

NO. 34624-2-III

IN THE COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON

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THE STATE OF WASHINGTON

Respondent

v.

TERI LOUISE TROWER

Petitioner/Appellant

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BRIEF OF RESPONDENT

---

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Prosecuting Attorney  
Stevens County

Lech Radzimski, # 39437  
Deputy Prosecuting Attorney  
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TABLE OF CONTENTS

I. APPELLANT’S ASSIGNMENTS OF ERROR.....1

1. THE EVIDENCE IS INSUFFICIENT TO ESTABLISH THE ELEMENT OF POSSESSION BECAUSE TROWER WAS NOT SHOWN TO BE MORE THAN A PASSENGER. ....1

2. THE OFFENDER SCORE IS UNSUPPORTED IN THE RECORD.....1

3. THE RESTITUTION ORDER ERRONEOUSLY COMPELS TROWER TO PAY FOR LOSSES HER CONDUCT DID NOT CAUSE.....1

4. THE TRIAL COURT’S IMPOSITION OF DISCRETIONARY LEGAL FINANCIAL OBLIGATIONS WAS CLEARLY ERRONEOUS .....1

5. IN THE EVENT TROWER DOES NOT PREVAIL ON APPEAL, THE COURT SHOULD DECLINE TO IMPOSE APPELLATE COSTS.....1

II. ISSUES PRESENTED.....1

1. IS THERE SUFFICIENT EVIDENCE TO ESTABLISH THE ELEMENT OF POSSESSION GIVEN THE TOTALITY OF THE SITUATION?.....1

2. IS THE CALCULATION OF THE OFFENDER SCORE SUPPORTED BY THE RECORD? .....1

3. DID TROWER CAUSE THE LOSS SUFFERED BY THE VICTIM THEREBY JUSTIFYING THE RESTITUTION ORDER? .....1

4. DID THE TRIAL COURT ERRONEOUSLY IMPOSE DISCRETIONARY LEGAL FINANCIAL OBLIGATIONS?.....1

5.	IN THE EVENT OF AN UNSUCCESSFUL APPEAL SHOULD THE COURT IMPOSE APPELLATE COSTS?.....	1
III.	STATEMENT OF THE CASE.....	2
IV.	ARGUMENT.....	6
1.	GIVEN THE TOTALITY OF THE SITUATION THERE IS SUFFICIENT EVIDENCE TO ESTABLISH THE ELEMENT OF POSSESSION.....	6
2.	IS THE CALCULATION OF THE OFFENDER SCORE SUPPORTED BY THE RECORD? .....	12
3.	TROWER DID CAUSE THE LOSS SUFFERED BY THE VICTIM THEREBY JUSTIFYING THE RESTITUTION ORDER.....	12
4.	DID THE TRIAL COURT ERRONEOUSLY IMPOSE DISCRETIONARY LEGAL FINANCIAL OBLIGATIONS?.....	16
5.	IN THE EVENT OF AN UNSUCCESSFUL APPEAL SHOULD THE COURT IMPOSE APPELLATE COSTS?.....	17
V.	CONCLUSION.....	17

TABLE OF AUTHORITIES

WASHINGTON STATE CASES

*State v. Acevedo*, 159 Wash.App 221, 249 P.3d 526 (2011) .....13, 14

*State v. Boot*, 89 Wash. App. 780, 950 P.2d 964 (1998) .....7

*State v. Enlow*, 143 Wash.App. 463, 178 P.3d 366 (2008).....7, 8

*State v. Enstone*, 89 Wash.App. 882, 951 P.2d 309 (1998).....13

*State v. Green*, 2 Wash.App. 57, 466 P.2d 193 (1970).....8, 9

*State v. Green*, 94 Wash.2d 216, 616 P.2d 628 (1980).....6

*State v. Griffith*, 164 Wash.2d 960, 195 P.3d 506 (2008).....12, 13, 14

*State v. Johnson*, 96 Wash.App. 813, 981 P.2d 25 (1999).....12

*State v. Jones*, 146 Wash.2d 328, 333, 45 P.3d 1062 (2002).....7

*State v. Joy*, 121 Wash.2d 333, 851 P.2d 654 (1993) .....6

*State v. Mathews*, 4 Wash.App. 653, 484 P.2d 942 (1971) .....8

*State v. Partin*, 88 Wash.2d 899, 567 P.2d 1136 (1977).....6

*State v. Salinas*, 119 Wash.2d 192, 829 P.2d 1068 (1992).....6

*State v. Summers*, 45 Wash.App. 761, 728 P.2d 613 (1986) .....7

*State v. Staley*, 123 Wash.2d 794, 872 P.2d 502 (1994).....7

*State v. Wilson*, 71 Wash. App. 880, 863 P.2d 116 (1993).....6

*State v. Wilson* 170 Wash.2d 682, 244 P.3d 950 (2010).....12

*State v. Woods*, 90 Wash.App. 904, 953 P.2d 834 (1998).....13

WASHINGTON STATE STATUTES

RCW 9A.56.140(1).....7, 13  
RCW 9.94A.753(5).....12

## I. APPELLANT'S ASSIGNMENTS OF ERROR

1. THE EVIDENCE IS INSUFFICIENT TO ESTABLISH THE ELEMENT OF POSSESSION BECAUSE TROWER WAS NOT SHOWN TO BE MORE THAN A PASSENGER.
2. THE OFFENDER SCORE IS UNSUPPORTED IN THE RECORD.
3. THE RESTITUTION ORDER ERRONEOUSLY COMPELS TROWER TO PAY FOR LOSSES HER CONDUCT DID NOT CAUSE.
4. THE TRIAL COURT'S IMPOSITION OF DISCRETIONARY LEGAL FINANCIAL OBLIGATIONS WAS CLEARLY ERRONEOUS.
5. IN THE EVENT TROWER DOES NOT PREVAIL ON APPEAL, THE COURT SHOULD DECLINE TO IMPOSE APPELLATE COSTS.

## II. ISSUES PRESENTED

1. IS THERE SUFFICIENT EVIDENCE TO ESTABLISH THE ELEMENT OF POSSESSION GIVEN THE TOTALITY OF THE SITUATION?
2. IS THE CALCULATION OF THE OFFENDER SCORE SUPPORTED BY THE RECORD?
3. DID TROWER CAUSE THE LOSS SUFFERED BY THE VICTIM THEREBY JUSTIFYING THE RESTITUTION ORDER?
4. DID THE TRIAL COURT ERRONEOUSLY IMPOSE DISCRETIONARY LEGAL FINANCIAL OBLIGATIONS?
5. IN THE EVENT OF AN UNSUCCESSFUL APPEAL SHOULD THE COURT IMPOSE APPELLATE COSTS?

### III. STATEMENT OF THE CASE

On April 12, 2016 Connor Chandler came home from work and parked his 1983 Toyota Pick-Up truck in the driveway of the Chandler family home in Spokane Valley, Washington. RP at 50. The next morning when he woke up his truck was gone. RP at 51. Mr. Chandler testified that he had not given anyone else permission to have his truck. *Id.* He then contacted law enforcement and posted information about his truck being stolen on Facebook. RP at 52 – 53.

Jason Collins, a resident of Loon Lake, Washington testified that he saw Connor Chandler's post on Facebook. RP at 58. On April 14, 2016, when Mr. Collins was in Chewelah, Washington, he observed what he believed was Connor Chandler's truck loaded in the back of a trailer. RP at 58. Mr. Collins took a photo of the truck loaded in the trailer. RP at 60. Mr. Collins also wrote down the license plate of the truck that was pulling the trailer. RP at 60. He passed this information along to law enforcement. *Id.*

Trooper Donald Field, of the Washington State Patrol also testified at the trial. RP at 101. He testified that he was on duty on April 14, 2016 and was patrolling in Stevens County. RP at 101 – 102. During the course of his shift he observed the same vehicle that had been observed by

Jason Collins. RP 103. Trooper Field contacted the vehicle pulling the trailer in the parking lot of a gas station in Chewelah, Washington. RP at 103. Trooper Field ran the license plate to the trailer which had a truck loaded on it. RP at 104. He was able to determine that the trailer was registered to an individual by the name of Teri Christianson. *Id.* Through further investigation law enforcement determined that Teri Christianson and Teri Trower are the same person. RP at 151. Trooper Field made contact with the two occupants of the truck that was pulling the trailer. *Id.* He identified the Petitioner as one of the two people he contacted on April 14, 2016. *Id.*

Detective Steve White of the Washington State Patrol also testified during the course of the trial. RP at 134. Det. White testified that he is a member of the WSP Spokane Regional Auto Theft Task Force. RP at 134. During the course of Det. White's investigation he was able to obtain photos from several gas station surveillance systems. RP at 139 – 140, RP at 160 – 162, and RP at 145 – 146. These photos captured a truck, pulling a trailer, with another truck loaded on the trailer. *Id.* Det. White showed these photos to Robert Chandler, who is Connor Chandler's father. RP at 174. Robert Chandler testified that he was able to identify the truck loaded in the trailer as the one that had been stolen from his home. RP at 37.

Based on further investigation Det. White was able to identify the two individuals that were in the truck that was pulling the trailer with the Chandlers' truck. RP at 144 and RP at 151. One was an individual by the name of Jack Essman and the other was the Petitioner, Ms. Trower. *Id.*

Det. White and Deputy Sutter interviewed Ms. Trower on April 20 2016. RP at 152 - During the course of that interview the Petitioner told the two investigators that Mr. Essman had come to her home in Elk, Washington and helped her load her Toyota pick-up onto a trailer. RP at 153. She told the investigators that she and Mr. Essman travelled to Stevens County to a friend's home that was a mechanic because the truck needed some repairs. RP at 155. She informed Det. White and Dep. Sutter that when they got to the friend's home they learned that he was incarcerated. *Id.* The Petitioner stated that they hauled her truck back to her home in Elk and put the trailer back into the shed where she was storing the vehicle. RP at 156. The Petitioner also stated that when they were heading back to her home in Elk they stopped at a gas station in Loon Lake, Washington. *Id.* During the course of this interview the Petitioner provided law enforcement with a copy of a vehicle title to a 1992 Toyota Pick-Up Truck. RP at 154 – 155.

After his interview with Ms. Trower Det. White went to the gas station in Loon Lake where Ms. Trower indicated she had stopped on the

way back to her home. RP 166. He was able to obtain surveillance footage of the trailer and truck that Ms. Trower and Mr. Essman had used to transport the Chandler's vehicle to Stevens County. RP at 167. However, the trailer was empty at this point. RP at 168.

On April 27, 2016 law enforcement went to Ms. Trower's residence in Elk, Washington to look at the vehicle she claimed had been transported to Stevens County. RP at 174. On that date law enforcement was able to view the vehicle that Ms. Trower claimed had been transported to and from Stevens County on April 14, 2016. *Id.* Investigators testified that the vehicle that was in Ms. Trower's garage was not the same vehicle that was in the photos that were obtained as part of the investigation. RP at 175. Law enforcement also noted that the vehicle in Ms. Trower's garage had been recently painted. RP at 176.

Ms. Trower was subsequently arrested and charged with one count of Possession of a Stolen Motor Vehicle. She was ultimately found guilty after jury trial on July 14, 2016. RP at 291.

#### IV. ARGUMENT

1. GIVEN THE TOTALITY OF THE SITUATION THERE IS SUFFICIENT EVIDENCE TO ESTABLISH THE ELEMENT OF POSSESSION.

Sufficient evidence was presented to the jury to establish that the Appellant was more than just a passenger in a vehicle pulling the truck which had been stolen from the Chandlers. The evidence established that Ms. Trower was in possession of the Chandler's stolen Toyota pick-up truck on April 14, 2016.

The test on review of a criminal conviction is whether the evidence could justify a trier of fact to rationally find guilt beyond a reasonable doubt. *State v. Green*, 94 Wash.2d 216, 220, 616 P.2d 628 (1980). When sufficiency of the evidence is challenged, all reasonable inferences from the evidence must be drawn in favor of the State. *State v. Partin*, 88 Wash.2d 899, 906-07, 567 P.2d 1136 (1977). The Court of Appeals draws all reasonable inferences from the evidence in the prosecution's favor, and interprets the evidence most strongly against the defendant. *State v. Joy*, 121 Wash.2d 333, 339, 851 P.2d 654 (1993); *State v. Salinas*, 119 Wash.2d 192, 201, 829 P.2d 1068 (1992). The Court assumes the truth of the prosecution's evidence and all inferences that the trier of fact could reasonably draw from it. *State v. Wilson*, 71 Wash. App. 880, 891, 863 P.2d 116 (1993), *rev'd on other grounds*, 125 Wash.2d 212, 883 P.2d 320

(1994). The trier of fact is deferred to when resolving any conflicts in testimony, to weigh the persuasiveness of evidence, and to assess the credibility of the witnesses. *State v. Boot*, 89 Wash. App. 780, 791, 950 P.2d 964 (1998), *review denied*, 135 Wash.2d 1015, 960 P.2d 939 (1998).

RCW 9A.56.068 provides, “A person is guilty of possession of a stolen vehicle if he or she possess [possesses] a stolen motor vehicle.” RCW 9A.56.140(1) states, “‘Possessing stolen property’ means knowingly to receive, retain, possess, conceal, or dispose of stolen property knowing that it has been stolen and to withhold or appropriate the same to the use of any person other than the true owner or person entitled thereto.” Possession may be actual or constructive. *State v. Summers*, 45 Wash.App. 761, 763, 728 P.2d 613 (1986). “Actual possession” means that the goods were in the personal custody of the defendant; “constructive possession” means that the goods were not in actual, physical possession, but the defendant had dominion and control over them. *State v. Staley*, 123 Wash.2d 794, 798, 872 P.2d 502 (1994). “Dominion and control means that the object may be reduced to actual possession immediately.” *State v. Jones*, 146 Wash.2d 328, 333, 45 P.3d 1062 (2002). The totality of the circumstances is examined, including the proximity of the property and ownership of the premises where the contraband was found, to

determine whether there is substantial evidence of dominion and control. *State v. Enlow*, 143 Wash.App. 463, 469, 178 P.3d 366 (2008).

In *State v. Matthews* the court addressed whether there was sufficient evidence to convict a defendant, who was a passenger in a vehicle, of possession of a controlled substance for drugs that were found in the vehicle. *State v. Matthews*, 4 Wash.App. 653, 484 P.2d 942 (1971). The court noted that, “Mere proximity to the drugs is not enough to establish constructive possession-it must be established that the defendant exercised dominion and control over either the drugs or the area in which they were found.” *Id.* at 656. The court went on to review circumstantial evidence which was presented during the trial that the trier of fact could have relied on to conclude the defendant possessed the heroin. *Id.* at 656 – 657. The court noted that there was insufficient direct evidence to establish constructive possession. *Id.* However, the court found that substantial circumstantial evidence had been presented to justify the conviction. *Id.* In arriving at this conclusion the court referenced *State v. Green* which states,

Although the circumstantial evidence in the case must be consistent with the hypothesis that the accused is guilty, and inconsistent with any reasonable hypothesis or theory of his innocence, whether or not the circumstantial evidence excludes every reasonable hypothesis consistent with the appellant's innocence is a determination properly made by the trier of the facts. This court's only function on

appeal is to determine if there is substantial evidence in the record tending to establish circumstances upon which a finding of guilt can be predicated.

*State v. Green*, 2 Wash.App. 57, 70, 466 P.2d 193 (1970)

In the present case ample evidence was presented to the jury to support the conclusion that Ms. Trower was in possession of the truck which was stolen from the Chandler family. The Chandler's truck was observed in multiple locations on April 14, 2016 loaded on a trailer which was registered to Ms. Trower. Multiple witnesses testified that the truck which was observed in Stevens County was the Chandler's truck. Not only was Ms. Trower in close proximity to the stolen truck on April 14, 2016 but the instrumentality which was being used to transport the stolen vehicle belonged to Ms. Trower.

When Ms. Trower was contacted by law enforcement she informed them that the truck in the trailer was hers and that she had enlisted the assistance of Jack Essman to help her bring the truck to a friend's home in Stevens County. Ms. Trower told law enforcement that when they got to the friend's house they found out that he was incarcerated, that they took the truck back to Elk, Washington, and pushed it back into a storage shed at her home. Through additional investigation Detective White was able to determine that this last statement was false. Detective White obtained a

photo of the trailer which showed that it was empty when it was being pulled in the direction of Elk, WA.

During an interview Ms. Trower provided Det. White with a title to a Toyota pick-up and claimed that it was the title to the truck that was in the trailer on April 14, 2016. The title which was provided was for a truck that was several years newer than the one that had been taken from the Chandlers.

Detective White also went to Ms. Trower's home. While he was there she showed him a vehicle in a storage shed which she stated was the vehicle that was transported to Stevens County. Investigators determined that the vehicle in the shed was a newer model Toyota pick-up truck. Law enforcement also observed that it had been recently spray painted in an attempt to make it look like the truck that was observed in Stevens County. From other observations law enforcement made that day it became obvious that Ms. Trower had attempted to make the truck in her shed look like the one that had been in the back of the trailer in Stevens County.

From what was discovered by law enforcement it is clear that Ms. Trower was not being honest with the investigators. A trier of fact could easily conclude that the reason that Ms. Trower was being dishonest with

law enforcement was because she knew where the stolen vehicle had been concealed and disposed of in Stevens County.

When the totality of the situation is looked at in a light most favorable to the State, and all reasonable inferences from the evidence are drawn in favor of the State, it is clear that sufficient evidence was presented to support the conclusion that Ms. Trower possessed a stolen motor vehicle. A rational trier of fact could conclude that Ms. Trower had possession of the vehicle when it was loaded in her trailer. She was riding in the vehicle that was pulling that trailer. A rational trier of fact could also conclude, from the circumstantial evidence, that the truck was left somewhere in Stevens County on April 14, 2016. The testimony of the witnesses established that Ms. Trower had acquaintances in Stevens County and she was travelling to see them on April 14, 2016. It would be reasonable for a jury to conclude that she left the stolen truck at one of those acquaintance's home. Ms. Trower's statements during subsequent contacts with law enforcement supports a finding of guilt as she provided false information to investigators and attempted to pass off a different Toyota pick-up as the one that was in the trailer.

2. Is the calculation of the offender score supported by the record?

The State agrees and concedes the Petitioner's prior criminal history was not properly established at the time of sentencing. The State likewise agrees that the proper remedy for this error is to remand this matter to the trial court for resentencing. *See State v. Wilson* 170 Wash.2d 682, 691, 244 P.3d 950 (2010).

3. TROWER DID CAUSE THE LOSS SUFFERED BY THE VICTIM THEREBY JUSTIFYING THE RESTITUTION ORDER.

The trial court's order requiring the Appellant to pay the Chandler family restitution for the value of the truck was proper as there is a causal connection between the Appellant's conduct and the victim's loss. Pursuant to RCW 9.94A.753(5) the court had authority to order restitution. But the authority to order restitution is limited to ordering restitution for those losses causally connected to the defendant's crime. *State v. Griffith*, 164 Wash.2d 960, 965-66, 195 P.3d 506 (2008). The question of whether the loss is causally connected to the crime is a question of law that is reviewed de novo. *State v. Johnson*, 96 Wash.App. 813, 816, 981 P.2d 25 (1999) (proper application of a statute is a question of law).

The reviewing court determines whether a causal connection exists by looking at the facts underlying the defendant's crime. *Griffith*, 164

Wash.2d at 966. Losses are causally connected if the victim would not have incurred the loss but for the crime. *Id.* There is no causal connection if the loss or damage occurred before the act constituting the crime. *State v. Woods*, 90 Wash.App. 904, 909, 953 P.2d 834 (1998). A causal connection exists when, “but for” the offense committed, the loss or damages would not have occurred. *State v. Enstone*, 89 Wash.App. 882, 885, 951 P.2d 309 (1998).

As noted above, “‘Possessing stolen property’ means knowingly to receive, retain, **possess**, **conceal**, or **dispose** of stolen property knowing that it has been stolen and to withhold or appropriate the same to the use of any person other than the true owner or person entitled thereto.” RCW 9A.56.140(1), emphasis added.

In *State v. Acevedo* the defendant was found to be in possession of a stolen motor vehicle. *State v. Acevedo*, 159 Wash.App 221, 249 P.3d 526 (2011). The vehicle the defendant was found to be in possession of was stolen on December 5, 2008. *Id.* at 228. The vehicle was found in the defendant’s possession approximately six months later on June 11, 2009. *Id.* When law enforcement found the vehicle in the defendant’s possession it was completely stripped. *Id.* No evidence was presented that the defendant stole the car or possessed it during the time period it was stripped. *Id.* The Court of Appeals reversed the restitution order noting,

“...no evidence shows that the Acura would not be stripped “but for” Mr. Acevedo's possession of it. The State, then, failed to show a causal connection between Mr. Acevedo's crime and the damage to [the victim's car].” *Id.* at 231.

In *State v. Griffith*, a home was burgled and approximately \$44,000 of property was stolen. *State v. Griffith*, 164 Wash.2d 960, 195 P.3d 506 (2008). Law enforcement was able to determine that the defendant came into a Spokane business and sold some of the items which were stolen in the burglary. *Id.* at 962. The witness from the shop where the jewelry had been sold testified that the defendant came in with a “bag of stuff.” *Id.* The trial court concluded that the defendant was in possession of approximately \$11,500 of property which had been stolen at the time of the burglary. *Id.* The Court of Appeals overturned the restitution order noting that the testimony of the witnesses did not establish that the defendant was in possession of property that had been stolen from the burglary. *Id.* at 967. Rather the testimony established that the defendant was in possession of several miscellaneous items, some of which were identified as having come from the home which had been burgled. *Id.*

This case is distinguishable from *Acevedo*. In *Acevedo* there was a 6 month gap between when the vehicle was stolen and when it was recovered in the defendant's possession. No evidence was presented that

the defendant was involved in dismantling the vehicle during that six month period of time. In the present case, the truck was stolen from the Chandler family sometime between the evening of April 12 and the morning of April 13, 2016. Within 48 hours of the theft, on April 14, 2016, Ms. Trower was found to be in possession of the vehicle. The vehicle had not been modified or dismantled and multiple witnesses were able to positively identify the truck as the one that had been stolen from the Chandlers. The evidence also established that the vehicle was transported into Stevens County at the direction of the Petitioner and unloaded in a location known to her.

This case is likewise distinguishable from *Griffith*. In *Griffith* the evidence established that the defendant was only in possession of a portion of the property that had been stolen during the burglary. In this case Ms. Trower was in possession of the vehicle in the same condition it had been when it was stolen from the Chandlers.

In the present case there is causal connection between the conduct of Ms. Trower and the loss which was suffered by the victims. The evidence which was presented in this case establishes that the Appellant was an active participant in the transportation and concealment of the vehicle that was stolen from the Chandler family. The truck which was stolen from the Chandlers was loaded in a trailer which belonged to Ms.

Trower. Ms. Trower had contacts in Stevens County. She admitted to law enforcement that she was travelling to Stevens County on April 14, 2016 to have the vehicle worked on. The photographic evidence which was presented established that the vehicle was left in Stevens County. Instead of revealing the location of the truck when contacted, Ms. Trower provided documentation to a different vehicle in attempt to redirect law enforcement from investigating her. She also repainted a different vehicle to make it look like the truck that was taken to Stevens County to dupe law enforcement. Despite the efforts of law enforcement the vehicle was still unrecovered at the time of the trial. But for Ms. Trower's conduct the Chandler's vehicle could have been recovered. Therefore the trial court's order requiring her to pay restitution for the value of the truck is appropriate.

4. DID THE TRIAL COURT ERRONEOUSLY IMPOSE  
DISCRETIONARY LEGAL FINANCIAL  
OBLIGATIONS?

The State agrees that the discretionary legal financial obligation imposed by the trial court should be stricken. The State does not agree that the judgment and sentence should be vacated as a result of the imposition of this fee. The Appellant provides no legal authority which would support setting aside the judgment and sentence in its entirety due

to the imposition of a discretionary legal financial obligation. The court did not engage in a colloquy with Ms. Trower to determine her present or future ability to pay legal financial obligations. The State has no objection to striking the \$500.00 fee which was imposed for public defense fees. All other legal financial obligations should remain imposed

5. IN THE EVENT OF AN UNSUCCESSFUL APPEAL  
SHOULD THE COURT IMPOSE APPELLATE COSTS?

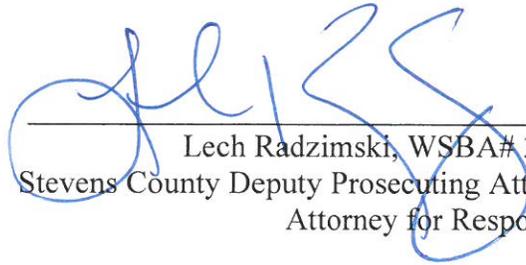
The State has no objection to this Court not imposing appellate costs in the event the Appellant's appeal is unsuccessful.

V. CONCLUSION

For the above stated reasons, the State respectfully requests that this court find that sufficient evidence was presented to establish that the Petitioner was in possession of the Chandler's stolen vehicle. The State agrees that a re-sentencing must occur in order to properly determine Ms. Trower's offender score. The State further requests that this Court find that there was a causal connection between the Petitioner's conduct and the victim's loss. The State has no objection to the Petitioner's request that discretionary legal financial obligations be waived. The State likewise has no objection to this Court not imposing appellate costs.

Respectfully submitted this 15<sup>th</sup> day of May, 2017

Tim Rasmussen, WSBA # 32105  
Sevens County Prosecutor



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Lech Radzinski, WSBA# 39437  
Stevens County Deputy Prosecuting Attorney  
Attorney for Respondent

**Affidavit of Certification**

I certify under penalty of perjury under the laws of the State of Washington, that I electronic filed a true and correct copy of the foregoing Brief of Respondent to the Court of Appeals, Division III, and emailed a copy to Andrea Burkhart, Burkhart & Burkhart PLLC, Andrea@BurkhartandBurkhart.com on May 9, 2017.



Michele Lembcke, Legal Assistant  
for Lech Radzinski

**STEVENS COUNTY PROSECUTOR'S OFFICE**

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