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No. 47138-8-II  
COURT OF APPEALS, DIVISION TWO  
OF THE STATE OF WASHINGTON

---

Skamania County Superior Court nos.  
14-1-00077-2

---

STATE OF WASHINGTON,  
Respondent

vs.

PATRICK FICK,  
Appellant

---

BRIEF OF RESPONDENT

---

Adam N. Kick, WSBA# 27525  
Prosecuting Attorney for Respondent  
Skamania County Prosecuting Attorney's Office  
P.O. Box 790  
Stevenson, Washington 98648  
509-427-3790

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..... 1

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**I. FACTS**

The state incorporates the facts as recited by the appellant in appellant's brief as pertains to the issues raised in this appeal.

**II. APPELLANT'S ASSIGNMENT OF ERROR**

1. The failure to file findings of fact and conclusions of law after bench trial require remand to the trial court for entry of finding of fact and conclusions of law pursuant to CrR 6.1.
2. The trial setting was in violation of the rules for the time for trial and in violation of the defendant's speedy trial rights.
3. The evidence presented at bench trial does not support conviction under a sufficiency of the evidence analysis.

**III. RESPONSE TO APPELLANT'S CLAIMS**

1. A filing of Findings of Fact and Conclusions of Law is required under CrR 6.1 and as such should be done by the trial court.
2. The court on it's own motion continued the trial for cause on the 53<sup>rd</sup> day of a 60 day speedy trial clock to the next docketed trial calendar. Trial occurred with thin speedy trial pursuant to court rules.
3. The evidence presented at trial is sufficient to establish a rational trier of fact could have found beyond a reasonable doubt that the appellant committed the crime of possession of Stolen motor Vehicle.

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**IV. ARGUMENT**

1. Findings of Fact and Conclusions of Law

CrR 6.1 mandates that after a trial without jury the court shall enter findings of fact and conclusions of law. While the trial court made oral findings and conclusions this does not meet the requirements of CrR 6.1. RP January 12, 2015 pg 59-64. CrR 6.1(d) requires entry of written findings of fact and conclusions of law at the conclusion of a bench trial. The purpose of CrR 6.1(d)'s requirement of written findings of fact and conclusions of law is to enable an [964 P.2d 1189] appellate court to review the questions raised on appeal. See *City of Bremerton v. Fisk*, 4 Wash.App. 961, 962, 486 P.2d 294 (1971), disapproved on other grounds by *State v. Souza*, 60 Wash.App. 534, 805 P.2d 237 (1991); cf. *State v. McGary*, 37 Wash.App. 856, 861, 683 P.2d 1125 (1984) (JuCR 7.11); *State v. Stock*, 44 Wash.App. 467, 477, 722 P.2d 1330 (1986) (CrR 3.6). *State v. Head*, 136 Wn.2d 619, 964 P.2d 1187 (1998). The court in *Head* addressed a finding of guilty on eight counts of First Degree Theft where the trial court, much like this court, made oral findings but no written findings were filed. The court in *head* found remand for entry of written findings and conclusions is the proper course. A trial court's oral opinion and memorandum opinion are no more than oral expressions of the court's informal opinion at the time rendered. *State v. Mallory*, 69 Wash.2d 532, 533, 419 P.2d 324 (1966). An oral opinion "has no final or binding effect unless formally incorporated into the findings, conclusions, and judgment." *Id.* at 533-34, 419 P.2d 324; accord *State v. Dailey*, 93 Wash.2d 454, 458-59, 610 P.2d 357 (1980). *State v. Head*, 136 Wn.2d 619, 964 P.2d 1187 (1998).

1 The state concedes the point and agrees that Findings of Fact and Conclusions  
2 of law should be entered. Presentment of Findings and Conclusions has been  
3 noted, before the trial court, for October 1, 2015.

4 2. Time for trial.

5 As noted by appellate counsel the appellant was arraigned on two  
6 separate multi-count informations at the same time and the cases proceeded in  
7 tandem.<sup>1</sup> This fact is captured in the relevant court proceedings of October 16,  
8 2014. See RP October 16, 2014 pgs. 1-8 in State v. Fick, no.47135-3-II.  
9 Attached hereto and incorporated herein by this reference as Appendix “A” is  
10 a transcript of the court proceedings for that day on the above referenced  
11 matter. The charges in the two informations arose from separate and distinct  
12 instances separated in time and space. The Appellant was appointed the same  
13 counsel for each case. On November 24, 2014 a 3.6 suppression hearing was  
14 conducted in which the order of the cases for trial was addressed as both were  
15 set for trial on December 8, 2014. See RP November 24, 2014 pg. 7-10 in  
16 State v. Fick no 47135-3-II. Attached hereto and incorporated herein as  
17 appendix “B” is the relevant section of the transcript of proceedings for that  
18 day. During that discussion it was pointed out that the appellant would not  
19 want to join the cases and no motion put forward by the parties. The issue of  
20 order was addressed once again on December 4, 2014 at a hearing on motions  
21  
22

---

23 <sup>1</sup> In point of fact both matters are now before this court on appeal. No. 47135-3-II and No.  
24 47138-8-II.

1 in limine. See RP December 4, 2014 pgs. 1-8 State v. Fick no. 47138-8-II<sup>2</sup>.  
2 Attached hereto and incorporated herein by this reference as Appendix "C" is  
3 the transcript of proceeding for that day. RP December 4, 2015 1-8. Finally  
4 the issue was addressed a final time on December 8, 2014 the day set for trial.  
5 There the court decided that the other matter would go on that day and  
6 continued for cause the appellant's matter due to the unavailability of facilities  
7 and defense counsel as he was the attorney on both matters. See RP  
8 December 8, 2014 pgs. 1-9 State v. Fick no. 47135-3-II. Attached hereto  
9 and incorporated herein by this reference as Appendix "D" is the relevant  
10 portion of the transcript of proceedings for that day. RP December 8, 2014 pg  
11 1-4.

12 CrR 3.3(f)(2) allows for continuance of a trial to a specific date when  
13 required in the administration of justice and the defendant's ability to present a  
14 defense will not be prejudiced. The motion may be brought by a party or the  
15 court. The motion must be brought before the end of speedy trial. CrR 3.3(e)  
16 establishes that the period between continuance of trial and the new date set for  
17 trial is an excluded period and is excluded in the computing the time for trial.  
18 Additionally, Crr3.3(b)(5) states that after an excluded period the allowable  
19 time for trial shall not expire earlier that 30 days after the end of the excluded  
20 period. Attached hereto and incorporated herein as Appendix "E" is CrR3.3.

21 Here, the appellant was arraigned on October 16, 2014 thus beginning

---

22  
23 <sup>2</sup>This transcript of proceedings was given the appellate case number for this current matter but  
24 is a transcript of proceedings in the case at issue in No. 47135-3-II and was provided with materials  
25 for that appeal.

1 the tolling of the speedy trial clock. The defendant was in-custody for this  
2 period and was therefore on a 60 day clock for trial to be completed. The  
3 court on its own motion continued the appellant's case to the next docketed  
4 trial day on December 8, 2014. At that time 53 days of speedy trial time had  
5 elapsed. The period between the continuance and the trial date is excluded in  
6 computing time therefore at the time of trial on January 12, 2015 54 days of  
7 speedy trial time had elapsed and the time for trial would not end for another  
8 30 days after that. The appellant's trial was within the time for trial as  
9 calculated under the rules.

10 3. Sufficiency of the Evidence

11 The court reviews the question of sufficiency of the evidence to  
12 determine "whether any rational trier of fact could have found the elements of  
13 the crime beyond a reasonable doubt." State v. McKague, 172 Wn.2d 802,  
14 805, 262 P.3d 1225 (2011). The court should assume the truth of the state's  
15 evidence, State v. Mines, 163 Wn.2d 387, 391, 179 P.3d 835 (2008), view  
16 reasonable inferences from the evidence in the light most favorable to the state,  
17 id., and deem circumstantial and direct evidence equally reliable, State v.  
18 Myers, 133 Wn.2d 26, 38, 941 P.2d 1102 (1997).

19 Pursuant to WPIC 77.21 Possessing A Stolen Motor  
20 Vehicle—Elements the state would need to prove the following elements  
21 beyond a reasonable doubt to convict the defendant:

22 (1) That on or between September 5, 2014 and September 26, 2014, the  
23 defendant knowingly possessed a stolen motor vehicle;

1 (2) That the defendant acted with knowledge that the motor vehicle had been  
2 stolen;

3 (3) That the defendant withheld or appropriated the motor vehicle to the use of  
4 someone other than the true owner or person entitled thereto;

5 (4) That any of these acts occurred in the State of Washington.

6 Pursuant to WPIC 50.03 Possession has the following definition(s):

7 Possession means having a substance in one's custody or control. [It may be  
8 either actual or constructive. Actual possession occurs when the item is in the  
9 actual physical custody of the person charged with possession. Constructive  
10 possession occurs when there is no actual physical possession but there is  
11 dominion and control over the substance.]

12 [Proximity alone without proof of dominion and control is insufficient to  
13 establish constructive possession. Dominion and control need not be exclusive  
14 to support a finding of constructive possession.]

15 [In deciding whether the defendant had dominion and control over a substance,  
16 you are to consider all the relevant circumstances in the case. Factors that you  
17 may consider, among others, include [whether the defendant had the  
18 [immediate] ability to take actual possession of the substance,] [whether the  
19 defendant had the capacity to exclude others from possession of the  
20 substance,][and][whether the defendant had dominion and control over the  
21 premises where the substance was located]. No single one of these factors  
22 necessarily controls your decision.]

23 At trial the arresting deputy testified that he responded to a report of a

1 suspicious vehicle where an individual was seen walking quickly away from the  
2 vehicle in Skamania County Washington. The deputy testified that he traveled  
3 to the location of the reported vehicle and located a vehicle with license plates  
4 issued to another vehicle. The deputy testified that in running the vin number of  
5 the located vehicle he discovered it was reported stolen from the neighboring  
6 county. The deputy further testified that he had seen the same vehicle earlier in  
7 the day a little over a mile away and the vehicle had sped away from him when  
8 he attempted to make contact. The deputy testified that he called the registered  
9 owner and that the registered owner came to the location to retrieve the  
10 vehicle. The deputy testified that the he searched the vehicle with the registered  
11 owner and located large sized clothing, small girls clothing , court paperwork  
12 with the name of the Appellant on it and a fishing license with the name and  
13 date of birth of the appellant on it. The deputy further testified that the fishing  
14 license was in a sleeve with the name of a local store stamped on the front. The  
15 deputy testified that he subsequently contacted the appellant at his residence  
16 and observed that he had a small daughter and that he located a spoiler  
17 consistent with a spoiler that appeared missing from the stolen vehicle. The  
18 deputy also testified that the appellant's residence was in the same location,  
19 "around the corner" from where he had initially seen the vehicle earlier in the  
20 day. The state entered 5 items into evidence. 1) the recovered fishing license  
21 with appellant' signature and date of birth, 2) the recovered Wasco County  
22 Court papers with appellant's name, 3) the recovered Spoiler, 4) the  
23 information for case # 14-1-00077-2, and 5) the notice re: Dates signed by the  
24 appellant in case # 14-1-00077-2. RP January 12, 2015 pgs 9-26.

1 The registered owner of the vehicle also testified. He testified that his  
2 vehicle had been stolen on September 5, 2014 from Dallesport in the  
3 neighboring county. He testified that he recovered his vehicle after being  
4 contacted by the deputy and that the spoiler was missing when he recovered  
5 the vehicle. The registered owner identified the spoiler recovered from the  
6 appellant's house as the spoiler that belonged on his vehicle. The registered  
7 owner also testified that he did not know the appellant and had never given him  
8 permission to use his vehicle. RP January 12, 2015 pgs 35-43.

9 The evidence, when construed in a light most favorable to the state,  
10 where the truth of the evidence is presumed, and direct and circumstantial  
11 evidence is deemed equally reliable, draws a clear picture where the appellant's  
12 possession of the vehicle can be reasonably inferred by the proximity to his  
13 residence, the legal paperwork in the vehicle, the clothing in the vehicle  
14 consistent with the appellant and his daughter, and his possession of the missing  
15 spoiler from the vehicle. Further, the court could have reasonably inferred the  
16 appellant's knowledge that the vehicle was stolen by the earlier evasive nature  
17 of the way the vehicle was driven to avoid contact with law enforcement, the  
18 alteration of the vehicle's appearance by removal of the spoiler, the  
19 replacement of the license plate, and the storage of the spoiler partially covered  
20 by a tarp at the appellant's residence. The court heard testimony from the  
21 registered owner stating he had not given the appellant permission to drive his  
22 vehicle and that he had reported stolen when he walked out after work and  
23 found it missing. Finally, the court heard testimony that these actions occurred  
24 in the State of Washington.

1 The evidence presented at trial form a valid basis for a rational trier of  
2 fact to find beyond a reasonable doubt that the appellant committed the crime  
3 of possession of Stolen Motor Vehicle.

4 **V. CONCLUSION**

5 The state respectfully submits that Findings of Fact and Conclusions of  
6 law should be entered based upon the bench trial conducted at the trial level.  
7 Further that the bench trial conducted was concluded before the time for trial  
8 had expired pursuant to the rules and that the evidence elicited at trial form a  
9 firm basis for a rational trier of fact to find beyond a reasonable doubt that the  
10 appellant committed the crime of Possession of Stolen Motor Vehicle.  
11

12 RESPECTFULLY SUBMITTED this 24<sup>th</sup> day of SEPTEMBER, 2015.

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14 

15 DANIEL C. MCGILL, WSBA# 39129  
16 Skamania County Deputy Prosecuting Attorney

# Appendix “A”

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF SKAMANIA

STATE OF WASHINGTON,	)	Superior Court
	)	No. 14-1-00060-8
Plaintiff,	)	
	)	Court of Appeals
vs.	)	No. 47135-3-II
	)	
PATRICK FICK	)	Stevenson, WA.
Defendant.	)	October 16, 2014
	)	9:02 A.M.

TRANSCRIPT OF HEARING  
BEFORE THE HONORABLE JUDGE PRO TEM REYNOLDS  
SKAMANIA COUNTY SUPERIOR COURT JUDGE

APPEARANCES:

For the Plaintiff: Office of the Pros. Attorney  
Adam Kick, Prosecutor  
PO Box 790  
Stevenson, WA. 98648  
(509) 427-3796

For the Defendant: Christopher Lanz  
Attorney at Law  
PO Box 1116  
White Salmon, WA. 98672  
(509) 493-2921

Transcription Service: Tammy Wooldridge  
Columbus Transcribing Service  
2521 Columbus Avenue  
Port Angeles, WA. 98362  
(360) 460-2270

Proceedings recorded by electronic sound recording;  
transcript produced by transcription service.  
STEVENSON, WA. OCTOBER 16, 2014 AT 9:02 A.M.

1 (Calendar in progress).

2 THE COURT: This is on Judge Pro Tem. I'm a  
3 retired judge, called back today to do this docket and  
4 Mr. Fick, you have a right to have -- you don't have to  
5 accept me as your judge on this today.

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: My understanding is you don't have any  
8 objection to me sitting on your case?

9 THE DEFENDANT: No, I don't.

10 THE COURT: Okay, then I would ask you if you would  
11 please just sign this consent of the parties for a judge  
12 pro-tem.

13 Are these both on for arraignment?

14 MR. KICK: They are, Your Honor.

15 MR. LANZ: I'm handing to the Court the consent on  
16 this case as well as his advice of rights form on 13-1-  
17 60-8. Mr. Fick and I did have an opportunity to review  
18 those advice of rights. We ask the Court to enter pleas  
19 of not guilty and we would waive second reading of the  
20 information at this point in time.

21 THE COURT: Is your true name Patrick Arnold Lee  
22 Fick?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: And what is your date of birth?

25 THE DEFENDANT: February 15, 1987.

1 THE COURT: And you read and write the English  
2 language?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: I have two documents here. They're  
5 entitled, Defendants Acknowledgment of Advice of Rights,  
6 Entry of Plea of Not guilty.

7 Have you seen both of these before, sir?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: And did you have an opportunity to go  
10 over these documents with Mr. Lanz, your attorney?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: And when you went over these with Mr.  
13 Lanz did you understand everything that's in both of  
14 these documents?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: And, Mr. Fick, did you sign these on  
17 the last page of both documents?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Those are your signatures, okay.

20 And, case number 14-1-60-8, you're charged with the  
21 crimes of Violation of Uniform Controlled Substance Act,  
22 Possession of Methamphetamine, maximum penalty five  
23 years in prison, \$10,000.00 fine.

24

25

1           You're charged with Violation of Uniform Controlled  
2 Substance Act, Possession of Oxycodone, maximum penalty  
3 five years in prison, \$10,000.00 fine.

4           Count three; Possession of Explosives without a  
5 License, maximum penalty five years in prison and  
6 \$10,000.00 fine.

7           Count four; Violation of the Uniform Controlled  
8 Substance Act, Use of Drug Paraphernalia, maximum  
9 penalty is 90 days in jail and a \$1,000.00 fine.

10          Do you understand all those charges against you and  
11 the maximum penalties?

12          THE DEFENDANT: Yes, Your Honor.

13          THE COURT: In that case, counts one, two, three  
14 and four what is your plea?

15          THE DEFENDANT: Not guilty.

16          THE COURT: Plead not guilty to all four counts  
17 received.

18          And this is in case number 14-1-77-2. In that case  
19 you're charges in count one with Violation of the  
20 Uniform Controlled Substance Act, Possession of  
21 Methamphetamine, maximum penalty of five years in  
22 prison, \$10,000.00 fine.

23          Count two; Possession of Stolen Vehicle, maximum  
24 penalty of ten years in prison, \$20,000.00 fine.

25

1 Do you understand those two charges and the maximum  
2 penalties?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: And to both of those charges what is  
5 your plea?

6 THE DEFENDANT: Not guilty.

7 THE COURT: A plea of not guilty is received.

8 And terms of release have been set. Are you asking  
9 for reconsideration?

10 MR. LANZ: Your Honor, it is a situation where Mr.  
11 Fick does have ties to the community. He was at his  
12 mother's residence at the point in time on that he was  
13 arrested. It is Mr. Fick's desire if released to obtain  
14 an address while nearby, basically outside of the  
15 community for reasons that are obviously related to  
16 these matters. While Mr. Fick does report to me that he  
17 has a history of having warrants out, he does make  
18 himself available. In an attempt to turn himself in on  
19 this matter he negotiated that with the prosecutor but  
20 then another incident outside his control kept him from  
21 doing that, so I'm asking the Court to reconsider the  
22 amount of bail I believe is set, \$50,000.00 on each of  
23 the two causes.

24 THE COURT: Mr. Kick?  
25

1 MR. KICK: Your Honor, we're asking that bail  
2 remain in the same amount. As Mr. Lanz acknowledges,  
3 there were it looks like quite a few warrants issued in  
4 previous cases. He's got a lot of felony history and  
5 it's all in the last seven years and my guess is he's  
6 only been out of prison since sometime in 2010 or 2009  
7 maybe. There is it looks like six felony convictions  
8 and then the most troubling part of this, Your Honor, is  
9 that Mr. Fick was charged with a crime out of custody,  
10 was served with notice that he was supposed to be here  
11 for first appearance and an arraignment, failed to  
12 appear on that and during that whole process he was  
13 actually committing other crimes and that's why there  
14 are two separate cause numbers here. So, we do believe  
15 that it's likely that Mr. Fick, based on his criminal  
16 history is likely to not appear and also likely to  
17 commit another violent crime.

18 MR. LANZ: And, Your Honor, just to rebut Mr.  
19 Kick's point. These are allegations at this point in  
20 time and merely just that. Mr. Fick's mother is present  
21 with his daughter. I believe she would vouch for Mr.  
22 Fick if the Court wishes to inquire of her.

23 THE COURT: Due to the defendant's prior history of  
24 contrary any warrants being issued for him and also the  
25 allegations here and they are just allegations but it

1 does give me some concern, I'm gonna leave bail at the  
2 amount presenting set in the amount of \$50,000.00 cash  
3 or bond.

4 Mr. Fick, also I noted in the file that you have  
5 not signed waivers of extradition. If you do post a  
6 bond you're going to have to sign those waivers before  
7 you are released.

8 Do you wish to sign them now or do you want to wait  
9 until you post the bond?

10 MR. LANZ: We'll go ahead and sign the waiver, Your  
11 Honor and both of them each.

12 THE COURT: Okay.

13 Mr. Fick, your court dates will be as follows:  
14 Your omnibus hearing will be on the 30 of October at  
15 9:00. Your attorney will explain to you what that is  
16 about. Your status conference is set for the 24th of  
17 November and your trial is set at 9 a.m., on the 8th of  
18 December.

19 The clerk's going to hand you an order setting  
20 those dates. You'll need to sign that indicating you  
21 received a copy and you'll get a copy of that order.

22 (Court signs orders.)

23 (Hearing recessed.)

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CERTIFICATE

STATE OF WASHINGTON )  
 ) ss  
COUNTY OF CLALLAM )

I hereby declare under penalty of perjury that the foregoing transcript of proceedings was prepared by me from electronic recordings of the proceedings, monitored by me and reduced to typewriting to the best of my ability;

That the transcript is, to the best of my ability, a full, true and correct record of the proceedings including the testimony of witnesses, questions and answers, and all objections, motions and exceptions of counsel made and taken at the time of proceedings;

That I am neither attorney for, nor a relative of any of the parties to the action, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially interested in its outcome.

\_\_\_\_\_  
Tammy Wooldridge Date

## Appendix “B”

1           IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
2                           IN AND FOR THE COUNTY OF SKAMANIA

3 STATE OF WASHINGTON,           )       Superior Court  
4                                   )       No. 14-1-00060-8  
5                                   )       Court of Appeals  
6                                   )       No. 47135-3-II  
7                                   )       Stevenson, WA.  
8                                   )       November 24, 2014  
9                                   )       11:06 A.M.

10                                   )       11:06 A.M.  
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                                  )       TRANSCRIPT OF 3.5/3.6 HEARING  
                                  )       BEFORE THE HONORABLE BRIAN ALTMAN  
                                  )       SKAMANIA COUNTY SUPERIOR COURT JUDGE

11 APPEARANCES:

12 For the Plaintiff:           Office of the Pros. Attorney  
13                                   Daniel McGill, Dep. Prosecutor  
14                                   P.O. Box 790  
15                                   Stevenson, WA. 98648  
16                                   (509) 427-3796

17 For the Defendant:           Christopher Lanz  
18                                   Attorney at Law  
19                                   P. O. Box 1116  
20                                   White Salmon, WA. 9867  
21                                   (509) 493-2921

22 Transcription Service: Tammy Wooldridge  
23                                   Columbus Transcribing Service  
24                                   2521 Columbus Avenue  
25                                   Port Angeles, WA. 98362  
                                  (360) 460-2270

Proceedings recorded by electronic sound recording;  
transcript produced by transcription service.

                                  STEVENSON, WA. NOVEMBER 24, 2014 AT 11:06 A.M.

1 THE COURT: -- taken out of the bush by the dog.  
2 She can just open it because she's curious.

3 MR. MCGILL: That's correct, Your Honor. Under the  
4 doctrine of voluntarily abandoned property there is no  
5 requirement of probable cause or search warrant to open  
6 these items.

7 THE COURT: That's where I don't need your second  
8 argument because I am absolutely convinced Mr. Lanz,  
9 that this was an abandoned backpack. He either dumped  
10 it off because he was afraid of what was in it or he  
11 accidentally dropped it, but left it. He skedaddle, the  
12 dog found it, and she opened it up. I believe there  
13 probably is an officer safety prong here. I'm just not  
14 going to reach it. I'm going to declare there's  
15 abandoned backpack and she had the right to go ahead and  
16 search that.

17 MR. MCGILL: Thank you, Your Honor.

18 THE COURT: Are we still on for trial?

19 MR. LANZ: Yes, Your Honor.

20 THE COURT: Same thing?

21 MR. LANZ: Same thing.

22 THE COURT: Same rules apply. Same procedures.

23 MR. MCGILL: And, Your Honor, I just want a  
24 clarification from the Court. I think one matter's

25

1 older than the other. I don't believe counsel wants to  
2 join the two?

3 THE COURT: Probably not.

4 MR. MCGILL: Which would be first in line, just to  
5 be sure?

6 THE COURT: Well, let's negotiate that. Same  
7 defendant, same lawyer, so the Court doesn't have any  
8 concerns about either one, probably same speedy trial  
9 rules apply to both. I'll find cause to continue the  
10 one that we don't try, so there won't be a speedy trial  
11 issue.

12 Mr. Lanz, do you want to state a preference?

13 MR. LANZ: I don't have any preference one way or  
14 the other.

15 THE COURT: Okay, if we could figure that out now  
16 it would save you both some work probably.

17 Mr. MCGILL: Do you have a preference?

18 MR. MCGILL: Only, Your Honor, I just bring it up  
19 so we're not dealing with issue where we're playing the  
20 guessing game as to which one goes forward. That's the  
21 only reason I asked. I have no preference.

22 THE COURT: I'm asking you, do you have a  
23 preference?

24 MR. MCGILL: No, Your Honor. Just a clarification  
25 as to which is the first in line.

1 THE COURT: Okay.

2 MR. LANZ: And it's a situation, Your Honor, I  
3 think it would be beneficial, maybe not so much for us  
4 but for I know which case that has to have jury  
5 instructions and final preparations for, but also for  
6 the State as far as which witnesses to have present on  
7 December 8th.

8 THE COURT: I'm agreeing with both of you. I'm  
9 just asking for...

10 MR. LANZ: I would think let's go back to 2013 and  
11 deal with that case before the 2014 case.

12 MR. MCGILL: That sounds right.

13 THE COURT: All right, we're gonna take the 13-1-  
14 99-5 case first.

15 MR. MCGILL: Just to be clear...

16 THE COURT: That's the abandoned backpack case.

17 MR. MCGILL: Right and actually that was charged  
18 under cause number 14-1-00060-8.

19 MR. MCGILL: Latter of the two, charged the  
20 backpack case. That was correct.

21 MR. LANZ: And it's -- does the Court have  
22 something different, because when the Court...

23 THE COURT: I thought you said you wanted the older  
24 case.

25

1 MR. LANZ: And that is actually the older case.  
2 That deals with issues that occurred back in 2013, even  
3 though it's a cause number under a 2014 charging. It's  
4 been too long of a day, Your Honor.

5 THE COURT: Okay, I've got it, that's what we'll  
6 do.

7 MR. MCGILL: Thank you, Your Honor.

8 THE COURT: Thank you.

9 (Hearing recessed.)

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## Appendix “C”

1           IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
2                           IN AND FOR THE COUNTY OF SKAMANIA

3 STATE OF WASHINGTON,           )        Superior Court  
                                  )        No. 14-1-00060-8  
4                    Plaintiff,    )        )  
                                  )        Court of Appeals  
5            vs.                    )        No. 47138-8-II  
                                  )        )  
6 PATRICK FICK                    )        Stevenson, WA.  
                                  )        December 4, 2014  
7                    Defendant.   )        12:18 P.M.  
                                  )        )

---

8                                   TRANSCRIPT OF HEARING  
9                    BEFORE THE HONORABLE BRIAN ALTMAN  
10                   SKAMANIA COUNTY SUPERIOR COURT JUDGE

11 APPEARANCES:

12 For the Plaintiff:           Office of the Pros. Attorney  
                                  Daniel McGill, Deputy Prosecutor  
13                                   P.O. Box 790  
                                  Stevenson, WA. 98648  
14                                   (509) 427-3796

15  
16 For the Defendant:         Christopher Lanz  
                                  Attorney at Law  
17                                   P. O. Box 1116  
                                  White Salmon, WA. 98672  
18                                   (509) 493-2921

19  
20 Transcription Service: Tammy Wooldridge  
                                  Columbus Transcribing Service  
21                                   2521 Columbus Avenue  
                                  Port Angeles, WA. 98362  
22                                   (360) 460-2270

23  
24 Proceedings recorded by electronic sound recording;  
transcript produced by transcription service.  
25                    STEVENSON, WA. DECEMBER 4, 2014 AT 12:18 P.M.

1 (Judge appears via telephone conference call).

2 MR. MCGILL: And that's State of Washington versus  
3 Patrick Arnold Lee Fick, case number 14-1-00060-8, Your  
4 Honor.

5 THE COURT: Mr. Lanz, do you have any objections to  
6 the State's motions?

7 MR. LANZ: Just the same as or stated previously,  
8 Your Honor. It looks as if they are the same motions.  
9 No objections to one through ten, again. The only  
10 reservation concerns whether or not there is going to be  
11 that conviction that has been disclosed.

12 THE COURT: All right, one through ten will be  
13 granted with that proviso, the same proviso.

14 MR. MCGILL: All Right, thank you, Your Honor.

15 THE COURT: Defendant's motions in limine?

16 Very short.

17 MR. MCGILL: No objection to the two motions.

18 THE COURT: No objection to number one and number  
19 two of defendant's motions in limine are granted. The  
20 defendant's Knapstad motion to dismiss. I've read the  
21 materials and the Knapstad motion to dismiss is denied.

22 MR. MCGILL: Thank you, Your Honor.

23 THE COURT: Is this matter ready for trial?

24

25

1 MR. MCGILL: It is, Your Honor, and I believe this  
2 was listed as number one in the order of taking the  
3 matters to trial.

4 THE COURT: I don't know, where did you get that  
5 order?

6 MR. MCGILL: Well, we discussed this at the last  
7 hearing, Your Honor and there was discussion between Mr.  
8 Lanz, myself and Your Honor. After we discussed this,  
9 just to get an order of matters and I think we said this  
10 was the older of the two and we were going to address  
11 this one as number one.

12 THE COURT: Okay and is that still the case between  
13 counsel?

14 MR. MCGILL: I have no objection, Your Honor as to  
15 the older one going forward and occurring first.

16 THE COURT: It looks like the arraignment time is  
17 the same and our speedy trial time appears to be the  
18 same, so that will be the order although somebody should  
19 be prepared on number two also. That'll be easy to do  
20 with the same defendant, but just in case something  
21 happens.

22 MR. MCGILL: Yes, Your Honor.

23 THE COURT: Okay, so be read on both. We'll do it  
24 in that order then.

25

1           Is there anything else we need to know at this  
2 time?

3           MR. LANZ: Nothing from the defense, Your Honor.

4           MR. MCGILL: Nothing from the State at this time,  
5 Your Honor.

6           THE COURT: Mr. Fick, are you there?

7           THE DEFENDANT: Yes, Your Honor.

8           THE COURT: We cannot start without you, so we do  
9 need you there promptly at 8 a.m., Monday morning.

10          MR. LANZ: And, Your Honor, just a reminder as the  
11 Court cannot see Mr. Fick. He is currently in custody  
12 and I'm sure the jail will have him here no later than 8  
13 a.m., Monday.

14          THE COURT: Okay, good and please let the Court  
15 Administrator know as soon as possible if anything  
16 changes, okay?

17          MR. LANZ: Thank you, Your Honor.

18          THE COURT: Thank you. We are at recess.

19          (Hearing recessed.)

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CERTIFICATE

STATE OF WASHINGTON )  
 ) ss  
COUNTY OF CLALLAM )

I hereby declare under penalty of perjury that the foregoing transcript of proceedings was prepared by me from electronic recordings of the proceedings, monitored by me and reduced to typewriting to the best of my ability;

That the transcript is, to the best of my ability, a full, true and correct record of the proceedings including the testimony of witnesses, questions and answers, and all objections, motions and exceptions of counsel made and taken at the time of proceedings;

That I am neither attorney for, nor a relative of any of the parties to the action, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially interested in its outcome.

\_\_\_\_\_  
Tammy Wooldridge

\_\_\_\_\_  
Date

## Appendix “D”

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF SKAMANIA

STATE OF WASHINGTON,	)	Superior Court
	)	No. 14-1-00060-8
Plaintiff,	)	
	)	Court of Appeals
vs.	)	No. 47135-3-II
	)	
PATRICK FICK	)	Stevenson, WA.
Defendant.	)	December 8, 2014
	)	8:12 A.M.

TRANSCRIPT OF JURY TRIAL, DAY ONE  
BEFORE THE HONORABLE BRIAN ALTMAN  
SKAMANIA COUNTY SUPERIOR COURT JUDGE

APPEARANCES:

For the Plaintiff: Office of the Pros. Attorney  
Daniel McGill, Dep. Prosecutor  
P.O. Box 790  
Stevenson, WA. 98648  
(509) 427-3796

For the Defendant: Christopher Lanz  
Attorney at Law  
P.O. Box 1116  
White Salmon, WA. 98672  
(509) 493-2921

Transcription Service: Tammy Wooldridge  
Columbus Transcribing Service  
2521 Columbus Avenue  
Port Angeles, WA. 98362  
(360) 460-2270

Proceedings recorded by electronic sound recording;  
transcript produced by transcription service.  
STEVENSON, WA. DECEMBER 8, 2014 AT 8:12 A.M.

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1 (Defendant not present.)

2 MR. MCGILL: I did make a request, at the defense's  
3 request, to have him brought around front though and so  
4 they're gonna do that.

5 THE COURT: Oh, definitely.

6 MR. MCGILL: He should be in route.

7 THE COURT: Got a whole bunch of jurors coming in,  
8 so that's gotta be worked out.

9 THE COURT: Got your introductory instructions, Mr.  
10 McGill?

11 MR. MCGILL: I do have them, Your Honor, they're  
12 not with me right now, but I can grab those for the  
13 court.

14 THE COURT: Okay, why don't you grab them real  
15 quick, have you got them on your desk?

16 (Mr. McGill exits courtroom.)

17 MR. LANZ: Does Your Honor wish my copies?

18 THE COURT: Yeah, sure, anything you've got, I'll  
19 take and start looking at it.

20 (Introductory instructions handed forward.)

21 THE COURT: Thank you.

22 THE COURT: Okay, any other work this morning on  
23 this case?

24 MR. MCGILL: No, Your Honor, nothing from the  
25 State.

1 (Mr. McGill in courtroom.)

2 MR. MCGILL: Around front caused some confusion.  
3 The normal process is they announce to Gary and Gary  
4 actually locks everything down, so.

5 THE COURT: Okay, whatever. We've got to get him  
6 here.

7 MR. MCGILL: Those are the introductory  
8 instructions, Your Honor.

9 THE COURT: Okay.

10 MR. MCGILL: Those instructions are being -- no,  
11 Your Honor, I think that's just for the one and I  
12 apologize. I can have read the other one. They're  
13 being printed up right now.

14 THE COURT: Okay?

15 MR. MCGILL: Yes, Your Honor?

16 THE COURT: Okay, it's in a different format than  
17 I'm used to getting from you and so I'm just struggling  
18 a little bit.

19 MR. MCGILL: I can see if there's something on  
20 file. That was just pulled from the WPIC.

21 THE COURT: I see, to wit, spelled W-H-I-T.

22 MR. MCGILL: I'm sorry for that as well if there's  
23 a typo there.

24 THE COURT: Okay.

25 MR. MCGILL: I can go back.

1 THE COURT: That's okay. We were probably gonna go  
2 with the other one anyways, is that correct?

3 Did we say we're going with the Stolen Property  
4 case first?

5 MR. MCGILL: And, Your Honor, and again I was  
6 functioning under (inaudible) Thursday and then  
7 subsequently my expectation is the Explosives and VUCSA  
8 case would be the first case to go.

9 MR. LANZ: And that was my understanding, Your  
10 Honor. I weakly prepared either way but my notes do  
11 reflect that we discussed back on Thursday we go with  
12 the 14-1-60-8 case first.

13 THE COURT: Okay, so that's gonna be  
14 Methamphetamine, Oxycodone and Explosives without a  
15 License and Drug Paraphernalia, correct?

16 MR. MCGILL: Correct, Your Honor.

17 THE COURT: Who are your witnesses for this case,  
18 Mr. McGill?

19 MR. MCGILL: Your Honor, the State expects to call  
20 Deputy Scheyer, Deputy Les Hastings, Lab Technician or I  
21 believe Forensic Scientist Jason Dunn, a Mr. C. Mason  
22 Reiter, R-E-I-T-E-R, Department of Labor and Industries.

23 THE COURT: R?

24 MR. MCGILL: R-E-I-T-E-R, Your Honor.

25 (Defendant present.)

1 THE COURT: Is it Mr.?  
2 MR. MCGILL: Yes.  
3 THE COURT: What's his name?  
4 MR. MCGILL: C. Mason Reiter.  
5 THE COURT: C. Mason and what does he do?  
6 MR. MCGILL: He is a Licensing Specialist for the  
7 Department of Labor and Industries, Explosives  
8 Licensing.  
9 THE COURT: Okay.  
10 MR. MCGILL: Officer Jerry Olson, Vancouver Police  
11 Department and Officer Chad Nolan with the Vancouver  
12 Police Department.  
13 THE COURT: They're ready to go?  
14 MR. MCGILL: Yes, Your Honor.  
15 THE COURT: We usually get -- we get two witnesses  
16 this morning, you understand that?  
17 MR. MCGILL: Yes, Your Honor.  
18 THE COURT: Okay.  
19 Okay, what else do we need to do this morning?  
20 Mr. Lanz, your client's here.  
21 MR. LANZ: Correct, Your Honor. We are ready to  
22 proceed. I believe that based on our discussions from  
23 Thursday we'll be proceeding with the older case number,  
24 again that being 14-1-60-8.  
25

1 As pointed out we are otherwise prepared to go  
2 forward on the other matter, 14-1-77-2.

3 THE COURT: Is the State ready?

4 MR. MCGILL: Yes, Your Honor.

5 CLERK: Are we gonna switch over to that case?

6 THE COURT: No, we're still on the 60-8 case?

7 CLERK: Yes.

8 THE COURT: Yeah, let's stay on the 60-8 case.  
9 That'll be the case we'll do this morning and I guess we  
10 should, Madam Clerk, go over to the other one and make a  
11 short record. So, as soon as you're ready let me know.

12 (Off record.)

13 (On record.)

14 THE COURT: Okay, any other work this morning on  
15 this case?

16 MR. MCGILL: No, Your Honor, nothing from the  
17 State.

18 MR. LANZ: No, Your Honor.

19 THE COURT: Okay, the jury will be cut off at about  
20 8:30 or so. We're gonna immediately get them into the  
21 courtroom and number them, so a little bit before nine  
22 we'll be ready to go. They're gonna watch a film and  
23 yes, Mr. Lanz?

24 MR. LANZ: And my only concern is how to  
25 accommodate bringing Mr. Fick into the courtroom without

## Appendix “E”



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RULE CrR 3.3  
TIME FOR TRIAL

(a) General Provisions.

(1) Responsibility of Court. It shall be the responsibility of the court to ensure a trial in accordance with this rule to each person charged with a crime.

(2) Precedence Over Civil Cases. Criminal trials shall take precedence over civil trials.

(3) Definitions. For purposes of this rule:

(i) "Pending charge" means the charge for which the allowable time for trial is being computed.

(ii) "Related charge" means a charge based on the same conduct as the pending charge that is ultimately file in the superior court.

(iii) "Appearance" means the defendant's physical presence in the adult division of the superior court where the pending charge was filed. Such presence constitutes appearance only if (A) the prosecutor was notified of the presence and (B) the presence is contemporaneously noted on the record under the cause number of the pending charge.

(iv) "Arraignment" means the date determined under CrR 4.1(b).

(v) "Detained in jail" means held in the custody of a correctional facility pursuant to the pending charge. Such detention excluded any period in which a defendant is on electronic home monitoring, is being held in custody on an unrelated charge or hold, or is serving a sentence of confinement.

(4) Construction. The allowable time for trial shall be computed in accordance with this rule. If a trial is timely under the language of this rule, but was delayed by circumstances not addressed in this rule or CrR 4.1, the pending charge shall

not be dismissed unless the defendant's constitutional right to a speedy trial was violated.

(5) Related Charges. The computation of the allowable time for trial of a pending charge shall apply equally to all related charges.

(6) Reporting of Dismissals and Untimely Trials. The court shall report to the Administrative Office of the Courts, on a form determined by that office, any case in which

(i) the court dismissed a charge on a determination pursuant to section (h) that the charge had not been brought to trial within the time limit required by this rule, or

(ii) the time limits would have been violated absent the cure period authorized by section (g)

(b) Time for Trial.

(1) Defendant Detained in Jail. A defendant who is detained in jail shall be brought to trial within the longer of

(i) 60 days after the commencement date specified in this rule, or

(ii) the time specified under subsection (b)(5).

(2) Defendant Not Detained in Jail. A defendant who is not detained in jail shall be brought to trial within the longer of

(i) 90 days after the commencement date specified in this rule, or

(ii) the time specified in subsection (b)(5)

(3) Release of Defendant. If a defendant is released from jail before the 60-day time limit has expired, the limit shall be extended to 90 days.

(4) Return to Custody Following Release. If a defendant not detained in jail at the time the trial date was set is subsequently returned to custody on the same or related charge, the 90-day limit shall continue to apply. If the defendant is detained in jail when trial is reset following a new commencement date, the 60-day limit shall apply.

(5) Allowable Time After Excluded Period. If any period of time is excluded pursuant to section (e), the allowable time for trial shall not expire earlier than 30 days after the end of that excluded period.

(c) Commencement Date.

(1) Initial Commencement Date. The initial commencement date shall be the date of arraignment as determined under CrR 4.1.

(2) Resetting of Commencement Date. On occurrence of one of the following events, a new commencement date shall be established, and the elapsed time shall be reset to zero. If more than one of these events occurs, the commencement date shall be the latest of the dates specified in this subsection.

(i) Waiver. The filing of a written waiver of the defendant's rights under this rule signed by the defendant. The new commencement date shall be the date specified in the waiver, which shall not be earlier than the date on which the waiver was filed. If no date is specified, the commencement date shall be the date of the trial contemporaneously or subsequently set by the court.

(ii) Failure to Appear. The failure of the defendant to appear for any proceeding at which the defendant's presence was required. The new commencement date shall be the date of the defendant's next appearance.

(iii) New Trial. The entry of an order granting a mistrial or new trial or allowing the defendant to withdraw a plea of guilty. The new commencement date shall be the date the order is entered.

(iv) Appellate Review or Stay. The acceptance of review or grant of a stay by an appellate court. The new commencement date shall be the date of the defendant's appearance that next follows the receipt by the clerk of the superior court of the mandate or written order terminating review or stay.

(v) Collateral Proceeding. The entry of an order granting a new trial pursuant to a personal restraint petition, a habeas corpus proceeding, or a motion to vacate judgment. The new commencement date shall be the date of the defendant's appearance that next follows either the expiration of the time to appeal such order or the receipt by the clerk of the superior court of notice of action terminating the collateral proceeding, whichever comes later.

(vi) Change of Venue. The entry of an order granting a change of venue. The new commencement date shall be the date of the order.

(vii) Disqualification of Counsel. The disqualification of the defense attorney or prosecuting attorney. The new commencement date shall be the date of the disqualification.

(d) Trial Settings and Notice---Objections---Loss of Right to Object.

(1) Initial Setting of Trial Date. The court shall, within 15 days of the defendant's actual arraignment in superior court or at the omnibus hearing, set a date for trial which is within the time limits prescribed by this rule and notify counsel for each party of the date set. If a defendant is not represented by counsel, the notice shall be given to the defendant and may be mailed to the defendant's last known address. The notice shall set forth the proper date of the defendant's arraignment and the date set for trial.

(2) Resetting of Trial Date. When the court determines that the trial date should be reset for any reason, including but not limited to the applicability of a new commencement date pursuant to subsection (c)(2) or a period of exclusion pursuant to section (e), the court shall set a new date for trial which is within the time limits prescribed and notify each counsel or party of the date set.

(3) Objection to Trial Setting. A party who objects to the date set upon the ground that it is not within the time limits prescribed by this rule must, within 10 days after the notice is mailed or otherwise given, move that the court set a trial within those time limits. Such motion shall be promptly noted for hearing by the moving party in accordance with local procedures. A party who fails, for any reason, to make such a motion shall lose the right to object that a trial commenced on such a date is not within the time limits prescribed by this rule.

(4) Loss of Right to Object. If a trial date is set outside the time allowed by this rule, but the defendant lost the right to object to that date pursuant to subsection (d)(3), that date shall be treated as the last allowable date for trial, subject to section (g). A later trial date shall be timely only if the commencement date is reset pursuant to subsection (c)(2) or there is a subsequent excluded period pursuant to section (e) and subsection (b)(5).

(e) Excluded Periods. The following periods shall be excluded in computing the time for trial:

(1) Competency Proceedings. All proceedings relating to the competency of a defendant to stand trial on the pending charge, beginning on the date when the competency examination is ordered and terminating when the court enters a written order finding the defendant to be competent.

(2) Proceedings on Unrelated Charges. Arraignment, pre-trial proceedings, trial, and sentencing on an unrelated charge.

(3) Continuances. Delay granted by the court pursuant to section (f).

(4) Period between Dismissal and Refiling. The time between

the dismissal of a charge and the refileing of the same or related charge.

(5) Disposition of Related Charge. The period between the commencement of trial or the entry of a plea of guilty on one charge and the defendant's arraignment in superior court on a related charge.

(6) Defendant Subject to foreign or Federal Custody or Conditions. The time during which a defendant is detained in jail or prison outside the state of Washington or in a federal jail or prison and the time during which a defendant is subjected to conditions of release not imposed by a court of the State of Washington.

(7) Juvenile Proceedings. All proceedings in juvenile court.

(8) Unavoidable or Unforeseen Circumstances. Unavoidable or unforeseen circumstances affecting the time for trial beyond the control of the court or of the parties. This exclusion also applies to the cure period of section (g).

(9) Disqualification of Judge. A five-day period of time commencing with the disqualification of the judge to whom the case is assigned for trial.

(f) Continuances. Continuances or other delays may be granted as follows:

(1) Written Agreement. Upon written agreement of the parties, which must be signed by the defendant or all defendants, the court may continue the trial date to a specified date.

(2) Motion by the Court or a Party. On motion of the court or a party, the court may continue the trial date to a specified date when such continuance is required in the administration of justice and the defendant will not be prejudiced in the presentation of his or her defense. The motion must be made before the time for trial has expired. The court must state on the record or in writing the reasons for the continuance. The bringing of such motion by or on behalf of any party waives that party's objection to the requested delay.

(g) Cure Period. The court may continue the case beyond the limits specified in section (b) on motion of the court or a party made within five days after the time for trial has expired. Such a continuance may be granted only once in the case upon a finding on the record or in writing that the defendant will not be substantially prejudiced in the presentation of his or her defense. The period of delay shall be for no more than 14 days for a defendant detained in jail, or 28 days for a defendant not detained in jail, from the date that the continuance is granted. The court may direct the parties to remain in attendance or be on-call for trial assignment during the cure period.

(h) Dismissal With Prejudice. A charge not brought to trial within the time limit determined under this rule shall be dismissed with prejudice. The State shall provide notice of dismissal to the victim and at the court's discretion shall allow the victim to address the court regarding the impact of the crime. No case shall be dismissed for time-to-trial reasons except as expressly required by this rule, a statute, or the state or federal constitution.

[Amended effective May 21, 1976; November 17, 1978; August 1, 1980; September 1, 1986; November 29, 1991; November 7, 1995; September 1, 2000; September 1, 2001; September 1, 2003.]

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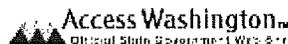
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**SKAMANIA COUNTY PROSECUTOR**

**September 24, 2015 - 11:14 AM**

**Transmittal Letter**

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Court of Appeals Case Number: 47138-8

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

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Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

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Objection to Cost Bill

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Letter

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No Comments were entered.

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[mcgill@co.skamania.wa.us](mailto:mcgill@co.skamania.wa.us)

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