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COURT OF APPEALS  
DIVISION II

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Court of Appeals No. 49671-2-II STATE OF WASHINGTON

BY \_\_\_\_\_  
DEPUTY

IN THE WASHINGTON STATE COURT OF APPEALS, DIVISION II

LARSON MOTORS, INC., a Washington corporation,  
Plaintiff-Respondent,

v.

PAUL SNYPP and JANE DOE SNYPP, a married couple,  
Defendants-Appellants.

**REPLY BRIEF OF CROSS-APPELLANT**

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## I. ARGUMENT<sup>1</sup>

The trial court abused its discretion in denying Larson's motion for sanctions against Appellant/Cross-Respondent Paul Snypp after he lied under oath at his deposition and submitted pleadings falsely alleging that he did not authorize Larson's work on his Porsche. In his response brief, Mr. Snypp does not dispute three fundamental premises of Larson's cross-appeal, namely that:

- Sanctions should be imposed when a party lies under oath in order to protect the integrity and truth-finding function of the courts. *See* Brief of Respondent/Cross-Appellant at 10-11.
- The trial court has authority to impose sanctions against a party for lying under oath at a deposition and for submitting false pleadings, up to and including striking all pleadings and entering a default judgment. *See* Brief of Respondent/Cross-Appellant at 11-13.
- Mr. Snypp in fact made false statements in his Answer and during his deposition that he did not authorize Larson to work

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<sup>1</sup> Pursuant to RAP 10.1(f) and RAP 10.3(c), this brief of Respondent/Cross-Appellant Larson Motors, Inc. ("Larson") is limited to a reply on Larson's cross-appeal.

on his car. *See* Brief of Respondent/Cross-Appellant at 5-6, 13-14.

Because he cannot challenge these core points, Mr. Snyppl instead tries to escape responsibility for his falsehoods by invoking Washington's privacy law, which by its terms does not apply to the non-private communications at issue. Specifically, he argues that: (1) the Court should completely disregard the recorded telephone calls pursuant to RCW 9.73.030, and (2) sanctions are inappropriate because Larson has not proved that Mr. Snyppl's lies meet the standard for criminal perjury. These arguments ignore that Mr. Snyppl's communications were not private by his own express, sworn admissions, and that Mr. Snyppl need not be convicted of the crime of perjury to be subject to sanctions for lying under oath. The Court should reject Mr. Snyppl's arguments, grant Larson's cross-appeal, and hold that the trial court erred in declining to impose sanctions.

**A. The Court should consider the recorded telephone calls because they were not private.**

Mr. Snyppl concedes that for a communication to be "private" and thus protected under RCW 9.73.030, two factors must be met: (1) the parties must manifest a subjective intention that the communication is private, and (2) the expectation of privacy must be reasonable. Br. of Appellant at 2 (citing *State v. Kipp*, 179 Wn.2d 718, 729, 317 P.3d 1029 (2014)).

Mr. Snypp cannot meet the first prong of this test because he admitted at least three times, under oath, that he did not intend any of his communications with Bryan Cabrera or Larson to be private. First, he testified:

Q. So there wasn't any kind of private, secret communications happening between you and Mr. Cabrera?

A. Oh, no.

CP 94. Later, he confirmed:

Q. ... Were you saying anything to Mr. Cabrera that you wouldn't say to everybody around the table today?

A. No.

Q. Were you saying anything to Mr. Cabrera that you wouldn't tell the judge who ultimately decides this case?

A. Oh, no.

Q. That's what I mean. Were there kind of secret, private communications that you didn't want documented going on between you and Mr. Cabrera?

A. Oh, no. I wanted everything documented...

CP 95. Finally, he testified:

Q. [E]verything that you told to Larson Motors or they told you, you'd tell to anybody else?

A. Exactly or tell to a judge, tell to a jury, whatever.

CP 97.

Mr. Snypp tries to explain away these express, sworn admissions because he did not specify the particular phone calls at issue when he made

his broad admissions. But Mr. Snyppe did not have to list out every single communication he had with Mr. Cabrera or Larson. Mr. Snyppe said that *all* his communications with Bryan Cabrera and Larson were completely open and that he wanted everything documented. This necessarily encompasses the telephone calls, which formed a substantial part of his communications with Larson. In his later affidavit, Mr. Snyppe now conveniently argues he intended his calls with Larson to be private. *See* CP 183. This Court should disregard his affidavit, which directly contradicts his earlier deposition testimony. *Selvig v. Caryl*, 97 Wn. App. 220, 225, 983 P.2d 1141 (1999) (“genuine issues of material fact cannot be created by a declarant who submits an affidavit that contradicts his or her own deposition testimony.”)

Contrary to Mr. Snyppe’s argument, *see* Brief of Appellant at 4, the Court need not consider whether an expectation of privacy is reasonable to determine that the communications are not “private” for purposes of RCW 9.73.030—the lack of any subjective expectation of privacy is dispositive. *Dillon v. Seattle Deposition Reporters, LLC*, 179 Wn. App. 41, 60, 316 P.3d 1119 (2014). This is the unusual case where a party has admitted, under oath, that he had no subjective expectation of privacy in the

communications at issue. The Court's analysis can end there.<sup>2</sup> The telephone calls can be—and should have already been—considered.

**B. It is immaterial whether Mr. Snyppe's lies amount to the crime of perjury.**

Mr. Snyppe next argues that Larson's cross-appeal should fail because it has not established that his lies under oath meet the standard of proof for the crime of perjury. Br. of Appellant at 6-7 (citing *State v. Wallis*, 50 Wn.2d 350, 354-55, 311 P.2d 659 (1957) and *Nessman v. Sumpter*, 27 Wn. App. 18, 24, 615 P.2d 522 (1980)). This argument is a red herring. Larson does not need to prove that Mr. Snyppe committed a crime for sanctions to be appropriate. Courts have authority to impose sanctions irrespective of a criminal conviction. See *Magana v. Hyundai Motor Am.*, 167 Wn.2d 570, 584, 220 P.3d 191 (2009). It would be completely counter to a court's broad authority to impose sanctions if the court were required to essentially hold a criminal trial before sanctioning a party for lying during judicial proceedings.

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<sup>2</sup> If the Court does consider the issue, it should conclude that no reasonable expectation of privacy existed for the reasons outlined in the Brief of Respondent/Cross-Appellant at 17. In so considering, the Court should note that Mr. Snyppe's brief misstates that Larson initiated all the recorded telephone calls with Mr. Snyppe. (Br. of Appellant at 3.) In fact, Mr. Snyppe initiated the first recorded call to the dealership in response to Cabrera's earlier attempt to call him. (CP 105.)

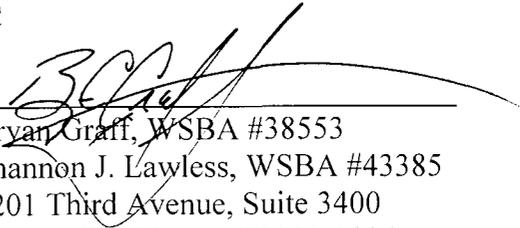
## II. CONCLUSION

Mr. Snyppe testified during his deposition that anything he told to Larson, or that Larson told to him, he would tell to anybody, including a jury or a judge. That has now come to pass. When the trial court learned of Mr. Snyppe's false statements in his Answer and deposition, it should have imposed sanctions due to the blatant falsehoods the recorded telephone calls revealed. Mr. Snyppe has attempted to perpetrate a fraud. This Court should correct the trial court's error and require the trial judge to impose sanctions, up to and including striking Mr. Snyppe's pleadings and entering a default judgment against him, for lying about the central issues in this case.

DATED: May 22, 2017.

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CERTIFICATE OF SERVICE

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I hereby declare that I am a citizen of the United States and a resident of the State of Washington. I am over the age of 18 years and not a party to the within action. I am employed by the law firm of Ryan, Swanson & Cleveland, PLLC, 1201 Third Avenue, Suite 3400, Seattle, Washington, 98101 3034. On May 22, 2017, I caused the Reply Brief of Cross-Appellant to be served upon counsel of record at the addresses and in the manner described:

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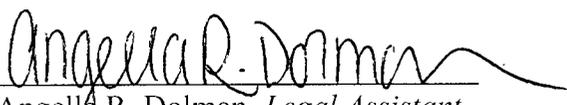
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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

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By   
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