's driver's license for commission of Taking a Motor Vehicle Without the Owner's Permission. RCW 46.20.285(4) provides as follows:

The department shall revoke the license of any driver for the period of one calendar year unless otherwise provided in this section, upon receiving a record of the driver's conviction of any of the following offenses, when the conviction has become final:

- (1) . . .
- (2) . . .
- (3) . . .
- (4) Any felony in the commission of which a motor vehicle is used.

It does not appear that any Washington court has decided the issue of whether a motor vehicle is "used in the commission of a crime" when the crime is the Theft of a Motor Vehicle or Taking a Motor Vehicle

Without Permission. This question was posed and then not answered by the court in State v. Dykstra, 127 Wn.App.1, 11, 110 P.3d 758 (2005).

The defendant in Dykstra, was convicted of First Degree Theft for his role in an auto theft ring. The court in Dykstra determined that the defendant had both stolen a number of motor vehicles and had used stolen motor vehicles to facilitate the thefts. The court in Dykstra found that a motor vehicle was both the object of the theft and an instrumentality used to steal other cars and car parts. Accordingly, the court in Dykstra did not answer the question of whether the conviction of theft of a motor vehicle or taking of a motor vehicle without the owner's permission could support license suspension. Dykstra 127 Wn.App. at page 12.

The standard for when a motor vehicle has been "used" in the commission of a crime has been set forth by the Supreme Court. State v. Batten, 140 Wn.2d 362, 365, 997 P.2d 350 (2000), citing to the Court of Appeals decision reported at 95 Wn.App. 127 (1999):

The vehicle must contribute in some way to the accomplishment of the crime. There must be some relationship between the vehicle and the commission or accomplishment of the crime.

In Batten, the court found that the motor vehicle had been "used" in the commission of a felony where the facts demonstrated that the defendant, who was charged with Unlawful Possession of a Firearm and Possession of a Controlled Substance, had used the motor vehicle as a place to hide the gun and the drugs.

Washington courts have since recognized that the statute clearly applies where the commission of a felony directly involves motor vehicle operation. State v. B.E.K., 141 Wn.App. 742, 746, 172 P.3d 365 (2007). The court in B.E.K. held that committing malicious mischief by spray painting a motor vehicle, did not involve the operation of a motor vehicle and thus, accordingly, would not support a revocation of the defendant's license.

This case presents a question of first impression in the State of Washington. The defendant clearly "used" the vehicle to commit the crime of Taking a Motor Vehicle Without Owner's Permission. The admitted facts show the nexus between the motor vehicle and the crime. In the context of RCW 46.20.285(4) "used" means employed in accomplishing the crime, an integral part of the crime. The theft or taking of the vehicle is certainly an integral part of the crime. See Batten 95 Wn.App. 127, 129, 974 P.2d 879 (1999). The defendant took the car by driving it away. He used the car to accomplish the crime.

The cases cited by the defendant certainly stand for the proposition that a person's privilege to drive may be revoked when that person uses the motor vehicle as an instrumentality to commit other crimes. The cases cited by the defendant, however, are all cases in which the motor vehicle was not stolen, but was related in some way to another crime, hence the requirement that there must be a relationship between the vehicle and the commission of a separate crime. Those cases do not address the issue of

whether revocation of the privilege to drive may result from the theft or taking of a motor vehicle without the owner's permission. This court should address the issue directly and determine that the courts finding was appropriate.

DATED this 7 day of July, 2011.

Respectfully Submitted,

By: Gerald R Fuller  
GERALD R. FULLER  
Chief Criminal Deputy  
WSBA #5143

GRF/lh

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BY [Signature]  
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STATE OF WASHINGTON,

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v.

**DECLARATION OF MAILING**

ALLEN K. DUPUIS,

Appellant.

**DECLARATION**

I, Barbara Chapman hereby declare as follows:

On the 7<sup>th</sup> day of July, 2011, I mailed a copy of the Brief of Respondent to  
Maureen M. Cyr, Washington Appellate Project, 1511 Third Avenue, Suite 701, Seattle, WA  
98101, by depositing the same in the United States Mail, postage prepaid.

I declare under penalty of perjury under the laws of the State of Washington that the  
foregoing is true and correct to the best of my knowledge and belief.

DATED this 7<sup>th</sup> day of July, 2011, at Montesano, Washington.

Barbara Chapman