

COA No. 34637-4-III
COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

WILLIE CHARLES RITCHEY, APPELLANT

APPEAL FROM THE SUPERIOR COURT
OF SPOKANE COUNTY

BRIEF OF RESPONDENT

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I. APPELLANT'S ASSIGNMENTS OF ERROR

1. The court erred by refusing to provide a limiting instruction after Officer Kennedy testified on re-direct that the defendant "appeared truthful" during his custodial interrogation.

2. The court erred by refusing to instruct the jury regarding the lesser included offense of second degree taking a motor vehicle without permission.

II. ISSUES PRESENTED

1. Did the trial court err in refusing to give the jury a limiting instruction with respect to Officer Kennedy's opinion testimony, when: (1) the testimony was stricken; (2) the jury was correctly instructed to disregard stricken statements; and (3) the jury was correctly instructed to disregard any argument during deliberations that was inconsistent with the trial court's instructions?

2. Was the defendant entitled to a lesser included instruction, where second degree taking a motor vehicle without permission meets neither the legal nor the factual prong of the *Workman* test?

III. STATEMENT OF THE CASE

A jury convicted the defendant, Willie Ritchey, of theft of a motor vehicle based on his actions on November 27, 2015.¹ Prior to the incident, Willie Ritchey and Jennifer Reed had known each other for about nine years, dating four of those years. CP 3-4; RP 242-43. While the relationship ultimately dissolved, they remained good friends and continued to socialize. *Id.* Ms. Reed began dating Andrew Hood, and she resided at his apartment. RP 241. Mr. Hood owned a green 1996 Subaru Legacy, and he sometimes gave Mr. Ritchey rides because Ms. Reed did not have a vehicle of her own. RP 222. Although Ms. Reed was given permission to use Mr. Hood's Subaru, and had the spare key on her key ring, she seldom drove it because she did not have a valid license. RP 245.

On November 27, 2015, Mr. Ritchey and his girlfriend, Amanda Stahl, visited the home of Ms. Reed and Mr. Hood. RP 246. The four spent some time together, until Mr. Hood went to bed at around 10:00 p.m. or 10:30 p.m. RP 227-28. Ms. Reed invited Mr. Ritchey to stay the night, and Mr. Ritchey agreed. RP 246. Later in the evening, Ms. Reed stepped outside

¹ The evidentiary portion of the jury trial took place on May 24-25, 2016, and was transcribed as three paginated volumes. For clarity purposes, citations to those portions of the record will refer to "RP," while references to the record occurring on any other date will include an additional reference to the date of the hearing.

to speak with a neighbor, leaving her guests unattended in the apartment. RP 249. During that time, Mr. Ritchey, knowing that the key ring with the Subaru key always hung on a hook near the front door, removed the key. RP 282, 321-22. He then informed Ms. Reed that he and Ms. Stahl needed to leave. RP 249. Thinking nothing of it, Ms. Reed continued speaking with her neighbor for a short while, until she finally headed to bed. RP 250.

The next morning, Mr. Hood woke up around 5:15 a.m. to get ready for work, but when he went outside to the parking lot, the Subaru was gone. RP 228-29. He went back inside and woke up Ms. Reed to ask if she had moved the car. RP 251. Ms. Reed stated that she did not. RP 229-30. They both went outside to search for the Subaru. RP 252. Then, Ms. Reed had a hunch and went to check her key ring. *Id.* The spare key was gone. *Id.*; RP 230. She immediately called and messaged Mr. Ritchey. RP 253. At about 6:00 or 7:00 a.m., Mr. Ritchey responded, "I'm coming back"- nothing more. *Id.* After waiting until 10:00 a.m., Mr. Hood and Ms. Reed reported the car stolen to police. RP 230.

At no point did Ms. Reed or Mr. Hood give Mr. Ritchey permission to drive the vehicle. RP 227, 247. Mr. Ritchey had never driven the car before, and even when he did get rides from Mr. Hood, he always sat in the back seat. RP 227-28.

The following afternoon, on November 28, 2015, at approximately 2:30 p.m., Officer Stephanie Kennedy was patrolling the area of Emerson Park, which is known for high crime. RP 275; CP 5. She noticed a green 1996 Subaru Legacy parked near the intersection of Alice and Jefferson, with two occupants inside. RP 277. Something about the car seemed out of the ordinary to Officer Kennedy, so she decided to circle back to get a license plate number. *Id.* When she looped back to the same place, the car was gone. *Id.* Officer Kennedy then drove into a dirt parking lot where stolen vehicles were known to be dumped. *Id.* The Subaru was there. *Id.* She ran the license plate number on her computer, and it came back stolen. *Id.* Officer Kennedy then called for backup. *Id.*

Sergeant Vigesaa arrived and helped Officer Kennedy block the Subaru from the front and back. RP 278. Mr. Ritchey was in the driver's seat. RP 277-78. Mr. Ritchey was placed in custody. RP 279. As Officer Kennedy placed handcuffs on Mr. Ritchey, he stated, "I'll tell you all about the vehicle. She has nothing to do with it." *Id.* After being placed in the back seat of the patrol car, Mr. Ritchey told Officer Kennedy that Ms. Reed gave him permission to drive the car, but that he knew the car belonged to Mr. Hood. RP 280, 298-98. In response, Officer Kennedy confronted Mr. Ritchey with the report made by Ms. Reed and Mr. Hood, at which point Mr. Ritchey stated, "I'll tell you the truth." RP 282, 304.

Mr. Ritchey admitted he stole the Subaru and did not have permission to use it, and that when Ms. Reed was not looking, he took the key off the key ring. *Id.*

The prosecution called four witnesses at trial: Andrew Hood, Jennifer Reed, Sergeant Kurt Vigesaa, and Officer Kennedy. RP 220-39, 241-55. The last witness, Officer Kennedy, testified and was cross-examined on the first day. RP 271-301. In response, the prosecutor's re-direct examination contained the following exchange, which has become an issue on appeal:

Q. Okay. When you were in the car and he was telling you, making the statement, Okay, I'll tell you the truth, I did take the car and I took the key off the ring, when he was making that statement, those statements, how was his demeanor compared to how his demeanor was when he first told you that he was -- that he had permission to have the car?

A. He appeared truthful.

Q. Okay.

[DEFENSE COUNSEL]: Your Honor, I would just have to object to that response in regards to I think it does go to an ultimate question here for a jury to decide. I would just ask for a limiting instruction on it.

THE COURT: No limiting instruction, Counsel, but I'll sustain the objection.

[PROSECUTOR]: Move to strike, your Honor.

THE COURT: Motion granted.

RP 304-05. The prosecutor then rephrased the question, which the jury heard without objection:

Q. How would you describe his physical demeanor when he was talking to you?

A. He was calm.

Q. Okay. And that was different than when he made the statement that he had permission. His demeanor changed; is that right?

A. Correct. Yes. He wasn't being evasive.

RP 305.

Following the conclusion of the testimony, both the prosecution and defense proffered argument on the defense's motion to permit the jury instructions to include a lesser included crime of taking a motor vehicle in the second degree. 5/25/16 RP 356-69. The court did not include the lesser included crime as part of the jury instructions. CP 62-79, 80-96. The jury was charged on May 25, 2016 and returned a verdict of guilty the same day. CP 100; 5/25/16 RP 424-27.

IV. ARGUMENT

A. THE COURT DID NOT ERR BY DECLINING TO PROVIDE A LIMITING JURY INSTRUCTION REGARDING OFFICER KENNEDY'S OPINION TESTIMONY AND CORRECTLY INSTRUCTED THE JURY TO DISREGARD STATEMENTS STRICKEN AT TRIAL.

Generally, it is impermissible for a witness to offer testimony in the form of an opinion regarding the defendant's guilt or veracity. *State v. Mohamed*, 187 Wn. App. 630, 650, 350 P.3d 671 (2015); *State v. Demery*, 144 Wn.2d 753, 759, 30 P.3d 1278 (2011). "Opinion testimony" is defined as "testimony based on one's belief or idea rather than on direct knowledge of facts at issue." *Demery*, 144 Wn.2d at 760. Such testimony may be reversible error given its potential to violate the defendant's constitutional right to a jury trial, including the independent determination of the facts by the jury. *Id.* at 759.

Conversely, testimony which is based on inferences from the evidence, does not comment directly on the defendant's guilt or on the veracity of a witness, and is otherwise helpful to the jury, does not typically constitute an opinion on guilt. *City of Seattle v. Heatley*, 70 Wn. App 573, 578, 854 P.2d 658 (1993). Washington courts have "expressly declined to take an expansive view of claims that testimony constitutes an opinion on guilt." *Demery*, 144 Wn.2d at 760 (citing *Heatley*, 70 Wn. App. at 579).

The improper testimony of a police officer raises additional concerns because “an officer’s testimony often carries a special aura of reliability.” *Demery*, 144 Wn.2d at 763 (quoting *U.S. v. Espinosa*, 827 F.2d 604, 613 (9th Cir. 1987)) (citations omitted). Despite the presence of this type of occurrence, jurors are presumed to follow instructions and ignore improper opinion evidence. *See, e.g., State v. Perez-Valdez*, 172 Wn.2d 808, 818-19, 265 P.3d 853 (2011); *State v. Gamble*, 168 Wn.2d 161, 178, 225 P.3d 973 (2010); *State v. Montgomery*, 163 Wn.2d 577, 183 P.3d 267 (2008). Thus, efforts to describe these errors as invading the province of the jury may often be “simple rhetoric.” *State v. Kirkman*, 159 Wn.2d 918, 928, 155 P.3d 125 (2007).

Here, the court made an appropriate decision to refuse to give a limiting instruction during re-direct examination of Officer Kennedy. A limiting instruction may be appropriate where evidence has been admitted at trial. *State v. Russell*, 154 Wn. App. 775, 225 P.3d 478 (2010), *rev’d*, 171 Wn.2d 118, 123-24, 249 P.3d 604 (2011) (the court shall grant a limiting instruction regarding ER 404(b) evidence admitted at trial upon counsel’s request). A limiting instruction is available as a matter of right solely where evidence is admissible for one purpose but not another under ER 105. *State v. Aaron*, 57 Wn. App. 277, 787 P.2d 949 (1990) (where evidence is admissible for a limited purpose, a limiting instruction is

available as a matter of right when requested by the opposing party). When this occurs, the court should properly instruct the jury, by way of a limiting or a curative instruction, to consider evidence for its intended purpose only. ER 105; *Aaron*, 57 Wn. App. at 281.

Trial courts hold “wide discretion to determine the admissibility of evidence.” *Demery*, 144 Wn.2d at 758. A trial court is charged with determining whether opinion testimony, when offered, is admissible evidence. *State v. Quaale*, 182 Wn.2d 191, 340 P.3d 213 (2014). When a party moves to strike objectionable evidence, and then the objection is sustained, that objectionable evidence does not become admitted and cannot be made subject of comment by the prosecution. *State v. Stackhouse*, 90 Wn. App. 344, 957 P.2d 218 (1998). Therefore, in this case, the court was not compelled to instruct the jury to disregard Officer Kennedy’s statement after it was stricken from the evidence, nor was it obligated to include a limiting instruction to the jury.

When an irregularity during trial occurs, the court must decide its prejudicial effect by examining three factors: “(1) the seriousness of the irregularity; (2) whether the statement was cumulative of evidence properly admitted; and (3) whether the irregularity could be cured by an instruction.” *Perez-Valdez*, 172 Wn.2d at 818 (quoting *State v. Post*, 118 Wn.2d 596,

620, 826 P.2d 172). A new trial is warranted where the trial court abused its discretion. *Id.*

First, the irregularity in question is that Officer Kennedy allegedly gave her opinion about the defendant's credibility. Second, her testimony was not cumulative. The fact that Mr. Hood and Mr. Reed already testified with respect to the defendant taking Mr. Hood's car without permission, *see* RP 227, 247, does not concern the actual police investigation into the circumstances surrounding the stolen vehicle prior to the defendant being found with it in his possession. Officer Kennedy was the lead officer in the investigation. RP 268, 303. As a result, any information she gathered was pertinent to the question of whether the defendant committed theft of a motor vehicle.

Third, the irregularity was cured by the court's instructions to the jury. Trial courts are given "wide discretion to cure trial irregularities resulting from improper witness statements." *Gamble*, 168 Wn.2d at 177-78 (citing *Post*, 118 Wn.2d at 620). While in some instances curative instructions have been held ineffective to eliminate the prejudicial effect of such statement, the ultimate query is "whether ... viewed against the background of all the evidence, the improper testimony was so prejudicial that the defendant did not get a fair trial." *Id.*, at 177-78 (quoting *State v. Thompson*, 90 Wn. App. 41, 47, 950 P.2d 977 (1998)); *see also*

State v. Hager, 171 Wn.2d 151, 159, 248 P.3d 512 (2011) (a new trial is not always required when a “witness has invaded the province of the jury” because, even though improper testimony may touch upon a constitutional right, it may still be cured with a proper instruction).

Here, the defendant suffered no prejudice by Officer Kennedy’s improper statement; neither did the prosecution intentionally seek to have Officer Kennedy comment on the defendant’s credibility. Rather, the prosecutor asked about the defendant’s demeanor. RP 304. To correct itself, the prosecution immediately moved to strike Officer Kennedy’s statement. RP 305. Before closing argument, the court did provide a curative instruction. 05/25/16 RP 371-72. Specifically, the court stated:

The evidence that you are to consider during your deliberations consists of the testimony you’ve heard from witnesses, stipulations, and the exhibits that I have admitted during the trial. **If evidence was not admitted or was stricken from the record, then you are not to consider it in reaching your verdict...** If I ruled that any evidence is inadmissible, or if I have asked you to disregard any evidence, then you must not discuss that evidence during your deliberations or consider it in reaching your verdict. Do not speculate whether the evidence would have favored one party or the other.

RP 372 (emphasis added).

Jurors are presumed to follow their instructions, unless there is evidence to the contrary. *Kirkman*, 159 Wn.2d at 928. Here, there is no evidence to the contrary. Any explanation about how the defendant had the

stolen vehicle was easy enough to discount without Officer Kennedy's stricken testimony. The defendant told Officer Kennedy that Ms. Reed gave him permission to use Mr. Hood's vehicle. RP 280, 298. When confronted with the report of the stolen vehicle, the defendant then stated "I'll tell you the truth," and proceeded to admit that he took the car without permission. RP 282. The defendant also admitted on the stand that he did not ask Mr. Hood permission to use the car, knowing the car belonged to Mr. Hood, not Ms. Reed, and knowing that Mr. Hood needed to be at work in the morning. RP 335.

The jury received all of the admitted evidence and must have determined that the defendant was disingenuous in his initial recitation of the events on the night of the incident. Officer Kennedy's opinion did not inject any new issues or details at trial. Given that the jury is presumed to follow the court's instructions, the court acted within its discretion by instructing the jury to appropriately weigh the credibility of each witness, including the defendant's own testimony and that of Officer Kennedy. The court specifically instructed:

You are the sole judges of the credibility of each witness. You are also the sole judges of the value or weight to be given to the testimony of each witness. In considering a witness's testimony, you may consider these things: The opportunity of the witness to observe or know the things he or she testifies about; the ability of the witness to observe accurately; the quality of a witness's memory while

testifying; the manner of the witness while testifying; any personality interest that the witness might have in the outcome or the issues; any bias or prejudice that the witness may have shown; the reasonableness of the witness's statements in the context of all of the other evidence; and any other factors that affect your evaluation or belief of a witness or your evaluation of his or her testimony.

RP 373.

Because the jury had substantial evidence from which to draw its own conclusions about whether the defendant's explanations and denials were believable, the trial court acted within its discretion by refusing to include a limiting instruction. Further, any potential irregularity as a result of Officer Kennedy's opinion testimony was correctly addressed by striking the statement and instructing the jury to disregard stricken testimony during trial, as well as any testimony inconsistent with the jury instructions.

B. DEFENDANT WAS NOT ENTITLED TO A LESSER INCLUDED INSTRUCTION FOR TAKING A MOTOR VEHICLE IN THE SECOND DEGREE BECAUSE THE ELEMENTS OF THAT CHARGE ARE NOT ALL NECESSARY ELEMENTS FOR THE CRIME OF THEFT OF A MOTOR VEHICLE IN THE FIRST DEGREE.

The defendant contends that a lesser included instruction should have been provided based upon review of the evidence. A trial court's decision regarding jury instruction is reviewed for abuse of discretion if the decision is based on factual issues and *de novo* where the decision is based on questions of law. *State v. Walker*, 136 Wn.2d 767, 771-72, 966 P.2d 883

(1998) (citing *State v. Lucky*, 128 Wn.2d 727, 731, 912 P.2d 483 (1996), *overruled on other grounds by State v. Berlin*, 133 Wn.2d 541, 544, 947 P.2d 700 (1997)). Here, there was no factual basis for an instruction on the lesser included offense, so there was no error by the trial court.

Statutes confer the right to have a lesser included offense considered by the jury making an adjudication of a criminal charge on both the defendant and the prosecution. *State v. Workman*, 90 Wn.2d 443, 447, 584 P.2d 382 (1978); *State v. Johnson*, 92 Wn.2d 671, 680, 600 P.2d 1249 (1979). The governing statute is RCW 10.61.003:

Upon indictment or information for an offense consisting of different degrees, the jury may find the defendant not guilty of the degree charged in the indictment or information, and guilty of any degree inferior thereto, or of an attempt to commit the offense.

The Supreme Court has held that a “lesser included offense exists when all of the elements of the lesser offense are necessary elements of the greater offense.” *State v. Bishop*, 90 Wn.2d 185, 191, 580 P.2d 259 (1978) (quoting *State v. Roybal*, 82 Wn.2d 577, 583, 512 P.2d 718 (1973)) (citations omitted). In *Workman*, a two-part test was established to serve as a basis for the lesser included analysis. 90 Wn.2d at 447-48. Under the test,

a defendant is entitled to a lesser included instruction if two conditions are met:

“(1) each element of the lesser offense is a necessary element of the offense charged (legal prong) and (2) the evidence, viewed most favorably to the defendant, supports an inference that **only the lesser crime was committed** (factual prong).” *State v. Hahn*, 174 Wn.2d 126, 129, 271 P.3d 892 (2012). Under the legal prong, an offense is not lesser included “if it is possible to commit the greater offense without committing the lesser offense.” *State v. Harris*, 121 Wn.2d 317, 320, 849 P.2d 1216 (1993).

State v. Sharkey, 172 Wn. App. 386, 390, 289 P.3d 763 (2012) (emphasis added); *see also Workman*, 90 Wn.2d at 447-48.

In *State v. Fernandez-Medina*, 141 Wn.2d 448, 6 P.3d 1150 (2000), the Court stated that the evidence requirement for a lesser included offense instruction is different than the factual requirement typically applied to jury instructions. “Specifically, we have held that the evidence must raise an inference that *only* the lesser included/inferior degree offense was committed to the exclusion of the charged offense.” *Id.* at 455 (emphasis in original). “Our case law is clear, however, that the evidence must affirmatively establish the defendant’s theory of the case - it is not enough that the jury might disbelieve the evidence pointing to guilt.” *Id.*, 141 Wn.2d at 457. “Instead, some evidence must be presented which affirmatively establishes the defendant’s theory on the lesser included

offense before an instruction will be given.” *State v. Fowler*, 114 Wn.2d 59, 67, 785 P.2d 808 (1990).

Here, the defendant, who was charged with theft of a motor vehicle, requested a lesser included instruction on crime of taking a motor vehicle in the second degree. A person is guilty of theft of a motor vehicle if he or she commits theft of a motor vehicle. RCW 9A.56.065. “Theft” means to wrongfully obtain or exert unauthorized control over the property or services of another or the value thereof, with intent to deprive him or her of such property or services. RCW 9A.56.020. “Deprive” is given its common meaning. RCW 9A.56.010(6). The common meaning of deprive is “to take something away from; to withhold something from.” MERRIAM WEBSTER’S COLLEGIATE DICTIONARY 335 (11th ed. 2003); *see also*, *State v. Komok*, 113 Wn.2d 810, 815, 783 P.2d 1061 (1989).

RCW 9A.56.075 provides:

A person is guilty of taking a motor vehicle without permission in the second degree if he or she, without the permission of the owner or person entitled to possession, intentionally takes or drives away any automobile or motor vehicle, whether propelled by steam, electricity, or internal combustion engine, that is the property of another, or he or she voluntarily rides in or upon the automobile or motor vehicle with knowledge of the fact that the automobile or motor vehicle was unlawfully taken.

Theft of a motor vehicle requires intent to deprive, whereas taking a motor vehicle without permission statute requires only that a defendant take

or drive away a motor vehicle without the owner's permission. Thus, a person who takes a car for a brief joyride around the block has taken a motor vehicle without permission but has not committed theft of a motor vehicle due to the absence of intent to deprive, as shown by the brevity of the taking and the intent to return the vehicle prior to the taking being discovered. The intent to deprive - that is, the intent to withhold property from its true owner - required to commit theft is significantly greater than the intent to take and use, without the intent to withhold, that is required by the taking motor vehicle statute. Therefore, second degree taking a motor vehicle does not meet the legal prong of the *Workman* test to be a lesser included to theft of a motor vehicle.

Furthermore, one can commit the crime of theft of a motor vehicle without actually driving or riding in the vehicle; for example, by an embezzlement or a misappropriation of goods. RCW 9A.56.020.² Thus, the element of second degree taking of a motor vehicle, which requires a defendant to actually take or ride in a vehicle knowing it has been taken without permission, are not necessary elements of theft of a motor vehicle.

Here, the trial court reviewed the evidence submitted to the jury and determined that the evidence did not support instructing on the lesser

² The State of Washington recognizes three different methods of theft; all are theft. *State v. Linehan*, 147 Wn.2d 638, 654, 56 P.3d 542 (2002).

offense of taking a motor vehicle in the second degree; rather, the evidence supported instructing the jury only on theft of a motor vehicle. *See* RP 371-80. The trial court carefully exercised its discretion in evaluating the evidence in light of the charged offense and instructed the jury correspondingly. Declining to instruct the jury on the lesser included offense was proper because neither the defendant's theory of the case nor the evidence before the jury supported instructing the jury regarding the lesser offense of taking a motor vehicle in the second degree. Therefore, legal prong of the test fails because the elements in the lesser are not included in the greater as each crime contains different elements.

Incidentally, the factual prong of the *Workman* test also fails. Even if the court were to find that the two crimes satisfy the statutory element requirement, a lesser included offense instruction was nevertheless inappropriate because evidence at trial did not support an inference that the lesser crime was committed. Theft of a motor vehicle contains the additional element that the defendant intended to deprive the true owner of the property. Intent to deprive does not mean intent to "permanently" deprive. Assuming, *arguendo*, the defense were able to establish that the defendant planned on returning the car at some later time, the deprivation was already established by the facts, which were more than sufficient to meet the legal definition for intent to deprive.

While mere knowledge and presence in the unlawful riding would be enough to commit joyriding,³ it would not be sufficient to establish a defendant's culpability or complicity in the crime of theft. *See, In Re Wilson*, 91 Wn.2d 487, 588 P.2d 1161 (1979) (mere presence and knowledge is not enough to establish accomplice liability).

Under the second degree taking motor vehicle statute, however, mere *presence*, i.e., "riding in or upon," the vehicle with *knowledge* that it was unlawfully taken is sufficient to support a conviction for the crime. Clearly, the State's burden to prove all of the elements of second degree taking motor vehicle without permission would have been significantly easier under the facts of this case than what was required to prove theft of a motor vehicle.

³ A person commits the crime of taking a motor vehicle without permission in the second degree when, without permission of the owner or person entitled to possession, he or she intentionally takes or drives away any automobile or motor vehicle, [whether propelled by steam, electricity, or internal combustion engine] that is the property of another.

[A person [also] commits the crime of taking a motor vehicle without permission in the second degree when he or she voluntarily rides in or upon an automobile or motor vehicle with knowledge of the fact that the same was unlawfully taken.

WPIC 74.01, *see also* WPIC 74.02.

Here, defendant was not “taking and driving away” the vehicle, as would be required for second degree taking a motor vehicle without permission. The evidence reflects that the victim missed work the following morning due to the vehicle being stolen. RP 232. The defendant was found in possession of the vehicle the following day around 2:30 p.m., approximately fourteen hours after the vehicle was stolen. 6/30/16 RP 434. The deprivation that occurred, as reflected by the evidence, is more than sufficient to establish the intent to deprive element. Thus, even if the defendant was planning on returning the car at a point beyond the established facts demonstrated by the evidence, there remains no reasonable inference the lesser crime was committed.

The defense has not explained how the evidence in this case supports an inference that the defendant committed only taking a motor vehicle in the second degree, to the exclusion of theft of a motor vehicle. Therefore, defense has failed to satisfy the requisite grounds for a lesser included instruction.

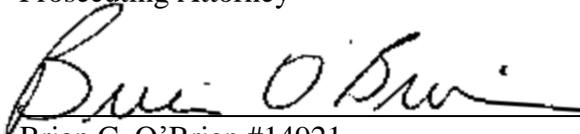
V. CONCLUSION

Given the foregoing reasons, the State respectfully requests this Court to affirm the defendant's conviction.

Dated this 8 day of May, 2017.

Respectfully Submitted,

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Prosecuting Attorney

A handwritten signature in black ink, appearing to read "Brian O'Brien", written over a horizontal line.

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A handwritten signature in black ink, appearing to read "Anastasiya E. Krotoff", written over a horizontal line.

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

Respondent,

v.

WILLIE CHARLES RITCHEY,

Appellant/Respondent,

NO. 34637-4-III

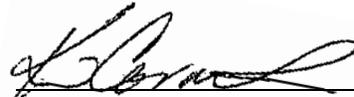
CERTIFICATE OF MAILING

I certify under penalty of perjury under the laws of the State of Washington, that on May 8, 2017, I e-mailed a copy of the Brief of Respondent in this matter, pursuant to the parties' agreement, to:

Ken Kato
khkato@comcast.net

5/8/2017
(Date)

Spokane, WA
(Place)



(Signature)

SPOKANE COUNTY PROSECUTOR

May 08, 2017 - 9:16 AM

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