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Court of Appeals  
Division III  
State of Washington

NO. 34375-8-III

COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON

Respondent,

v.

SHAWN ALAN STAHLMAN,

Appellant.

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BRIEF OF RESPONDENT

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David B. Trefry WSBA #16050  
Senior Deputy Prosecuting Attorney  
Attorney for Respondent

JOSEPH A. BRUSIC  
Yakima County Prosecuting Attorney  
128 N. 2d St. Rm. 329  
Yakima, WA 98901-2621

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## I. ASSIGNMENTS OF ERROR

### A. ISSUES PRESENTED BY ASSIGNMENTS OF ERROR.

Appellant raised twenty-one assignments of error. Four of those address specific allegations the remainder are challenges to findings of fact and conclusions of law. The four “substantive” allegation are as follows;

1. The state failed to prove that Mr. Stahlman intended to commit assault.
2. The state failed to disprove self-defense.
3. The state failed to prove attempted burglary in the second degree.
- ...
21. The court erred in finding guilt of both theft and the same tire and wheel.

Stahlman further challenges numerous findings of fact and conclusion of law;

4. Stahlman assigns error to the findings of fact 1.9 that approaching a shop door late at night is a substantial step towards the commission of burglary in the second degree.
5. Stahlman assigns error to the findings of fact 1.13 that Murphy intentionally steered the van into Oliver’s truck to create fear in Oliver.
6. Stahlman assigns error to the findings of fact 1.14 that Stahlman acted as an accomplice to Murphy intentionally steering the van into Oliver’s truck to create fear in Oliver, where Murphy was acquitted of this charge as a principal.
7. Stahlman assigns error to the findings of fact 1.16 that the veering of the van was a threat to Oliver.
8. Stahlman assigns error to the findings of fact 1.17 that Oliver’s fear was reasonable.
9. Stahlman assigns error to the findings of fact 1.18 that the collision of vehicles was likely to cause death or substantial injury to Oliver who owned a large truck.

10. Stahlman assigns error to the findings of fact 1.19 that he ran at Oliver at a dead run with a sledge hammer raised overhead.
11. Stahlman assigns error to the findings of fact 1.20 that he ran at Oliver at a dead run with a sledge hammer raised to create fear in Oliver.
12. Stahlman assigns error to the findings of fact 1.21 that he ran at Oliver at a dead run with a sledge hammer raised which constituted a threat.
13. Stahlman assigns error to the findings of fact 1.23 that being struck with a sledge hammer would likely cause death.
14. Stahlman assigns error to the findings of fact 1.24 that no reasonable person in his position would have believed that they were in imminent danger of bodily harm during Oliver's car chase.
15. Stahlman assigns error to conclusion of law 2.1 that the state proved guilt beyond a reasonable doubt attempted second possession of stolen property based on the taking and retention of degree burglary.
16. Stahlman assigns error to conclusion of law 2.1 that the state proved guilt beyond a reasonable doubt attempted second degree burglary.
17. Stahlman assigns error to conclusion of law 2.3 that the state proved guilt beyond a reasonable doubt possession of stolen property in the third degree.
18. Stahlman assigns error to conclusion of law 2.4 that the state proved guilt beyond a reasonable doubt second degree assault as charged in count 4.
19. Stahlman assigns error to conclusion of law 2.6 that the state proved guilt beyond a reasonable doubt that Stahlman was armed with a deadly weapon during the assault in the second degree as charged in count 5.
20. Stahlman assigns error to conclusion of law 2.7 that the state proved guilt beyond a reasonable doubt that Stahlman was guilty of the crimes charged.

B. ANSWERS TO ASSIGNMENTS OF ERROR.

Stahlman has raised twenty-one assignments of error and seventeen issues presented on appeal. In the body of his brief he sets out four specific allegations. The State's response is as follows:

1. The State proved beyond a reasonable doubt that Stahlman committed two counts of assault in the second degree. Further, the State proved beyond a reasonable doubt that the Stahlman was not acting in self-defense on either count of assault in the second degree.
2. The Court properly found Stahlman guilty both as an accomplice and a principle as charged in the information.
3. The State proved beyond a reasonable doubt that Stahlman committed attempted burglary in the second degree.
4. The trial court properly entered convictions for both theft and possession of stolen property.

## II. STATEMENT OF THE CASE

It must be noted that many of the finding of the trial court located at CP's 23-28 were not challenged and therefore they are verities for purposes of this appeal, this court should note those unchallenged findings. State v. Hill, 123 Wn.2d 641, 647, 870 P.2d 313 (1994). It also must be noted that Stahlman waived his right to a jury and this case was tried to the bench.

On September 23, 2015 Mr. Oliver was at home sleeping. His home is located on Terrace Heights Drive in the City of Yakima RP 104, 114. Mr. Oliver' home is in a relatively remote location. CP 23

At approximately 2:00 AM Mr. Oliver had awakened and gone to the bathroom. While up he heard a vehicle pull up in and area near where he has a shop. RP 114, CP finding 1.7 page 24, 190-1. Mr. Oliver observed the defendant reach for the shop door, the motion sensor light came on and at that time Mr. Oliver yelled at Stahlman to get the "F" out

of her. RP 114, 192 When Stahlman was first observed the motion sensor light had not turned on yet. Mr. Oliver testified that for that light to be activated you have to be very close to the door. He testified that “[h]is hand was outreached towards the door...[h]e looked like he was going to try to get into my shop. His hand was outreached to the man door, to the handle of the man door. RP 115-16 CP 24. Stahlman’s hand was reaching for the door, possibly three feet away and that the motion sensor light does not come on until approximately three feet from the door. RP 162, 164.

When Mr. Oliver yelled at Stahlman he ran away from the shop and Mr. Oliver heard a door slam and he observed a vehicle leaving his home. He identified this vehicle as a “late 90’s white Ford Winstar van.” RP 116-17, 223. The shop that Stahlman was trying to enter is according to testimony approximately 200 feet from the road. RP 223.

Mr. Oliver positively identified the defendant, Stahlman, as the person whom he observed trying to enter his shop on the day in question. Stating the he was the man in the blue shirt with the tattoos all over his face. RP 117-8.

Mr. Oliver grabbed only is pants and some slip-on shoes, no shirt or phone, left his home with the intent to follow Stahlman with the hope of attracting the attention of another person or the police. RP 117-18. Mr.

Oliver testified that there was never any intent on his part to fight with Stahlman because Oliver is a hemophiliac and with this condition it could easily kill him. RP 118, 129-30, 192-3.

Mr. Oliver testified that he was following the van carrying Stahlman when it entered a section of road on Roza Hill that is four-lane. He was able to observe the interior of the van and at first could not see the driver. In this section of the road while next to the van he was finally able to see the driver and he also observed Stahlman trying to hide in the van. Mr. Oliver would occasionally see Stahlman's head pop up and Oliver was able to observe that Stahlman was yelling at the driver. RP 122-3.

He was able to pull next to the white van on its left hand, drives side. RP 122-3 Mr. Oliver stated that he was near the van and that Stahlman "popped up" and he was able to see Stahlman. Mr. Oliver described Stahlman as "in a frenzy...yelling and screaming at the driver, whom Mr. Oliver identified in the courtroom as being Amy Jo Murphy, the codefendant in this case. RP 123-4, 177-8, 197, 200, 217-8.

Mr. Oliver described Murphy as "in duress, definitely panic stricken" and that Stahlman continued to yell at her. During this portion of the chase they were driving 80 maybe 90 miles per hour. RP 124, 178-9. Oliver testified that it was during this portion of the chase that the van veered over and rammed his truck. He stated that it caused over \$5,000.00

worth of damage to this truck. RP 124-5, 126. Photographs were admitted as exhibits that showed the damage to his truck and he described to the court and the jury what that damage was and how it was caused and that the photographs accurately depicted the damage. RP 124-26, 214-6. He testified that Murphy veered into his truck a couple of times. RP 125, 137-8, 178-9, 199. Dep. Hull observed damage to the left front fender, the bumper and the step bar of Mr. Oliver's truck. RP 266, 267-8.

Mr. Oliver testified that he was in fear for his life when the van rammed his truck. He determined that the best course of action was to slow down and get a license plate number. RP 125, 180-1, 217, 224.

The Chase halted in an area that Oliver described as Terrace Estates. It was at an intersection where the van stopped that Mr. Oliver exited his truck to go to the van. It was after he had exited his truck to confront the van's occupant's as to why they had been on his property and at that time he observed Stahlman running at him full speed with a small sledgehammer raised. Mr. Oliver described it as Stahlman "was on a mission...[h]e was running" "a dead run." RP 128, 129, 180-81, 201. Mr. Oliver fled back to his truck and Stahlman struck Oliver's truck with this hammer causing damage to one of the front fenders. Mr. Oliver had reentered his truck and "slammed it into reverse" as he was trying to get away from Stahlman's attack. Mr. Oliver stated that when Stahlman was

running at him with the sledge hammer he feared for his life. RP 126-7, 129, 200-02, 224. Mr. Oliver's truck was only a few feet, perhaps five feet behind the van. RP 129.

Because of Mr. Oliver's hemophilia he testified that if he had been struck with the sledge hammer it would have caused more problems for him than for a person without his disease. RP 129-30. Mr. Oliver testified that he owned a body shop and the hammer that he observed in Stahlman's hand was a "one-handed sledgehammer...[t]his is more of a hammer that's more destructive" RP 132-3. He identified a sledgehammer that was shown for illustrative purposes as being very similar to the one wielded by Stahlman when he attacked Mr. Oliver's truck. RP 132-3. The white van then appeared to be trying to back into Mr. Oliver's truck so he took evasive action, jumping the curb at which time he actually struck a fence in his attempt to get away. Mr. Oliver feared that Stahlman and Murphy were trying to ram the front of his truck, setting off the airbags which would disable his truck and leave him defenseless. RP 134-6

The chase continued for an extended length, eventually going onto the freeway then back off and into the City of Yakima. Soon thereafter the van struck a curb, went airborne and slowed to a stop. Stahlman ran from the van but came back and helped Murphy out of the van and then they both fled the area. RP 140-3, 189-90, 205. Mr. Oliver

actually stopped and took the keys from the wrecked van then followed the two defendants for a while then stopped at an open convenience store and asked the operator to call the police. RP 145-6.

Mr. Oliver self-described his appearance at the end of the case in his testimony stating that “the attendant looked at (him) like I’m kind of a nutcase because I don’t have a shirt on...just got out of bed...and my hair is going everywhere.” RP 145, 179-90, 189-90, 207. (Stahlman claims that an officer testified that Oliver looked deranged, scary, and crazy like a “nutcase” citing to page 225, 413-16, 456. Apps brief at 8. No officer testified using those words. Mr. Oliver is testifying at page 225 not an officer.)

Mr. Oliver later determined that there had been a BMW M3 wheel and tire stolen from his property. He stated that they were very expensive. RP 148. He testified on cross-examination that the wheels and tires while used were actually off of his personal vehicle. RP 164-5. He estimated that the wheel was worth approximately \$700.00-800.00 and the tire on that wheel was worth an additional \$300.00-350.00. RP 149-52. The final value placed on these two items was \$900.00. RP 153. Mr. Oliver also found a wallet with Stahlman’s identification on the ground near his shop, in the location previously described by Mr. Oliver. RP 153-4. This wheel was located near Mr. Oliver’s shop and at the same location

where Stahlman's wallet was found and was one of a set of four. RP 157, 161. Mr. Oliver testified that this one wheel found in the back of the crashed out van matched the others. RP 161.

The owner of the van driven by Murphy and Stahlman testified that on the day in question Stahlman had asked if he could borrow her vehicle. She told him no. She positively identified Stahlman in the courtroom. She testified that he had been allowed to borrow it before and there had been issues with his not returning the vehicle. The owner did not testify that Murphy had requested to drive the van or had used the van in the past. RP 248-9, 260-1

Dep. Hull testified that he interviewed Murphy and she stated to him that she had borrowed the van earlier, about 11:00 AM and had left her purse in the vehicle. She stated she had no knowledge of the burglary at Mr. Oliver's home. RP 283, 314. When questioned about her whereabouts at the time of this crime Murphy gave Dep. Hull three different answers. RP 293

On cross-examination the Deputy confirmed that the "running boards" on Mr. Oliver's truck were damaged. RP 294-5.

### **III. ARGUMENT**

The State shall address the challenges to the findings and conclusions first. The State addresses these allegations even though this

court has ruled that challenges of this nature do not preserve the “objections” for purpose of review. See State v. C.B., 195 Wn.App. 528, 535-6, 380 P.3d 626 (Wn.App. Div. 3 2016), *infra*.

Stahlman indicates in the outline section of his appeal that he is challenging numerous finding and conclusions however, in the body of his brief he does not specifically address the challenged findings and/or conclusions. State v. Dunham, 194 Wn.App. 744, 748, 752, 379 P.3d 958 (Wn.App. Div. 2 2016) “We treat the other, unchallenged, findings as verities on appeal. State v. Chacon Arreola, 176 Wn.2d 284, 288, 290 P.3d 983 (2012)... Substantial evidence supports the challenged finding of fact.” State v. Gonzales-Morales, 91 Wn.App. 420, 429, n. 6, 958 P.2d 339 (Div. I 1998), affirmed, 138 Wn.2d 374, 979 P.2d 826 (1999);

Gonzales-Morales also alludes to a separate due process argument when he cites State v. Sain, 34 Wn.App. 553, 558, 663 P.2d 493 (1983). But because we need not consider “naked castings into the constitutional sea,” *see* State v. Linden, 89 Wn.App. 184, 197, 947 P.2d 1284 (1997) (*quoting In re Rosier*, 105 Wn.2d 606, 616, 717 P.2d 1353 (1986)), we need not undertake such an inquiry. ...

In addition, RAP 10.3(a)(5) and 10.3(b), applicable to opening and responding briefs in appellate cases, require that legal arguments be supported by appropriate references to the record. Other than the bald assertion in the section of Stahlman’s brief setting out allegations and issues there is no reference to any portion of the record regarding the

challenged findings.

**Response to challenged Findings of Fact and Conclusions of Law.**

Stahlman's case was a joint trial with his case tried to the bench and his co-defendant, Amy Jo Murphy tried to a jury. As just indicated many of the facts set forth by the trial court sitting as the trier of fact are now verities. In State v. Carlin, 40 Wn. App. 698, 700 P.2d 323 (1985) the court addressed trials to the bench; "Moreover, in a bench trial a trial judge is presumed to have considered only the evidence properly before the court. In re Wilson, 91 Wn.2d 487, 490, 588 P.2d 1161 (1979); State v. Carlson, 27 Wn. App. 387, 390, 618 P.2d 531 (1980), review denied, 95 Wn.2d 1001 (1981)."

A case tried to the bench is reviewed by this court differently than a case tried to a jury. State v. Carlson, 27 Wn. App. 387, 390, 618 P.2d 531 (1980) "Judges routinely rule on evidentiary matters in bench trials and are not found "prejudiced" by the exposure to inadmissible evidence. Trial judges are presumed to have considered only the evidence properly before the court and for proper reasons. In re Harbert, 85 Wn.2d 719, 538 P.2d 1212 (1975)"

To determine whether sufficient evidence supports a conviction, this court will view the evidence in the light most favorable to the prosecution and determine whether any rational fact finder could have

found the elements of the crime beyond a reasonable doubt. State v. Engel, 166 Wn.2d 572, 576, 210 P.3d 1007 (2009). In claiming insufficient evidence, the defendant admits the truth of the State's evidence and all reasonable inferences that can be drawn from it. State v. Drum, 168 Wn.2d 23, 35, 225 P.3d 237 (2010). This court will defer to the trier of fact on issues of conflicting testimony, witness credibility, and the persuasiveness of the evidence. State v. Thomas, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004).

Following a bench trial, review is limited to determining whether substantial evidence supports the findings of fact, and if so, whether the findings support the conclusions of law. State v. Homan, 181 Wn.2d 102, 105-06, 330 P.3d 182 (2014). "Substantial evidence" is evidence sufficient to persuade a fair-minded person of the truth of the asserted premise. Homan, 181 Wn.2d at 106.

Appellant has challenged only a small portion of the written findings and conclusions in this appeal. CP 23-8 Therefore, this court will consider the unchallenged findings verities on appeal. State v. Brockob, 159 Wn.2d 311, 343, 150 P.3d 59 (2006) (citing State v. Hill, 123 Wn.2d 641, 647, 870 P.2d 313 (1994)). See also Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 808, 828 P.2d 549 (1992), unchallenged findings of fact are verities on appeal.

As this court ruled in State v. C.B., 195 Wn.App. 528, 535-6, 380

P.3d 626 (Wn.App. Div. 3 2016) a recent case from Yakima County:

In the opening pages of his brief, Carter assigns error to eight of the juvenile court’s findings of fact. But as the State points out, he does not thereafter address the challenged findings— or at least doesn’t address most of them— in the argument section of his brief. We will not review issues for which inadequate argument is briefed or only passing treatment is given. State v. Thomas, 150 Wash.2d 821, 868-69, 83 P.3d 970 (2004), *aff’d*, 166 Wash.2d 380, 208 P.3d 1107 (2009). Only the asserted shortcomings of findings 1.6, 1.9, and 1.14 are sufficiently briefed to warrant review.

Following a bench trial, we review the findings of fact for substantial evidence. State v. Homan, 181 Wash.2d 102, 105-06, 330 P.3d 182 (2014). “ ‘ Substantial evidence’ is evidence sufficient to persuade a fair-minded person of the truth of the asserted premise.” *id.* at 106, 330 P.3d 182. We defer to the trial court, as finder of fact, for purposes of resolving conflicting testimony and evaluating the persuasiveness of the evidence. See id. (Footnote omitted.)

During review this court may in addition to considering the written findings of fact and may, where a trial court's written findings are incomplete or inadequate, look to the trial court's oral findings to aid review. State v. Robertson, 88 Wn.App. 836, 843, 947 P.2d 765 (1997), review denied, 135 Wn.2d 1004, 959 P.2d 127 (1998). The trial court’s oral ruling was extensive. That detailed and thorough ruling is found in its totality in Appendix B along with a similar ruling after the “half-time motion found in Appendix A. State v. Hill, 123 Wn.2d 644, 870 P.2d 313 (1994) addressed this type of challenge as follows:

It is well-established law that an unchallenged finding of fact will be accepted as a verity upon appeal....

Defendant's failure to assign error to the facts entered by the trial court precludes our review of these facts and renders these facts binding on appeal. We will nevertheless take this opportunity to clarify the case law regarding the standard of review for factual findings entered pursuant to a suppression hearing.

Generally, findings are viewed as verities, provided there is substantial evidence to support the findings. Substantial evidence exists where there is a sufficient quantity of evidence in the record to persuade a fair-minded, rational person of the truth of the finding. (Citations omitted.)

There are several of the findings of fact which appear to contain conclusions of law. This court has addressed issues with findings such as this in State v. Niedergang, 43 Wn. App. 656, 658-9, 719 P.2d 576 (1986) “If a determination concerns whether evidence shows that something occurred or existed, it is properly labeled a finding of fact, but if the determination is made by a process of legal reasoning from facts in evidence, it is a conclusion of law. When findings of fact in reality pronounce legal conclusions, they may be treated as such. (Citations omitted.)

This court will review challenges to a trial court’s conclusions of law de novo. State v. Gatewood, 163 Wn.2d 534, 539, 182 P.3d 426 (2008). See also, State v. Armenta, 134 Wn.2d 1, 9, 948 P.2d 1280 (1997).

Clearly the testimony of Mr. Oliver and the two defendant’s does

not match. As this court noted in Hill, supra, “[t]he Court will still accord an "appropriate and substantial effect" to state court "resolutions of conflicts in evidence as to the occurrence or nonoccurrence of factual events and happenings." The reason given for this is the "trial judge and jury are closest to the trial scene and thus afforded the best opportunity to evaluate contradictory testimony." (Citations omitted)

Substantial evidence supports each and every challenged finding of fact set out by the trial court. Each and every challenged fact can be found in the record. As indicated above some of the stated findings of fact appear to actually be a conclusion.

The State must note that some of the “findings” that are set out in Stahlman’s brief as being a finding of fact of the court are not in fact the findings of the court, they include Mr. Stahlman’s issue with the courts findings. For example, Stahlman states that he “assigns error to the findings of fact 1.18 that the collision of vehicles was likely to cause death or substantial injury to Oliver who owned a large truck.” (Emphasis added.) (Apps brief at 2) The actual finding of the court reads as follows; “1.18 . The Court finds that that the collision of the vehicles was likely to cause death or substantial bodily harm. Mr. Oliver's hemophilia is a factor in this determination.”

Stahlman challenged the following findings:

**1. Findings of fact 1.9 – Stahlman alleges that approaching a shop door late at night is a substantial step towards the commission of burglary in the second degree. (This is listed as “4” in Stahlman’s brief.)**

This finding appears to be both fact and conclusion. The trial court found that Mr. Oliver’s testimony was credible and Stahlman’s was not. Therefore, the fact that Stahlman reached for the door is a fact substantially supported by the record. The conclusion that this was a substantial step was not found by the trial court in a vacuum. It was made in conjunction with the testimony regarding the location of the home, the time of day – 2 AM, the theft of the tire and wheel. The fact that Stahlman was reaching for the door in conjunction with the other facts allowed the court to conclude that this reach was a substantial step towards the completion of the crime of burglary.

As set forth in the fact section above, the trial court found that the victim’s testimony was credible and that Stahlman reached for the door from a few feet away and that there was no reason for Stahlman to be on the victim’s property at 2:00 AM. And that the RP 114, 192 RP 115-16 CP 24, RP 162, 164. This finding was not made in isolation nor should it be considered in isolation. The direct and circumstantial evidence regarding the defendant being on the property in the first place, the theft of

the wheel and tire, Stahlman's prior criminal history and his unreliable/untrustworthy testimony should be and were taken in totality.

**2) Stahlman challenges - Findings of fact 1.13, 1.14, 1.16, 1.17, 1.18 pertaining to Murphy's intentionally act of steering the van into Oliver's truck to create fear in Oliver, that Stahlman acted as an accomplice, that veering the van was likely to cause death of injury and that Oliver's fear was reasonable.**

This finding is supported by the direct testimony of Mr. Oliver regarding what he observed occurring in the van as he pulled alongside the vehicle. He observed that Stahlman was very agitated and yelling at Murphy, who was driving the van, after which the van swerved into Oliver's truck causing damage. This fact that there was damage to the vehicle was also set forth in the testimony of Dep. Hull who observed the damage to the victim's truck. The testimony of Mr. Oliver was that at the time the two vehicles hit they were both traveling down the road, at around two o'clock in the morning at speeds up to 90 miles per hour. Mr. Oliver testified under oath that the actions of the defendant's made him fear for his life. He stated that the van hit him a couple times. RP 122-3, 123-5, 177-8, 178-9, 197, 200, 214-16, 217-8, 266, 267-8. The court also took into consideration that the victim, Mr. Oliver, is a hemophiliac and any type of assault can have dire consequences. Something as simple and common as a tooth extraction can cause Mr. Oliver severe problems. RP 118, 129-31.

Clearly the court is allowed to, required to take into account the totality of the testimony both direct and circumstantial presented to it and it is, as the trier of fact, allowed to analyze those facts based on the court's judicial and common knowledge.

When one person is seen screaming and yelling at the driver of a vehicle and at that moment the vehicle swerves over and hits the other vehicle more than once while traveling at 90 miles an hour at 2 AM the court can and did logically determine that the actions of Stahlman were to incite the actions of Murphy to use the van as a weapon to assault Mr. Oliver and that those actions, as he testified, place Mr. Oliver in fear for his live, thus supporting the findings of the court.

The court summed this up in its oral ruling contained in its entirety in the appendix to this brief. The following is a relevant portion of that oral ruling:

I would find that Mr. Stahlman was, in fact, an accomplice to that crime. He was not the driver, but he, according to the testimony, was encouraging and demanding or commanding Ms. Murphy in a way that influenced her driving or at least joined with her view of how the driving should occur.

The testimony from Mr. Oliver was that he observed the vehicle traveling next to him at approximately 80 to 90 miles an hour. Mr. Stahlman was seen gesticulating and appeared to be yelling. Although he couldn't hear the words, he had a very angry look on his face. That was

followed near in time with Ms. Murphy swerving the vehicle, her van, into Mr. Oliver's truck.

I find that he is guilty of that crime of second degree assault, that the swerving, if you will, the van into his car, the truck, was an intentional assault. It was used – it was an attempt to threaten Mr. Oliver with substantial bodily injury, and I find the vehicle is capable of producing substantial bodily injury.

The physical evidence, the paint on the nerf bar, corroborates Mr. Oliver's version of events. There may have been some uncertainties, but the weight of the evidence, I think, shows there was damage to the vehicle. Mr. Oliver testified that damage occurred as a result of the collision. RP 654.

Stahlman argues that he could not be found guilty of the assault involving the van because his co-defendant Murphy was acquitted. The charging language in the information does not state that Stahlman was only charge as an accomplice but also as a principle. CP 13. Therefore, the charge could stand even if Murphy was acquitted. Murphy was tried to a jury and Stahlman was to the bench. This allows for two verdicts to be different without there being a conflict.

Stahlman cites State v. Peterson, 54 Wn.App. 75, 772 P.2d 513 (1989) as controlling, this is incorrect. In fact, Peterson established that even if the “principle” was not found or convicted the accomplice could in fact be found guilty of the charged crime if the State proved that the accomplice in fact had meet the requirement of the statute.

Accomplice liability is not a separate crime--it is predicated on aid to another "in the commission of a crime" and is in essence liability for that crime. RCW 9A.08.020(3); Conviction for accomplice liability is improper where there is no proof that a principal "actually committed the crime." But in order to establish accomplice liability "the State need not prove that the principal and accomplice share the same mental state."

The State only needs to show "the accomplice's general knowledge of [the principal's] substantive crime." In fact, under RCW 9A.08.020(6)

[a] person legally accountable for the conduct of another person may be convicted on proof of the commission of the crime and of his complicity therein, though the person claimed to have committed the crime has not been prosecuted or convicted or has been convicted of a different crime or degree of crime or has an immunity to prosecution or conviction or has been acquitted. (Citations omitted.) Peterson, 54 Wn.App. at 78-9.

The law does not allow for inquiry into the workings of the jury.

Here the proof needed here is that which was before the court and that testimony, as evidenced by the findings of fact and conclusions of law prove that Murphy and Stahlman both committed the assault. Because the separate trier of fact determined for whatever reason that Murphy was not guilty of the crime beyond a reasonable doubt does not negate the fact that the State proved the elements of the crime against both individuals and in this case proved the elements beyond a reasonable doubt.

Here there is "proof that a principal "actually committed the crime.""Peterson does not require a finding of guilt beyond a reasonable

doubt and actually recites the section of RCW 9A.08.020(6) that specifically states that the other party “has been acquitted.” *Id.* at 79.

**3) Findings of Fact 1.19, 1.20, 1.21, 1.23 pertaining to Stahlman’s assault charge which arose from his use of a sledge hammer – That this act was done with the hammer over his head, creating fear in constituted a threat to and was likely to cause the death of Mr. Oliver.**

Once again the trial court determined that Mr. Oliver, the victim, testified truthfully and that Stahlman’s testimony was not credible. Therefore, based on the credible facts heard by the court it found issues the findings of fact, to include those now challenged by Stahlman.

The testimony which the trial court found credible indicated that when the chase briefly halted at an intersection and Mr. Oliver exited his truck to go to the van. When he exited his truck to confront the van’s occupant’s he observed Stahlman running at him full speed with a small sledgehammer raised. Mr. Oliver stated that Stahlman “was on a mission...[h]e was running” “a dead run.” RP 128, 129, 180-81, 201. When Oliver fled back to his truck Stahlman hit the truck with the sledge hammer damaging the front fender. Mr. Oliver reentered his truck “slammed it into reverse” trying to get from Stahlman’s attack, fearing the threatening actions of Stahlman. Oliver testified he feared for his life because of what Stahlman did with that sledge hammer. RP 126-7, 129, 200-02, 224. Mr. Oliver’s testified that his hemophilia made him far more

vulnerable, stating if he had been struck with the sledge hammer it would have caused more problems for him than for a person without his disease. RP 129-30. Oliver testified the hammer in Stahlman's hand was a "one-handed sledgehammer...[t]his is more of a hammer that's more destructive" RP 132-3. He identified a sledgehammer as being very similar to the one wielded by Stahlman. RP 132-3,134-6.

**4. The final finding Stahlman assigns error to is findings of fact 1.24 that no reasonable person in his position would have believed that they were in imminent danger of bodily harm during Oliver's car chase.**

SELF DEFENSE - Once again the standard for review is that this court will review a trial court's findings of fact for substantial evidence and review de novo whether the findings support the conclusions of law. "Following a bench trial, we review the findings of fact for substantial evidence. State v. Homan, 181 Wash.2d 102, 105-06, 330 P.3d 182 (2014). " 'Substantial evidence' is evidence sufficient to persuade a fair-minded person of the truth of the asserted premise." id. at 106, 330 P.3d 182. We defer to the trial court, as finder of fact, for purposes of resolving conflicting testimony and evaluating the persuasiveness of the evidence. See also, C.B. 195 Wn.App. 535-6.

This finding addresses the need for self-defense. One of the crucial statements from the testimony of Stahlman was at the very end of

this time on the stand and it directly impacts this allegation. When asked by the State if he had called the police, an all-encompassing question regarding the event, he stated “no.” RP 448. This is clear evidence that he was not in such fear for his life that he needed to contact the police to “save him” from Mr. Oliver.

Clearly the court was allowed as the trier of fact to look to the totality of the testimony and determine that the actions of the people in the van were such that they were not taking flight due to fear of Mr. Oliver but fear of being caught. The court stated the following regarding the use of “self-defense” for this count:

Interestingly, the defendant has asserted also a self-defense. With regard to the van, the testimony from both Ms. Murphy and Mr. Stahlman was that they didn't believe there was any contact.

I find their comments lack credibility. The idea that they would be so sensitive and alert to all the issues going on as they described in their testimony, the speed, the facial expressions, their personal emotion, the route they took indicated a real specificity of detail. The comments that I don't believe there was a collision between the two vehicles at 80 or 90 miles an hour lacks credibility.

...

Before I go there, the issue of self-defense, it's difficult. I don't think that you can assert self-defense by accident. Both Ms. Murphy and Mr. Stahlman indicated that the use of the vehicle would have been self-defense. They both denied that it happened. It's difficult to assert a claim of self-defense when you said it didn't happen. In any event, I don't find that the response of her

swerving her vehicle into Mr. Oliver's vehicle would have been an act of self-defense. It would have been an act that was not a reasonable response to the circumstances that they were encountering. The more reasonable response would have been to pull off to the side of the road and disengage. It would not be to use your vehicle as a ramming device to hit the other side. RP 655-6.

All of the findings of fact that were challenged by Stahlman were and are supported by substantial evidence. The trial court sitting as the trier of fact determined what the question of sufficiency of the evidence. Stahlman challenges these findings as having no basis in fact and later challenges them as being sufficient to support the convictions found by the trial court.

Because this is a challenge of the sufficiency of the evidence Stahlman must admit the truth of the State's evidence and all reasonable inferences drawn in favor of the State, with circumstantial evidence and direct evidence considered equally reliable. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992); State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). The elements of a crime can be established by both direct and circumstantial evidence. State v. Brooks, 45 Wn. App. 824, 826, 727 P.2d 988 (1986). One is no less valuable than the other. There is sufficient evidence to support the conviction if a rational trier of fact could find each element of the crime proven beyond a reasonable doubt.

Credibility determinations are for the trier of fact and are not

subject to review. State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). "It is axiomatic in criminal trials that the prosecution bears the burden of establishing beyond a reasonable doubt the identity of the accused as the person who committed the offense." State v. Hill, 83 Wn.2d 558, 560, 520 P.2d 618 (1974).

The facts presented to the jury in this case were without a doubt sufficient to meet the test set forth in, State v. Bucknell, 183 P.3d 1078, 1080 (WA 2008) "In reviewing a sufficiency of the evidence challenge, the test is whether, after viewing the evidence in a light most favorable to the jury's verdict, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. State v. Green, 94 Wn.2d 216, 220-21, 16 P.2d 628 (1980)."

**Response to Stahlman's challenge to conclusions of law, 2.1, 2.3, 2.4, 2.6 and 2.7 (Appellant lists a challenge to conclusion of law 2.1 twice. Apps brief at 2-3. The State is uncertain if this is meant to be a challenge of finding 2.2 or was just redundant.)**

Once again citing from C.B., supra "Due process requires the State to prove every element of the crime charged beyond a reasonable doubt. State v. Baeza, 100 Wash.2d 487, 488, 670 P.2d 646 (1983). "The test for determining the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found guilt beyond a reasonable doubt." State v. Salinas, 119

Wash.2d 192, 201, 829 P.2d 1068 (1992). Where trial was to the bench, this is done through determining whether substantial evidence supports the findings of fact, as discussed earlier, and if so, whether the findings support the conclusions of law. Homan, 181 Wash.2d at 105-06, 330 P.3d 182. In claiming insufficient evidence, the defendant necessarily admits the truth of the State's evidence and all reasonable inferences that can be drawn from it. *id.* at 106, 330 P.3d 182." State v. Mendez, 137 Wash.2d 208, 214, 970 P.2d 722 (1999) "[the court of appeals will] review de novo the trial court's conclusions of law."

The State shall not recite the facts that are set forth above, clearly the testimony of Mr. Oliver was more than sufficient to support the conclusions of law set forth by the trial court.

### **Assault in the second degree**

#### **Self defense**

Self-Defense is set out in RCW 9A.16.020 which provides, in relevant part, that:

The use, attempt, or offer to use force upon or toward the person of another is not unlawful in the following cases:

...

(3) Whenever **used by a party about to be injured**, or by another lawfully aiding him or her, **in preventing or attempting to prevent an offense against his or her person**, or a malicious trespass, or other malicious interference with real or personal property lawfully in his

or her possession, in case the force is not more than is necessary . . .  
(Emphasis added)

While this case was tried to the bench the language of the Washington Pattern Instruction 17.02 is instructive, it states;

The use of or attempt to use force upon or toward the person of another is lawful when used or attempted by a person who reasonably believes that he is about to be injured in preventing or attempting to prevent an offense against the person, and when the force is not more than is necessary.

The person using the force may employ such force and means as a reasonably prudent person would use under the same or similar conditions as they appeared to the person, taking into consideration all of the facts and circumstances known to the person at the time of and prior to the incident.

“To prove self-defense, there must be evidence that (1) the defendant subjectively feared that he was in imminent danger of death or great bodily harm; (2) this belief was objectively reasonable; [and] (3) the defendant exercised no greater force than was reasonably necessary.”

State v. Callahan, 87 Wn. App. 925, 929, 943 P.2d 676 (1997) *cited by Werner*, 170 Wn.2d at 337-38.

The right self-defense is historically recognized, “the right of the defendant” to act in defense of himself when he has a good faith belief that he is in apparent danger. State v. Carter, 15 Wash. 121, 123, 45 P. 745 (1896). The right to act in self-defense is viewed from the perspective of

the defendant, as the situation appeared to him. Id. The right of self-defense is grounded upon two elements: (1) That the party attacked may use sufficient force to offset the actual danger; [and] (2) that he may use sufficient force to offset the apparent danger. State v. Churchill, 52 Wash. 210, 214, 100 P. 309 (1909).

This Division ruled in State v. Miller, 89 Wn. App. 364, 367-8, 949 P.2d 821 (Div. 3 1997) as follows;

The State does not dispute that it bears the burden of disproving self-defense. However, it contends no error occurred in the present case because the defense presented insufficient evidence to justify any instruction on the lawful use of force/self-defense. Self-defense instructions are required when a defendant meets his initial burden of producing "some evidence demonstrating self-defense..." The burden then shifts to the State to prove the absence of self-defense.

Evidence of self-defense is evaluated "from the standpoint of the reasonably prudent person, knowing all the defendant knows and seeing all the defendant sees." This standard incorporates both objective and subjective elements. The subjective portion requires the jury to stand in the shoes of the defendant and consider all the facts and circumstances known to him or her; the objective portion requires the jury to use this information to determine what a reasonably prudent person similarly situated would have done. (Citations omitted, emphasis mine.)

See also State v. Graves, 97 Wn. App. 55, 61-62, 982 P.2d 627 (1999):

To raise the claim of self-defense, the defendant must first offer credible evidence tending to prove self-defense. The burden then shifts to the State to prove the absence of self-defense beyond a reasonable doubt.

"To establish self-defense, a defendant must produce evidence showing that he or she had a good faith belief in the necessity of force and that that belief was objectively reasonable." Evidence of self-defense is viewed "from the standpoint of a reasonably prudent person, knowing all the defendant knows and seeing all the defendant sees." This approach incorporates both subjective and objective characteristics. (Citations omitted, emphasis mine.)

When this court takes into account the testimony before the court at the time it found the defendant guilty as charged, the facts did not even amount to "some" "credible" evidence that Appellant was defending himself. In fact, both Murphy and Stahlman testified that the van never touched Mr. Oliver's truck and therefore the ability to even claim self-defense did not even exist with regard to that count of assault.

With regard to the sledge hammer assault the evidence presented by the State was such that Stahlman and Murphy testified that they were in fear of Mr. Oliver and yet they never pulled over and just stopped, they never attempted to call the police, they too raced past the one open store that Mr. Oliver slowed at in an attempt to alert another driver. They simply raced through town in an attempt to flee from the crimes that they had

committed and their actions were that of a primary aggressor not of a person or persons who were trying to defend themselves.

The trial court found and Stahlman does not dispute the fact that both of the defendant's testimony was not believable, finding 1.3 and 1.4. CP 23-4. Therefore, the testimony of Mr. Oliver was in essence the only factual information for the trial court to consider. Mr. Oliver testified that he did nothing that was aggressive, he drove next to the fleeing car, he backed away from the van when it attempted to back into him and swerved into a fence to avoid the van, he ran back to and re-entered his truck when Stahlman ran at him with the sledge hammer, he did not try to run over or assault Stahlman when Stahlman was out of the van and Mr. Oliver most definitely did not drive down the sidewalk once the van had crashed out.

There was nothing presented through the testimony of the State's witnesses or through the testimony of Stahlman or Murphy which would rise to the level of them needing to defend themselves.

The court's finding regarding self-defense "1.24 No reasonable person in Mr. Stahlman's position would have believed that they were in danger of imminent bodily harm from Mr. Oliver during this incident." accurately reflects that there was nothing for the defendants to defend

themselves from and the court found that the State had proven beyond a reasonable doubt that there was no defense present. CP 27.

For a defendant to be entitled to a fact-finder's consideration of his or her self-defense claim, the defendant "must produce some evidence demonstrating self-defense." State v. Walden, 131 Wn.2d 469, 473, 932 P.2d 1237 (1997). Although this burden "is low, it is not nonexistent, " and the defendant must produce some evidence showing that he or she has met the statutory requirements for claiming self-defense. State v. Janes, 121 Wn.2d 220, 237, 850 P.2d 495 (1993). If the defendant produces some evidence demonstrating the exercise of self-defense, "the burden shifts to the prosecution to prove the absence of self-defense beyond a reasonable doubt." Walden, 131 Wn.2d at 473.

While the State did produce evidence through the testimony of the victim and the officers who investigated this case to prove beyond the absence of self-defense beyond a reasonable doubt, it is also the State's position that when the court found, and Stahlman did not challenge, the finding that the testimony of the two defendants was not believable, that the burden did not shift and the State was not required to prove beyond a reasonable doubt that the defense was not proven.

Stahlman's testimony was that there was no contact between the van and Mr. Oliver's truck negates the ability of him to claim that the was

any defense. RP 408- 20, 423. He testified under oath that there was not assault, by any party, for which self-defense could or would be claimed.

(Mr. Soukup) Q. All right. Thank you very much. So was there ever any contact between the vehicles?

A. No, not that I know of.

Q. Mr. Oliver never hit the van with his truck, did he?

A. No. RP 423.

"One cannot deny striking someone and then claim to have struck that person in self-defense." State v. Barragan, 102 Wn.App. 754, 762, 9 P.3d 942 (2000).

And with regard to the sledge hammer attack the simple fact remains that the court did not find the story told by Stahlman and Murphy to be credible, therefore the State bore no duty to prove the absence of self-defense.

Stahlman's claim that the reason he had to try and attack a truck that was following him after he committed the crimes he had committed was because he was some sort of "marked man" because years ago he had testified in another trial is at best ludicrous, especially in light of this own testimony that he never called the police.

The lawful use of force statute in nonhomicide prosecutions, RCW 9A. 16.020, provides in relevant part:

The use, attempt, or offer to use force upon or toward the person of another is not unlawful in the following cases:  
(3) Whenever used by a party about to be injured, ... in preventing or attempting to prevent an offense against his or her person, or a malicious trespass, or other malicious interference with real or personal property lawfully in his or her possession, in case the force is not more than is necessary.

See also State v. Kyлло, 166 Wn.2d 856, 863, 215 P.3d 177 (2009) (stating RCW 9A.16.020 applies in nondeadly force self-defense claims).

Accordingly, Stahlman would be entitled to have the court consideration his claim of self-defense only if there was some evidence at trial that he had struck Mr. Oliver's truck because he reasonably feared that he was about to be injured by Oliver. Kyлло, 166 Wn.2d at 863.

The trial court sitting as the finder of fact determined that there was no evidence that a reasonable person would believe that they were put in harm's way by Mr. Oliver's actions to the extent that they needed to exit their stopped vehicle with a sledge hammer and assault the other party, Mr. Oliver in this instance.

**Count 4 Van.**

The State needed to prove that "On or about September 23, 2015, in the State of Washington, acting as a principal or an accomplice to another participant in the crime, you or another participant in the crime

intentionally assaulted Gary Oliver, with a deadly weapon, a vehicle.” CP 5,13.

The trial courts findings of fact mirror the testimony of Mr. Oliver. That testimony factually set forth the actions of Stahlman and Murphy on September 23, 2015. Count 4 and 5 of the information both allege that Stahlman assaulted Mr. Oliver, count 4 involves the use of the van and count 5 involves the use of the sledge hammer.

Stahlman has not challenged finding of fact 1.12 which states, “Mr. Oliver looked over and he could see that Ms. Murphy was driving the van and that Mr. Stahlman was in the front passenger seat. He saw that Mr. Stahlman was in an extremely agitated state, flinging his arms around and apparently screaming at Ms. Murphy.” Further, Stahlman appears in his limited challenge to finding of fact 1.13 to only be challenging a small portion of that finding. There is no mention in the limited challenge of the first two sentences of finding 1.13 “Ms. Murphy then intentionally veered the van into Mr. Oliver's truck with substantial force. Mr. Stahlman knew that he was soliciting, requesting or commanding Ms. Murphy to commit this act.” Therefore, it would be that State’s position that this portion of finding 1.13 is a verity on appeal.

The State would refer this court to the legal analysis and facts set forth above regarding the findings and conclusions that address the assault

charges. The State would adopt that legal analysis and the factual recitations set forth above regarding the alleged failure by the State to prove these two assault charges beyond a reasonable doubt.

A car is, depending on the factual setting a deadly weapon by definition, "deadly weapon" under RCW 9A.04.110(6). A car is not always a "deadly weapon"; it becomes a deadly weapon only when used in a particular manner. RCW 9A.04.110(6). Here, when Murphy steered the van into Mr. Oliver's truck, she was armed with a deadly weapon, her car, by virtue of the manner of it was being used.

The courts have determined that a vehicle can be a deadly weapon, Cole v. Bone, 993 F.2d 1328, 1333 (8th Cir. 1993) holding that officer, who fired his weapon at driver of speeding truck, "had probable cause to believe that the truck posed an imminent threat of serious physical harm to innocent motorists as well as to the officers themselves"; Smith v. Freland, 954 F.2d 343, 347 (6th Cir. 1992) noting " a car can be a deadly weapon" and holding that officer's decision to fire his gun through passenger-side window to stop the car from possibly injuring others was reasonable.

Here the testimony was that Stahlman was in rage, a frenzy inside the van driven by his co-defendant Murphy. That he was gesturing wildly just before the van struck Mr. Oliver's truck not once but twice. As the court pointed out regarding the claim of self-defense, they denied the

contact occurred and a reasonable response would have been to pull over and stop the van. And as pointed out above Murphy and Stahlman did not even call the police during or after what they claim was an assault committed on them by Mr. Oliver. RP 448.

**Count 5 – Sledge Hammer.**

Stahlman claims that he was a “marked man and was afraid of being killed” when he left the safety of a van and attacked Mr. Oliver’s truck with the sledge hammer. The court was not tasked with throwing its common sense out the window when it was sitting as the trier of fact in this case. Just as the court found that the statement by Stahlman that he was on the Oliver property for romantic reasons was for shock effect, so too could the court look at this claim in conjunction with the facts and determine that it too was there for “a little shock value.” RP 651.

Stahlman did not call the police and when the chase was actually stopped, rather than just sit still he decided to attack Mr. Oliver. Stahlman’s explanation that was echoed by Murphy that Oliver had tried to run Stahlman over was clearly a false. They claim throughout that Mr. Oliver’s truck was much faster and large and yet when he, from ten feet behind the van, drove at Stahlman Oliver missed so badly that he ended up off the road and stuck in a fence. The actions of Mr. Oliver were clearly those of a person attempting to get out of the way or away from the other

vehicle, not the actions of a madman in a huge truck trying to kill Stahlman and Murphy. If Mr. Oliver had such desire or intent from ten feet away he clearly could have smashed into the van or for that matter run Stahlman over. RP 128, 129, 180-81, 201. Mr. Oliver testified that he had exited his truck when the van stopped but he fled back to his truck when Stahlman struck his truck with the hammer. Mr. Oliver “slammed it into reverse” as he was trying to get away from Stahlman’s attack. Mr. Oliver stated that when Stahlman was running at him with the sledge hammer he feared for his life. RP 126-7, 129, 200-02, 224. Mr. Oliver’s truck was only a few feet, perhaps five feet behind the van. RP 129.

Mr. Oliver is a hemophiliac and he testified that if he had been struck with the sledge hammer it would have caused more problems for him than for a person without his disease. RP 129-30 and that the hammer Stahlman used was a “one-handed sledgehammer...[t]his is more of a hammer that’s more destructive” RP 132-3

Here once again it is clear from the facts presented to the court that the State proved each and every element of assault.

**3. The State proved beyond a reasonable doubt that Stahlman committed Attempted Burglary in the second degree.**

Stahlman has not challenged finding 1.15 it is therefore a verity.

This finding states;

1.15 Both Mr. Stahlman and Ms. Murphy were motivated by their desire to convince Mr. Oliver to stop his pursuit of them. They knew that Mr. Oliver was the person who had yelled at Mr. Stahlman **when he attempted to burglarize** Mr. Oliver's shop. (Emphasis added.)

To quote the trial court; “[Mr. Oliver]...observed Mr. Stahlman, a person, approaching the door to his shop. He observed the individual we now know to be Mr. Stahlman to reach his hand towards the door. I find that the reaching of the hand towards door while located on a piece of property that he has no right to be on was a substantial step towards entering or remaining in that building.” RP 651.

Stahlman does not challenge several of the findings of fact, to include that the location of the burglary was that committed in a relatively remote location as well as the fact that the court did not find the testimony of Stahlman or Murphy to be credible, that Stahlman admitted that he had committed a theft while at the property, a theft that was committed prior to his attempt to burglarize the shop. Because these findings were not and are not challenge they are verities for purpose of this court’s review of the trial. State v. Hill, supra. Stahlman has admit that he is bound by the truth of the State's evidence and all reasonable inferences drawn in favor of the State, with circumstantial evidence and direct evidence considered equally reliable. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992); State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). The

elements of a crime can be established by both direct and circumstantial evidence. State v. Brooks, 45 Wn. App. 824, 826, 727 P.2d 988 (1986). One is no less valuable than the other. There is sufficient evidence to support the conviction if a rational trier of fact could find each element of the crime proven beyond a reasonable doubt.

The trial court easily found that this crime was proven beyond a reasonable doubt based on the admitted criminal act of theft by Stahlman, combined with the remote location, no reason given by either defendant as to why Stahlman would have needed to be on the porch area of the shop, reaching for the door, from mere feet away, at 2:00 AM and the fact that he fled when confronted. The finding of fact and the conclusion of law supported by those facts that Stahlman had committed this burglary are supported by substantial evidence with taken as a whole prove the criminal act of attempted second degree burglary

Because the court was sitting as the trier of fact it is also applicable to address State v. McDaniel, 155 Wn.App. 829, 230 P.3d 245 (2010) "Analytically, flight is an admission by conduct. Evidence of flight is admissible if it creates 'a reasonable and substantive inference that defendant's departure from the scene was an instinctive or impulsive reaction to a consciousness of guilt or was a deliberate effort to evade arrest and prosecution.' (Citations omitted.)

The State's theory was that these two defendants were acting in concert committed these crimes, as was addressed in, State v. McChristian, 158 Wn.App. 392, 400-01, 241 P.3d 468 (2010) "A person is an accomplice under the statute if, with knowledge that it will promote or facilitate the commission of the crime, he aids another person in committing it. RCW 9A.08.020... Our Supreme Court has made clear, however, that an accomplice need not have knowledge of each element of the principal's crime to be convicted under RCW 9A.08.020; general knowledge of " the crime" is sufficient. " [A]n accomplice, having agreed to participate in a criminal act, runs the risk of having the primary actor exceed the scope of the preplanned illegality." (Citations omitted.)

State v. Bencivenga, 137 Wn.2d 703, 709, 974 P.2d 832 (1999).

"Intent to attempt a crime may be inferred from all the facts and circumstances."

**4. The trial court did err when it found Stahlman guilty of both theft and possession of stolen property.**

Count 2 of the information charged Stahlman with Second Degree Theft, Count 3 Second Degree Possession of Stolen Property.

Appellant cites State v. Melick, 131 Wn.App. 835, 129 P.3d 816 (2006) as controlling. The State could not find within Melick or cases citing Melick the same charging language used here, one count as

principle and the second court as principle or accomplice. Therefore, this case may be distinguishable.

However, in the interest of justice and judicial economy the State would agree that this case should be remanded and the court directed to dismiss Count three, Possession of Stolen Property in the third degree.

The trial court will also need to amend the judgment and sentence to remove this count and the sentence imposed. This can be done by ex parte order without a resentencing of the defendant because this charge is a gross misdemeanor and the dismissal will have no effect on the standard range sentence imposed.

#### **IV. CONCLUSION**

For the reasons set forth above this court should deny this appeal.

Respectfully submitted this 8<sup>th</sup> day of February 2017,

By: s/ David B. Trefry  
DAVID B. TREFRY WSBA# 16050  
Senior Deputy Prosecuting Attorney  
P.O. Box 4846 Spokane, WA 99220  
Telephone: 1-509-534-3505  
E-mail: [David.Trefry@co.yakima.wa.us](mailto:David.Trefry@co.yakima.wa.us)

# APPENDIX A

THE COURT: The events in this case, in my mind, start with the viewing of a silhouette at Mr. Oliver's home and really end at the hammer episode with the exception of the discovery of a tire and wheel in the back of the van at the end of the evening. I guess I look at this as a concatenation of events, like a domino effect. Once started, it's hard to stop.

Mr. Oliver may not have known that he was missing a tire and wheel at the time that he first encountered Mr. Stahlman, but that certainly became obvious by the end of the evening that, in fact, a theft had occurred.

Mr. Oliver saw the hand reach out towards the door. I cannot think of anything that would be characterized more as a substantial step towards entering.

Mr. Oliver did not know Mr. Stahlman or Ms. Murphy. There was no basis for them to be there, no basis for them to be reaching out with a hand to enter his shop area. I think the reach is a clear substantial step. I think ascending the steps to get into the shop in itself was a substantial step.

I believe that there's ample evidence the jury can consider and could infer that there are facts sufficient to support an attempted burglary charge. That motion is denied as to both defendants.

As to the value of the stolen tire and wheel, the allegedly stolen tire and wheel, Mr. Oliver ended his testimony with the statement \$900. I think that Mr. Bruns is accurate that much of the examination of Mr. Oliver could go towards the weight of that, but there's evidence that it was \$900. That exceeds the \$750.

I can't think of a more qualified witness. I think his equivocation, to the extent he did equivocate, is because of the rarity of the item on the marketplace. He certainly has more information and more knowledge given his job about these issues than just about anybody we could have asked for. At the end of the testimony, he concluded it was \$900.

He also started with the value of approximately \$900 at the beginning of his testimony. He segregated it in between the tire and the wheel. That motion is denied as to the value of the tire and wheel.

The assault with the car, one can't help but understand

that these are probably kinds of events that law enforcement really don't want people engaging in, and it's obvious. It also obviates any effort by citizens to protect themselves.

Listening to Mr. Krom's argument regarding the testimony we've heard and characterizing it as just driving along, well, they weren't driving around as innocent people. They had attempted to enter or burglarize the shop. They weren't trying to escape from him. They were trying to escape from the crime would be the other appearance that one could or the way to characterize their behavior.

The testimony from Mr. Oliver was that the car swerved towards him. He indicated he thought it appeared to be intentional. It can be confirmed, and there's evidence the jury could believe that the efforts by Mr. Stahlman were to encourage her and to exhort her to turn the vehicle in. Admittedly he didn't hear what they were saying. Based on his behaviors, the jury could conclude that.

If the event didn't occur, as is argued, then the self-defense issue doesn't come up. To the extent it does come up, I think it is, frankly, them attempting to escape. The testimony at this juncture is that they turned the car

into him. That motion is denied.

The sledgehammer episode, Mr. Stahlman exits the vehicle with a sledgehammer. Mr. Oliver exits his vehicle. Mr. Stahlman runs towards him with a sledgehammer. Again, I would say that that would have created in Mr. Oliver and is consistent with his testimony that he had a reasonable apprehension of fear.

The fact that he retreated from the assaulting individual with the hammer doesn't change the fact that he had already created that reasonable apprehension. The fact that he hit the car afterwards is, I guess, a second event that might also create -- there was certainly damage to the vehicle. I would find that the important part of this is that Mr. Stahlman came at him with the hammer, came to within five feet of him and that Mr. Oliver indicated he was afraid for his life.

There was nothing to indicate that Mr. Oliver in either the sideswipe episode or the hammer episode did anything other than exist. He was following them because of his belief that a burglary had been attempted. Whether that was wise or not is another issue. I believe there is sufficient

information and evidence for the jury to consider this matter. That motion is denied.

...

THE COURT: The possession.

MR. KROM: You went through the five.

THE COURT: The possession of stolen motor vehicle, Ms. Wells testified that she was not granted permission. I think that was clear. That motion is denied as well.

RP 346-50

# APPENDIX B

P R O C E E D I N G S

THE COURT: All right. Good morning.

MR. BRUNS: Good morning, your Honor.

THE COURT: We're here on 15-1-00489-2, State vs. Stahlman. It's for me to give you the decision.

Mr. Stahlman was charged with five crimes, Count 1, attempted second degree burglary, Count 2, second degree theft, Count 3, second degree possession of stolen property, Count 4 and Count 5, second degree assault.

The witnesses that I certainly focussed my attention on were Mr. Oliver, Mr. Stahlman and Ms. Murphy.

With regard to attempted second degree burglary, I find that Mr. Stahlman is guilty of that crime. On the evening of September 23, 2015, Mr. Stahlman and his girlfriend, Ms. Murphy, the codefendant, went to the property, which is a remote location out in the Terrace Heights area. It was remote by virtue of the map. It was remote by virtue of the testimony provided by Mr. Stahlman and Mr. Oliver.

Mr. Stahlman indicated that the reason that he gave for them being in the vicinity was that he and his girlfriend wanted to be intimate. I thought it was an interesting description and it had some significance to me. It was the type of comment that is made not necessarily for the truth of it but to get somebody's attention to try to have a little shock value. It was dropped as a comment and never

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referred to again.

In fact, they proceeded onto the property, parked the car on the property. They advanced on one of the buildings. I'm not referring to the theft issues at this point but the proximity to the building being on the property.

The testimony was clear to me that Mr. Stahlman had no right or reason to be on the property. He was observed by Mr. Oliver. I find Mr. Oliver's testimony to be very credible. Mr. Oliver was thoughtful in his responses. Sometimes he stumbled on his responses. As I perceived his demeanor, it was an attempt to generate the most honest answer he could given a very chaotic situation.

He had gotten up in the middle of the night, was returning to bed. He heard noises outside and looked out his window. He went out on the porch or the balcony, the deck, whatever it's called, and observed Mr. Stahlman, a person, approaching the door to his shop. He observed the individual we now know to be Mr. Stahlman to reach his hand towards the door.

I find that the reaching of the hand towards door while located on a piece of property that he has no right to be on was a substantial step towards entering or remaining in that building.

The motion sensor light came on illuminating

Mr. Stahlman. Mr. Oliver indicated that he yelled for them  
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to leave, for Mr. Stahlman to leave the property.

Both Mr. Stahlman and Ms. Murphy said they heard a noise, which I again find significant. I think it's fairly common for people to admit part but not all of what is going on. In this particular instance, they each said we heard a noise or they each said individually they heard a noise. That noise obviously was Mr. Oliver yelling at them because immediately following being yelled at Mr. Stahlman fled the property in the van.

I find that he is guilty of attempted second degree burglary. The reaching toward the door handle was a substantial step towards entering or remaining, and it was done with the intent to commit second degree burglary as to remove items from that property.

All of the acts in this case, all of the criminal charges, occurred in the state of Washington.

I find at least, and I'll focus on it later, but Mr. Stahlman's testimony was not credible. I thought the indication regarding intimacy to be a marker of a dishonest description of what was going on as well as the comment about we heard a noise, which I treat as a partial admission. In any event, I don't find him credible.

The second count is second degree theft. I don't think

there was any issue there. Mr. Stahlman admitted that he had taken the tire and wheel. On September 23rd, he had 653

wrongfully exerted, obtained and exerted unauthorized control over the property. He did it with the intent to deprive the person of the property. Again, it was in the state of Washington.

The issue was whether or not the tire and wheel had a value of \$750 or more or less. I probably struggled with that one as much as anything. The only testimony we had from Mr. Oliver was from Mr. Oliver as to the value. It was a bit of a rambling discussion about value.

Even though he's the only one testifying as to the value, I felt that it was uncertain enough that I'm going to find that value is \$250. I can't conclude that it was, in fact, based on his analysis \$750 or more. Therefore, he would be guilty of the lesser crime of third degree theft.

It was clear that he possessed the property having removed it from its location on the property. He then placed it in the van and then removed the van and the tire within from the property for his own purposes. So he knowingly possessed, retained and concealed the stolen property. He would be guilty of the lesser of third degree possession.

That takes us to second degree assault with the car.

On September 23, 2015, Ms. Murphy was driving the vehicle. I would find that Mr. Stahlman was, in fact, an accomplice to that crime. He was not the driver, but he, according to 654

the testimony, was encouraging and demanding or commanding Ms. Murphy in a way that influenced her driving or at least joined with her view of how the driving should occur.

The testimony from Mr. Oliver was that he observed the vehicle traveling next to him at approximately 80 to 90 miles an hour. Mr. Stahlman was seen gesticulating and appeared to be yelling. Although he couldn't hear the words, he had a very angry look on his face. That was followed near in time with Ms. Murphy swerving the vehicle, her van, into Mr. Oliver's truck.

I find that he is guilty of that crime of second degree assault, that the swerving, if you will, the van into his car, the truck, was an intentional assault. It was used – it was an attempt to threaten Mr. Oliver with substantial bodily injury, and I find the vehicle is capable of producing substantial bodily injury.

The physical evidence, the paint on the nerf bar, corroborates Mr. Oliver's version of events. There may have been some uncertainties, but the weight of the evidence, I think, shows there was damage to the vehicle. Mr. Oliver testified that damage occurred as a result of the collision.

Interestingly, the defendant has asserted also a self-defense. With regard to the van, the testimony from both Ms. Murphy and Mr. Stahlman was that they didn't believe there was any contact.

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I find their comments lack credibility. The idea that they would be so sensitive and alert to all the issues going on as they described in their testimony, the speed, the facial expressions, their personal emotion, the route they took indicated a real specificity of detail. The comments that I don't believe there was a collision between the two vehicles at 80 or 90 miles an hour lacks credibility.

Mr. Oliver's testimony was clear. He looked at Ms. Murphy. He saw her turn the wheel towards his and their two cars collided. That was an intentional act by her, and she was being encouraged in that effort by Mr. Stahlman.

Next is the assault with the hammer. Before I go there, the issue of self-defense, it's difficult. I don't think that you can assert self-defense by accident. Both Ms. Murphy and Mr. Stahlman indicated that the use of the vehicle would have been self-defense. They both denied that it happened. It's difficult to assert a claim of self-defense when you said it didn't happen.

In any event, I don't find that the response of her swerving her vehicle into Mr. Oliver's vehicle would have

been an act of self-defense. It would have been an act that was not a reasonable response to the circumstances that they were encountering. The more reasonable response would have been to pull off to the side of the road and disengage. It would not be to use your vehicle as a ramming device to hit 656 the other side.

Particularly all they testified to was they were going at a high rate of speed. He wasn't wearing a shirt, and he had an angry look on his face. Those are all circumstances that were explained by his rapid departure from the home and his emotional and perhaps appropriate response to having been the victim of an attempted burglary.

With regard to the hammer, I find that Mr. Stahlman is guilty of that crime. At the T in the road, Mr. Stahlman and Ms. Murphy came to a stop. Mr. Stahlman exited the vehicle. When doing so, he left with a sledgehammer.

He approached Mr. Oliver. I don't think it matters at all whether has a good hand or a bad hand, whether he could have raised the hammer in a way or any particular way. He clearly did raise it during the course of the assault.

Mr. Oliver indicated he was scared for his life when Mr. Stahlman advanced on him with the hammer. Mr. Stahlman was using it in a way that he wanted to make it clear to Mr. Oliver that he was in immediate danger and that he

should apprehend that danger and disengage from them. He was trying to make good their escape from the burglary.

I know that he indicates we didn't know that the victim of the burglary was following them, but I find that lacking in credibility. The fact is that he advanced on Mr. Oliver, who exited his vehicle, with the hammer. Mr. Oliver  
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retreated to a safe place.

Mr. Stahlman struck the truck with the hammer, certainly indicating the hammer was capable of causing substantial bodily harm. It caused a significant dent in the vehicle, also showing he had the capacity to wield a weapon and use it as an offensive tool. I don't find that there was anything that occurred that would have given rise to the self-defense.

MR. STAHLMAN: How did I drop the hammer then?

MR. BRUNS: Wait.

THE COURT: Mr. Stahlman is the one that exited the vehicle with the hammer and advanced on Mr. Oliver. There was nothing Mr. Oliver was doing in the vehicle behind them that would have given rise to an act of self-defense.

MR. STAHLMAN: That's bullshit.

THE COURT: I would also observe that I believe Mr. Oliver's testimony when he indicated that he retreated as Mr. Stahlman advanced on him.

The other issue I wanted to address is, again, general credibility. There were a number of ways that came up. One is Mr. Stahlman's criminal record. It was his personal description of himself, his appearance and demeanor at trial.

His criminal record indicates he has a number of crimes of dishonesty in his record. That fact may have been 658 important at some level, but it certainly paled next to his own personal announcement when he described himself as a thief. That's what I do, I believe he said. When asked why, he said it's easier than working.

He announced that I'm different from you. When he spoke directly to the jury, I have a different lifestyle. I thought his personal pronouncement of his own dishonest approach to life is important. I don't find his testimony to be credible.

I did note his appearance at trial. Obviously Mr. Stahlman has a number of facial tattoos, which he was referring to when he said that I'm different than you in speaking to the jury.

It's interesting. When you encounter someone with those facial tattoos, initially that's what you see is the tattoos. The longer somebody sits in front of you, the less you see them. The more you listen to the things they say

and you're not influenced by their appearance.

I found his testimony to be not credible for all of the reasons I've previously given. I find him, as I said, guilty of the crimes of attempted second degree burglary, second degree assault, Counts 4 and 5, and third degree theft and third degree possession of stolen property.

MR. SOUKUP: Deadly weapon on Count 5?

THE COURT: The hammer is a deadly weapon and  
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capable of causing substantial bodily injury.

MR. SOUKUP: And death?

THE COURT: And death.

MR. SOUKUP: Thank you.

RP 651-61.

DECLARATION OF SERVICE

I, David B. Trefry state that on February 8, 2017 emailed a copy, by agreement of the parties, of the Respondent's Brief, to: Ms. Lise Ellner at liseellnerlaw@comcast.net

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

DATED this 8<sup>th</sup> day of February, 2017 at Spokane, Washington.

By: s/David B. Trefry  
DAVID B. TREFRY WSBA# 16050  
Senior Deputy Prosecuting Attorney  
Yakima County  
P.O. Box 4846 Spokane, WA 99220  
Telephone: 1-509-534-3505  
E-mail: David.Trefry@co.yakima.wa.us