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**COURT OF APPEALS, DIVISION II**  
**STATE OF WASHINGTON**

STATE OF WASHINGTON, APPELLANT

v.

PAUL TAYLOR ELLIOTT, RESPONDENT

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Appeal from the Superior Court of Pierce County  
The Honorable Stephanie Arend

No. 18-1-00563-1

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**Brief of Appellant**

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A. ASSIGNMENTS OF ERROR.

1. The sentencing court erred in ruling that an exceptional sentence downwards was appropriate based upon RCW 9.94A.535(1)(g) the multiple offense policy.
2. The sentencing court erred in ruling that the standard sentencing range resulted in a sentence that is clearly excessive.
3. The sentencing court erred in that the punishment imposed in this case was commensurate with the punishment imposed on others committing a similar offense pursuant to RCW 9.94A.010(3).

B. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR

1. Do the Findings of Fact provide substantial and compelling reasons to support the mitigated exceptional sentence imposed in this case and do they provide substantial evidence in support of the Conclusions of Law?
2. Does the commission of the crimes of identity theft in the first degree that occurred at the same time as the theft of some of the victim's money provide a substantial and compelling reason to support a mitigated sentence? (Findings of Fact 3)

C. STATEMENT OF THE CASE.

1. Procedure

On February 9, 2018, the Respondent was charged with one count of Theft in the First Degree and 17 counts of Identity Theft in the First Degree. (CP 4-10). On July 27, 2018, the Information was amended to delete Count 2 because it was outside of the statute of limitations and to

amend count 5 to reflect the actual date of the offense which was April 24, 2015, and not April 24, 2014 as originally charged. (CP 28-34). After amending the information, the Respondent entered a guilty plea to all counts. (CP 36-45) The resulting standard sentence range for Theft in the First Degree, based upon an offender score of 16, is 43 to 57 months and for Identity Theft in the First Degree, based upon an offender score of 16, is 63 to 84 months. (CP 64-70). None of the counts included a sentencing aggravating circumstance pursuant to RCW 9.94A.535(3).

After the entry of the guilty plea, the parties proceeded to sentencing. The Respondent requested that the sentencing court sentence him either as a first-time offender or to an exceptional sentence below the standard range. The Appellant asked that the Respondent be sentenced within the standard range on each count. (VRP 16) The court, after hearing argument, imposed an exceptional sentence below the standard ranges of 30 months on each count to run concurrent to each other. (CP 46-59). The court orally ruled that due to the nature of the case the respondent was not entitled to a first-time offender sentence. (VRP 33)

On August 24, 2018, a notice of appeal was filed in this matter which was later amended on October 15, 2018, to attach the Findings of Fact to the amended notice of appeal as required by RAP 5.3(a).

On August 24, 2018, the Appellant brought a motion for reconsideration which was denied. (VRP 38-61, VRP 60, CP 71-80) The Findings of Facts and Conclusions of Law were signed in this case on September 28, 2018. (CP 89-92) As is noted on the Findings of Fact, the Appellant objected to Findings of Fact 3, 4, 6, 8, 10-17, 19, 20 and each of the Conclusions of Law. (CP 89-92)

2. Facts<sup>1</sup>

The Victim in this case is Nichol's Trucking where the Respondent worked for 12 years as the bookkeeper/office manager. His position with the victim business was one of trust and confidence. He was responsible for handling the billing, preparing the deposit slips, generating invoices, maintaining all bills of lading, and processing all receivables. He had access to the business' credit card numbers as well as the actual credit card, but he never had permission to use the credit card. The owner of the business, Diane Stack, reviewed the business' credit card statements and found questionable payments made to Square device and PayPal. She also saw that the tire and repair expenses on the credit card were very high. Ms. Stack asked the Respondent about the payments and the repair and tire expenses. The Respondent told her that the victim business needed to

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<sup>1</sup> The below facts were taken from the Declaration for Determinaton of Probable Cause. CP 1-3.

get parts quickly and the vendors would only take payment from Square device or PayPal. Ms. Stack asked the Respondent for the bank statements, so she could review them, but he never provided them. Ms. Stack had to hunt for the bank statements and, after finding the statements, the Respondent resigned. Ms. Stack later discovered that the vendors for the tires and the repairs did not require the use of PayPal or Square device as the Respondent had claimed. (CP 1-3, 20)

The Respondent, in his resignation letter, informed Ms. Stack “I am fully aware of the length and depth of my disappointment and want you to know that there was no malice intended in my failure...I have made so many mistakes that I cannot even begin to recount the ways I have failed everyone.” The Respondent then sent an email to Ms. Stack in which he stated “if there was anything I could do to make up for the betrayal and wrong I’ve done, I would gladly do so, but I fear that I have done too much...I have been so incredibly foolish that I would risk everything for feeding an addictive behavior that was destroying me...I am truly sorry for what has happened.” After the Respondent had left the business, Ms. Stack’s husband encountered the Respondent. He asked the Respondent what the Respondent had done with the money. The Respondent said that he had spent the money on prostitutes and strippers. (CP 1-3)

The ensuing investigation by the Tacoma Police Department revealed that the Respondent stole \$298,597.58 from the business. (CP 81-86) The Respondent's position of trust with the victim business enabled him to steal from the victim using two different methods. The first method was using the victim's credit card to make payments into the Square and PayPal accounts that belonged to the Respondent. The second method entailed the Respondent contacting businesses who owed Nichol's Trucking money and having the businesses make payments directly into the Respondent's Square and PayPal accounts. The businesses were unaware that they were not paying Nichol's Trucking. (CP 1-3)

In the first method, the Respondent used the victim's credit card 38 times, from May 7, 2012 through August 26, 2015, to make payments into the Respondent's PayPal and Square accounts resulting in a loss to the victim of \$110,209.71. In addition to including the amount of money that the Respondent stole by the victim's credit card in the Theft in the First Degree charge, the Appellant also charged the respondent with 16 counts of Identity Theft in the First Degree for his use of Nichol's Trucking credit card from December 2, 2014 to August 26, 2015. The Appellant was unable to charge the Respondent with the 12 incidents of identity theft that had occurred prior to December 2, 2014 because of the statute of limitations. The 16 counts of Identity Theft in the First Degree to which

the Respondent pled guilty are delineated in the following list that includes the date of each count and the amount obtained from the use of the credit card for each count. (CP 1-3, 81-86)

Count 3	February 21, 2015	\$4,415.67
Count 4	March 3, 2015	\$6,359.99
Count 5	April 8, 2015	\$5,462.70
Count 6	April 24, 2015	\$2,321.00
Count 7	May 5, 2015	\$3,657.00
Count 8	May 19, 2015	\$3,661.99
Count 9	June 10, 2015	\$4,852.69
Count 10	June 18, 2015	\$5,125.69
Count 11	June 30, 2015	\$4,553.69
Count 12	July 6, 2015	\$5,237.69
Count 13	July 14, 2015	\$3,169.00
Count 14	July 24, 2015	\$3,561.80
Count 15	July 29, 2015	\$4,756.93
Count 16	August 4, 2015	\$4,425.99
Count 17	August 10, 2015	\$5,531.29
Count 18	August 26, 2015	\$5,463.99

(CP 1-3, 81-86)

The total amount of money stolen from the victim as covered in the identity theft counts is \$72,556.89. (CP 1-3, 81-86)

In the second method, the Respondent hijacked the payments owed by customers to Nichol's Trucking from May 7, 2012 to August 26, 2015.

This method resulted in a loss to Nichol's Trucking of \$188,387.87. The Respondent hid these thefts by making false entries into Nichol's Trucking ledgers that showed the customers allegedly did not owe Nichol's Trucking any money. (CP 1-3, 2-, 81-86)

The following list (CP 2) includes the names of the customers, the number of times the customer paid into the Respondent's accounts and the total amount the Respondent obtained from each customer.

CMax LLC	1 transaction	\$ 672.03
Curtis Wilson Concrete	1 transaction	\$ 3,107.04
Fireworks Northwest	1 transaction	\$ 342.88
Pedro Lopez	3 transactions	\$ 2,800.00
Sam Michael	1 transaction	\$ 4,544.00
Sonoco Products	2 transactions	\$ 1,179.00
Tri Terra	1 transaction	\$ 1,850.00
University of Washington	2 transactions	\$ 1,026.84
World vision	36 transactions	\$ 7,107.25
Patriot Fire	60 transactions	\$165,748.83

(CP 2, 81-86)

The Respondent's thefts had a negative impact on the victim business over the 41 months that he stole from the victim business. As Diane Stack provided in her victim impact statement (CP 20), the business has 40 employees. During this 41-month period, the business had to struggle to pay for fuel, normal equipment replacements and

payroll. Ms. Stack stated that they could not understand how the cash was dwindling when they knew the revenue they were supposed to be receiving was so good. Ms. Stack further provided in her statement that she and her husband discussed the financial situation in the Respondent's presence and, as they later discovered, he did not stop his thefts but escalated them. (CP 20)

The Respondent's thefts did not just impact on the business and its employees, but it also impacted on the personal life of Ms. Stack and her family. (CP 20) Ms. Stack's father died in October 2015. Ms. Stack was unable to be with her father as much as he wanted her to because she worked 10 to 12 hours a day for months to deal with the business problems due to the actions of the Respondent. In the end, the business had to hire an accountant to untangle the accounts receivables. (CP 20)

D. ARGUMENT.

1. THE FINDINGS OF FACT AND CONCLUSIONS OF LAW DO NOT PROVIDE SUBSTANTIAL AND COMPELLING REASONS TO SUPPORT THE EXCEPTIONAL SENTENCE IMPOSED IN THIS CASE AND DO NOT PROVIDE SUBSTANTIAL SUPPORT FOR THE CONCLUSIONS OF LAW.

The Sentencing Reform Act provides that "a sentencing court generally must impose a sentence within the standard sentencing range. RCW 9.94A.505(2)(a)(i)." *State v. Graham*, 181 Wn. 2d 878, 882, 337

P.3d 319 (2014). Case law has established that an exceptional sentence, whether based upon aggravating or mitigating factors, can be imposed but the exceptional sentence is only appropriate when the circumstances of the crime distinguish it from other crimes of the same statutory category. *State v. Estrella*, 115 Wn. 2d 350, 359, 798 P.2d 289 (1990); *State v. Gaines*, 122 Wn. 2d 502, 509, 859 P.2d 36 (1993); *State v. Ha'mim*, 132 Wn. 834, 840, 940 P.2d 633 (1997); *State v. Fowler*, 145 Wn. 2d 400, 405, 38 P.3d 335 (2002). The justification for departing from the standard range must be substantial and compelling. *State v. Grewe*, 117 Wn. 2d 211, 214, 813 P.3d 1238 (1991); *State v. Hutsell*, 120 Wn. 2d 913, 923, 845 P.2d 1325 (1993).

The State Supreme Court in *Ha'mim*, at 840, instituted a two-part test to decide if an exceptional sentence is “justified as a matter of law.” *State v. Law*, 154 Wn. 2d 85, 95, 110 P.3d 717 (2005). The test, as developed in *Ha'mim, Id.*, is

first, a trial court may not base an exceptional sentence on factors necessarily considered by the Legislature in establishing the standard sentence range; second, the asserted aggravating or mitigating factor must be sufficiently substantial and compelling to distinguish the crime in question from others in the same category.

In applying the *Ha'mim* test, the appellate court is to ask three questions. The first question is “are the reasons supplied by the

sentencing judge supported by the record.” This question is decided according to the clearly erroneous standard. *State v. Borg*, 145 Wn. 2d 329, 336, 36 P.3d 546 (2001). The second question is “do those reasons justify a sentence outside the standard range.” The second question is decided pursuant to the de novo standard. *Borg, Id.* The third question is “was the sentence clearly excessive or too lenient” and the abuse of discretion standard is applied to this question. *Borg, Id.*

In this case, the sentencing court relied upon the multiple offense policy provided in RCW 9.94A.535(1)(g) to support the exceptional downward sentence of 30 months. (CP 89-92) Mitigating circumstances for the departure from the standard sentencing range provides at RCW 9.94A.535(1) that “[t]he court may impose an exceptional sentence below the standard range if it finds that the mitigating circumstances are established by a preponderance of the evidence.” The multiple offense policy is one of the listed mitigating circumstances at RCW 9.94A.535(1)(g). This statute states that when “[t]he operation of the multiple offense policy of RCW 9.94A.589 results in a presumptive sentence that is clearly excessive in light of the purpose of this chapter, as expressed in RCW 9.94A.010” an exceptional sentence may be imposed.

Case law, when analyzing the application of the multiple offense policy as a mitigating circumstance at sentencing, has required the sentencing court to establish that the cumulative effects of the offenses must be “nonexistent, trivial or trifling”. *State v. Sanchez*, 69 Wn. App 255, 261, 848 P.2d 208 (1993); *State v. Hortman*, 76 Wn. App 454, 461, 886 P.2d 234 (1994); *State v. Calvert*, 79 Wn. App. 569, 582-583, 903 P.2d 1003 (1995).

Most of the case law that deals with the application of the multiple offense policy to a reduced sentence are drug cases. The courts in these cases emphasized that the defendant sold drugs to either law enforcement or to an undercover operative. (*Sanchez, supra; Hortman, supra*). The appellate courts upheld the reduced sentence because the undercover buys were initiated and controlled by the police, they had occurred over a short period of time, they were made by the same seller and the purchases were of a small amount of drugs (*Sanchez*, at 261; *Hortman*, at 463-464).

However, in *Calvert, Id.*, the appellate court applied the multiple offense policy as a mitigating circumstance to a case in which the defendant had deposited several forged checks over a short period of time into an account that he shared with his minor son. The appellate court upheld the reduced sentence because the sentencing court found that “the

close relationship in time, intent and scheme of the several forgeries” that totaled \$1,570.00 had “minimal cumulative effects.”

In *State v. Kinneman*, 120 Wn. App 327, 84 P.3d 882 (2003), the trial court had imposed a lower sentence based upon the multiple offense policy. The defendant in *Kinneman*, at 330 - 332, was an attorney who had been convicted of 28 counts of theft in the first degree and 39 counts of theft in the second degree. The charges were based upon the defendant making multiple unauthorized withdrawals from his IOLTA account. The sentencing court did not sentence the defendant within the standard range, which was 43 to 57 months for the crimes of theft in the first degree, and 22 to 29 months for the crimes of theft in the second degree, but sentenced the defendant to 14 months for each count to run concurrently to each other. The Court of Appeals did not uphold the exceptional sentence.

The Appellate Court in *Kinneman* at 342-343, followed the rationale in *Sanchez, supra*, when it considered “the difference between the effects of the first criminal act and the cumulative effects of the subsequent acts”. The Court in *Kinneman*, at 346, reviewed the facts and concluded that the cumulative effect of the thefts could not be said to be nonexistent, trivial or trifling. The Court noted that the defendant’s first criminal act was a withdrawal of \$400.00. Thereafter, the defendant

committed 67 thefts that totaled \$208,713.10, as well as causing the foreclosure of four of the five properties for which funds had been deposited in the defendant's IOLTA account. The Court in *Kinneman*, at 348, found

The multiple offense policy is not supported by the facts and circumstances of this case. No mitigating factor other than the multiple offense policy has been identified to support a downward exceptional sentence. The Findings of Fact do not provide a substantial and compelling reason for departure from the standard range sentences as a matter of law.

In this case, the sentencing court never analyzed whether the cumulative effects of the offenses were nonexistent, trifling or cumulative and never made a Finding of Fact that the cumulative effects of the offense were nonexistent, trifling or cumulative. (CP 89-92) The Appellant presented evidence that the cumulative effects of the offenses were anything but trifling, cumulative or nonexistent (VRP 43-46, CP1-3, 20, and 81-86). The Identity Theft in the First Degree counts were not close in time to each other; they did involve significant amounts of money; and the Respondent had sole control over when he would use the victim's credit card and when he would collect money directly from the victim's customers. (CP 1-3, CP 81-86). The amount of money that the Respondent stole each time he used the victim business's credit card as charged in Counts 3 through 18 was in a different amount and the total

amount that the Respondent stole using the victim's credit card was \$72,556.89. (CP 1-3, 81-86)

The sentencing court in this case further relied upon RCW 9.94A.010(3) to support its imposition of a sentence below the standard range. (Conclusion of Law 3, CP 89-92) The purposes for the Sentencing Reform Act are delineated in RCW 9.94A.010, but the listed purposes have been found "not in and of themselves [to be] mitigating circumstances." *Kinneman*, at 347. The court in *Kinneman, Id.*, went on to state

Rather, they may provide support for the imposition of an exceptional sentence once a mitigating circumstance has been identified by the trial court. *State v. Alexander*, 125 Wn. 2d 717, 730 n. 22, 888 P.2d 1169 (1995).

In this case, the Appellant contends that the only mitigating circumstance identified by the sentencing court, that of the multiple offense policy, has not been established, and therefore RCW 9.94A.010(3) alone cannot be a basis to impose a sentence below the standard range.

At the time of the sentencing of the Respondent, the Appellant discussed with the sentencing court that this case could qualify as a major economic offense. (VRP 16-19, CP 11-19) This information was only presented to the court to counteract the Respondent's request for either a first-time offender sentence or a sentence below the standard range. The

Appellant was clear that it was not asking for a sentence above the standard range. (VRP 16)

A major economic offense is defined in RCW 9.94A.535(3)(d) as:

the current offense was a major economic offense or series of offenses, so identified by a consideration of any of the following factors: (i) the current offense involved multiple victims or multiple incidents per victim; (ii) the current offense involved attempted or actual monetary loss substantially greater than typical for the offense; (iii) the current offense involved a high degree of sophistication or planning or occurred over a lengthy period of time; or (iv) the defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate the commission of the current offense...

The offenses to which the Respondent pled guilty involved multiple incidents per victim; were an abuse of the Respondent's position of trust with the victim business; had a high degree of sophistication and planning; occurred over a lengthy period of time; and the amount of money stolen in this case is an amount which, the Appellant contended, is substantially greater than is typically stolen for a standard count of theft in the first degree, and identity thefts in the first degree. (CP 1-3, 20, 81-86) Only one of the factors needs to be present to establish a major economic offense. *State v. Baldwin*, 111 Wn. App. 631, 644, 45 P.2d 1093 (2002); *State v. Branch*, 129 Wn. 2d 635, 645, 919 P.2d 1228 (1996). If one of the factors is not established, that does not convert the factor into a

mitigating factor. As the Supreme Court provided in *State v. Armstrong*, 106 Wn. 2d 547, 551, 723 P.2d 1111 (1986) “[t]he lack of an aggravating circumstance does not create a mitigating circumstance.”

The sentencing court, as shown in Findings of Facts 3, 5, 7, 9, 11 to 16 and 18, (CP 89-92) relied upon *State v. Oxborrow*, 106 Wn. 2d 525, 723 P.2d 1123 (1986) and *Branch, supra*, to conclude that the standard sentencing range for the respondent in this case was clearly excessive in comparison to the sentences imposed in *Oxborrow* and *Branch*. The appellant had cited these cases only in support of its argument that the amount of money stolen by the respondent was substantially greater than typical for a standard count of theft in the first degree. (VRP 16-17, CP 11-19)

The concept of a clearly excessive sentence is not a recognized basis to impose an exceptional sentence below the standard range unless a mitigating circumstance has been established. *Grewe, supra; Hutsell, supra; Borg, supra*; RCW 9.94A.535(1). As the Appellant argued above, a mitigating circumstance has not been established and the only other possible basis for a mitigated sentence, that of RCW 9.94A.010(3) (CP89-92), can only be used in support of an exceptional sentence if there is an identifiable mitigating factor independent of this statute.

Contrary to the assertion in Finding of Fact 13, (CP 89-92) a review of *Oxborrow, supra* and *Branch, supra* does not establish the rationale followed by the prosecutor in making the charging decision in each case. It is mere speculation that the defendant in *Branch* could have been charged with more than one crime since a review of the facts in *Branch*, at 639, does not provide the actual time period in which he committed the thefts in relation to the statute of limitations. In addition, there is no evidence that the defendant committed any identity theft and more importantly, even if there was such evidence of identity theft, identity theft was not a crime in Washington until 1999.

The facts in *Oxborrow*, at 526-529, establish that the defendant pled guilty to two crimes, theft in the first degree and a violation of a cease and desist order in connection with the sale of securities. As with *Branch*, there is insufficient information concerning any additional charges that could have been brought against the defendant in regards to the statute of limitations, and there is no discussion about the factors upon which the prosecutor relied to make the charging decision. Finally, as with *Branch*, there is no evidence that *Oxborrow* committed any identity theft and as with *Branch* the crime of identity theft did not exist at the time *Oxborrow* was stealing money from his victims.

Conclusion of Law 2 (CP 89-92) that was entered in this case does state that the list of reasons for a mitigated sentence provided in RCW 9.94A.535(1) are illustrative only. However, the Findings of Fact and the Conclusions of Law do not provide an additional basis for a mitigated sentence beyond the multiple offense policy and RCW 9.94A.010(3). (CP 89-92)

2. THE COMMISSION OF THE CRIMES OF IDENTITY THEFT IN THE FIRST DEGREE THAT OCCURRED AT THE SAME TIME AS THE THEFT OF SOME OF THE VICTIM'S MONEY DOES NOT PROVIDE A SUBSTANTIAL AND COMPELLING REASON TO SUPPORT A MITIGATED SENTENCE. (FINDING OF FACT 3)

The Fifth Amendment of the U.S. Constitution and Article I, Section 9 of the Washington State Constitution prohibits a defendant from being placed in double jeopardy by being punished more than once for the same offense. Case law provides that a "defendant's double jeopardy rights are violated if he or she is convicted of offenses that are identical both in fact and in law." *State v. Calle*, 125 Wn. 2d 769, 777, 888 P.2d 155 (1995).

Identity Theft is defined in RCW 9.35.010(1) as

No person may knowingly obtain, possesses, use or transfer a means of identification or financial information of

another person living or dead, with the intent to commit, or to aid or abet, any crime.

Identity Theft in the First Degree further requires that the defendant or an accomplice obtains an aggregate total of credit, money, goods, service or anything else of value in excess of \$1,500.00. (RCW 9.35.020(2)).

Theft in the First Degree is defined in RCW 9A.56.020 and RCW 9A.56.030 as wrongfully obtaining or exerting unauthorized control over property of another, the value of which exceeds \$5,000.00.

Case law has held that the crimes of identity theft and theft are not the same offense in law since each crime has an element that the other crime does not and, thus, double jeopardy does not apply. In *State v Milam*, 155 Wn. App 365, 228 P.3d 788 (2010), the defendant was convicted of second degree theft and second degree identity theft for his use of a stolen ATM card and PIN to withdraw \$360.00 from an ATM. The Court of Appeals noted that while the two crimes were identical in fact to the extent that the same acts proved both crimes, they were not identical in law. The Court in *Milam*, at 372, found that identity theft requires

proof of a knowing use of financial information of another with the intent to commit a crime. In contrast, second degree theft required proof that one wrongfully obtained the property of another with intent to deprive him or her of the property. The elements of identity theft and second degree theft were not the same in law.

In *State v. Sells*, 166 Wn. App 918, 926, 271 P.3d 952 (2012), the Court of Appeals found that theft in the third degree and identity theft in the second degree were not identical in law for purposes of double jeopardy. The Court found that

Second degree identity theft requires proof that the defendant “obtain, possess, use, or transfer” another person’s identification or financial information. Third degree theft does not require this. Third degree theft requires proof that one wrongfully obtained the property of another with intent to deprive him or her of the property. Second degree identity theft does not require proof of this.

The crime of Theft in the First Degree and the crimes of Identity Theft in the First Degree to which the Respondent pled guilty can be punished separately since there is no violation of double jeopardy. Each crime has an element that the other does not. Theft in the First Degree, as with theft in the second degree, requires proof that the Respondent wrongfully obtained property of another to deprive him or her of the property. Identity Theft in the First Degree, as with identity theft in the second degree, requires proof that the Respondent obtained, possessed, used or transferred another person’s means of identification or financial information.

The facts in this case have established that the Respondent did not commit the majority of the thefts by using the victim’s credit card. The

Respondent obtained \$72,556.89 by using the victim's credit card as charged in Counts 3 to 18. (CP 1-3, 81-86) The remaining amount of the theft of \$226,040.69 was committed by either obtaining payments from the victim's customers or by using the victim's credit card which could not be charged as identity theft because of the statute of limitations. (CP 1-3, 81-86)

Finally, it is important to note that Finding of Fact 3 is not referred to in any of the Conclusions of Law and thus, does not provide any rationale to impose a mitigated sentence.

E. CONCLUSION.

For the foregoing reasons the Appellant respectfully requests that the sentence imposed in this case be reversed. This case should be remanded for a new sentencing hearing.

DATED: October 31, 2018.

MARK LINDQUIST  
Pierce County Prosecuting Attorney



APRIL MCCOMB  
Deputy Prosecuting Attorney  
WSB # 11570

Certificate of Service:

The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

11.1.18   
Date Signature

**PIERCE COUNTY PROSECUTING ATTORNEY**

**November 01, 2018 - 10:01 AM**

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