

No. 46093-9-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

Jason Hernandez,

Appellant.

Pierce County Superior Court

Cause No. 13-1-02943-1

The Honorable Judge Garold Johnson

Appellant's Supplemental Brief

Jodi R. Backlund
Manek R. Mistry
Skylar T. Brett
Attorneys for Appellant

BACKLUND & MISTRY
P.O. Box 6490
Olympia, WA 98507
(360) 339-4870
backlundmistry@gmail.com

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SUPPLEMENTAL ASSIGNMENT OF ERROR

The Information failed to allege that Mr. Hernandez “withheld or appropriated” a stolen vehicle.

SUPPLEMENTAL ISSUE

Under *State v. Satterthwaite*, an Information charging a violation of RCW 9A.56 must allege that a person “withheld or appropriated” the property at issue. This was not alleged and cannot be inferred by a fair construction of the Information. Must the conviction be reversed for a constitutionally deficient charging document? *State v. Satterthwaite*, COA No. 45732-6-II, -- Wn. App. --, -- P.3d -- (March 10, 2015).

SUPPLEMENTAL FACTS AND PRIOR PROCEEDINGS

The state charged Jason Hernandez with Unlawful Possession of a Stolen Vehicle, specifying:

That [defendant], in the State of Washington, on or about the 24th day of July, 2013, did unlawfully and feloniously knowingly possess a stolen motor vehicle, knowing that it had been stolen, contrary to RCW 9A.56.068 and 9A.56.140, and against the peace and dignity of the State of Washington.
CP 1.

ARGUMENT

I. THE INFORMATION FAILED TO ALLEGE THAT MR. HERNANDEZ “WITHHELD OR APPROPRIATED” THE VEHICLE, SO *STATE V. SATTERTHWAITE* REQUIRES REVERSAL.

The Court of Appeals recently decided *State v. Satterthwaite*. *State v. Satterthwaite*, COA No. 45732-6-II, -- Wn. App. --, -- P.3d – (March 10, 2015). In that case, the court reversed the defendant’s conviction for a charge of possession of a stolen motor vehicle. *Id.*

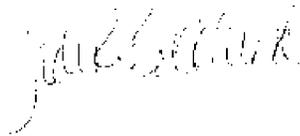
Satterthwaite involved a deficiency in the charging language. The charge did not allege that the defendant “withheld or appropriated” the vehicle. *Id.* The charge against Mr. Hernandez suffers from the same deficiency.¹ CP 1.

¹ Mr. Hernandez did not object to the deficiency in the trial court. However, this doesn’t change the analysis: even construing the document liberally, the necessary elements do not appear in any form, nor can they be found by any fair construction. *Satterthwaite*.

Because “withhold or appropriate” is an essential element of the charge, and because it is not found in the Information, the conviction for Unlawful Possession of a Stolen Vehicle must be reversed. Id.

Respectfully submitted on March 24, 2015.

BACKLUND AND MISTRY



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



Manek R. Mistry, WSBA No. 22922
Attorney for the Appellant



Skylar T. Brett, WSBA No. 45475
Attorney for Appellant

CERTIFICATE OF SERVICE

I certify that on today's date:

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

Jason Hernandez/DOC#342332
Cedar Creek Corrections Center
PO Box 37
Littlerock, WA 98556

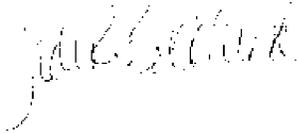
With the permission of the recipient(s), I delivered an electronic version of the brief, using the Court's filing portal, to:

Pierce County Prosecutor
PCpatceef@co.pierce.wa.us

I filed the Appellant's Supplemental 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 March 24, 2015.



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

BACKLUND & MISTRY

March 24, 2015 - 3:03 PM

Transmittal Letter

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