

NO. 46148-0-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION TWO

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STATE OF WASHINGTON,

Respondent,

v.

JOHN R. RING,

Appellant.

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR MASON COUNTY

The Honorable Toni A. Sheldon, Judge

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BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. Appellant was denied his right to a unanimous jury verdict when the jury was instructed regarding an alternative means for possessing stolen property for which there was insufficient evidence.

2. There was insufficient evidence to prove the value element required to convict appellant of possession of stolen property.

3. Appellant was denied effective assistance of counsel when defense counsel failed to conduct adequate discovery and investigate a key witness.

4. Remand is necessary for the trial court to reconsider appellant's exceptional sentence.

Issues Pertaining to Assignments of Error

1. Appellant was charged with first degree possession of stolen property. The "to convict" instruction listed as alternatives means that the defendant received, retained, possessed, or concealed stolen property. There was no unanimity instruction. The State failed to provide sufficient evidence establishing appellant concealed the property at issue. Was there insufficient evidence to support the conviction?

2. To convict appellant of first degree possession of stolen property, the State was required to prove the value of the stolen property exceeded \$5,000. The State failed to prove the market value of the stolen property. It also failed to prove there was no market value before introducing evidence of replacement value. Was there insufficient evidence to support the possession of stolen property conviction?

3. Defense counsel failed to make the discovery requests needed to timely locate, investigate, and interview a key defense witness. When he finally located this witness, he did not have time to sufficiently reflect upon the record and was thus unable to persuasively convince the trial judge that the trial (which was already nearly over) should be continued to allow counsel to interview the witness and arrange for his transport to testify. Had appellant been able to present the testimony of this witness there was a reasonable probability the outcome would have been different. Was counsel ineffective in failing to conduct adequate discovery?

4. Appellant's offender score was calculated as 15. This included appellant's current convictions at issue in this case and

those at issue in appellant's appeal under COA No. 46145-5-II.<sup>1</sup> The trial court imposed an exceptional sentence, citing the "free crimes" doctrine. Appellant has challenged numerous convictions between his two appeals. Presuming he is successful -- or even partially successful in his appeals -- is it necessary to remand to allow the trial court to reconsider the exceptional sentence?

B. STATEMENT OF THE CASE

1. Procedural History

On October 4, 2012, the Mason County prosecutor charged appellant John R. Ring with one count of first degree possession of stolen property. CP 71. The information was later amended to include an additional charge of bail jumping. CP 52-53. A jury convicted Ring of both charges. CP 18-19.

At sentencing, the trial court considered Ring's convictions in this case in conjunction with his other current convictions under three other cause numbers.<sup>2</sup> The trial court found the bail jumping

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<sup>1</sup> Appellant is filing a motion to link the cases contemporaneously with this brief.

<sup>2</sup> The three other cause numbers were joined into one case for trial and are the subject of a separate appeal under Court of Appeals number 46145-5-II. Because the trial court combined sentencing for the two cases, appellant is moving to link the two appeals so this Court may fully consider his challenge to the exceptional sentence. Appellant also asks this Court to take judicial notice of the record in appellant's other appeal. To help facilitate this, appellant has attached the Judgment and Sentence of appellant's other case as appendix A. He has also attached his opening brief in his other appeal as appendix B.

conviction in this case constituted the same criminal conduct as the three other bail jumping charges Ring faced under the other case numbers.<sup>3</sup> RP 248. Given Ring's criminal history and current offenses, the trial court calculated his offender score to be 15. RP 248.

Ring was sentenced to 57 months for the possession charge. RP 248. Finding an exceptional sentence was warranted under the "free crimes" doctrine, the trial court decided to run this 57-month term consecutively to Ring's sentence under the other cause numbers. RP 248; 252; Appendix A. Ring timely appeals. CP 2.

## 2. Substantive Facts

On May 17, 2012, a burglary occurred on the property of Ferdinand Schmitz. RP 62. Among the items missing were a 2007 Yamaha Wave Runner and a trailer. RP 63. A man name Steve loerger was involved in the burglary and eventually pled guilty to stealing several items. RP 67, 151-52. However, the State was never able to prove a specific link between loerger and the Wave Runner or trailer in that case. RP 159-62.

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<sup>3</sup> The bail jumping charges are not the subject of any challenges on appeal, so appellant will provide no further facts.

In the fall of 2012, the Mason County Sheriff's office received an anonymous tip that the stolen Wave Runner and trailer were on the property of William Kennedy. RP 46, 51. Kennedy was a long-time friend of Ring. RP 32. Kennedy leased part of his shop to Ring for miscellaneous repair work. RP 40. Ring commonly stored property on Kennedy's property. RP 32-33.

On October 1, 2012, Deputy Sheriff Sean Dodge went to Kennedy's shop to investigate and spoke with Kennedy. RP 46. Kennedy showed Dodge the Wave Runner and trailer. RP 47. He also showed Dodge a text message from Ring that he had received on May 19, 2012. RP 37-38. This message indicated that a Wave Runner and trailer would be dropped off on Kennedy's property for storage. RP 37-38. This type of drop-off and storage arrangement was not unusual. RP 39, 43-44.

At trial, Kennedy testified he did not see who dropped off the Wave Runner and trailer. RP 33. He explained that he found the items in his parking lot as Ring had arranged. RP 40. The items had been left uncovered and out in the open. RP 40. Afterward, the items were openly stored in a brush shed where they sat for many months awaiting repair. RP 43, 47, 133.

In support of his defense, Ring presented the testimony of Michael Hughes and Donald Cotton to explain how the Wave Runner and trailer came to be stored by Ring. RP 106, 131.

In May 2012, Cotton was staying with Hughes. RP 106, 131. One morning, they found a Wave Runner sitting atop a defective trailer, which was resting at the end of Hughes' driveway. RP 106; 131. Hughes eventually discovered the items were left there by "Stevie," a friend of a friend. RP 106. Later that morning, Stevie showed up, explaining that he had fallen asleep at the wheel and wrecked his truck and the trailer. RP 118.

Ring, who was a friend of Hughes, arrived at Hughes' house that morning. RP 133. Hughes asked Ring if he had a wheel for the trailer and if he would help Stevie get the trailer out of his driveway. RP 119.

Hughes and Cotton testified that Ring got Stevie a rim from his spare parts supply, and he made arrangements for Stevie to store the property while awaiting repair. RP 126; 133. Hughes and Cotton saw Stevie drive off with the Wave Runner and trailer. RP 110, 133. Later, Cotton saw the Wave Runner at Kennedy's shop, a mile down the road from Hughes' house. RP 133, 139. He testified that the Wave Runner was not concealed and no efforts

were made to hide it. RP 133. It was just parked in the brush shed. RP 133-34.

Cotton and Hughes testified that Stevie never gave any indication that he had stolen the Waver Runner and actually claimed ownership of it. RP 107, 110, 131,142.

C. ARGUMENT

I. APPELLANT WAS DENIED HIS RIGHT TO A UNANIMOUS VERDICT WHERE THERE WAS INSUFFICIENT EVIDENCE THAT HE "CONCEALED" THE STOLEN PROPERTY.

Appellant was charged with possession of stolen property. The to-convict instruction specifically listed as alternative means that defendant "received, retained, possessed, concealed" stolen property. CP 39. There was no unanimity instruction. Thus, the State was required to prove each alternative means beyond a reasonable doubt. The State failed to provide sufficient evidence that Ring concealed the property at issue.

Criminal defendants have a right to a unanimous jury verdict. Wash. Const. art. I, § 21. Where there is more than one way to commit a single offense, the jury must be unanimous that the defendant is guilty for the single crime charged. State v. Nicholson, 119 Wn. App. 855, 860, 84 P.3d 877 (2003), overruled on other

grounds, State v. Smith, 159 Wn.2d 778, 155 P.3d 873 (2007). If one of the listed means is not supported by substantial evidence and there is only a general verdict, the reviewing court must vacate the conviction unless it can definitively determine that the verdict was founded upon one of the means supported by substantial evidence. Nicholson, 119 Wn. App. at 860. Hence, when a defendant challenges the sufficiency of the evidence in an alternative means case, appellate review focuses on whether sufficient evidence supports each alternative means. State v. Sweany, 174 Wn.2d 909, 914, 281 P.3d 305 (2012).

An alternative means crime categorizes distinct acts that amount to the same crime. State v. Peterson, 168 Wn.2d 763, 770, 230 P.3d 588 (2010). Possession of stolen property in the first degree is an alternative means crime.

A person is guilty of this crime if he knowingly possesses stolen property that exceeds \$5,000 in value. RCW 9A.56.150. The statute defines possessing stolen property as “knowingly to receive, retain, possess, conceal, or dispose of stolen property knowing that it has been stolen and to withhold or appropriate the same to the use of any person other than the true owner or person entitled thereto.” RCW 9A.56.140(1). Accordingly, to receive,

retain, possess, conceal or dispose of stolen property are alternative means for committing possession of stolen property. State v. Lillard, 122 Wn. App. 422, 434-35, 93 P.3d 969 (2004).

Here, the jury instructions defined possessing stolen property as “knowingly to receive, retain, possess, conceal, or dispose of stolen property knowing that it has been stolen and to withhold or appropriate the same to the use of any person other than the true owner or person entitled thereto.” CP 51. The to-convict instructions essentially echoed this language, setting forth as an element: “that the defendant knowingly received, retained, possessed, concealed stolen property.”<sup>4</sup> CP 61, 63. Consequently, there were four potential means of possession.

For purposes of appellate review, the first three means listed in the instruction (receive, retain, possess) are considered to be essentially synonymous. Lillard, 122 Wn. App. at 435. Hence, practically speaking, there are two means presented in this case: (1) to receive, retain possess, and (2) to conceal. Only the second is at issue here.

There was not substantial evidence that Ring attempted to conceal the stolen Wave Runner and trailer. When alternative

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<sup>4</sup> The only means that was eliminated was disposing of stolen property.

means of committing a single offense are presented to a jury, each alternative means must be supported by substantial evidence<sup>5</sup> in order to safeguard a defendant's right to a unanimous jury determination. State v. Smith, 159 Wn.2d 778, 783, 154 P.3d 873 (2007). The Wave Runner and trailer were left in plain sight in the parking lot of Kennedy's shop. RP 40. Ring indicated in his text to Kennedy that someone would be dropping off the items, but Ring never asked Kennedy to hide or conceal the property. RP 33, 40, Exs. 6 and 7. Cotton testified that the Wave Runner and trailer were clearly visible in the brush shed where Deputy Dodge found them. RP 47.

There was no evidence the appearance of the Wave Runner or trailer had been physically altered in any way so as to conceal the property. Furthermore, while the Wave Runner was covered with a standard Yamaha Jet Ski cover, this did not conceal the fact that it was a wave runner, and did not conceal the identity of the trailer. RP 140.

Given this record, it cannot be said the State proved beyond a reasonable doubt that Ring concealed the stolen property. Given

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<sup>5</sup> "Substantial evidence exists if any rational trier of fact could find the essential elements of the crime beyond a reasonable doubt." Lillard, 122 Wn. App. at 434.

that there was no unanimity instruction, it was the State's burden to so prove. Having failed to meet this burden, the conviction must be reversed.

II. THE STATE FAILED TO SUFFICIENTLY PROVE THE VALUE OF THE STOLEN PROPERTY.

The State failed to sufficiently prove that the market value of the trailer and Wave Runner exceeded \$5,000. It also failed to prove that there was no objective market value for the property such that the State might properly ask the jury to consider replacement value alone as establishing the value of the stolen property. Consequently, there was insufficient evidence to support the conviction.

(i) Relevant Facts

To convict Ring, the jury had to find the State proved beyond a reasonable doubt that the value of the trailer and Wave Runner exceeded \$5,000. CP 39. The prosecutor mistakenly believed this could be sufficiently proven by merely presenting evidence establishing that the replacement value of the items exceeded \$5,000. RP 99.

The State called only one witness to establish value – Sean Haskins, a Claims Field Examiner for Safeco insurance. RP 70.

Haskins testified that Safeco paid a claim to the property owner in the amount of \$13,000 for the Wave Runner and \$800 for the trailer. RP 72. The prosecutor understood this to be the “replacement value” of the property. RP 99. Haskins provided no testimony as to how Safeco arrived at that particular valuation or whether the policy required reimbursement at “market value.” RP 70-74. He was never directly asked if the replacement, or payout amount, was the same as the actual “market value” of the property.<sup>6</sup> RP 70-74.

During closing, the prosecutor’s only argument as to value consisted of the following:

We heard the value. We heard the insurance company paid out \$13,800.”

...

Again, the insurance settlement was \$13,800 for these two pieces of equipment.

RP 202, 210.

(ii) Legal Argument

Due process requires the State prove every element of a crime beyond a reasonable doubt. State v. Felipe Zeferino-Lopez, 179 Wn. App. 592, 599, 319 P.3d 94 (2014) (citing State v. Baeza,

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<sup>6</sup> Haskins also testified that the Wave Runner and trailer were sold together at a salvage auction for \$4,400. Haskins explained, however, that the salvage price was not considered fair market value. RP 72-73.

100 Wn.2d 487, 488, 670 P.2d 646 (1983)). A person is guilty of first degree possession of stolen property if he knowingly possesses stolen property that exceeds \$5,000 in value. RCW 9A.56.150. Hence, the value of the Wave Runner and trailer was an element of the charged crime and had to be proven beyond a reasonable doubt.

For purposes of proving possession of stolen property, value means the “market value of the property ... at the time and in the approximate area of the criminal act.” RCW 9A.56.010(21)(a). “Market value is the ‘price which a well-informed buyer would pay to a well-informed seller, where neither is obliged to enter into the transaction.’” State v. Ehrhardt, 167 Wn. App. 934, 944, 276 P.3d 332 (2012) (citations omitted). Market value is based on an objective standard, not on the value to any particular person or company. State v. Shaw, 120 Wn. App. 847, 850, 86 P.3d 823 (2004).

“Evidence other than market value, such as replacement cost, is inadmissible unless it is first shown that the property has no market value.” Ehrhardt, 167 Wn. App. at 944. Likewise, evidence of a salvage value is inadmissible unless the State has first

established the market value cannot be established. See, State v. Hughes, 130 Idaho 698, 702, 946 P.2d 1338, 1343 (1997).

Here, the State never offered evidence as to an objective market value for the Wave Runner or trailer. The only evidence it offered was that Safeco paid out \$13,800.00 on the owner's claim. However, there is no evidence that Safeco arrived at this payout value by first determining the market value of the stolen property. As such, the State only presented Safeco's subjective valuation rather than providing evidence of an objective market value.

Comparatively, the State could have established an objective market value by introducing evidence of the Kelly Blue Book price for the Yamaha Wave Runner. See, Shaw, 120 Wn. App. at 852 (concluding Kelly Blue Book values constitute a reliable valuation of vehicles and are widely used to establish an objective market value). Kelly Blue Book not only establishes objective market value for cars, it also does so for personal watercraft.<sup>7</sup> However, the State never made any effort to establish an objective market value via the Kelly Blue Book or with any other evidence.

As this record shows, the State also failed to prove there was no ascertainable market value for the Wave Runner or the

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<sup>7</sup> See, <http://www.kbb.com/personalwatercraft/?r=335473988205194500>.

trailer such that the jury would properly infer market value from only the replacement value of the property. As this Court has stated, replacement value does not become material until a party establishes there is no objective market value for the property at issue. Ehrhardt, 167 Wn. App. at 944. That was not done here. Hence, it was improper for the jury to consider only the replacement value of the property.

In sum, in order to convict Ring of the charged crime, the State was required to prove the market value of the Wave Runner and the trailer. It never proved an objective market value for the stolen property. Moreover, proof of Safeco's subjective replacement value for the property was insufficient to prove market value, as the State made no showing that there was no objective market place value. Nor could it, considering the availability of the Kelly Blue Book). Consequently, Ring's conviction for possession of stolen property must be reversed for insufficient evidence.

### III. RING WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL.

Defense counsel failed to make formal discovery requests needed to locate, investigate, and interview a key defense witness. When he did finally locate this witness, he was unable to make an

informed offer of proof to convince the trial judge that the trial should be continued so that he could further interview the witness and arrange for his transport to testify. Had Ring been able to present the testimony of this witness there was a reasonable probability the outcome would have been different. As such, Ring was denied effective assistance of counsel.

(i) Relevant Facts

On the first morning of trial, defense counsel informed the trial court the defense still needed to obtain a separate police report that was referenced in the lead investigator's report. RP 9. He had not made a formal discovery request before that time despite numerous omnibus hearings. RP 10. The State said it would supply the report later that day. RP 10.

After defense counsel received the report, he explained to the trial court that it had been difficult for him to locate "this guy named Stevie" until he saw the newly discovered police report. Defense Counsel indicated that this report showed Stevie was convicted of stealing the Wave Runner at issue in Ring's case. RP 19. Counsel moved for dismissal based on a discovery violation. RP 19. In response, the prosecutor said that Ring was never accused of being the person who actually stole the Wave Runner,

and that the defense was provided everything that was asked for. RP 20. The trial court denied the motion. RP 20.

The next day, defense counsel informed the trial court that Stevie was a key witness to the case, he was incarcerated in Walla Walla, and defense counsel was attempting to get transport arranged. RP 28.

On the third day, after the State had rested and the defense put on the testimony of both Hughes and Cotton, defense counsel asked for a continuance or dismissal based on the need to interview and transport Stevie. RP 147-49, 152-53. As an offer of proof as to the relevance of Stevie's testimony, counsel explained that given Stevie's guilty plea, he expected Stevie's testimony would establish that Stevie took the trailer and Wave Runner, parked them in the brush shed, and Ring never had possession of the property. RP 149. Defense counsel pointed the trial court to the record in Stevie's case as establishing that he already pled guilty to stealing the Wave Runner. RP 151-153, 157-58. Defense counsel admitted, however, that prior to trial, he had made no formal discovery request to obtain the police report as to Stevie that eventually led him to this evidence. RP 147-49, 154, 155.

The trial court found there was no discovery violation. RP 154. Looking over the case history, it noted that defense counsel had failed to request the additional police reports until shortly after trial began, despite numerous omnibus hearings in which he could have done so. RP 154-55.

The trial court also denied the motion for a continuance. After reviewing the court files pertaining to Stevie, the trial court concluded that he in fact did not plead guilty to stealing or possessing the Wave Runner or trailer, thus, undercutting the defense's offer of proof as to what Stevie's testimony would accomplish. RP 156, 158-59, 162.

(ii) Legal Argument

The Sixth Amendment guarantees the right to effective counsel. Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). "This right exists, and is needed, in order to protect the fundamental right to a fair trial." Id. at 684. Ineffective assistance of counsel is established if: (1) counsel's performance was deficient, and (2) the deficient performance prejudiced the defendant. State v. Thomas, 109 Wn.2d 222, 225-26, 743 P.2d 816 (1987) (adopting two-prong test from Strickland, 466 U.S. at 687). As shown below, both prongs are satisfied here.

To provide constitutionally adequate assistance, “counsel must, at a minimum, conduct a reasonable investigation enabling [counsel] to make informed decisions about how best to represent [the] client.” In re Fleming, 142 Wn.2d 853, 16 P.3d 610 (2001) (citing Sanders v. Ratelle, 21 F.3d 1446, 1456 (9th Cir.1994)); see also, Strickland, 466 U.S. at 69. Counsel’s performance is inadequate where he or she fails to conduct appropriate investigations (either factual or legal), fails to determine what matters of defense were available, or fails to allow enough time for reflection and preparation for trial. State v. Maurice, 79 Wn. App. 544, 552, 903 P.2d 514 (1995) (citing, State v. Jury, 19 Wn. App. 256, 263-64, 576 P.2d 1302 (1978)). Specifically, failure to conduct interviews of material witnesses is not objectively reasonable performance by counsel. State v. Visitacion, 55 Wn. App. 166, 173-74, 776 P.2d 986 (1989).

The record demonstrates defense counsel failed to adequately investigate and locate “Stevie” prior to trial. As counsel was forced to admit to the trial court, he did not make a formal discovery request for the additional police reports prior to trial. There was no legitimate reason why counsel would not have requested production of the reports that were noted in the lead detective’s report. It was

objectively unreasonable not to use formal discovery to find Stevie and investigate the initial burglary at the Schmidt property.

Moreover, without a timely discovery request, counsel was not in a position to adequately reflect on the record. Hence, he blundered his way through an offer of proof as to why he needed a continuance. As shown below, reasonably competent counsel who had time to review the discovery would have reflected upon it and recognized Stevie did not plead guilty to stealing the Wave Runner. As such, competent counsel would have been able to formulate a more informed offer of proof as to why Stevie's testimony was nonetheless material and crucial to the defense. As it was, however, counsel's performance here was objectively unreasonable.

Defense counsel's deficient performance prejudiced the defense. When counsel's deficient performance prejudices the outcome of the case, reversal is required. Strickland, 466 U.S. at 691. In Strickland, the United States Supreme Court rejected a more onerous burden requiring the defendant to show counsel's deficient performance more likely than not altered the outcome of the case. 466 U.S. at 693-94. In so doing the Supreme Court recognized, even if counsel's errors cannot be shown by a preponderance of the evidence to have determined the outcome,

counsel's deficient performance can still render a proceeding unreliable. Id.

The Supreme Court adopted a less demanding standard. It determined that reversal is merited where the defense can show, but for counsel's professional errors, there is a reasonable probability that the outcome of the proceeding would have differed. Stickland, 466 U.S. at 694; see also, In re Personal Restraint of Pirtle, 136 Wn.2d 467, 487, 965 P.2d 593 (1998).

This record establishes there is a reasonable probability, but for counsel's deficient performance, the outcome would have been different. First, it is reasonably probable a competent attorney would have made formal and timely discovery requests for all relevant police reports and, thus, timely discovered Stevie's role in the burglary.

Second, it is reasonably probable a competent attorney would have called Stevie as a witness, despite the fact he did not plead guilty to taking the Wave Runner. Ring's defense was that Stevie took the Wave Runner and trailer and eventually left it in the bush shed without informing anyone the property was stolen. While it is unlikely Stevie would have confessed to stealing the Wave Runner and trailer while on the stand, defense counsel would have been able

to establish that Stevie pled guilty to stealing other items on Schmitz's property at the same time the Wave Runner and trailer were stolen. With this established, defense counsel could have reasonably argued Stevie alone was responsible for the theft of the property and the reason he was not prosecuted was because he had cleverly dumped the property on Ring without Ring's knowledge that it was stolen. Given the corroborating testimony of Hughes and Cotton -- who testified that Stevie claimed ownership of the stolen goods before storing them with Ring -- there is a reasonable probability that such an argument would have raised a reasonable doubt in the jury's eyes regarding the element of knowledge.

In sum, it was objectively unreasonable for defense counsel not to have conducted appropriate discovery in order to investigate and locate Stevie prior to trial. There is a reasonable probability that the testimony of this witness, taken in conjunction with the testimony of Hughes and Cotton, would have changed the outcome of the trial. As such, this Court should find Ring was denied effective assistance of counsel and reverse.

IV. REMAND IS NECESSARY FOR THE TRIAL COURT TO RECONSIDER ITS EXCEPTIONAL SENTENCE.

Appellate courts have a duty to correct an erroneous sentence. In re Pers. Restraint of Call, 144 Wn.2d 315, 331–32, 28 P.3d 709 (2001). The trial court sentenced appellant to an exceptional sentence under the “free crimes” doctrine. CP 6-7; RP 248. This doctrine is codified under RCW 9.94A.535(2)(c), which allows for an exceptional sentence if “the defendant has committed multiple current offenses and the defendant's high offender score results in some of the current offenses going unpunished.”

The trial court calculated Ring's offender score to be 15. RP 248. In doing so, however, it considered Ring's current convictions in both this appeal and his other appeal. RP 248; CP 4-15; appendix B. Appellant has challenged several of his convictions in his first appeal (see appendix A) and one here. If he prevails, this Court should remand for resentencing to allow the trial court's reconsideration of the exceptional sentence.

D. CONCLUSION

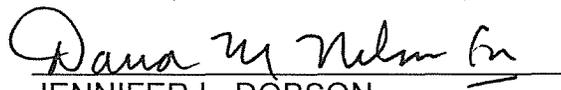
This Court should reverse appellant's conviction for possession of stolen property, because the State failed to sufficiently prove all alternative means – specifically it failed to prove appellant concealed the property at issue. Appellant's conviction should also be reversed because the State failed to provide evidence that the fair market value of the stolen property exceeded \$5,000. Alternatively, this Court should reverse the conviction because Ring received ineffective assistance of counsel.

Finally, this Court should remand for resentencing for the trial court to either vacate or reconsidering its exceptional sentence in light of the appellate decisions in this case and his other appeal.

DATED this 4<sup>th</sup> day of ~~October~~ <sup>November</sup>, 2014.

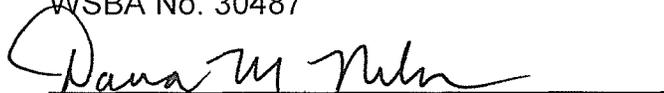
Respectfully submitted,

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WSBA No. 30487



DANA M. NELSON

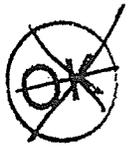
WSBA No. 28239

Office ID No. 91051

Attorneys for Appellant

## **APPENDIX A**

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APR 15 2014  
GINGER BROOKS, Clerk of the  
Superior Court of Mason Co. Wash.

Superior Court of Washington  
County of Mason

State of Washington, Plaintiff,

vs.

JOHN R. RING,  
Defendant.  
DOB: 06/17/1960  
PCN:941100228  
SID:WA11832978

No.12-1-000398-0

14-9-00 296.2  
Felony Judgment and Sentence --  
Prison  
(FJS)

- Clerk's Action Required, para 2.1, 4.1, 4.3, 4.8 5.2, 5.3, 5.5 and 5.7
- Defendant Used Motor Vehicle
- Juvenile Decline  Mandatory  Discretionary

I. Hearing

1.1 The court conducted a sentencing hearing this date; the defendant, the defendant's lawyer, and the (deputy) prosecuting attorney were present.

II. Findings

2.1 **Current Offenses:** The defendant is guilty of the following offenses, based upon  
 guilty plea (date) \_\_\_\_\_  jury-verdict (date) 03/04/2014  bench trial (date) \_\_\_\_\_:

Count	Crime	RCW (w/subsection)	Class	Date of Crime
I	Possession of Stolen Motor Vehicle	9A.56.068	FB	09/28/2012
II	Forgery	9A.60.020	FC	12/30/2011
III	Forgery	9A.60.020	FC	07/15/2011

Class: FA (Felony-A), FB (Felony-B), FC (Felony-C)  
(If the crime is a drug offense, include the type of drug in the second column.)

Additional current offenses are attached in Appendix 2.1a.

The jury returned a special verdict or the court made a special finding with regard to the following:

GV  For the crime(s) charged in Count \_\_\_\_\_, domestic violence was pled and proved.  
RCW 10.99.020.

The defendant used a **firearm** in the commission of the offense in Count \_\_\_\_\_, RCW 9.94A.825, 9.94A.533.

The defendant used a **deadly weapon other than a firearm** in committing the offense in Count \_\_\_\_\_, RCW 9.94A.825, 9.94A.533.

148

- Count \_\_\_\_\_, Violation of the Uniform Controlled Substances Act (VUCSA), RCW 69.50.401 and RCW 69.50.435, took place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, public transit vehicle, or public transit stop shelter; or in, or within 1000 feet of the perimeter of a civic center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local governing authority as a drug-free zone.
- In count \_\_\_\_\_ the defendant committed a robbery of a pharmacy as defined in RCW 18.64.011(21), RCW 9.94A.\_\_\_\_\_.
- The defendant committed a crime involving the manufacture of methamphetamine, including its salts, isomers, and salts of isomers, when a juvenile was present in or upon the premises of manufacture in Count \_\_\_\_\_ RCW 9.94A.605, RCW 69.50.401, RCW 69.50.440.
- Count \_\_\_\_\_ is a criminal street gang-related felony offense in which the defendant compensated, threatened, or solicited a minor in order to involve that minor in the commission of the offense. RCW 9.94A.833.
- Count \_\_\_\_\_ is the crime of unlawful possession of a firearm and the defendant was a criminal street gang member or associate when the defendant committed the crime. RCW 9.94A.702, 9.94A.829.
- The defendant committed  vehicular homicide  vehicular assault proximately caused by driving a vehicle while under the influence of intoxicating liquor or drug or by operating a vehicle in a reckless manner. The offense is, therefore, deemed a violent offense. RCW 9.94A.030.
- GY  In Count \_\_\_\_\_, the defendant had (number of) \_\_\_\_\_ passenger(s) under the age of 16 in the vehicle. RCW 9.94A.533.
- Count \_\_\_\_\_ involves attempting to elude a police vehicle and during the commission of the crime the defendant endangered one or more persons other than the defendant or the pursuing law enforcement officer. RCW 9.94A.834.
- In Count \_\_\_\_\_ the defendant has been convicted of assaulting a law enforcement officer or other employee of a law enforcement agency who was performing his or her official duties at the time of the assault, as provided under RCW 9A.36.031, and the defendant intentionally committed the assault with what appeared to be a firearm. RCW 9.94A.831, 9.94A.533.
- Count \_\_\_\_\_ is a felony in the commission of which the defendant used a motor vehicle. RCW 46.20.285.
- The defendant has a chemical dependency that has contributed to the offense(s). RCW 9.94A.607.
- In Count \_\_\_\_\_, assault in the 1<sup>st</sup> degree (RCW 9A.36.011) or assault of a child in the 1<sup>st</sup> degree (RCW 9A.36.120), the offender used force or means likely to result in death or intended to kill the victim and shall be subject to a mandatory minimum term of 5 years (RCW 9.94A.540).
- Counts 9 \* see below encompass the same criminal conduct and count as one crime in determining the offender score. RCW 9.94A.589.
- Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

	Crime	Cause Number	Court (county & state)	DV* Yes
1.	Bail Jumping	12-1-00406-4	Mason County, WA	NO
2.	VUCSA Possession Methamphetamine	12-1-00406-4	Mason County, WA	NO

\* DV: Domestic Violence was pled and proved.

- Additional current convictions listed under different cause numbers used in calculating the offender score are attached in Appendix 2.1b.

\* in this cause number and Count II in 12-1-406-4 and Count II in 12-1-407-2 and Count IV in 12-1-408-1.

**2.2 Criminal History (RCW 9.94A.525):**

	Crime	Date of Crime	Date of Sentence	Sentencing Court (County & State)	A or J Adult, Juv.	Type of Crime	DV* Yes
1	Possession Stolen Property in the First	08/12/02	04/23/04	Grant County, WA	A	FB	NO
2	Possession Stolen Property in the Second (Wash Out)	08/12/02	04/23/04	Grant County, WA	A	FC	NO
3	Delivery of Controlled Substance Methamphetamine	05/21/03	01/15/04	Mason County, WA	A	FB	NO
4	Possession Methamphetamine	09/21/10	09/10/12	Kitsap County, WA	A	FC	NO
5							

\* DV: Domestic Violence was pled and proved.

Additional criminal history is attached in Appendix 2.2.

The defendant committed a current offense while on community placement/community custody (adds one point to score). RCW 9.94A.525.

The prior convictions listed as number(s) \_\_\_\_\_, above, or in appendix 2.2, are one offense for purposes of determining the offender score (RCW 9.94A.525)

The prior convictions listed as number(s) \_\_\_\_\_, above, or in appendix 2.2, are not counted as points but as enhancements pursuant to RCW 46.61.520.

**2.3 Sentencing Data:**

Count No.	Offender Score	Seriousness Level	Standard Range (not including enhancements)	Plus Enhancements*	Total Standard Range (including enhancements)	Maximum Term
I	<del>1+</del> 9+	II	43-57 Months	NA	43-57 Months	10 Years \$20,000
II	<del>1+</del> 9+	I	22-29 Months	NA	22-29 Months	5 Years \$10,000
III	<del>1+</del> 9+	I	22-29 Months	NA	22-29 Months	5 Years \$10,000

\* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (RPh) Robbery of a pharmacy, (VH) Veh. Hom, see RCW 46.61.520, (JP) Juvenile present, (CSG) criminal street gang involving minor, (AE) endangerment while attempting to elude, (ALF) assault law enforcement with firearm, RCW 9.94A.533(12), (P16) Passenger(s) under age 16.

Additional current offense sentencing data is attached in Appendix 2.3.

For violent offenses, most serious offenses, or armed offenders, recommended sentencing agreements or plea agreements are  attached  as follows: \_\_\_\_\_

**2.4  Exceptional Sentence.** The court finds substantial and compelling reasons that justify an exceptional sentence:

below the standard range for Count(s) \_\_\_\_\_.

above the standard range for Count(s) \_\_\_\_\_.

The defendant and state stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the sentencing reform act.

Aggravating factors were  stipulated by the defendant,  found by the court after the defendant waived jury trial,  found by jury, by special interrogatory.

within the standard range for Count(s) \_\_\_\_\_, but served consecutively to Count(s) \_\_\_\_\_. Findings of fact and conclusions of law are attached in Appendix 2.4.  Jury's special interrogatory is attached. The Prosecuting Attorney  did  did not recommend a similar sentence.

**2.5 Legal Financial Obligations/Restitution.** The court has considered the total amount owing, the defendant's present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. (RCW 10.01.160). The court makes the following specific findings:

The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753): \_\_\_\_\_

The defendant has the present means to pay costs of incarceration. RCW 9.94A.760.

(Name of agency) \_\_\_\_\_ 's costs for its emergency response are reasonable. RCW 38.52.430 (effective August 1, 2012).

**2.6  Felony Firearm Offender Registration.** The defendant committed a felony firearm offense as defined in RCW 9.41.010.

The court considered the following factors:

the defendant's criminal history.

whether the defendant has previously been found not guilty by reason of insanity of any offense in this state or elsewhere.

evidence of the defendant's propensity for violence that would likely endanger persons.

other: \_\_\_\_\_

The court decided the defendant  should  should not register as a felony firearm offender.

### III. Judgment

3.1 The defendant is *guilty* of the Counts and Charges listed in Paragraph 2.1 and Appendix 2.1 (a)

3.2  The court ~~finds~~ *jury found defendant Not Guilty on* Counts *5 and 7* in the charging document.

### IV. Sentence and Order

*TAS*  
*TAS*  
It is ordered:

**4.1 Confinement.** The court sentences the defendant to total confinement as follows:

(a) **Confinement.** RCW 9.94A.589. A term of total confinement in the custody of the Department of Corrections (DOC):

57 months on Count I

83 months on Count VI

29 months on Count II

29 months on Count VIII

29 months on Count III

60 ~~58~~ months on Count IX *TAS*

29 months on Count IV

The confinement time on Count(s) \_\_\_\_\_ contain(s) a mandatory minimum term of \_\_\_\_\_.

The confinement time on Count \_\_\_\_\_ includes \_\_\_\_\_ months as enhancement for  firearm  deadly weapon  VUCSA in a protected zone

manufacture of methamphetamine with juvenile present.

Actual number of months of total confinement ordered is: 83 *TAS*

All counts shall be served concurrently, except for the portion of those counts for which there is an enhancement as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: \_\_\_\_\_

This sentence shall run consecutively with the sentence in the following cause number(s) (see RCW 9.94A.589(3)): \_\_\_\_\_

Confinement shall commence immediately unless otherwise set forth here: \_\_\_\_\_

- (b) **Credit for Time Served.** The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The jail shall compute time served.
- (c)  **Work Ethic Program.** RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic program. The court recommends that the defendant serve the sentence at a work ethic program. Upon completion of work ethic program, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions in Section 4.2. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of confinement.

**4.2 Community Custody.** (To determine which offenses are eligible for or required for community custody see RCW 9.94A.701)

(A) The defendant shall be on community custody for:

Count(s) \_\_\_\_\_ 36 months for Serious Violent Offenses  
Count(s) \_\_\_\_\_ 18 months for Violent Offenses  
Count(s) \_\_\_\_\_ 12 months (for crimes against a person, drug offenses, or offenses involving the unlawful possession of a firearm by a street gang member or associate)

Note: combined term of confinement and community custody for any particular offense cannot exceed the statutory maximum. RCW 9.94A.701.

(B) While on community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community restitution (service); (3) notify DOC of any change in defendant's address or employment; (4) not consume controlled substances except pursuant to lawfully issued prescriptions; (5) not unlawfully possess controlled substances while on community custody; (6) not own, use, or possess firearms or ammunition; (7) pay supervision fees as determined by DOC; (8) perform affirmative acts as required by DOC to confirm compliance with the orders of the court; and (9) abide by any additional conditions imposed by DOC under RCW 9.94A.704 and .706. The defendant's residence location and living arrangements are subject to the prior approval of DOC while on community custody.

The court orders that during the period of supervision the defendant shall:

- consume no alcohol.  
 have no contact with: \_\_\_\_\_  
 remain  within  outside of a specified geographical boundary, to wit: \_\_\_\_\_  
 not serve in any paid or volunteer capacity where he or she has control or supervision of minors under 13 years of age.  
 participate in the following crime-related treatment or counseling services: \_\_\_\_\_  
 undergo an evaluation for treatment for  domestic violence  substance abuse  
 mental health  anger management, and fully comply with all recommended treatment.  
 comply with the following crime-related prohibitions: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
 Other conditions: \_\_\_\_\_  
\_\_\_\_\_

Court Ordered Treatment: If any court orders mental health or chemical dependency treatment, the defendant must notify DOC and the defendant must release treatment information to DOC for the duration of incarceration and supervision. RCW 9.94A.562.

**4.3 Legal Financial Obligations:** The defendant shall pay to the clerk of this court:

JASS CODE

PCV	\$ <u>500</u>	Victim assessment	RCW 7.68.035
PDV	\$ _____	Domestic Violence assessment	RCW 10.99.080
CRC	\$ <u>1,134.50</u>	Court costs, including RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190	
		Criminal filing fee \$ <u>200</u>	FRC
		Witness costs \$ _____	WFR
		Sheriff service fees \$ <u>684.50</u>	SFR/SFS/SFW/WRF <b>TAS</b>
		Jury demand fee \$ <u>250</u>	JFR
		Extradition costs \$ _____	EXT
		Other \$ _____	
PUB	\$ <u>300</u>	Fees for court appointed attorney	RCW 9.94A.760
WFR	\$ <u>528</u>	Court appointed defense expert and other defense costs	RCW 9.94A.760
FCM/MTH	\$ _____	Fine RCW 9A.20.021; <input type="checkbox"/> VUCSA chapter 69.50 RCW, <input type="checkbox"/> VUCSA additional fine deferred due to indigency RCW 69.50.430	
CDF/LDI/FCD	\$ _____	Drug enforcement fund of _____	RCW 9.94A.760
NTF/SAD/SDI	\$ _____	DUI fines, fees and assessments	
CLF	\$ _____	Crime lab fee <input type="checkbox"/> suspended due to indigency	RCW 43.43.690
	\$ <u>100</u>	DNA collection fee	RCW 43.43.7541
FPV	\$ _____	Specialized forest products	RCW 76.48.140
	\$ _____	Other fines or costs for: _____	
DEF	\$ _____	Emergency response costs (\$1000 maximum, \$2,500 max. effective Aug. 1, 2012.) RCW 38.52.430	
		Agency: _____	
<b>TAS</b>	\$ <u>Reserved</u>	Restitution to: _____	
RTN/RJN	\$ _____	Restitution to: _____	
	\$ _____	Restitution to: _____	
		(Name and Address--address may be withheld and provided confidentially to Clerk of the Court's office.)	
<b>TAS</b>	\$ <u>2,562.50</u>	<b>Total</b>	RCW 9.94A.760

The above total does not include all restitution or other legal financial obligations, which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:  shall be set by the prosecutor.

is scheduled for \_\_\_\_\_ (date).

The defendant waives any right to be present at any restitution hearing (sign initials): \_\_\_\_\_.

**Restitution** Schedule attached.

Restitution ordered above shall be paid jointly and severally with:

Name of other defendant      Cause Number      (Victim's name)      (Amount-\$)

R/JN

The Department of Corrections (DOC) or clerk of the court shall immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602, RCW 9.94A.760(8).

All payments shall be made in accordance with the policies of the clerk of the court and on a schedule established by DOC or the clerk of the court, commencing immediately, unless the court specifically sets forth the rate here: Not less than ~~\$100.00~~ per month commencing sixty days from release. RCW 9.94A.760.

\$100.00

The defendant shall report to the clerk of the court or as directed by the clerk of the court to provide financial and other information as requested. RCW 9.94A.760(7)(b).

The court orders the defendant to pay costs of incarceration at the rate of \$ \_\_\_\_\_ per day, (actual costs not to exceed \$100 per day). (JLR) RCW 9.94A.760. (This provision does not apply to costs of incarceration collected by DOC under RCW 72.09.111 and 72.09.480.)

The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.160.

**4.4 DNA Testing.** The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency shall be responsible for obtaining the sample prior to the defendant's release from confinement. This paragraph does not apply if it is established that the Washington State Patrol crime laboratory already has a sample from the defendant for a qualifying offense. RCW 43.43.754.

**HIV Testing.** The defendant shall submit to HIV testing. RCW 70.24.340.

**4.5 No Contact:**

The defendant shall not have contact with Kelly Lund, Mike Hanes, Ace Paving, ~~Pape Bobcat West, Scarcella Brothers Construction~~ including, but not limited to, personal, verbal, telephonic, written or contact through a third party until ~~03/18/2023~~ (which does not exceed the maximum statutory sentence).

PAS

The defendant is excluded or prohibited from coming within 500 feet (distance) of: ~~Ace Paving~~

Kelly Lund, Mike Hanes, Ace Paving, ~~Pape Bobcat West, Scarcella Brothers Construction~~ (name of protected person(s))'s  home/ residence  work place  school  (other location(s))

other location: \_\_\_\_\_, or  
until ~~3~~ 4-14-2024 for Kelly Lund and until 4-14-2019 for Ace Paving (which does not exceed the maximum statutory sentence).

TTS

A separate Domestic Violence No-Contact Order, Antiharassment No-Contact Order, or Stalking No-Contact Order is filed concurrent with this Judgment and Sentence.

**4.6 Other:** \_\_\_\_\_

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**4.7 Off-Limits Order.** (Known drug trafficker). RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the county jail or Department of Corrections: \_\_\_\_\_

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**4.8 Exoneration:** The Court hereby exonerates any bail, bond and/or personal recognizance conditions.

### V. Notices and Signatures

**5.1 Collateral Attack on Judgment.** If you wish to petition or move for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, you must do so within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.

**5.2 Length of Supervision.** If you committed your offense prior to July 1, 2000, you shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. If you committed your offense on or after July 1, 2000, the court shall retain jurisdiction over you, for the purpose of your compliance with payment of the legal financial obligations, until you have completely satisfied your obligation, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505(5). The clerk of the court has authority to collect unpaid legal financial obligations at any time while you remain under the jurisdiction of the court for purposes of your legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).

**5.3 Notice of Income-Withholding Action.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections (DOC) or the clerk of the court may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.

**5.4 Community Custody Violation.**

(a) If you are subject to a first or second violation hearing and DOC finds that you committed the violation, you may receive as a sanction up to 60 days of confinement per violation. RCW 9.94A.633.

(b) If you have not completed your maximum term of total confinement and you are subject to a third violation hearing and DOC finds that you committed the violation, DOC may return you to a state correctional facility to serve up to the remaining portion of your sentence. RCW 9.94A.714.

**5.5a Firearms.** You may not own, use or possess any firearm, and under federal law any firearm or ammunition, unless your right to do so is restored by the court in which you are convicted or the superior court in Washington State where you live, and by a federal court if required. You must immediately surrender any concealed pistol license. (The clerk of the court shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.

**5.5b  Felony Firearm Offender Registration.** The defendant is required to register as a felony firearm offender. The specific registration requirements are in the "Felony Firearm Offender Registration" attachment.

5.6 Reserved

**5.7  Department of Licensing Notice:** The court finds that Count \_\_\_\_\_ is a felony in the commission of which a motor vehicle was used. **Clerk's Action**—The clerk shall forward an Abstract of Court Record (ACR) to the DOL, which must revoke the Defendant's driver's license. RCW 46.20.285. **Findings for DUI, Physical Control, Felony DUI or Physical Control, Vehicular Assault, or Vehicular Homicide (ACR information) (Check all that apply):**

Within two hours after driving or being in physical control of a vehicle, the defendant had an alcohol concentration of breath or blood (BAC) of \_\_\_\_\_.

- No BAC test result.
  - BAC Refused. The defendant refused to take a test offered pursuant to RCW 46.20.308.
  - Drug Related. The defendant was under the influence of or affected by any drug.
  - THC level was \_\_\_\_\_ within two hours after driving.
  - Passenger under age 16. The defendant committed the offense while a passenger under the age of sixteen was in the vehicle.
- Vehicle Info.:  Commercial Veh.  16 Passenger Veh.  Hazmat Veh.

5.8 Other: \_\_\_\_\_

Done in Open Court and in the presence of the defendant this date: 4-15-2014

TONI A. SHELDON

Toni A. Sheldon  
Judge/Print Name

Michael Rothman  
Deputy Prosecuting Attorney  
WSBA No. 33048  
Print Name: Michael Rothman

[Signature]  
Attorney for Defendant  
WSBA No. 36360  
Print Name:

John Ring  
Defendant  
Print Name: John Ring

**Voting Rights Statement:** I acknowledge that I have lost my right to vote because of this felony conviction. If I am registered to vote, my voter registration will be cancelled.

My right to vote is provisionally restored as long as I am not under the authority of DOC (not serving a sentence of confinement in the custody of DOC and not subject to community custody as defined in RCW 9.94A.030). I must re-register before voting. The provisional right to vote may be revoked if I fail to comply with all the terms of my legal financial obligations or an agreement for the payment of legal financial obligations

My right to vote may be permanently restored by one of the following for each felony conviction: a) a certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) a court order issued by the sentencing court restoring the right, RCW 9.92.066; c) a final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) a certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 29A.84.660. Registering to vote before the right is restored is a class C felony, RCW 29A.84.140.

Defendant's signature: [Signature]

I am a certified or registered interpreter, or the court has found me otherwise qualified to interpret, in the \_\_\_\_\_ language, which the defendant understands. I interpreted this Judgment and Sentence for the defendant into that language.

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed at (city) \_\_\_\_\_, (state) \_\_\_\_\_, on (date) \_\_\_\_\_.

\_\_\_\_\_  
Interpreter Print Name

I, \_\_\_\_\_, Clerk of this Court, certify that the foregoing is a full, true and correct copy of the Judgment and Sentence in the above-entitled action now on record in this office.

WITNESS my hand and seal of the said Superior Court affixed this date: \_\_\_\_\_.

Clerk of the Court of said county and state, by: \_\_\_\_\_, Deputy Clerk

### VI. Identification of the Defendant

SID No. WA11832978  
(If no SID complete a separate Applicant card  
(form FD-258) for State Patrol)

Date of Birth 06/17/1960

FBI No. 243808JA5

Local ID No. \_\_\_\_\_

PCN No. 941100228

Other \_\_\_\_\_

Alias name, DOB: \_\_\_\_\_

**Race:**

- Asian/Pacific Islander     Black/African-American     Caucasian  
 Native American     Other: \_\_\_\_\_

**Ethnicity:**

- Hispanic     Male  
 Non-Hispanic     Female

**Fingerprints:** I attest that I saw the defendant who appeared in court affix his or her fingerprints and signature on this document.

Clerk of the Court, Deputy Clerk, \_\_\_\_\_

*Sharon D. [Signature]*

Dated: 4-15-14

**The defendant's signature:** \_\_\_\_\_

*John R. [Signature]*

Left four fingers taken simultaneously

Left  
Thumb

Right  
Thumb

Right four fingers taken simultaneously



**Superior Court of Washington  
County of**

**State of Washington, Plaintiff,**

**No.12-1-00398-0**

vs.  
**JOHN R. RING**  
Defendant.

**Additional Criminal History and Current  
Offense Sentencing Data (Appendix 2.2 and  
2.3, Judgment and Sentence) (APX)**

2.2 The defendant has the following criminal history (RCW 9.94A.525):

	<i>Crime</i>	<i>Date of Crime</i>	<i>Date of Sentence</i>	<i>Sentencing Court (County &amp; State)</i>	<i>A or J Adult, Juv.</i>	<i>Type of Crime</i>	<i>DV* Yes</i>
1							
2							
3							
4							
5							

\* DV:Domestic Violence was pled and proved.

2.3 The additional current offense sentencing data is as follows:

<i>Count No.</i>	<i>Offender Score</i>	<i>Seriousness Level</i>	<i>Standard Range (not including enhancements)</i>	<i>Plus Enhancements*</i>	<i>Total Standard Range (including enhancements)</i>	<i>Maximum Term</i>
IV	<del>14</del> 9+	I	22-29 Months	NA	22-29 Months	5 Years \$10,000
VI	<del>14</del> 9+	IV	63-83 Months	NA	63-84 Months	10 Years \$20,000
VIII	<del>14</del> 9+	I	22-29 Months	NA	22-29 Months	5 Years \$10,000
IX	<del>14</del> 9+	III	51-68 Months	NA	51-68 Months	5 Years \$10,000

\*(F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. hom. See RCW 46.61.520, (JP) Juvenile present, (SM) Sexual motivation, RCW 9.94A.533(8), (SCF) Sexual conduct with a child for a fee RCW 9.94A.533(9), (CSG) criminal street gang involving minor, (AE) endangerment while attempting to elude, (ALF) assault law enforcement with firearm, RCW 9.94A.533(12), (P16) Passenger(s) under age 16.

[ ] See additional sheets for more criminal history and current offense sentencing data.

**Superior Court of Washington  
County of**

**State of Washington, Plaintiff,**

**No.12-1-00398-0**

vs.  
**JOHN R. RING**  
Defendant.

**Additional Current Offenses and Current  
Convictions Listed Under Different Cause  
Numbers Used in Calculating the Offender  
Score (Appendix 2.1a and 2.1b, Judgment and  
Sentence) (APX)**

2.1a The defendant has the following additional current offenses:

<b>Count</b>	<b>Crime</b>	<b>RCW (w/subsection)</b>	<b>Class</b>	<b>Date of Crime</b>
IV	Forgery	9A.60.020	FC	08/11/2011
VI	Trafficking in Stolen Property in the First Degree	9A.82.050	FB	<del>04/09/2011</del> 9-4-2012
VIII	Possession Stolen Property in the Second Degree	9A.56.160	FC	09/28/2012
IX	Bail Jumping	9A.176.170	FB	01/28/2013

Class: FA (Felony-A), FB (Felony-B), FC (Felony-C)

(If the crime is a drug offense, include the type of drug in the second column.)

2.1b The defendant has the following additional current convictions listed under different cause numbers used in calculating the offender score:

	<b>Crime</b>	<b>Cause Number</b>	<b>Court (county &amp; state)</b>	<b>DV* Yes</b>
1	Possession of Stolen Property in the First Degree	12-1-00407-2	Mason County, WA	NO
2	Bail Jumping	12-1-00407-2	Mason County, WA	NO
3	Possession of Stolen Property in the First Degree	12-1-00408-1	Mason County, WA	NO
4	Possession of Stolen Property in the First Degree	12-1-00408-1	Mason County, WA	NO
5	Possession of Stolen Property in the First Degree	12-1-00408-1	Mason County, WA	NO
6	Bail Jumping	12-1-00408-1	Mason County, WA	NO
7	VUCSA-Possession Methamphetamine	12-1-00406-4	Mason County, WA	NO
8	Bail Jumping	12-1-00406-4	Mason County, WA	NO

\* DV:Domestic Violence was pled and proved.

## **APPENDIX B**

NO. 46145-5-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION TWO

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STATE OF WASHINGTON,

Respondent,

v.

JOHN RING,

Appellant.

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR MASON COUNTY

The Honorable Toni Sheldon, Judge  
The Honorable Amber L. Finlay, Judge

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BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. Appellant was denied his due process right to notice where the State failed to include all the essential elements for forgery in the information.

2. Where evidence was seized pursuant to a partially overbroad warrant, the trial court erred in admitting the evidence without first determining whether the searching officer was executing the valid part of the warrant when he seized the evidence.

3. There was insufficient evidence to support two of appellant's convictions for possessing stolen property.

4. There was insufficient evidence to support a conviction for trafficking stolen property.

5. The Judgment and Sentence sets forth the incorrect date of the offense for two of appellant's convictions.

Issues Pertaining to Assignments of Error

1. It has long been the case in Washington State that one of the elements of forgery is that the written instrument must be of apparent legal efficacy. The State failed to include this legal element in the information when charging appellant with three forgery

offenses. Was appellant denied his due process right to proper notice of these charges?

2. Appellant was convicted of possessing a controlled substance. The evidentiary basis of this charge consisted of an aluminum can that had a residue of crystallized white powder. This can was discovered during a search of appellant's property. The search was conducted pursuant to a partially overbroad search warrant. Appellant moved to suppress the evidence. The trial court denied appellant's motion without first determining whether the controlled substance evidence was found while officers were executing the valid portion of the warrant. Did the trial court err when it denied appellant's motion to suppress the drug evidence?

3. Appellant was charged with four counts of possession of stolen property. The "to convict" instructions listed as alternatives means that defendant received, retained, possessed, or concealed stolen property. There was no unanimity instruction. As to two of the possession counts, the State failed to provide sufficient evidence from which the jury could conclude appellant concealed the property at issue. Was there insufficient evidence to support conviction for these two charges?

4. Appellant was charged with trafficking stolen property. Under the law of this case, the State was required to prove appellant both participated in the theft of the property and was trafficking the property. Whether there was sufficient evidence to prove the trafficking element, the State failed to present evidence linking appellant to the theft of the property. Was there insufficient evidence to support the conviction for trafficking stolen property?

5. The Judgment and Sentence sets the date of the crime for two convictions as "9/28/2013." The information and instructions in this case indicate the date of the offense was September 28, 2012. Should this Court remand for correction of the Judgment and Sentence?

B. STATEMENT OF THE CASE

1. Procedural History

On October 1, 2012, the Mason County prosecutor charged appellant John R. Ring with two counts of possession of a stolen vehicle (a truck and a motorcycle) and one count of trafficking in stolen property under Cause number 12-1-00398-0. CP 103-106. That information was later amended to include an additional three counts of forgery, one count of first degree possession of stolen property (a trailer), one count of second degree possession of

stolen property (various tools, a tire balance machine, irrigation pumps, and a tire mounter), and one count of bail jumping.

On October 4, 2012, the Mason County prosecutor charged Ring with one count of possession of a controlled substance under Cause No. 12-1-00406-4. CP 137. That information was later amended to include one count of bail jumping. CP 132-35.

Also on October 4, 2012, the Mason County prosecutor charged Ring with two counts of first degree possession of stolen property (a Whacker generator and a Bobcat mini-excavator) under Cause No. 12-1-00408-1. CP 163-64. That information was later amended to include another count of first degree possession of stolen property (a Kubota backhoe) and one count of bail jumping. CP 157-62.

The cases were consolidated for trial and the jury returned its verdicts on March 4, 2014. Under Cause No. 12-1-00398-0, the jury acquitted Ring of one of count of possessing a stolen vehicle (the motorcycle) and of second degree possession of stolen property (the tools). The jury convicted him of the other charged counts. CP 24-33.

Under Cause No. 12-1-00406-4, the jury convicted Ring of both counts. CP 113-129. Under Cause No. 12-1-00408-1, the jury convicted Ring of all three counts. CP 20-23.

At sentencing, the trial court found the four convictions for bail jumping constituted the same criminal conduct.<sup>1</sup> CP 6. Given Ring's criminal history and his current crimes, his offender score was calculated as 14. RP 1141. The trial court sentenced him to the top of the standard range. RP 1143. Ring's conviction for trafficking garnered the longest confinement period – 83 months.<sup>2</sup> CP 8. Ring appeals. RP 150.

## 2. Substantive Facts

On September 5, 2012, Garrett Rochon contacted the Mason County Sheriff's office to report that his uncle's stolen 1968 GMC truck was listed for sale on Craigslist.com. RP 146, 380. Rochon was certain of this because the pictures accompanying the advertisement revealed the license plate number. RP 146. Rochon informed the deputy that his brother Nicholas Rochon was

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<sup>1</sup> The bail jumping charges are not the subject of any challenges on appeal, so appellant will provide no further facts.

<sup>2</sup> This sentence was run consecutively with a conviction under Cause No. 12-1-00407-2. RP 1148. However, that sentence is the subject of a separate appeal.

the legal owner of the truck and his uncle Kelly Lund was the registered owner. RP 145. The truck had been parked on Lund's property while he was in jail. RP 165. It was one of many vehicles stolen from the property during Lund's incarceration. RP 165.

Detective Jeffery Rhoades, the detective assigned to the case, discovered through the Department of Licensing that the truck was registered to John Ring, not Lund. RP 386. The phone number listed on the Craigslist ad belonged to the Ring family. RP 385

Detective Rhoades contacted the Department of Licensing and confirmed that there was an Affidavit of Loss of Title and Release of Interest filed for the truck. The document was purportedly signed by Nicholas Rochon and Kelly Lund and notarized by Sarah Griffin. The Department of Licensing also had a bill of Sale signed by Lund and Rochon and transferring the truck to Ring. Lund later confirmed he never signed the documents. RP 157, 160.

Detective Rhoades discovered there was a notary in Washington State by the name of Sarah Griffin, but he saw that the notary stamp used on the truck documents had a different expiration date. CP 108. Rhoades also noted the notary signature

on the documents did not match Griffin's driver license signature. CP 108. Griffin was contacted and confirmed she did not notarize the documents. RP 390.

Rhoades requested information from the Department of Licensing regarding all vehicles currently registered to Ring. RP 389. He noted the same suspicious notary stamp was used on the Affidavit of Loss and Release of Interest for a 1996 Chevrolet Blazer. CP 109. There was also a bill of sale that appeared to have the forged signatures of Barbara and Douglas Seeger, purported owners of the car. RP 423, 514, 519.

Rhoades also discovered suspicious paperwork for a 2001 Ford F350, also registered to Ring. CP 109. The paperwork claimed the vehicle had been gifted to Ring from Venita McBride. RP 361-62. Rhoades contacted McBride who explained she had not gifted the car to Ring, and the car in question was parked right outside her house. CP 109. One of the documents filed was an invoice indicating that the truck was old enough to be gifted without tax consequences to the receiver. RP 361-62, 382.

Eventually, Rhoades obtained a search warrant to search Ring's property. CP 214. This was executed on September 27, 2012. RP 214. After an exhaustive 10-hour search, Lund's truck

was not found on the property. RP 275, 383. Meanwhile, deputies ran the serial number of every vehicle on the property. RP 402. A motorcycle was the only vehicle seized from the property. RP 215, 387. In addition, deputies seized various tools, a tire balance machine and tire mounter, which they believed to be stolen. RP 232-38, 387. Deputies also seized a can from one of the shipping containers that had a white powdery residue. RP 244-45. It was later confirmed that the residue was methamphetamine. RP 263.

Inside one of the vehicles on Ring's property, deputies located a box of forms that included incomplete Affidavit of Loss Title and Release of Interest forms and Bill of Sale forms. RP 227-31. Some of the forms included the purported notary stamp of Sarah Griffin, while others included a suspicious notary stamp belonging to a "Paul W. Bryan." RP 227-31.

During the search of Ring's property, Rhoades interviewed Ring's wife who said Ring sometimes stores equipment at "Dean's" house. RP 384. Deputies found a paper with Dean's phone number. RP 384. Rhoades ran a check and determined that the phone number belonged to Dean Speaks. RP 385.

Rhoades obtained a warrant to search Speaks' property. RP 275, 385. The warrant was executed the next day. RP 323.

Deputies found Lund's truck there. RP 276. They also seized a Bobcat excavator, a utility trailer, a Kubota backhoe tractor, irrigation pumps, and a Whacker generator. RP 277-53, 386. Speaks said Ring brought these items to his property and asked to store them there. RP 322-26. He said Ring never asked him to hide or conceal these items and did not act suspicious. RP 328-331.

As indicated in the procedural facts, the State eventually brought fifteen charges against Ring. At trial, Ring testified he had a long history of working in the auto repair business. RP 838-40. He had owned a towing business, two impound lots, and an automobile repair shop. RP 838-40. He explained that for years, he had owned the various tools, tire balancing machine and tire moulder that he was charged with stealing. Numerous other witnesses corroborated his testimony. RP 590-600, 606, 668, 671, 687, 690-91, 749, 756, 758.

Ring also explained that he had obtained the 1968 truck from an individual who advertised it as being for sale with a sign in the window. RP 837. Ring purchased the truck by exchanging a vehicle he owned and paying some cash. RP 900. Two witnesses

to the purchase corroborated this. RP 669, 674-77, 681, RP 765-767.

Ring testified he did not have any indication the truck was stolen when he purchased it. RP 859. Ring explained that prior to the purchase, the seller was struggling to find someone to notarize the necessary documents to facilitate the sale, so Ring suggested the seller go to a female notary who was living in a trailer on "Fat Pat's" property. RP 841-42. Ring had used this notary to notarize other documents, and he believed the notary was whom she purported to be, Sarah Griffin. RP 639-40, 644, RP 842, 898. This notary was also used by Ring to notarize the documents on the Chevy Blazer. RP 859. Ring denied forging any of the documents pertaining to the truck or other vehicles. RP 842-43, 861.

Ring further testified that he obtained the stolen motorcycle as a trade with Christopher Smith. RP 844. Ring explained that he had a motorcycle that was too big for his son to ride, and Smith had a motorcycle that was too small for his child. RP 844. The two agreed to swap. RP 844. Ring's friend Don Cotton was present at the time of the trade and corroborated the swap. RP 789-90, 802. Ring testified he did not know Smith's motorcycle was stolen when he possessed it. RP 845.

Ring also testified that he picked up the other property at issue (i.e. the tractor, excavator, irrigation pumps) through third parties either at estate auctions, or from individuals offering to sell what appeared to be their personal property to raise cash. RP 845-47, 863. Ring testified he was unaware the property had been stolen. RP 879, 927-36.

Ring denied knowing about the can with methamphetamine residue found in the shipping container. RP 872. Ring said he had permitted his friend Don Cotton to live in a portion of the shipping container where the aluminum can was located. RP 849. Cotton confirmed. RP 706. Cotton also admitted he was in recovery for drug addiction and had possessed methamphetamine while on Ring's property, but then asserted his Fifth Amendment right against self-incrimination. RP 693-694.

Ring testified he never forged any of the documents at issue or a notary stamp. RP 854, 962. In support, Ring offered the testimony of Burton Wilson, who admitted he attempted to make a false notary stamp to affix to various documents while at Ring's house. RP 564-65. Wilson acknowledged that he put the fake notary stamp on some of the blank forms found in Ring's possession. RP 575. Wilson testified he acted on his own. RP

580. When Ring found out about it, he told Wilson that he could not fake a notary. RP 855.

C. ARGUMENT

I. THE INFORMATION DID NOT INCLUDE ALL THE ESSENTIAL ELEMENTS FOR FORGERY THEREBY DENYING APPELLANT OF HIS RIGHT TO DUE PROCESS.<sup>3</sup>

Constitutional due process requires two conditions to be met when the State charges a crime: (1) the charging document must allege the legal elements of the charged crime; and (2) it must allege sufficient facts to support every element of the crime charged. State v. Leach, 113 Wn.2d 679, 688, 782 P.2d 552 (1989). Proof of the apparent legal efficacy of the document alleged to have been forged is an essential element of forgery. This element was not included in the information charging Ring. The charging document therefore failed to provide Ring with constitutionally required notice.

(i) Facts

The State charged appellant with three counts of forgery. CP 68-69. Except for specifying the date of the offense and the

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<sup>3</sup> This argument pertains to the three forgery counts under Cause No. 12-1-00398-0.

specific written instrument at issue, the charging language was the same for each charge and read as follows:

In the County of Mason, State of Washington, on or about [date], the above-named defendant, JOHN R. RING, did commit FORGERY, a class C felony, in that the above-named Defendant, with intent to injure or defraud, did falsely make, or alter a written instrument, and/or did possess, utter, offer, dispose of, or put off as true a written instrument which he knew to be forged, said instrument being a [name of document]; contrary to RCW 9A.60.020(1) and contrary and against the peace and dignity of the State of Washington.

CP 68-69.

(ii) Legal Argument

Under the Sixth Amendment, a charging document is constitutionally adequate only if all essential elements of a crime, both statutory and non-statutory, are included so as to apprise the defendant of the charges against him and to allow him to prepare his defense. See also Wash. Const. art. I, § 22; State v. Zillyette, 178 Wn.2d 153, 158, 307 P.3d 712 (2013).

An essential element is one whose specification is necessary to establish the very illegality of the behavior charged. State v. Ward, 148 Wn.2d 803, 811, 64 P.3d 640 (2003). Essential elements include both statutory and non-statutory elements. State v. Kjorsvik, 117 Wn.2d 93, 101-02, 812 P.2d 86 (1991). “The

primary goal of the 'essential elements' rule is to give notice to an accused of the nature of the crime that he or she must be prepared to defend against." Id. at 101. A secondary purpose for the essential elements rule is to bar "any subsequent prosecution for the same offense." State v. Nonog, 169 Wn.2d 220, 226, 237 P.3d 250 (2010) (internal quotes and citation omitted).

When a defendant challenges the sufficiency of a charging document for the first time on appeal, an appellate court will liberally construe the language of the charging document in favor of validity. Kjorsvik, 117 Wn.2d at 105. "If the document [charging] cannot be construed to give notice of or to contain in some manner the essential elements of a crime, the most liberal reading cannot cure it." State v. Moavenzadeh, 135 Wn.2d 359, 363, 956 P.2d 1097 (1998) (citation omitted).

In liberally construing the charging document, reviewing courts employ the two-pronged Kjorsvik test, asking: (1) do the necessary elements appear in any form, or by fair construction, on the face of the document; and, if so, (2) can the defendant show he or she was actually prejudiced by the unartful language. Kjorsvik, 117 Wn.2d at 105–06. If the information fails the first prong of the

test, prejudice is presumed and the conviction reversed. Zillyette, 178 Wn.2d at 162.

Here, the information failed to apprise Ring of all the essential elements of the crime of forgery. Specifically, it did not contain in any manner the legal-efficacy element.

Generally, forgery consists of three essential elements: (a) The false making or material alteration (b) with intent to defraud (c) of a writing which, if genuine, might be of legal efficacy. See, United States v. McGovern, 661 F.2d 27, 29 (3d Cir.1981) (recognizing these as the common law elements of forgery); see also, 36 Am.Jur.2d Forgery § 1 (2001) (defining "forgery" to include the same elements). The rule of legal efficacy is a common-law provision supplementing the penal statutes. State v. Smith, 72 Wn. App. 237, 241, 864 P.2d 406 (1993).

For nearly a century, Washington courts have recognized that, to be the subject of a forgery charge, a written instrument must be such that, if genuine, it would appear to have some legal efficacy, or be the basis of some legal liability. E.g., State v. Scoby, 117 Wn.2d 55, 810 P.2d 1358 (1991); State v. Morse, 38 Wn.2d 927, 929, 234 P.2d 478 (1951); Taes, 5 Wn.2d at 54; State v. Kuluris, 132 Wash. 149, 231 P. 782 (1925); State v. Richards, 109

Wn. App. 648, 653-54, 36 P.3d 1119; (2001); State v. Stiltner, 4 Wn. App. 33, 479 P.2d 103 (1971). Where the legal efficacy of the written instrument is not established, Washington courts have concluded there was no chargeable forgery crime. State v. Taes, 5 Wn.2d 51, 54, 104 P.2d (1940); State v. Stiltner, 4 Wn. App. 33, 479 P.2d 103 (1971).

When the Washington Legislature codified the crime of forgery under RCW 9A.60.020, the elements for forgery did not change. RCW 9A.60.020 provides:

- (1) A person is guilty of forgery if, with intent to injure or defraud:
  - (a) He or she falsely makes, completes, or alters a written instrument or;
  - (b) He or she possesses, utters, offers, disposes of, or puts off as true a written instrument which he or she knows to be forged.

Despite the statute's failure to explicitly set forth the legal-efficacy element, Washington courts have consistently construed this statute as continuing the practice of requiring proof of apparent legal efficacy as a legal element of forgery. E.g., Scoby, 117 Wn.2d at 57-58. Hence, the State is constitutionally required to include this essential element in the information. See, Kuluris, 132

Wash. at 151-52 (reversing where this element was not properly included in the information).

Even under a liberal construction, the information here cannot be construed as giving Ring proper notice as to the legal efficacy element. For each of the three forgery charges against Ring, the State failed to set forth the legal-efficacy element. CP 68-69. While the State set forth the statutory language, it has long been recognized that a charge of forgery requires more – it requires notice and proof as to the non-statutory legal-efficacy element. Kuluris, 132 Wash. at 151-52. Because such notice was not given here, the first prong of the Kjorsvik test is not met. Hence, reversal is required. Zillyette, 178 Wn.2d at 164.

In sum, an essential element of forgery is that the written instrument have apparent legal efficacy. This legal element does not appear in any form in the information, thus denying Ring proper notice. Prejudice is presumed and the three forgery convictions must be reversed.

II. THE STATE FAILED TO PROVE THE OFFICERS WERE EXECUTING THE VALID PORTION OF A PARTIALLY OVERBROAD WARRANT WHEN THEY DISCOVERED THE DRUG EVIDENCE.

The evidentiary basis of the charge for possession of a controlled substance consisted of an aluminum can upon which there was a residue of crystallized white powder. This can was found during a search that was conducted pursuant to a partially overbroad warrant.

When there is a partially overbroad warrant, trial courts are required to apply the five Maddox<sup>4</sup> factors to determine whether the particular evidence at issue is still admissible under the severability doctrine. The trial court did not undertake this inquiry here. As shown below, when the correct legal standard is applied, it cannot be said the State met its burden of demonstrating the drug evidence was found while officers were executing the valid portion of the warrant when the evidence was found. As such, the trial court erred when it admitted the drug evidence.

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<sup>4</sup> State v. Maddox, 152 Wn.2d 499, 509, 98 P.3d 1199 (2004).

(i) Facts

Detective Jeff Rhoades sought a search warrant to search Ring's property and residence. Ex. 1 ("Complaint for Search Warrant").<sup>5</sup> Although Rhoades alleged facts establishing probable cause to believe Ring committed possession of a stolen motor vehicle, trafficking in stolen property, possession of stolen property, and forgery, he failed to allege facts establishing probable cause to believe Ring had committed a drug offense. RP 34, 37. Despite this, Rhoades sought a warrant that not only authorized a search for specific items related to the crimes for which there was probable cause, he also sought broad authority to search for:

7. Any contraband (including controlled substances), fruits of crime or things otherwise unlawfully possessed, weapons or other things that which a crime has been committed or reasonable [sic] appears to be committed.

Appendix A at 6. A warrant was issued that included verbatim the above provision. Ex. 2 ("Search Warrant").<sup>6</sup>

The warrant was executed on September 27, 2012. CP 140. During the search, Mason County Sheriff Deputy Jason Sisson

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<sup>5</sup> Attached as appendix A.

<sup>6</sup> Attached as Appendix B.

discovered an aluminum can that displayed a white crystallized residue. RP 57-58. Sisson believed it to be drug paraphernalia and collected it. RP 57-58.

Appellant moved to suppress all evidence seized under the warrant, attacking the validity of the warrant on several grounds. CP 84-96. On December 6, 2013, the trial court heard argument. RP 40-41. While the trial court found much of the warrant was supported by probable cause, it also concluded there was not probable cause to support a search for controlled substances or a broad search for contraband. RP 37-38. It ruled paragraph 7 was overbroad, struck the provision, and suppressed the drug evidence. RP 38.

Subsequently, the State moved the trial court to reconsider, asking for an evidentiary hearing on the issue. RP (2-13-14) at 2. It had previously told the court an evidentiary hearing would be required to establish facts relevant to the Maddox factors. RP 23. However, when considering the State's motion to reconsider, the trial court ignored the Maddox factors and, instead, focused the parties on a straight-forward application of the plain-view exception to the warrant requirement. RP (2-13-14) 3-5.

On February 19, 2014, the evidentiary hearing took place. RP 55-59. The State called just one witness – Deputy Sisson. RP 55-58. Sisson testified he found the can while searching a Conex shipping container located on Ring’s property. RP 56-57.

During cross examination, defense counsel asked Sisson whether he was aware of the language in the warrant or the purpose for the search. CP 58. Sisson testified that he was not aware of the purpose or language, explaining he was just helping to process “anything illegal.” RP 58-59. When specifically asked why he was in the shipping container, Sisson replied: “It was a general search, and I was assisting detectives.” RP 59. When pressed as to what he was searching for in particular, Sisson stated only that he was assisting Detective Gardner. RP 59.

The State never called Detective Gardner or any other detectives who were directing the search to establish the scope and purpose of Sisson’s search in the shipping container. RP 55-62.

The State argued the drug evidence came in under the plain view doctrine. RP 63. The defense countered that Sisson’s testimony established that he was merely executing a general search when he saw the drug evidence, which was beyond the valid scope of the warrant. RP 69-70.

The trial court reversed itself and denied Ring's motion to suppress the drug evidence. RP 70-72. Specifically, the trial court found: Sisson was on the property pursuant to a valid warrant to search for items related to the possession of stolen property and forgery charges; he was searching a shipping container, which "would be appropriate for [Sisson] to be looking in" if he were looking for stolen property; and Sisson immediately recognized the can to be drug paraphernalia. RP 70-72. Notably, the trial court did not apply the Maddox factors and never found that Sisson did in fact discover the drug evidence while executing the valid part of the warrant.<sup>7</sup> RP 70-72.

(ii) Argument

The Fourth Amendment to the U.S. Constitution provides that "no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." This amendment was designed to prohibit "general searches" and to prevent "general, exploratory rummaging in a person's

---

<sup>7</sup> As of the date of filing, it appears there are no CrR 3.6 findings filed. However, appellant believes the trial court's oral ruling is sufficient to permit appellate review. If the State files Findings and Conclusions after the filing of this brief, appellant reserves the right to challenge those findings.

belongings.” State v. Perrone, 119 Wn.2d 538, 545, 834 P.2d 611 (1992) (quoting Andresen v. Maryland, 427 U.S. 463, 480, 96 S.Ct. 2737, 49 L.Ed.2d 627 (1976)). Similarly, article I, section 7 of the Washington Constitution provides that “[n]o person shall be disturbed in his private affairs, or his home invaded, without authority of law.”

It is well-established that the warrant clauses of the Fourth Amendment to the United States Constitution and article I, section 7 of Washington’s constitution require that a search warrant issue only upon a judicial determination of probable cause. State v. Fry, 168 Wn.2d 1, 5–6, 228 P.3d 1 (2010). Probable cause is established only if the affidavit sets forth sufficient facts to lead a reasonable person to conclude there is a probability the defendant is involved in criminal activity and that evidence of the criminal activity will be found at the place to be searched. State v. Maddox, 152 Wn.2d 499, 509, 98 P.3d 1199 (2004).

Additionally, “a search warrant must be sufficiently definite so that the officer executing the warrant can identify the property sought with reasonable certainty.” State v. Stenson, 132 Wn.2d 668, 692, 940 P.2d 1239 (1997). The particularity requirement serves the dual functions of limiting the executing officer’s

discretion and informing the person subject to the search what items may be seized. State v. Higgs, 177 Wn. App. 414, 426, 311 P.3d 1266 (2013) (citing State v. Riley, 121 Wn.2d 22, 29, 846 P.2d 1365 (1993)). A warrant can be “overbroad” either because it fails to describe with particularity items for which probable cause exists, or because it describes, particularly or otherwise, items for which probable cause does not exist. See, United States v. Spilotro, 800 F.2d 959, 963 (9th Cir.1986); Stenson, 132 Wn.2d at 692–93; Perrone, 119 Wn.2d at 545–46.

Even if a search warrant is overbroad or insufficiently particular, “[u]nder the severability doctrine, ‘infirmary of part of a warrant requires the suppression of evidence seized pursuant to that part of the warrant’ but does not require suppression of anything seized pursuant to valid parts of the warrant.” Higgs, 177Wn. App. at 430 (quoting Perrone, 119 Wn.2d at 556). The doctrine applies when a warrant includes both items that are supported by probable cause and described with particularity and items that are not. Id.

In State v. Maddox, this Court held the severability doctrine allows the State to introduce evidence seized under a partially

overbroad search warrant only after the following five factors are proved:

First, the warrant must lawfully have authorized entry into the premises....

Second, the warrant must include one or more particularly described items for which there is probable cause....

Third, the part of the warrant that includes particularly described items supported by probable cause must be significant when compared to the warrant as a whole....

Fourth, the searching officers must have found and seized the disputed items while executing the valid part of the warrant (i.e., while searching for items supported by probable cause and described with particularity)....

Fifth, the officers must not have conducted a general search, i.e., a search in which they flagrantly disregarded the warrant's scope.

116 Wn. App. at 807–08 (internal quotations omitted). The State bears the burden of proving the applicability of the severability doctrine and the Maddox factors. See, State v. Kinzy, 141 Wn.2d 373, 384, 5 P.3d 668 (2000) (holding State bears the burden of showing that an exception to the warrant requirement applies). The State failed to carry this burden.

Here, the trial court correctly found the warrant was overbroad, specifically finding there was no probable cause to

support paragraph 7 which permitted a search for controlled substances and contraband. The trial court struck that paragraph. This ruling was not challenged during the second hearing. Instead, the State simply argued that the evidence was admissible under the plain view doctrine. RP 63. In doing so, it completely ignored the Maddox factors. RP 63.

Because this is a case where the warrant includes both items that are supported by probable cause and described with particularity and items that are not, the plain view doctrine must be considered within the context of the Maddox factors. See, Higgs, 177 Wn. App. at 433-434 (applying the plain view doctrine within the Maddox framework). The trial court did not consider those factors here. Hence, it erred in reversing its prior ruling and admitting the evidence without first applying the correct legal inquiry. As shown below, this error was not harmless.

Based on the record here, it cannot be said the State met its burden as to the last two Maddox factors. Under the fourth Maddox factor, the State had the burden of proving Sisson found and seized the drug evidence "while executing the valid part of the warrant" (i.e. while searching for items supported by probable cause and described with particularity). The only officer the State called was

Officer Sisson. Sisson was unfamiliar with the contents of the warrant and admitted he was merely working under the direction of detectives. RP 58-59. The State failed to call any detectives or other officers to testify to facts that established Sisson was indeed assisting in executing the valid portion of the warrant at the time he discovered the drug evidence.

Given this record, it is not surprising the trial court never found that Sisson was actually executing the valid portion of the warrant or assisting a detective who was doing so. Although the trial court found Sisson lawfully could have been in the Conex container executing the valid portion of the warrant and looking for items for which there was probable cause, it did not find Sisson was indeed executing the valid portion of the warrant at that time. Maddox requires such a finding.

Additionally, the State failed to meet its burden of proving the fifth factor (i.e. that Sisson was not conducting a general search at the time he discovered the drug evidence). Sisson testified that he was conducting a "general search." RP 59. Although he tried to qualify this by stating he was just assisting detectives (RP 59), the State never called any detectives to establish that they were conducting anything other than a general search at the time. Once

again, based on this record, it cannot be said the State meet its burden under Maddox.

In sum, the trial court correctly found the search warrant was partially overbroad. As such, the State was required to satisfy the five Maddox factors before the severability doctrine could be applied to uphold admission of the drug evidence. The State failed to carry this burden. Hence, this Court should find the trial court erred in reversing its previous decision to suppress the drug offense evidence. Moreover, because this was the only evidence supporting Ring's conviction for possession of a controlled substance, this Court should reverse that conviction.

III. THERE WAS INSUFFICIENT EVIDENCE TO SUPPORT TWO OF THE CONVICTIONS FOR POSSESSION OF STOLEN PROPERTY.<sup>8</sup>

Appellant was charged with several counts of possession of stolen property. The "to convict" instructions specifically listed as alternative means that the defendant "received, retained, possessed, concealed" stolen property. CP 55, 61. There was no unanimity instruction. Thus, the State was required to prove each alternative means beyond a reasonable doubt. As to two of the

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<sup>8</sup> The charges at issue here are: possession of the Whacker generator under Cause No. 12-1-00408-1; and possession of the Kubota backhoe under Cause No. 12-1-00408-1.

charges, the State failed to provide sufficient evidence that Ring concealed the property at issue.

Criminal defendants have a right to a unanimous jury verdict. Wash. Const. art. I, § 21. Where there is more than one way to commit a single offense, the jury must be unanimous that the defendant is guilty for the single crime charged. State v. Nicholson, 119 Wn. App. 855, 860, 84 P.3d 877 (2003) overruled on other grounds, State v. Smith, 159 Wn.2d 778, 155 P.3d 873 (2007). If one of the listed means is not supported by substantial evidence and there is only a general verdict, the reviewing court must vacate the conviction unless it can definitively determine that the verdict was founded upon one of the means supported by substantial evidence. Nicholson, 119 Wn. App. at 860. Hence, when a defendant challenges the sufficiency of the evidence in an alternative means case, appellate review focuses on whether sufficient evidence supports each alternative means. State v. Sweany, 174 Wn.2d 909, 914, 281 P.3d 305 (2012).

An alternative means crime categorizes distinct acts that amount to the same crime. State v. Peterson, 168 Wn.2d 763, 770, 230 P.3d 588 (2010). Possession of stolen property in the first degree is an alternative means crime. A person is guilty of this

crime if he knowingly possesses stolen property that exceeds \$5,000 in value. RCW 9A.56.150. The statute defines possessing stolen property as “knowingly to receive, retain, possess, conceal, or dispose of stolen property knowing that it has been stolen and to withhold or appropriate the same to the use of any person other than the true owner or person entitled thereto.” RCW 9A.56.140(1). Accordingly, to receive, retain, possess, conceal or dispose of stolen property are alternative means of committing possession of stolen property. State v. Lillard, 122 Wn. App. 422, 434-35, 93 P.3d 969 (2004).

Here, the jury instructions defined possessing stolen property as “knowingly to receive, retain, possess, conceal, or dispose of stolen property knowing that it has been stolen and to withhold or appropriate the same to the use of any person other than the true owner or person entitled thereto.” CP 51. The to-convict instructions essentially echoed this language, setting forth as an element: “that the defendant knowingly received, retained, possessed, concealed stolen property.”<sup>9</sup> CP 61, 63. Consequently, there were four potential means of possession.

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<sup>9</sup> The only means that was eliminated was disposing of stolen property.

For purposes of appellate review, the first three means listed in the instruction (receive, retain, possess) are considered to be essentially synonymous. Lillard, 122 Wn. App. at 435. Hence, practically speaking, there are two means presented in this case: (1) to receive, retain possess; and (2) to conceal. Only the second is at issue here.

There was not substantial evidence that Ring attempted to conceal the stolen Whacker generator or the Kubota backhoe. When alternative means of committing a single offense are presented to a jury, each alternative means must be supported by substantial evidence<sup>10</sup> in order to safeguard a defendant's right to a unanimous jury determination. State v. Smith, 159 Wn.2d 778, 783, 154 P.3d 873 (2007). Turning first to the generator, it was found in plain sight on Dean Speaks' property. RP 277, 344, 386. Speaks testified that Ring had asked to store the generator and other items on his property, but never asked him to hide or conceal the property. RP 328, 331. Speaks characterized his storage of the items as "pretty open." RP 328. Furthermore, the serial and

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<sup>10</sup> "Substantial evidence exists if any rational trier of fact could find the essential elements of the crime beyond a reasonable doubt." State v. Lillard, 122 Wn. App. 422, 434, 93 P.3d 969 (2004).

VIN numbers for the generator were not altered or obliterated. RP 203, 208. There was no evidence its physical appearance was altered.<sup>11</sup> Indeed, a representative of the company that owned the generator was able to easily identify it from a photograph. RP 207.

Similarly, the Kubota backhoe was identifiable from a picture. The witness identifying it did not indicate any alterations to its appearance. RP 481-82, 491-92. Ring stored the tractor openly in Speaks' backyard. RP 281, 323-24, 386. There was no evidence it was covered or locked away. There also was no evidence it was physically altered in an attempt to conceal it.

Given this record, it cannot be said the State proved beyond a reasonable doubt that Ring concealed the generator or the Kubota backhoe. Given that there was no unanimity instruction, it was the State's burden to do so. Having failed to meet this burden, the two possession charges must be reversed and the charges dismissed for insufficient evidence.

---

<sup>11</sup> Comparatively, the State produced evidence suggesting the stolen trailer and Bobcat excavator were repainted or partially stripped of identifying decals. RP 252, 504.

IV. UNDER THE LAW OF THIS CASE, THE STATE FAILED TO PROVIDE SUFFICIENT EVIDENCE TO SUPPORT A CONVICTION FOR TRAFFICKING STOLEN PROPERTY.

Appellant was charged with trafficking stolen property in regard to Lund's 1968 GMC truck. Under the law of this case, the State was required to prove that Ring both (1) participated in the theft of the truck and (2) trafficked the truck. As shown below, there was insufficient evidence to support the first element.

Washington's trafficking statute provides:

A person who knowingly initiates, organizes, plans, finances, directs, manages, or supervises the theft of property for sale to others, or who knowingly traffics in stolen property, is guilty of trafficking in stolen property in the first degree.

RCW 9A.82.050(1). Generally, this statute contemplates the State proving one of two means of committing the crime: (1) participating in the theft of the property or (2) trafficking the stolen property. State v. Owens, 180 Wn.2d 90, 99, 323 P.3d 1030 (2014). In this case, however, the State charged the two means conjunctively and the jury was instructed as such. CP 50, 69. Hence, this became the law of the case and the State was required to prove beyond a reasonable doubt that Ring participated in the theft of the truck and trafficked it. RP 1036; see, State v. Hickman, 135 Wn.2d 97, 101-

05, 954 P.2d 900 (1998) (holding an extraneous element becomes the law of the case when it is included in a jury instruction). Here, there was not sufficient evidence to support conviction under the theft element.

The State presented evidence that the 1968 truck was stolen from Lund's property sometime in mid-2012. RP 147-49, 165. It was one of nine vehicles stolen off the property. RP 165. The State offered no evidence linking Ring to its theft. Despite an exhaustive search of Ring's property and his vehicles, the State offer no evidence that any of Lund's other vehicles were in Ring's possession. There was also no evidence Ring attempted to conceal the 1968 truck by altering its appearance and condition. Additionally, Ring testified as to how he purchased the truck from a third party. Compare with, Owens, 180 Wn.2d at 100 (holding sufficient evidence to uphold a trafficking conviction where the defendant failed to provide details of his claimed purchase of a car from a third party, where the State showed there was only one car stolen from the owner and defendant was in possession of it, and where the State offered evidence the defendant attempted to disguise the car).

Given this record, it is not surprising the State failed to offer any argument to the jury as to Ring's involvement in the theft of the truck. RP 1084. Indeed, the sum total of the prosecutor's argument was as follows:

Instruction 27, and this deals with the trafficking charge. And again, the State proves that by proving that the 2008 F-150 – I'm sorry, the 1968 GMC truck that was stolen from Mr. Lund is posted on Craigslist and it's for sale. It's stolen, he knows it's stolen, and he is attempting to sell it. You'll have the Craigslist ad. You can go ahead and you can look at that.

RP 1084 (emphasis). As the prosecutor's argument demonstrates, the State never acknowledged its burden of proving Ring's participation in the original theft. Instead, it suggested that it only had to prove the truck was stolen and Ring knew that the car was stolen. However, the State's burden was greater than that – it had to prove that Ring was in fact involved in the theft of the truck. CP 69. It failed to do so.

In sum, it cannot be said – based on this record – that the State presented sufficient evidence to prove beyond a reasonable doubt that Ring stole or participated in the theft of Lund's truck. Hence, the trafficking conviction must be reversed and the charge dismissed. Hickman, 135 Wn.2d at 106.

V. THE ERRONEOUS JUDGMENT AND SENTENCE SHOULD BE CORRECTED.

Appellate courts have a duty to correct an erroneous sentence. In re Pers. Restraint of Call, 144 Wn.2d 315, 331–32, 28 P.3d 709 (2001). The Judgment and Sentence under Cause no. 12-1-00408-1 sets for the date of the crime for counts II and III as “9/28/2013.” CP 144. The information and instructions in this case indicate the date of the offenses was September 28, 2012. CP 62-63; 158. As such, the sentence is erroneous as to specification of the date of the crime and this Court should remand for correction.

D. CONCLUSION

For the reasons stated above, this Court should reverse appellant's three forgery convictions due to the constitutionally deficient notice provided in the charging document. It should also reverse the conviction for possession of a controlled substance because it was predicated upon evidence that was not shown to be seized pursuant to the valid portion of the partially overbroad search warrant.

Additionally, two of appellant's convictions for possession of stolen property should also be reversed because the State failed to sufficiently prove all alternative means – specifically it failed to prove

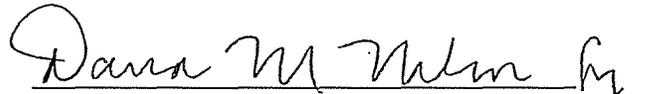
appellant concealed the property at issue. Likewise, appellant's conviction for trafficking stolen property should be reversed because there was insufficient evidence proving appellant participated in the theft.

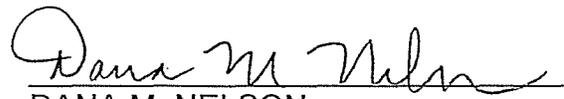
Finally, appellant's Judgment and Sentence contains an erroneous date of the crime and it should be remanded for correction.

DATED this 20<sup>th</sup> day of October, 2014.

Respectfully submitted,

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## APPENDIX A

The document to which this certificate is attached is a full, true and correct copy of the original on file and of record in my office. IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court this

21 day of Sept 2012

Clerk of the District Justice Court of the State of Washington and for the County of Mason



1  
2 RECEIVED  
3 2012 SEP 21 P 2:09  
4 MASON CO. DISTRICT COURT  
BY 5 *AMS*

6 THE DISTRICT COURT OF THE STATE OF WASHINGTON  
7 IN AND FOR THE COUNTY OF MASON  
8

9	STATE OF WASHINGTON	) S/W Number: <u>SW12-76</u>
10	Plaintiff,	)
11	vs.	) CASE#: 12-12154
12	The property, curtilage, residence,	) COMPLAINT FOR SEARCH WARRANT
13	buildings, and vehicles located at 1540 E.	) FOR FRUITS / INSTRUMENTALITIES
14	Jensen Rd. in Shelton WA., further	) AND/OR EVIDENCE OF A CRIME FOR:
15	described as Mason County Parcel #'s	) Possession of Stolen Motor Vehicle, RCW
16	32130-75-90150 and 32130-75-90151. A	) 9A.56.068; Trafficking Stolen Property 1,
17	stick built residence with attached garage, a	) RCW 9A.82.050; and Possession of Stolen
18	metal roofed detached carport/garage, a	) Property, RCW 9A.56.140; and Forgery, RCW
19	detached stick built building, numerous	9A.60.020
20	metal shipping containers and trailers.	
21	Defendant	

22  
23 DETECTIVE Jeff Rhoades, Being first duly sworn upon oath, deposes and says:

24  
25 That I am a duly appointed, qualified, and acting commissioned Mason County Deputy Sheriff. I  
26 am currently assigned to the Mason County Sheriff's Office Detectives Division. I am charged  
27 with the responsibility for the investigation of criminal activity occurring within the State of  
28 Washington, and I have probable cause to believe, and do, in fact, believe that, in violation of the  
29 laws of the State of Washington with respect to Possession of Stolen Motor Vehicle, RCW  
30 9A.56.068; Trafficking Stolen Property 1, RCW 9A.82.050; and Possession of Stolen Property,

1 RCW 9A.56.140; and Forgery, RCW 9A.60.020 evidence, fruits, and/or instrumentalities of said  
2 offense(s) are presently being kept, stored, or possessed, and can be located and seized in the  
3 above described property, curtilage, buildings, residence, and vehicles, said belief being based  
4 upon information acquired through personal interviews with witnesses, said information being as  
5 further described herein;

6  
7 **Affiant's training and experience:**

8 Affiant Detective Rhoades has been a fully commissioned Peace Officer in the State of  
9 Washington since 1997. Affiant was commissioned as a Shelton Police Officer on November 17,  
10 1997. Affiant was employed as a Shelton Police Officer from November 17, 1997 until April 19,  
11 2007. On April 19, 2007 Affiant was commissioned as a Mason County Deputy Sheriff and has  
12 been assigned to the Detectives Division since March 2009. While with the Shelton Police  
13 Department, Affiant served as a Patrol Officer and for the last six years as a Patrol Sergeant.  
14 During the course of Affiant's law enforcement career, he has attended a variety of training  
15 seminars and classes dealing with felony investigations. Affiant has an Associates Degree from  
16 Centralia Community College. Affiant has attended and successfully completed both the  
17 Washington State Reserve Police Officer Academy and the Washington State Criminal Justice  
18 Training Commission Basic Law Enforcement Academy.

19  
20 **This affidavit made in support of an application for search warrant for the premises**  
21 **described as:**

22 The property, curtilage, residence, buildings, and vehicles located at 1540 E. Jensen Rd. in  
23 Shelton WA., further described as Mason County Parcel #'s 32130-75-90150 and 32130-75-  
24 90151. A stick built residence with attached garage, a metal roofed detached carport/garage, a  
25 detached stick built building, numerous metal shipping containers and trailers.

26  
27 **Probable cause to request this warrant consists of the following information:**

28 On 090512 Garrett Rochon contacted MCSO and advised that he had located his uncle's stolen 1968  
29 GMC truck listed for sale on Craigslist.com. Upon checking the advertisement, Rochon noted that one of  
30 the photographs of the truck clearly shows the license number as B79310B, the license of his uncle's  
stolen truck.

1  
2 Rochon is the nephew of Kelly D. Lund of Belfair WA and is the brother to Nicholas M. Rochon of  
3 Seattle WA. According to a title in Rochon's possession, Nicholas is listed as the legal owner and Lund  
4 the registered owner for a 1968 GMC truck bearing WA license plates B79310B and VIN  
5 #CM20CZB12009. The title that Rochon is in possession of is not signed releasing interest of the vehicle  
6 by either Lund or Nicholas.

7  
8 Upon running a check of the license B79310B on 090512 it was discovered that it returned to a 1968  
9 GMC truck with VIN #CM20CZB12009 registered to John R. Ring of 1540 E. Jensen Rd. in Shelton  
10 WA. The description of the truck, license number, and VIN number on the truck currently registered to  
11 Ring matches exactly the title for the stolen truck belonging to Nicholas and Lund.

12  
13 Lund is currently incarcerated in prison in WA and has been since November 2011 and Rochon currently  
14 has power of attorney over Lund's property and affairs. Since the time of Lund's incarceration, his  
15 residence in Belfair was burglarized and numerous items were stolen from his property, to include his  
16 1968 GMC truck bearing WA license plates B79310B.

17  
18 Upon Lund learning of the vehicles being stolen he listed them as stolen from prison, however, it appears  
19 that there was a miscommunication between Rochon and Lund as the 1968 GMC truck was stolen around  
20 March 2012 but was never listed. Rochon was under the impression that it had been listed stolen by Lund  
21 and has been searching online for it ever since. Upon realizing the discrepancy on 090512, when he  
22 called to report locating it online, Rochon listed it as stolen.

23  
24 According to the Craigslist.com advertisement the seller was listing their phone number as 360-432-8423.  
25 A check of the phone number from the ad confirms it to be a number associated with Patrice Ring, Alexxa  
26 Ring, and Terry Simmons all of 1540 E. Jensen Rd. of Shelton WA. Patrice Ring is John Ring's wife.

27  
28 DOL was contacted and confirmed that they had an Affidavit of Loss Title and Release of Interest for a  
29 1968 GMC step-side pick-up bearing WA license B79310B and VIN #CM20CZB12009 signed by Kelly  
30 Lund and Nicholas Rochon dated 123011 and notarized by Sarah Griffin a Notary Public located in Pierce  
County. DOL also indicated that they had a Bill of Sale signed by Lund and Nicholas, indicating that

1 they sold a 1968 GMC Pick-up bearing WA license plates B79310B and VIN # CM20CZB12009 to John  
2 Ring on 123011. The Bill of Sale was filed at the Mt. View Licensing office at 301 E. Wallace Kneeland  
3 Blvd. Suite 240 in Shelton WA and indicates that Ring traded Lund and Nicholas a 1980 El Camino for  
4 the GMC truck. The signatures of Lund and Nicholas on the Bill of Sale and Affidavit of Loss Title /  
5 Release of Interest appear to be the same or similar.

6  
7 Upon comparing the signatures of Lund and Nicholas on the Bill of Sale and Affidavit of Loss Title /  
8 Release of Interest against their signatures on file with the DOL from their Driver's Licenses I noted that  
9 they don't appear anything alike. The signature of the Notary Public, Griffin, also appears suspicious and  
10 doesn't seem to match the signature on file for her with DOL.

11  
12 Lund was in prison on 123011, the date depicted on the Affidavit of Loss Title / Release of Interest,  
13 therefor making it impossible for him to be appearing before a Notary Public in Pierce County WA like  
14 indicated on the Bill of Sale and Affidavit of Loss Title / Release of Interest .

15  
16 Rochon has signed a statement with MCSO indicating that he never signed anything transferring the title  
17 for the 1968 GMC truck owned by him and Lund.

18  
19 I noted that the Notary Public stamp depicts Griffin's name and lists her license as expiring either 06-  
20 2015 or 08-2015. I contacted an employee at the Business and Professional Licensing Dept. for the State  
21 of Washington and they confirmed that Griffin is a licensed Notary Public and that her license expired  
22 090114. They indicated that all valid Notary Public stamps will list the entire date, not just the month and  
23 year like the one seen on the Affidavit of Loss/Release of Interest provided by DOL.

24  
25 The employee I spoke with stated that the stamp I described was not valid and probably a forgery, stating  
26 that they have had numerous complaints of forged stamps just like this in the recent past. She emailed me  
27 a copy of the Declaration of Applicant filled out and signed by Griffin on 082610 when she applied for  
28 her Notary Public license. I noted that her signature on this document matches that of her Driver's  
29 License but not the signature depicted on the Affidavit of Loss Title / Release of Interest.

1 I was advised of a past MCSO investigation from December 2011 in which Ring's name was brought up  
2 and it was rumored at that time that he was supposed to be in possession of a notary stamp and was using  
3 it to forge titles and other documents. Ring's name has come up in this and other investigations reference  
4 vehicles and or heavy equipment that is believed to be stolen and in his possession.

5  
6 Rochon indicated that upon finding the Craigslist.com ad for the truck he called the listed number and  
7 spoke with a female who claimed it was her son-in-law who was selling the truck, that he was currently  
8 at work and the truck was parked in the garage at the residence. Ring currently is working and lives with  
9 his wife, daughter, and mother-in-law at the Jensen Rd. address.

10  
11 I checked Craigslist.com on 092012 and noted that the truck is still listed as being for sale for \$10,000  
12 under the posting ID# 3249383600 with the same phone number of 360-432-8423.

13  
14 A criminal history check of Ring confirmed him to be a convicted felon, with convictions for Possession  
15 of a Controlled Substance Without a Prescription, Possession of Stolen Property 1, Possession of Stolen  
16 Property 2, VUCSA Manufacture/Deliver/Possession with Intent, and Unlawful Issuance of Bank Checks.

17  
18 On 092012 I drove by Ring's residence at 1540 E. Jensen Rd. in Shelton and noted that in addition to the  
19 residence there were at least two additional buildings on the property, numerous vehicles, and shipping  
20 containers. A subsequent check of the property via the Mason County Assessor's website revealed that  
21 the residence is the only building listed for the property. There was no history of Ring applying for or  
22 being granted any building permits for the additional buildings. It appears that the additional buildings  
23 were not permitted like required and may be a violation of the Mason County Building Code.

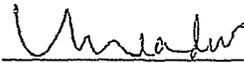
24  
25 Based on the facts listed in this affidavit, your affiant has probable cause to believe, and does, in  
26 fact, believe, that there is evidence, fruits, and/or instrumentalities of a crime in and on the  
27 described above. I request that a search warrant be issued for the

28 Following items:  
29  
30

1. Any and all identifiable stolen property, including but not limited to a 1968 GMC truck bearing WA license plates B79310B and VIN #CM20CZB12009;
2. Any and all computers or other digital devices capable of being used to gain access to the internet for the purposes of internet postings reference the selling of the stolen truck on Craigslist.com or any other online site or classified ads;
3. Any devices capable of taking and storing digital photographs, including but not limited to digital cameras, cellular phones, iPads, memory cards, SD cards, CD's, external hard drives, thumb drives;
4. Any papers, photographs, depicting images of the stolen truck or internet postings/correspondences related to the attempted sale of the stolen truck;
5. Any evidence related to the forging of the title of the stolen truck, including but not limited to computer printer, paperwork reference filing for lost title of automobiles, the title for the 1968 GMC truck bearing WA license plates B79310B, notary stamp, paperwork depicting name of Sarah Griffin Notary Public;
6. Any papers, receipts, bills, ledgers, that can be used to determine/show ownership, dominion and control of the residence, property, and vehicles covered herein;
7. Any contraband (including controlled substances), fruits of crime or things otherwise unlawfully possessed, weapons or other things that which a crime has been committed or reasonable appears to be committed.

  
\_\_\_\_\_  
Detective

SUBSCRIBED AND SWORN BEFORE ME this 21 day of Sept, 2012.  
TIME 1:53 AM/PM

  
\_\_\_\_\_  
JUDGE

## APPENDIX B

RECEIVED

1812 SEP 21 P 2:09

MASON CO. DISTRICT COURT

*[Signature]*

The document to which this certificate is attached is a full, true and correct copy of the original on file and of record in my office. IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court this

21 day of Sept 2016

Clerk of the District Justice Court of the State of Washington in and for the County of Mason.



THE DISTRICT COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF MASON

STATE OF WASHINGTON

Plaintiff,

vs.

The property, curtilage, residence, buildings, and vehicles located at 1540 E. Jensen Rd. in Shelton WA., further described as Mason County Parcel #'s 32130-75-90150 and 32130-75-90151. A stick built residence with attached garage, a metal roofed detached carport/garage, a detached stick built building, numerous metal shipping containers and trailers.

Defendant

) S/W Number: SW12-76  
)  
) CASE#: 12-12154  
)  
) SEARCH WARRANT FOR FRUITS /  
) INSTRUMENTALITIES AND/OR  
) EVIDENCE OF A CRIME FOR:  
)  
) Possession of Stolen Motor Vehicle, RCW  
) 9A.56.068; Trafficking Stolen Property 1,  
) RCW 9A.82.050; and Possession of Stolen  
) Property, RCW 9A.56.140; and Forgery, RCW  
) 9A.60.020

TO ANY PEACE OFFICER IN THE STATE OF WASHINGTON:

WHEREAS, upon the sworn complaint heretofore made and filed in the above entitled court, it appears to the undersigned Judge of the above entitled court that there is probable cause to believe that, in violation of the laws of the State of Washington with respect to Possession of Stolen Motor Vehicle, RCW 9A.56.068; Trafficking Stolen Property 1, RCW 9A.82.050; and Possession of Stolen Property, RCW 9A.56.140; and Forgery, RCW 9A.60.020 that evidence, fruits and/or instrumentalities of said offense(s) are presently being kept, stored, or possessed, in

1 violation of the provisions of the State of Washington, in the above described property, curtilage,  
2 buildings, residence, and vehicles above described within Mason County, State of Washington,  
3 hereinafter designated and described as;

4  
5 The property, curtilage, residence, buildings, and vehicles located at 1540 E. Jensen Rd. in  
6 Shelton WA., further described as Mason County Parcel #'s 32130-75-90150 and 32130-75-  
7 90151. A stick built residence with attached garage, a metal roofed detached carport/garage, a  
8 detached stick built building, numerous metal shipping containers and trailers.

9  
10 NOW THEREFORE, in the name of the State of Washington, you are hereby commanded, with  
11 the necessary and proper assistance and by all means necessary, to enter and search said  
12 and to seize any fruits, instrumentalities and/or evidence of a crime, to wit:

- 13  
14 1. Any and all identifiable stolen property, including but not limited to a 1968 GMC truck  
15 bearing WA license plates B79310B and VIN #CM20CZB12009;
- 16 2. Any and all computers or other digital devices capable of being used to gain access to the  
17 internet for the purposes of internet postings reference the selling of the stolen truck on  
18 Craigslist.com or any other online site or classified ads;
- 19 3. Any devices capable of taking and storing digital photographs, including but not limited  
20 to digital cameras, cellular phones, iPads, memory cards, SD cards, CD's, external hard  
21 drives, thumb drives;
- 22 4. Any papers, photographs, depicting images of the stolen truck or internet  
23 postings/correspondences related to the attempted sale of the stolen truck;
- 24 5. Any evidence related to the forging of the title of the stolen truck, including but not  
25 limited to computer printer, paperwork reference filing for lost title of automobiles, the  
26 title for the 1968 GMC truck bearing WA license plates B79310B, notary stamp,  
27 paperwork depicting name of Sarah Griffin Notary Public;
- 28 6. Any papers, receipts, bills, ledgers, that can be used to determine/show ownership,  
29 dominion and control of the residence, property, and vehicles covered herein;

30

7. Any contraband (including controlled substances), fruits of crime or things otherwise unlawfully possessed, weapons or other things that which a crime has been committed or reasonable appears to be committed.

Promptly make a return of said warrant within three (3) days of service and file it with the clerk of the above entitled court. The return must include an inventory of all property seized.

A copy of the warrant and a receipt for the property taken shall be given to the person from whom or from whose premises property is taken. If no person is found in possession, a copy and receipt shall be conspicuously posted at the place where the property is found.

The said property, curtilage, buildings, residence, and vehicles referred to above, located in Mason County, State of Washington is designated and described as follows:

The property, curtilage, residence, buildings, and vehicles located at 1540 E. Jensen Rd. in Shelton WA., further described as Mason County Parcel #'s 32130-75-90150 and 32130-75-90151. A stick built residence with attached garage, a metal roofed detached carport/garage, a detached stick built building, numerous metal shipping containers and trailers.

GIVEN UNDER MY HAND this 21 day of Sept, 2012  
at 1:54 AM/PM

Umeadow  
JUDGE, Mason County District Court

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION TWO

---

STATE OF WASHINGTON,	)	
	)	
Respondent,	)	
	)	
vs.	)	COA NO. 46145-5-II
	)	
JOHN RING,	)	
	)	
Appellant.	)	

---

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 20<sup>TH</sup> DAY OF OCTOBER, 2014, I CAUSED A TRUE AND CORRECT COPY OF THE BRIEF OF APPELLANT TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] JOHN RING  
DOC NO. 866651  
WASHINGTON CORRECTIONS CENTER  
P.O. BOX 900  
SHELTON, WA 98584

SIGNED IN SEATTLE WASHINGTON, THIS 20<sup>TH</sup> DAY OF OCTOBER, 2014.

X Patrick Mayovsky


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**October 20, 2014 - 3:09 PM**

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Court of Appeals Case Number: 46145-5

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- Answer/Reply to Motion: \_\_\_\_
- Brief: Appellant's
- Statement of Additional Authorities
- Cost Bill
- Objection to Cost Bill
- Affidavit
- Letter

- Copy of Verbatim Report of Proceedings - No. of Volumes: \_\_\_\_  
Hearing Date(s): \_\_\_\_\_
- Personal Restraint Petition (PRP)
- Response to Personal Restraint Petition
- Reply to Response to Personal Restraint Petition
- Petition for Review (PRV)
- Other: \_\_\_\_\_

**Comments:**

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION TWO

---

STATE OF WASHINGTON,	)	
	)	
Respondent,	)	
	)	
vs.	)	COA NO. 46148-0-II
	)	
JOHN RING,	)	
	)	
Appellant.	)	

---

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 4<sup>TH</sup> DAY OF NOVEMBER, 2014, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] JOHN RING  
DOC NO. 866651  
WASHINGTON CORRECTIONS CENTER  
P.O. BOX 900  
SHELTON, WA 98584

SIGNED IN SEATTLE WASHINGTON, THIS 4<sup>TH</sup> DAY OF NOVEMBER, 2014.

X Patrick Mayovsky

**NIELSEN, BROMAN & KOCH, PLLC**

**November 04, 2014 - 1:56 PM**

**Transmittal Letter**

Document Uploaded: 461480-Appellant's Brief.pdf

Case Name: John Ring

Court of Appeals Case Number: 46148-0

**Is this a Personal Restraint Petition?** Yes  No

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Answer/Reply to Motion: \_\_\_\_\_

Brief: Appellant's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: \_\_\_\_\_

Hearing Date(s): \_\_\_\_\_

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

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**Comments:**

No Comments were entered.

Sender Name: Patrick P Mayavsky - Email: [mayovskyp@nwattorney.net](mailto:mayovskyp@nwattorney.net)

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[timw@co.mason.wa.us](mailto:timw@co.mason.wa.us)