

No. 42902-1-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

Staci Allison,

Appellant.

Clallam County Superior Court Cause No. 09-1-00206-1

The Honorable Judge Ken Williams

Appellant's Opening Brief

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ASSIGNMENTS OF ERROR

1. The trial judge abused his discretion by refusing to dismiss the prosecution for government mismanagement and late discovery.
2. The prosecution mismanaged its case by failing to provide counsel an audit of the sheriff's property room until the morning of trial, forcing Ms. Allison to choose between her right to a speedy trial and her right to the effective assistance of counsel.
3. The prosecution mismanaged its case by failing to provide a box of documents until after the scheduled start of trial, forcing Ms. Allison to choose between her right to a speedy trial and her right to the effective assistance of counsel.
4. RCW 9A.83.020 is unconstitutional because it was enacted in violation of Wash. Const. Article II, Section 19's single-subject rule.
5. Ms. Allison was convicted of violating an unconstitutional statute.
6. The trial court erred by setting restitution in excess of \$50,000.

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. A trial court may dismiss charges under CrR 8.3 whenever government mismanagement forces an accused person to choose between speedy trial and the effective assistance of counsel. In this case, the prosecutor failed to provide counsel the results of an audit and a box of documents prior to trial. Did the trial court abuse its discretion by refusing to dismiss charges as a result of governmental mismanagement?
2. Washington's constitution requires that bills enacted into law embrace a single subject. The statute defining and criminalizing money laundering also included legislation relating to civil forfeiture in drug cases. Was RCW 9A.83.020 enacted in violation of the single-subject rule of Wash. Const. Article II, Section 19?

3. A sentencing court may only impose restitution for damages causally connected to the charged offense. Here, the prosecution proved that Ms. Allison stole (at most) approximately \$9,800, but the sentencing court imposed more than \$50,000 in restitution. Did the sentencing court exceed its statutory authority by imposing restitution for losses that were not causally related to the offense charged?

STATEMENT OF FACTS AND PRIOR PROCEEDINGS

From 2003-2006, Chris James worked as support services supervisor for the Clallam County Sheriff's Department. RP (10/18/11) 116-119. She was in charge of the sheriff's department evidence room. RP (10/18/11) 116-119. She had a key to the evidence room and access to both the computer program (AEGIS) and the card system used for tracking evidence. RP (10/18/11) 117-119.

An audit of evidence room procedures, conducted in December of 2006 and completed in January in 2007, revealed significant flaws. Exhibit 3 (1/13/11), Supp. CP.¹ The department manual had not been updated during Ms. James's tenure, and contained outdated information that impacted the "primary means by which the Evidence Officer receive[d] authorization to purge property and/or evidence from the system." Ex. 3, p. 4, Supp. CP.

The methods for intake, packaging, storage, and disposal of property were inconsistent, and the auditor noted a 25% error rate for a sample of controlled substance evidence. The evidence room was overcrowded, and a great deal of evidence had been retained past the date on which it should have been purged. Ex. 3, pp. 5-6, Supp. CP. Written

¹ Hereafter "Ex. 3."

documentation was inconsistent with the computer database, and the auditor was unable to locate the file for certain items (including firearms).

Ex. 3, p. 7, Supp. CP.

The auditor also found a general failure to comply with written policies and procedures, and that

[a]ccountability was noticeably absent both up and down the chain of command. Guidance in the form of written policies and procedures that the Evidence Officer and Chief Administrative Deputy were to follow had been established but were not followed. Guidance in the form of written procedures for all officers to follow in the handling of property and evidence were absent. Ex. 3, p. 6, Supp. CP.

The audit revealed a complete failure to conduct mandatory annual audits; the last one had been performed in April of 2003.² The lack of audits was attributed to the “[f]ailure of administration to comply with established policies and procedures requiring both an annual audit of property room procedures, records, and contents, and another of the high value items (money, drugs, and firearms).” Ex. 3, p. 8, Supp. CP. The auditor opined that theft of money from the evidence room and “evidence areas stuffed to overflowing” were “the direct result of the lack of oversight by the administration.” Ex. 3, p. 8, Supp. CP.

² According to Ms. James, this was merely a perfunctory annual audit performed by state auditors. Ex. 3, p. 8, Supp. CP.

Ms. James supervised Staci Allison, who worked in the evidence room. RP (10/18/11) 46, 116-119. Ms. James kept a secret log of Ms. Allison's weaknesses, but did not share her critique with Ms. Allison, and did not include any of the information noted in her secret log in Ms. Allison's personnel file.³ RP (10/18/11) 77-80, 145-147.

On November 27, 2006, Ms. James was asked by Ron Cameron (who was the sheriff's department captain of investigations at the time) to retrieve from the evidence room car keys (for seized vehicles). RP (10/18/11) 7-13. Ms. James was unable to find the keys, and so she invited Cameron into the evidence room to help her look. RP (10/18/11) 14. While he was there, she complained about the messiness of the room and showed him a plastic tub containing envelopes of the sort used to store seized currency. RP (10/18/11) 16-18. She and Cameron looked at the envelopes and discovered that some of them were open. RP (10/18/11) 16-18. According to Cameron, this was "a red flag." RP (10/18/11) 16.

When money was received by the evidence room, proper procedure called for it to be counted in the presence of a witness, logged, recounted (in the presence of a witness) and then stored in the locked

³ Indeed, the evidence room audit noted that "[t]here was no established method for evaluating the job performance of the Evidence Custodian," and that "[p]roper supervision of personnel was discouraged." Ex. 3, p. 9, Supp. CP. Ms. James claimed that her own supervisor prevented her from properly supervising Ms. Allison. RP (10/18/11) 62-163, 171.

evidence room safe. RP (10/18/11) 23-27, 52, 126-127, 131-132. RP (10/19/11) 20. However, on November 27, “there were so many things stacked up in front of the safe it didn't appear anybody had been in there for a while.” RP (10/18/11) 16, 125, 128, 136-137. Ms. James had not moved the items blocking the safe because she did not want to “micromanage” Ms. Allison. RP (10/18/11) 167.

A subsequent financial audit conducted by the Washington State Patrol revealed that the evidence room was missing more than \$50,000.⁴ RP (10/19/11) 16, 22. The WSP report also revealed that 49 records had been deleted from AEGIS, the evidence tracking database used then by the sheriff's department. The records were deleted on May 24, 2006, one day before a scheduled state audit of the evidence room. RP (10/18/11) 63-68; RP (10/19/11) 22-23. Sixteen of the 49 deleted records related to missing funds; the total amount deleted from the system was approximately \$6,500.⁵ RP (10/19/11) 23-25. Ms. Allison deleted the records (with the knowledge of her supervisor) in an effort to clean up errors and conduct

⁴ A detective searching the evidence room later found an extra \$5,000 in cash that did not appear in the computer and card tracking systems. RP (10/19/11) 37; RP (10/20/11) 8.

⁵ The amount missing from the 11 cases in which records were deleted from the computer system totaled approximately \$9,800. RP (10/19/11) 24, 32-33.

testing in the AEGIS system before the scheduled state audit.⁶ RP (10/19/11) 50-54; Stipulation with Regard to Patrick Langford, Supp. CP.

Ms. Allison was fired from the sheriff's department soon after. On June 1, 2009, she was charged with first-degree theft. Information, Supp. CP.⁷

The case was continued several times; some of the continuances resulted from "new" discovery provided by the prosecution. For example, on June 17, 2010, with just 11 days left on the speedy trial clock, the case was continued after the prosecution provided Ms. Allison with approximately 700 pages of discovery. Clerk's Minutes (6/17/10), Supp. CP; see also RP (9/13/10) 18 (noting that the defense received more than 700 pages of late discovery in June).

At a status hearing in August, 2010, Ms. Allison indicated that she was ready for trial, which was scheduled to begin on September 13, 2010. Clerk's Minutes (8/12/10), Supp. CP. At that time, the speedy trial "outside date" was determined to be October 13, 2010. Order Setting Case Schedule (6/17/10), Supp. CP.

⁶ Ms. James denied knowledge of the deletions. RP (10/18/11) 134, 164.

⁷ More than two years later, the Information was amended to allege aggravating factors in support of an exceptional sentence. CP 19.

On the morning of trial, the defense made an oral motion to dismiss for government mismanagement.⁸ RP (9/13/10) 16. The prosecution had just provided Ms. Allison with the 2007 report of the audit of evidence room procedures, which had not previously been disclosed.⁹ RP (9/13/10) 16; see Ex. 3, Supp. CP. In addition, the prosecution revealed that the government had failed to turn over an entire box of additional documents relating to the audit, as well as a report¹⁰ by a detective who later found some of the supposedly missing cash in the evidence room.¹¹ RP (9/13/10) 17, 42.

After reviewing the audit report, the court denied the motion without prejudice, and reset the case to October 11, which was within the

⁸ Defense counsel apparently brought the issue to the court's attention late on Friday, September 10; however, because the clerk's minutes from that date are less than clear, a transcript of the hearing was not ordered. Clerk's Minutes (9/10/10), Supp. CP; see also RP (9/13/10) 7-50.

⁹ The audit had been performed in December of 2006, and was complete by January 3, 2007. Ex. 3, Supp. CP. Although the discovery contained some passing reference to this audit, the record does not indicate that discovery clearly distinguished between the two WSP audits and an internal audit commenced by the Clallam County Sheriff's Department. RP (9/13/10) 7-50; RP (10/1/10) 2-10; RP (1/13/11) 3-44.

¹⁰ The detective's findings were later referred to as "notes," rather than a formal report. RP (10/1/10) 10.

¹¹ This detective was the husband of the elected prosecutor. Defense counsel eventually brought a motion to disqualify the elected prosecutor; the motion was denied. Motion to Disqualify Counsel, Memorandum Opinion on Motion to Disqualify Counsel, Supp. CP.

speedy trial period. RP (9/13/10) 35, 46-50; Order Setting Case Schedule (9/13/10), Supp. CP.

On or about September 20th, defense counsel received a copy of the box of documents relating to the 2007 WSP audit of evidence room procedures. RP (10/1/10) 9. The box was subsequently determined to contain more than 1500 pages relating to the audit of evidence room procedures. RP (1/13/11) 4.

Because of the volume of late discovery, defense counsel needed additional time to prepare for trial, and to file a motion seeking disqualification of the prosecuting attorney due to a conflict stemming from information in the late discovery. Ms. Allison requested for a continuance, reserving the right to move again to dismiss for mismanagement. RP (10/1/10) 2-5, 10; Memorandum Opinion on Motion to Dismiss¹², pp. 2-3, Supp. CP. The case was then continued beyond the October 13th expiration of speedy trial.¹³ RP (10/1/10) 9-14; Order Setting Case Schedule (10/11/10), Motion to Dismiss for Discovery Violation, Supp. CP.

¹² Hereafter "Memorandum Opinion."

¹³ Because the deputy prosecuting attorney assigned to the case was scheduled to leave the office, the case was delayed significantly beyond October 13 speedy trial expiration date. RP (10/1/10) 9.

Ms. Allison moved again to dismiss for government mismanagement. Motion to Dismiss for Discovery Violation, Memorandum in Opposition to Defense Motion, Motion for Hearing with Oral Testimony, Supplemental Brief on Motion to Dismiss, Supp. CP. At a hearing on the motion, the prosecution conceded a “failure of discovery,” and admitted that the evidence room audit results—and the accompanying box of supporting documents—had been available since 2007, and had been in the possession of both the WSP and the sheriff’s department. RP (1/13/10) 23, 31. The court issued a written opinion addressing the motion to dismiss. Memorandum Opinion. Supp. CP. The court found that “there was misfeasance on the part of law enforcement, and perhaps mismanagement by the Prosecuting Attorney’s office,” but refused to dismiss the case. Memorandum Opinion, p. 8, Supp. CP.

At trial, the prosecution’s evidence established that Ms. Allison had access to the evidence room, that she struggled in her personal finances but was able to go 24 months without a payday loan (from May 2004-May 2006), that she had “unexplained” cash deposits into her bank account totaling approximately \$9,000,¹⁴ that she deleted 49 entries from

¹⁴ Ms. Allison explained that these deposits came from payday loans that the auditor had missed. RP (10/20/11) 41. The auditor acknowledged that he may have missed a payday loan source. RP (10/19/11) 72.

the AEGIS tracking system, and that she may have reimbursed others who had paid her travel expenses or bought her gifts. RP (10/18/11) 46; RP (10/19/11) 22-26, 60-69; RP (10/20/11) 17, 30, 50.¹⁵

Following trial, Ms. Allison was convicted of first-degree theft and money laundering. Verdict Form (Count I), Verdict Form (Count II), Special Verdict, Supp. CP; CP 7. After denial of her motion for a new trial, Ms. Allison was ordered to serve an exceptional sentence of 36 months in prison.¹⁶ CP 9, 16; Defense Motion for a New Trial, Supp. CP.

Prior to trial, the prosecutor announced the state's plan to prove theft of approximately \$8,000, but to request restitution for the more than \$50,000 missing from the evidence room. RP (1/13/11) 28. At trial, the state's evidence tenuously connected Ms. Allison to approximately \$9,800 of the missing funds: she deleted AEGIS records relating to cases that were short approximately \$9,800, and she made "unexplained" cash deposits into her bank account of approximately \$9,000.¹⁷ RP (10/18/11)

¹⁵ There were also allegations that she had reimbursed her then-boyfriend the amount he'd paid to fly her to visit him when he was stationed in Korea. Ms. Allison disputed these allegations, and no direct evidence of payments was ever introduced. RP (10/19/11) 67-68, 77-79; RP (10/20/11) 32, 47-50.

¹⁶ The sentence was eventually stayed pending appeal.

¹⁷ As noted previously, Ms. Allison provided an explanation for the deposits that the auditor was unable to dispute. RP (10/19/11) 72; RP (10/20/11) 14-67.

46; RP (10/19/11) 22-26, 60-69; RP (10/20/11) 17, 30, 50. Despite this, the court ordered her to pay more than \$50,000 in restitution. Minute Order on Restitution, Supp. CP; Order Setting Restitution, Supp. CP.

Ms. Allison timely appealed. CP 6.¹⁸

ARGUMENT

I. THE TRIAL COURT SHOULD HAVE DISMISSED THE CHARGES UNDER CRR 8.3(B) FOR GOVERNMENT MISMANAGEMENT.

A. Standard of Review

A trial court's ruling under CrR 8.3(b) is reviewed for a manifest abuse of discretion. *State v. Michielli*, 132 Wash.2d 229, 240, 937 P.2d 587 (1997). A trial court abuses its discretion when its order is manifestly unreasonable or based on untenable grounds. *State v. Depaz*, 165 Wash.2d 842, 858, 204 P.3d 217 (2009). This includes relying on unsupported facts, taking a view that no reasonable person would take, applying the wrong legal standard, or ruling based on an erroneous view of the law. *State v. Hudson*, 150 Wash.App. 646, 652, 208 P.3d 1236 (2009).

B. A prosecution must be dismissed whenever government mismanagement forces an accused person to choose between speedy trial and the effective assistance of counsel.

¹⁸ Two separate appeals were filed; they were subsequently consolidated by the Court of Appeals.

CrR 8.3(b) allows a trial court to dismiss any prosecution in the furtherance of justice “due to arbitrary action or governmental misconduct when there has been prejudice to the rights of the accused which materially affect the accused’s right to a fair trial.” CrR 8.3(b). Dismissal may be premised upon simple mismanagement; the governmental misconduct “need not be of an evil or dishonest nature.” *State v. Brooks*, 149 Wash.App. 373, 384, 203 P.3d 397 (2009). Accordingly, a finding of “good faith” does not excuse the government’s mismanagement of a prosecution. *Id.*

An accused person is prejudiced when government mismanagement negatively impacts “the right to a speedy trial and the ‘right to be represented by counsel who has had sufficient opportunity to adequately prepare a material part of [the] defense.’” *Michielli*, at 240 (quoting *State v. Price*, 94 Wash.2d 810, 814, 620 P.2d 994 (1980)). The right to a speedy trial is outlined in CrR 3.3. Under that rule, “[a] charge not brought to trial within the time limit determined under this rule shall be dismissed with prejudice.” CrR 3.3(h). It is the responsibility of the court to ensure compliance with the rule. CrR 3.3(a)(1).

It is objectively unreasonable to expect an attorney to try a case without adequate opportunity to investigate and prepare. See, e.g., *State v. A.N.J.*, 168 Wash.2d 91, 109, 225 P.3d 956 (2010) (outlining minimal

steps to be taken by counsel before advising entry of a guilty plea); *Sneed v. Smith*, 670 F.2d 1348, 1353 (4th Cir. 1982) (“[A]n attorney must, at a minimum, ‘conduct appropriate investigations, both factual and legal, to determine if matters of defense can be developed, and to allow himself enough time for reflection and preparation for trial.’”) (quoting *Coles v. Peyton*, 389 F.2d 224, 226 (4th Cir. 1968)).

- C. Egregious government mismanagement forced Ms. Allison to choose between speedy trial and the effective assistance of counsel.

In this case, charging occurred more than two years after the incident and Ms. Allison’s employment terminated. Information, Supp. CP. Despite this lengthy pre-charging period, the prosecutor did not provide complete discovery at the initiation of the case. Instead, the prosecution continued to provide discovery throughout a lengthy pretrial period, including 700 pages provided just 11 days prior to the expiration of speedy trial (in June, 2010), and—after the case was continued—the audit report, more than 1500 pages of supporting documents, and the notes/report from the detective who found some of the missing money. This last group of materials was provided on and after the rescheduled

start date.¹⁹ Ex. 3, Supp. CP; RP (9/13/10) 16, 17, 42; RP (10/1/10) 9, 10; RP (1/13/11) 4.

The ongoing discovery problem amply demonstrates the government's egregious mismanagement of its case.²⁰ The prosecutor was alerted to the issue more than once, yet the problem persisted—even after trial started, more than two years after charges were filed. RP (9/13/10) 7-8, 16-50; RP (10/1/10) 2-10; RP (1/13/11) 3-44. Each time the prosecution was alerted of the problem, it should have taken steps to ensure that discovery was complete. It failed to do so.

The prosecution's mismanagement of discovery forced Ms. Allison to choose between her right to a speedy trial and her right to the effective assistance of counsel. As counsel explained, the sheer volume of late

¹⁹ Prior to June, 2010, the case had been continued several times for reasons unrelated to government mismanagement. For example, Ms. Allison initially had difficulty securing counsel. Clerk's Minutes (7/16/09), Supp. CP; Clerk's Minutes (8/6/09), Supp. CP; Clerk's Minutes (8/17/09), Supp. CP. A conflict public defender was eventually appointed. Order Appointing Attorney/Conflict, Supp. CP. His health problems (including several heart surgeries) caused additional delays. RP (10/1/10) 5. The effect of these earlier delays was to give the prosecution extra time to provide complete discovery. Even with the extra time, however, the prosecution failed in its duty.

²⁰ Even by the time trial commenced (more than a year after the September 13th 2010 start date), the prosecutor had still failed to provide discovery which had been in the government's possession since the inception of the case. Specifically, on the 2nd day of trial, defense counsel finally received copies of notebooks seized from Ms. Allison's desk while she was still employed by the sheriff's department. RP (10/18/11) 112-114; RP (10/19/10) 7-8. Defense counsel did not object, move for a mistrial, or indicate that this late discovery prejudiced the defense. However, this episode reveals the extent of the prosecution's mismanagement of its case.

discovery—including the 1500 pages of financial documents underlying the forensic audit of Ms. Allison’s finances—required postponement, to enable counsel to get up to speed. See RP (10/1/10) generally. Under these circumstances, the court should have dismissed the prosecution under CrR 8.3. *Michielli*, at 240. Its failure to do so was an abuse of discretion. *Id.*

The prosecution mismanaged its case and thereby prejudiced Ms. Allison. Accordingly, her convictions must be reversed and the case dismissed with prejudice. *Brooks*, at 384.

II. RCW 9A.83.020 WAS ENACTED IN VIOLATION OF WASH. CONST. ARTICLE II, SECTION 19.

A. Standard of Review

Constitutional issues are reviewed de novo. *Bellevue School Dist. v. E.S.*, 171 Wash.2d 695, 702, 257 P.3d 570 (2011). Statutes are presumed constitutional; the party challenging a statute’s constitutionality “bears the heavy burden of establishing its unconstitutionality beyond a reasonable doubt.” *Amalgamated Transit Union Local 587 v. State*, 142 Wash.2d 183, 205, 11 P.3d 762 (2000) opinion corrected, 27 P.3d 608 (2001). This standard is met when “argument and research show that there is no reasonable doubt that the statute violates the constitution.” *Id.*

- B. The statute defining and criminalizing money laundering is unconstitutional because it was passed in violation of the single subject rule.

Under Wash. Const. Article II, Section 19, “No bill shall embrace more than one subject...” The provision is intended to prevent “logrolling” (where a law is pushed through by attaching it to other legislation). *Amalgamated Transit Union*, at 207. The legislature must “be given the opportunity to consider legislative subjects in separate bills, so that each subject may stand or fall upon its own merits or demerits.” *Washington Toll Bridge Auth. v. State*, 49 Wash.2d 520, 525, 304 P.2d 676 (1956).

The relevant inquiry is whether “the body of the act contain[s] more than one general subject...” *Id.*, at 523. Part of the analysis turns on whether either subject is necessary to implement the other. *Amalgamated Transit Union*, at 217. A statute passed in violation of the single subject rule is unconstitutional and therefore void. *Id.*, at 216; *Toll Bridge*, at 525.

For example, in *Toll Bridge*, the Supreme Court invalidated an act because it embraced two subjects: “(1) To provide legislation, permanent in character, empowering a state agency to establish and operate all toll roads, and (2) to provide for the construction of a specific toll road linking Tacoma, Seattle, and Everett.” *Toll Bridge*, at 523. Similarly, in *Amalgamated Transit Union*, the Court found that in I-695 embraced two

different purposes: “to specifically set license tab fees at \$30 and to provide a continuing method of approving all future tax increases.” Amalgamated Transit Union, at 217.

RCW 9A.83.020, which criminalizes money laundering, was enacted by the legislature in 1992. Laws of 1992, Ch. 210. The legislation was titled “AN ACT Relating to money laundering...” Laws of 1992, Ch. 210.²¹ This act embraced more than one subject.

The 1992 act addressed more than just money laundering; instead, it also reenacted and amended RCW 69.50.505 (“Seizure and forfeiture”). That statute addresses the seizure and forfeiture of personal property, real property, and intangible property associated with the drug trade. RCW 69.50.505.²² Thus, the 1992 act addressed both money laundering (a criminal offense related to proceeds of any criminal enterprise) and the civil forfeiture of property in drug cases—two different subjects. This violated Wash. Const. Article II, Section 19. Amalgamated Transit Union, at 207.

²¹ The act was captioned “Crimes—Money Laundering—Property Seizure and Forfeiture.”

²² The 1992 amendments to this statute addressed the jurisdictional limits for removal of administrative forfeiture actions to district court, outlined procedures to be taken upon seizure of property, and amended statutory directives for the distribution of property seized. Laws of 1992, Ch. 210.

Because it was enacted in violation of the constitution, RCW 9A.83.020 is void. It has not been resuscitated by reenactment or amendment since passage of the 1992 act. See *Morin v. Harrell*, 161 Wash. 2d 226, 228, 164 P.3d 495 (2007) (a proper “amendment or reenactment cures the article II, section 19 defect.”) Accordingly, the law is unconstitutional. Because she was convicted under an unconstitutional statute, Ms. Allison’s money laundering conviction must be vacated and the charge dismissed with prejudice. *Amalgamated Transit Union*, at 207.

III. THE TRIAL COURT ERRED BY ORDERING MS. ALLISON TO PAY MORE THAN \$50,000 IN RESTITUTION.

A. Standard of Review

A restitution order is reviewed for an abuse of discretion. *State v. Griffith*, 164 Wash.2d 960, 965, 195 P.3d 506 (2008). A trial court abuses its discretion when its order is manifestly unreasonable or based on untenable grounds. *Depaz*, at 858.

B. The prosecution proved a causal connection between the crime charged and losses of (at most) approximately \$9,800.

A trial court’s authority to impose restitution is derived from statute. *Griffith*, at 965. The amount of restitution must be based on easily ascertainable damages, established by substantial credible evidence, without resort to speculation or conjecture. *Id.*

Restitution is allowed only for losses that are causally connected to the crime charged. *Id.* A loss is causally connected “if, but for the charged crime, the victim would not have incurred the loss.” *Id.*, at 966.

In this case, the prosecution established that more than \$50,000 was missing from the sheriff’s department evidence room. RP (10/19/11) 16, 22. It also established that Ms. Allison may have been responsible for approximately \$9,800 of that loss. RP (10/18/11) 46; RP (10/19/11) 22-26, 32-33, 60-69; RP (10/20/11) 17, 30, 50 The evidence showed that others also had access to the evidence room, and the record establishes that at least two other sheriff’s department employees were suspected in the theft. RP (10/18/11) 11-12, 32, 46, 120, 141, 162-163, 171.

The state did not establish that Ms. Allison was responsible for the full amount, especially in the absence of procedures to ensure the integrity of the evidence room, the number of people who had access to the evidence room, and the lack of any baseline audit from before Ms. Allison began her employment. Nor did the state show any significant changes in Ms. Allison’s lifestyle, or unexplained deposits beyond the \$9,000 to which the auditor testified, or any other circumstances suggesting that she was the only person who took advantage of the evidence room’s lax security.

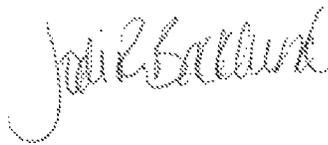
Absent proof that Ms. Allison stole the entire amount, the court was not authorized to impose more than twice the amount she took. See RCW 9.94A.753(3). Because the prosecution failed to prove that Ms. Allison stole more than \$9,800, the restitution order must be vacated and the case remanded for entry of an order consistent with the evidence produced at trial. Griffith, at 965-968.

CONCLUSION

For the foregoing reasons, Ms. Allison's conviction must be reversed and the charge dismissed with prejudice. In the alternative, the restitution order must be vacated and the case remanded for entry of a new restitution order.

Respectfully submitted on December 17, 2012,

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CERTIFICATE OF SERVICE

I certify that on today's date:

I mailed a copy of Appellant's Opening Brief, postage prepaid, to:

Staci Allison
212 G St NW #A
Ephrata, WA 98823

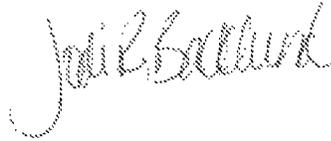
With the permission of the recipient(s), I delivered an electronic version of the brief, using the Court's filing portal, to:

Clallam County Prosecuting Attorney
lschrawyer@co.clallam.wa.us

I filed the Appellant's Opening Brief electronically with the Court of Appeals, Division II, through the Court's online filing system.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Olympia, Washington on December 17, 2012.



Jodi R. Backlund, WSBA No. 22917
Attorney for the Appellant

BACKLUND & MISTRY

December 17, 2012 - 9:51 AM

Transmittal Letter

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Case Name: State v. Staci Allison

Court of Appeals Case Number: 42902-1

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