71161-0

71161-0

NO. 71161-0-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

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STATE OF WASHINGTON,

Respondent,

v.

SENAI HANKERSON,

Appellant.

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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE MICHAEL TRICKEY

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# BRIEF OF RESPONDENT

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DANIEL T. SATTERBERG
King County Prosecuting Attorney

STEPHANIE D. KNIGHTLINGER
Senior Deputy Prosecuting Attorney
Attorneys for Respondent

King County Prosecuting Attorney
W554 King County Courthouse
516 3rd Avenue
Seattle, Washington 98104
(206) 296-9650

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## A. ISSUES

1. To prove the crime of attempting to elude a pursuing police vehicle, the State had to establish, *inter alia*, that the officer who gave the signal to stop was in uniform and that Hankerson drove in a reckless manner. Officer Clark attempted to stop Hankerson while she was on patrol in a patrol car and her fellow officer testified that patrol officers always wear their uniforms while on patrol. Clark also observed Hankerson drive through a red light and a stop sign on a wet road while he failed to stop for her lights. The codefendant, a passenger in the car, said Hankerson drove erratically while being chased by police. Did the State present sufficient evidence for a rational trier of fact to reasonably infer that Officer Clark was in uniform and that Hankerson drove in a reckless manner?

2. Findings of fact and conclusions of law may be submitted and entered while an appeal is pending if, under the facts of the case, there is no appearance of unfairness and the defendant is not prejudiced. Here, the findings of fact that were entered by the trial court while the appeal was pending are consistent with the trial court's oral ruling. Given that the defendant

is not prejudiced, may this Court properly consider the findings of fact and conclusions of law on appeal?

3. Exigent circumstances allow officers to enter a structure without a warrant if necessary for their own or the public's safety and the officers have strong reason to believe the suspect is on the premises, reasonably believe he is guilty, and that he may be armed. Officers used LoJack to track a stolen Lexus to a driveway in a busy, residential area. The Lexus was parked in front of a partially-open garage, but officers could not see inside. Witnesses told officers that the suspects had just arrived and hidden in the garage. Officers had to process the Lexus and feared that they could be ambushed by suspects in the garage. Did the trial court properly conclude that the danger to the officers justified their entry into the garage?

4. A defendant may only challenge officers' seizure of property if he has a reasonable expectation of privacy in the property or automatic standing. Automatic standing requires that the defendant have possession at the time of the police's seizure of the property. After an extended pursuit from Seattle to Bellevue, officers located an abandoned Range Rover on a residential street. No one was inside the vehicle or anywhere nearby. Because he

was not in possession of the Range Rover at the time it was seized, does Hankerson lack standing to challenge the seizure?

5. Police may impound a vehicle if they have probable cause to believe it was stolen or used in the commission of a felony. Officer Hanson spotted the Range Rover in a secluded parking lot with no license plates. He followed it and attempted to stop it, but the Range Rover drove for three blocks the wrong way down a one-way street. When Trooper Bennett found the Range Rover in a neighborhood after an extended pursuit, the temporary license tag returned to a different vehicle and the vehicle identification number had been obscured on the dash. Did Trooper Bennett properly impound the vehicle?

6. Relevant evidence is evidence that has any tendency to make the existence of a fact of consequence more or less probable. ER 403 provides that relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. The trial court found the dash-camera video showing officers, with their firearms drawn, removing Hankerson from the garage and arresting him probative of his proximity to the stolen Lexus. Any prejudice was minimal because

officers had already testified to these same facts. Did the trial court properly admit the video?

## B. STATEMENT OF THE CASE

### 1. PROCEDURAL FACTS.

The State charged Senai Hankerson by amended information with count 1, possession of a stolen vehicle (Range Rover); count 2, possession of a stolen vehicle (Honda); count 3, attempting to elude a pursuing police vehicle; count 4, possession of a stolen vehicle (Lexus); count 5, first degree taking a motor vehicle without permission (Lexus); count 6, possession of a stolen vehicle; count 7, hit and run of an attended vehicle; and count 8, second degree vehicle prowl. CP 35-38. The Honorable Michael Trickey presided over the jury trial for counts 1-5 at which Hankerson was found guilty. 3RP[1] 2; 9RP 113-14; CP 64, 93-99. Counts 6-8 were severed for trial.[2] 3RP 2-4, 7.

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[1] The verbatim report of proceedings consists of eleven volumes separately paginated, which will be referred to in this brief as follows: 1RP (10/11/11 & 2/14/12); 2RP(12/16/11); 3RP (4/2/12); 4RP (4/3/12); 5RP (4/4/12); 6RP (4/5/12); 7RP (4/9/12); 8RP (4/10/12); 9RP (4/11/12, 4/12/12 & 4/16/12); 10RP (5/17/12 & 6/25/12); 11RP (6/15/12).

[2] Post-trial on counts 1-5, Hankerson pled guilty to count 6 and the State dismissed counts 7 and 8 in exchange. 10RP 3, 19-23, 29-30, 47; CP 133-36.

The trial court sentenced Hankerson to concurrent standard range sentences of 43 months for counts 1 and 2, 22 months for count 3, and imposed a prison-based drug offender sentencing alternative of 42 months confinement for count 5.[3] 10RP 47; CP 134-37.

## 2. SUBSTANTIVE FACTS FROM THE CrR 3.6 HEARING.

Pursuant to CrR 3.6, Hankerson moved to suppress the Range Rover, the Lexus key found in the garage with Hankerson, his statements made after being arrested near the Lexus, and his cellular phone found in the Lexus.[4] 4RP 52-53.

The trial court denied the motions to suppress the Range Rover or the entry into the garage near the stolen Lexus.[5] 5RP 6, 9; CP 183. The trial court granted defense's motions to suppress the key to the Lexus, Hankerson's cellular phone found in the Lexus, and the post-arrest statements. 5RP 9-10; CP 183.

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[3] Prior to sentencing, the State dismissed count 4 because it was based on the same conduct as count 5. 10RP 31; CP 134.

[4] Defense counsel's CrR 3.6 brief is referred to in the record, but counsel could not locate it in the court file and it was not available as part of the clerk's papers. 3RP 3.

[5] Defense counsel did not initially challenge the officers' entry into the garage, but raised it during oral argument at the CrR 3.6 hearing. 4RP 58-59.

a. The Stolen Range Rover.

On July 2, 2011, Seattle Police Department (SPD) Officer Brian Hanson spotted a Range Rover in a secluded parking lot. 3RP 29-31; 5RP 2; CP 181. It was unusual to see other cars in this lot on a Saturday, although stolen cars were often dumped there. 3RP 29; 5RP 2. A black male, later identified as Hankerson, was in the driver's seat and another male was in the passenger's seat. 3RP 28, 31; 5RP 2; CP 181. The Range Rover was not properly parked in a parking space and was missing a front license plate. 3RP 30-31; 5RP 2; CP 181. Hankerson appeared nervous after seeing Hanson's marked patrol car. 3RP 32.

Hankerson exited the lot. 3RP 32. Hanson waited to see the Range Rover's back license plate, but it was missing. 3RP 32; 5RP 2; CP 181. No temporary license tag was visible due to the extremely tinted windows. 3RP 32; 5RP 2; CP 182. Hanson followed the Range Rover. 3RP 33; 5RP 3. The Range Rover then drove the wrong way on a one-way street. 3RP 33. Hanson activated his emergency lights and briefly sounded his siren, but the Range Rover only accelerated. 3RP 33. The Range Rover exceeded the 30 mph speed limit while driving the wrong way on a one-way street for approximately three blocks. 3RP 34-35. Based

on the driver's actions, Hanson concluded that the Range Rover was likely stolen. 3RP 34.

Hanson followed the Range Rover onto Interstate 5, although he turned off his lights based on SPD's policy to only continue a pursuit for serious felonies due to the danger to the public. 3RP 34-35; 5RP 3; 6RP[6] 6-7; CP 182. His communications unit alerted the Washington State Patrol (WSP) so that they could stop the vehicle. 3RP 36; 5RP 3. Hanson followed the Range Rover at varying speeds across the Ship Canal bridge, onto State Route 520, across Lake Washington, and then onto southbound Interstate 405. 3RP 37-38; 5RP 3; CP 182. The Range Rover changed lanes erratically, weaved in and out of occasionally heavy traffic, exceeded the speed limit at times, and appeared to be continuing to attempt to elude Hanson. 3RP 37-38, 41-43. Hanson continually updated dispatch so that they could update the WSP. 3RP 36; 5RP 3; CP 182.

Troopers picked up the pursuit on southbound I-405. 4RP 5-6; CP 182. Trooper David Bennett coordinated the WSP response. 4RP 5; 5RP 3; CP 182. He learned from dispatch the

[6] This citation is to SPD Officer Molly Clark's trial testimony where she offered a more thorough explanation of the pursuit policy than Hanson.

information that Hanson had relayed. 4RP 5-6. He learned that Trooper Osborne had caught up to the Range Rover and seen it exit I-405. 4RP 6. Osborne lost sight of it, but learned from witnesses it had driven down a nearby bike path. 4RP 6; 5RP 4; CP 182. Bennett ordered his troopers not to pursue the Range Rover onto the busy bike path, but to search the surrounding area. 4RP 6-7. Bennett saw that one of the normally-closed gates to the bike path near Coal Creek Parkway was open. 4RP 8.

Bennett located the Range Rover in a nearby residential area parked and locked on a dead-end street. 4RP 9; 5RP 4; CP 182. No one was inside the vehicle or anywhere in the vicinity. 4RP 10, 12-13; CP 182. A neighbor did not recognize the car nor had he seen anyone in it. 4RP 12-13; CP 182.

The Range Rover had no plates and Bennett could barely see the temporary license tag due to the darkly-tinted rear window. 4RP 10; 5RP 4; CP 182. Bennett ran the tag prior to opening the vehicle, but it returned to a 1990s Lincoln from Pacific. 4RP 11-12. The Range Rover had front-end damage, which had not been initially reported, but which appeared consistent with having been driven through the bike path gates. 4RP 11; 5RP 4; CP 182. The vehicle identification number (VIN) was not visible from outside the

car because a Starbucks coffee sleeve covered it on the front dash. 4RP 10; 5RP 4; CP 182.

Bennett called a tow truck to impound the Range Rover because officers could not locate the registered owner and the car had eluded Seattle police and WSP. 4RP 13-15. Bennett located the VIN when the tow truck arrived. 4RP 13. The VIN returned to an owner in Ohio who explained that he had returned the Range Rover to a company in New York. 4RP 13; 5RP 4. The Range Rover was towed to a secured lot, so that Bennett could find the registered owner and obtain consent or a search warrant for it. 4RP 14-16; 5RP 4.

On July 18, 2011, Bennett learned that the Range Rover had been stolen. 4RP 17. Craig Ludy, owner of the Auto Quest car dealership in the Georgetown neighborhood of Seattle, realized that the Range Rover had been stolen from his lot. 3RP 44, 47; 5RP 4; CP 182. On July 15, 2011, he consented for the police to search the recovered Range Rover. 3RP 47; 5RP 4; CP 182. Seattle Police Detective Manuel Quinonenz and his fingerprint technician searched the vehicle on July 21, 2011. 4RP 19. Hankerson's

fingerprints were found in two locations inside the Range Rover. 4RP 53; 5RP 4; CP 182; 8RP 83-92.[7]

b. The Stolen Lexus.

On July 10, 2011, SPD learned that a Lexus SUV had been stolen from the same dealership, Auto Quest. 3RP 44-45, 58; 5RP 6; CP 182. The Lexus was equipped with a LoJack transponder, which police activated and then tracked the signal using a receiver in their patrol cars. 3RP 58-59; 5RP 6; CP 182. They located the stolen Lexus in a driveway in a busy neighborhood in Beacon Hill. 3RP 59-60; 5RP 6; CP 182. The Lexus was parked immediately in front of a garage. 3RP 62; 5RP 7; CP 182. The garage door was open approximately one foot. 3RP 62; 5RP 7; CP 182.

Officer Jerry Stone was the second patrol car to arrive, after Officers Brathwait and Ortiz. 3RP 60-61. Officers performed a high-risk stop of two individuals in a car parked next to the Lexus because they thought they had been involved with stealing the Lexus. 3RP 58; CP 182. A high-risk stop is used to contact any stolen vehicle suspects because these stops are often volatile and

[7] The latent print examiner, Aleah Cole, did not testify at the CrR 3.6 hearing. This citation is to her trial testimony.

suspects may be armed. 3RP 55-57. Officers wait for multiple officers to respond and approach with their firearms drawn. 3RP 55-57.

After speaking with the two individuals, officers learned that they had not been involved with stealing the Lexus. 3RP 61; 5RP 7. However, the two individuals reported that a black male and white female had just arrived in the Lexus and had gone into the garage. 3RP 61-62; 5RP 7; CP 182. Officer Caille spoke to a neighbor across the street, later identified as Antonio Guerrero, who reported that a black male and white female had just arrived in the Lexus. 3RP 61-62; 5RP 7; 9RP 13[8]; CP 182

Officers had to secure and process the Lexus. 3RP 65-66. Yet, it was parked immediately in front of the garage and they were concerned that someone inside the garage with a gun or weapon could ambush them. 3RP 64-66; CP 183. To secure the scene, Stone opened the garage door while Brathwait and Ortiz entered the garage with their firearms drawn. 3RP 66; 5RP 7; CP 183. While this occurred, Officer Walter spoke to the two individuals who

[8] This citation is to Antonio Guerrero's trial testimony. 9RP 2,13-14. He is not identified by name in the CrR 3.6 testimony, but his testimony at trial clarifies that he was the witness that Officer Caille spoke to and whose information was relayed to Stone. 3RP 61-62; 9RP 13-14.

had been found in the driveway. 4RP 34-35. Walter testified that they said that the suspects from the Lexus had left the area. 3RP 34-35.

Hankerson and Michelle Antioquia were inside the garage lying on a mattress. 3RP 67; 5RP 7; CP 183. Police arrested them. 4RP 45; 5RP 7-8; CP 183. After Hankerson and Antioquia were removed, officers quickly re-entered the garage to ensure there were no weapons. 3RP 68; 5RP 8; CP 183. They found a yellow tag under the mattress, upon which Hankerson had lain, which they realized was a Lexus key when they picked it up. 3RP 68; 5RP 8; CP 183. Officers used this key to open the Lexus. 3RP 69; 5RP 8; CP 183.

3. SUBSTANTIVE FACTS FROM THE TRIAL.

a. The Stolen Honda.

On July 10, 2011, SPD Officer Molly Clark observed Hankerson in a stolen Honda at 4:05 a.m. 6RP 9-10. She noticed his vehicle because he stopped at a stop sign, yet did not continue. 6RP 10. Clark turned her patrol car around to follow him. 6RP 11. Hankerson appeared to see her and reacted by darting away, running a stop sign, and turning without signaling. 6RP 11. Clark

followed him without activating her emergency lights. 6RP 14. She intended to pursue him to a location where she could have another officer stop to assist her. 6RP 13.

She followed Hankerson on Aurora Avenue as he headed toward downtown Seattle. 6RP 13-14. Clark attempted to pull even with Hankerson to see him and his passenger. 6RP 14. As she did so, Hankerson abruptly cut into another lane and turned off onto a side street. 6RP 14. All Clark saw was that the driver was male and the passenger female. 6RP 14. Hankerson continued driving through the residential streets toward 5th Avenue and Broad Street. 6RP 16, 17. He ran the red light at 5th Avenue and Broad Street. 6RP 15-16. Several other vehicles were on the road at this normally congested intersection. 6RP 16.

Clark activated her emergency lights to stop Hankerson. 6RP 16. He reacted by accelerating. 6RP 16. Clark managed to call out his license plate over the radio as he sped away. 6RP 16, 19. She saw Hankerson speed through a stop sign without stopping or even tapping his brakes. 6RP 16. After observing that Hankerson's erratic driving had only increased since she had signaled him to stop, Clark shut down her lights pursuant to the SPD's pursuit policy. 6RP 6, 17-18.

b. Codefendant Antioquia's Testimony Regarding The Honda And The Lexus.

Michelle Antioquia was Hankerson's codefendant. 7RP 111, 127. She pled guilty to taking a motor vehicle without permission and agreed to testify truthfully at Hankerson's trial in exchange for a lesser sentence. 7RP 127, 142, 157.

Antioquia testified that she rode in the passenger seat of the Honda while Hankerson eluded Clark. 7RP 115-18. Hankerson had picked her up from a bus stop on Aurora Avenue sometime after midnight on July 10, 2011. 7RP 113. Hankerson drove down Aurora Avenue and all was calm until an officer attempted to stop them. 7RP 116-17.

Hankerson began driving very fast and erratically. 7RP 117, 151-52. Antioquia was scared, but Hankerson explained to her that she should not "freak out" because there was a no-chase law inside city limits so that police could only chase for three to five minutes. 7RP 118, 152. She did not believe him and asked him to let her out, but he would not. 7RP 118. Eventually, Hankerson "shook the police." 7RP 119.

They drove to the University District and then back south where they went inside a garage. 7RP 120, 123. The garage was a mess

inside, but they had a beer and stayed awhile. By then it was daytime. 7RP 127. Hankerson then had the idea that they should go for a drive. 7RP 128. He drove the Honda over to a car dealership in the south end and parked in an alley. 7RP 128. He left for a few minutes and then returned with the Lexus. 7RP 128-30. He switched the license plate from the back of the Honda and put it on the Lexus. 7RP 128.

They returned to the garage in the Lexus. 7RP 129. Police arrived outside minutes later. 7RP 130-31. Hankerson had not even completely closed the garage door; it remained open approximately a foot. 7RP 130. After hearing the police outside, Hankerson told Antioquia to lie down and pretend to be asleep. 7RP 131. The police then opened the garage and detained her and Hankerson. 7RP 131.

## C. ARGUMENT

### 1. SUFFICIENT EVIDENCE SUPPORTS HANKERSON'S CONVICTION FOR ATTEMPTING TO ELUDE A PURSUING POLICE VEHICLE.

Hankerson contends that the State did not present sufficient evidence to convict him of count 3, attempting to elude a pursuing police vehicle, for eluding Officer Clark. Specifically, he asserts

that the State failed to prove: 1) that Officer Clark was in uniform when she signaled Hankerson to stop, and 2) that Hankerson drove in a reckless manner. Both of his claims fail. The State presented sufficient evidence from which a rational trier of fact could find Hankerson guilty.

The State must prove each element of the charged crime beyond a reasonable doubt. State v. Alvarez, 128 Wn.2d 1, 13, 904 P.2d 754 (1995). Evidence is sufficient to support a conviction if, viewed in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). A sufficiency challenge admits the truth of the State's evidence. State v. O'Neal, 159 Wn.2d 500, 505, 150 P.3d 1121 (2007). The appellate court draws all reasonable inferences in favor of the State and interprets them "most strongly against the defendant." Salinas, 119 Wn.2d at 201.

A reviewing court must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. State v. Fiser, 99 Wn. App. 714, 719, 995 P.2d 107, review denied, 141 Wn.2d 1023 (2000). Circumstantial and direct evidence are equally reliable. O'Neal, 159 Wn.2d at 506.

RCW 46.61.024 defines the offense of attempting to elude a pursuing police vehicle:

> Any driver of a motor vehicle who willfully fails or refuses to immediately bring his or her vehicle to a stop and who drives his or her vehicle in a reckless manner while attempting to elude a pursuing police vehicle, after being given a visual or audible signal to bring the vehicle to a stop. . . .The signal given by the police officer may be by hand, voice, emergency light, or siren. The officer giving such a signal shall be in uniform and the vehicle shall be equipped with lights and sirens.

The State must prove that the officer was in uniform as an essential element of the crime. State v. Fussell, 84 Wn. App. 126, 127, 925 P.2d 642 (1996); State v. Hudson, 85 Wn. App. 401, 403-04, 932 P.2d 714 (1997).

a. A Rational Trier Of Fact Could Have Found That Officer Clark Was In Uniform While On Patrol From Her Fellow Officer's Testimony That He Wore A Uniform On Patrol.

The State presented sufficient evidence for a rational trier of fact to conclude that Officer Molly Clark was in uniform when Hankerson eluded her. Clark had just started her Seattle Police Department patrol shift when she observed Hankerson in the stolen Honda. 6RP 9-10. Her shift began as usual with the roll call meeting where she learned what had happened in the previous

shift. 6RP 9-10. She then patrolled her district in a patrol car equipped with lights and sirens. 6RP 9, 16, 19.

Her general duties on patrol were to respond to 911 calls and any issues she observed. 6RP 5. She also served a deterrent function by maintaining a visible presence. 6RP 5. For example, she often parked her car and wrote reports near a grocery store that had shoplifting issues to deter crime. 6RP 5.

Clark's fellow officer, Sydney Brathwait, testified that his shift also began with roll call where he learned information from the prior shift. 8RP 122. He then patrolled his assigned sector; responding to 911 calls and maintaining a presence to prevent crime. 8RP 122-23. Lastly, he explained that he wore the standard blue Seattle police uniform on patrol. 8RP 123.

A rational juror could have reasonably concluded that Clark also wore her police uniform while on patrol given that she and Brathwait both worked for Seattle police as patrol officers and each described the same general duties. Although Clark did not directly testify that she was in uniform, it was a reasonable inference given Brathwait's testimony.

Moreover, a rational juror could conclude that Clark wore her uniform because she testified that she maintained a visible

presence in her district to deter crime. 6RP 5. Only if Clark were in uniform and readily recognizable as a police officer could her presence have a deterrent effect.

b. The State Presented Sufficient Evidence That Hankerson Drove In A Reckless Manner.

Hankerson next contends that the State did not present sufficient evidence that he drove in a reckless manner. This claim also fails. The State presented ample evidence that Hankerson drove in a reckless manner by running a red light and a stop sign while driving with Michelle Antioquia in the car.

An individual drives in a reckless manner when he operates his car in a "rash or heedless manner, indifferent to the consequences." State v. Ridgley, 141 Wn. App. 771, 781, 174 P.3d 105, 110 (2007).

The State is not required to prove that anyone was actually endangered by the defendant's driving. State v. Whitcomb, 51 Wn. App. 322, 327, 753 P.2d 565 (1988). Instead, "the State need only show that the defendant engaged in certain conduct, from which a particular disposition or mental state. . .may be inferred." Id.

Here, Clark observed Hankerson drive in an erratic manner in the very early morning hours on a wet road. 6RP 10-15. He

drove through a red light at 5th Avenue and Broad Street, a busy arterial intersection, while other vehicles were also on the road. 6RP 16. In response to Clark's activation of her emergency lights, Hankerson rapidly accelerated. 6RP 16. He drove through a stop sign without even attempting to brake. 6RP 16. At this point, Clark stopped her pursuit because of his absolute disregard for her emergency lights and the SPD pursuit policy to only continue a pursuit for an egregious felony. 6RP 6-7, 17.

In addition, Antioquia testified that she was scared and asked Hankerson to let her out of the car, but he refused. 7RP 118, 151-52. Instead, he told her that she should "not freak out" because the police had a no-chase policy within the city limits. 7RP 117.

Clearly, Hankerson had no regard for Clark's signal to stop, the traffic laws, or the safety of his passenger or others on the road. His statements to Antioquia demonstrated that his only concern was eluding police. From this testimony, a rational juror could conclude that Hankerson drove in a rash and heedless manner without regard for the consequences. This Court should affirm count 3.

## 2. HANKERSON WAS NOT PREJUDICED BY THE DELAY IN ENTRY OF CrR 3.6 FINDINGS.

Hankerson argues that his case should be dismissed because the trial court did not enter findings of fact and conclusions of law under CrR 3.6(b). This argument should fail because the trial court entered written findings while this appeal was pending and the findings are consistent with the trial court's oral findings and conclusions of law. CP 181-84; Appendix A.

Findings of fact and conclusions of law may be submitted and entered while an appeal is pending if there is no prejudice to the defendant by the delay and no indication that the findings and conclusions were tailored to meet the issues presented on appeal. State v. Quincy, 122 Wn. App. 395, 398, 95 P.3d 353 (2004), review denied, 153 Wn.2d 1028 (2005).

Hankerson cannot establish prejudice resulting from the content of these findings. A review of the findings illustrates that the State did not tailor them to address the defendant's claims on appeal. CP 181-84. The language of the findings is consistent with the trial court's oral ruling. 5RP 2-10; CP 181-84. Moreover, the trial prosecutor who drafted the findings of fact had no knowledge of the issues in this appeal. CP 186-87.

In addition, the delay in the entry of the findings does not in and of itself establish a valid claim of prejudice. In State v. Smith, this Court held that the State's request at oral argument for a remand to enter the findings would have caused unnecessary delay and was thus prejudicial. 68 Wn. App. 201, 208-09, 842 P.2d 494 (1992). However, unlike Smith, here the court entered findings that have not delayed resolution of Hankerson's appeal. There is no resulting prejudice.

In light of the above, Hankerson cannot demonstrate an appearance of unfairness or prejudice. The trial court's CrR 3.6 findings of fact and conclusions of law are properly before this Court.

### 3. EXIGENT CIRCUMSTANCES JUSTIFIED OFFICERS' ENTRY INTO THE GARAGE IMMEDIATELY BEHIND WHERE OFFICERS TRACKED THE STOLEN LEXUS.

Hankerson contends that the trial court erred in finding that the officers' entry into the garage was lawful. He is incorrect. Exigent circumstances justified the officers' entry into the garage where the officers had tracked the LoJack signal to the Lexus parked in the driveway and the officers reasonably believed the driver of the stolen Lexus was hiding in the garage.

An appellate court reviews the trial court's findings of fact for substantial evidence. State v. Hill, 123 Wn.2d 641, 644, 870 P.2d 313 (1994). Unchallenged findings are verities on appeal. Id. The trial court's legal conclusions are reviewed *de novo*. State v. Doughty, 170 Wn.2d 57, 61, 239 P.3d 573 (2010).

The Fourth Amendment and article 1, section 7, of the Washington State Constitution prohibit most warrantless searches aside from a narrow set of exceptions. State v. Tibbles, 169 Wn.2d 364, 368-69, 236 P.3d 885 (2010). Exigent circumstances is one of those exceptions. Id. at 369. It applies where "obtaining a warrant is not practical because the delay inherent in securing a warrant would compromise officer safety, facilitate escape or permit the destruction of evidence." State v. Smith, 165 Wn.2d 511, 517, 199 P.3d 386 (2009) (quoting State v. Audley, 77 Wn. App. 897, 907, 894 P.2d 1359 (1995)).

The Washington Supreme Court has identified five circumstances which could be termed exigent: "(1) hot pursuit; (2) fleeing suspect; (3) danger to arresting officer or to the public; (4) mobility of the vehicle; and (5) mobility or destruction of the evidence." Tibbles, 169 Wn.2d at 370 (quoting State v. Counts, 99

Wn.2d 54, 60, 659 P.2d 1087 (1983)). Six additional factors also guide the analysis:

> (1) the gravity or violent nature of the offense with which the suspect is to be charged; (2) whether the suspect is reasonably believed to be armed; (3) whether there is reasonably trustworthy information that the suspect is guilty; (4) there is strong reason to believe that the suspect is on the premises; (5) a likelihood that the suspect will escape if not swiftly apprehended; and (6) the entry is made peaceably."

State v. Cardenas, 146 Wn.2d 400, 406, 47 P.3d 127 (2002).

The analysis focuses on the totality of the circumstances. State v. Carter, 151 Wn.2d 118, 128, 85 P.3d 887 (2004). Not all factors are necessary. State v. Patterson, 112 Wn.2d 731, 736-37, 774 P.2d 10 (1989) (exigent circumstances justified officers' entry into burglary suspect's car even though there was no indication suspect was armed and offense less grave).

In this case, the exigency of the need to secure the Lexus and the danger to the officers from the suspect likely in the garage justified the entry. Officers tracked the stolen Lexus to a driveway in a busy, residential area. 3RP 30-31; 5RP 6; CP 182. It had been reported stolen less than thirty minutes before officers were dispatched. 3RP 46, 81; 4RP 33; 5RP 6; CP 182. Two individuals were in a car parked next to the Lexus. 3RP 58; 5RP 7; CP 182.

At first, officers thought that these two individuals were involved with the stolen Lexus, so officers performed a high-risk stop and detained them. 3RP 58; CP 182.

Officers performed a high-risk stop of these individuals because contacting stolen vehicle suspects carries significant safety risks. 3RP 44-56; 4RP 31-32. The situations are often volatile and suspects may be armed. 3RP 55. To mitigate these risks, officers are trained to ensure that multiple officers respond, they approach with their firearms drawn, and detain all involved. 3RP 55-57.

The scene of the stolen Lexus presented particular safety concerns because it was parked in front of a partially-open garage. 3RP 62-64; 4RP 34. The garage and driveway funneled to the Lexus, which officers had to secure and process. 3RP 64-66; 5RP 7; CP 183. Officers had particular concerns that the suspect may have been in the garage with a gun or other weapon, preparing to ambush them while they secured the Lexus. 3RP 63-64; CP 183; 5RP 9.

Beyond the danger to the officers, officers needed to secure the scene to protect the public. It was a busy residential area with many pedestrians. 3RP 60. Two witnesses were in the driveway

and another had seen Hankerson drive up in the stolen Lexus. 3RP 61-62; 4RP 34; 5RP 7; CP 182. All could have been at risk if the suspect in the garage had decided to ambush officers. The danger to the officers and the public was an exigent circumstance justifying entry of the garage.

Turning to the six additional factors, officers had strong reason to believe Hankerson was in the garage. Stone was the second officer on-scene, after Ortiz and Brathwait, and the first to speak to the two witnesses in the driveway. 3RP 61. He testified that these two individuals said that a black male and white female had driven up in the Lexus moments before officers arrived and that they had hidden in the garage. 3RP 61-62; 5RP 7; CP 182.

Second, there was reasonably trustworthy information that Hankerson was guilty. Officers had immediately tracked the stolen Lexus' LoJack signal to the scene and the witness' statements led them to believe that those in the Lexus had just driven up and hidden in the garage. 3RP 58-59, 62; 5RP 7; CP 182. Events happened quickly with the officers' entering the garage approximately one hour and twenty minutes from when Hankerson

stole the Lexus.[9] 3RP 46, 58-60, 84 81; 4RP 47; 5RP 7; Ex. 16. Given the timing and the witness' information, officers had reliable information that Hankerson stole the Lexus.

Third, officers peaceably entered the garage. Stone opened the garage door while other officers entered the garage. 3RP 66; 5RP 7; CP 183. The officers had their guns drawn to protect themselves given the high-risk situation, but their entry was still peaceable. 3RP 66. They holstered their firearms after ensuring that there was no risk. 3RP 75-77; Ex. 16.[10]

Lastly, the remaining factors were substantially satisfied. While taking a motor vehicle in the first degree is not classified as a violent offense, it is one that presents a risk to the public and officers. 3RP 55-57. It is also a class B felony. RCW 9A.56.075.

The garage did not have another exit, so it was not likely that Hankerson could have escaped. 3RP 62-63. This increased the danger to the officers and witnesses who were in front of the

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[9] Craig Ludy testified that they had searched for the Lexus for approximately 15 to 20 minutes before calling police. 3RP 45. He had signed the statement at 5:28 p.m. 3RP 46. Stone testified that when he responded the Lexus had been reported stolen approximately 30 minutes prior, he was the second patrol car to arrive on-scene, and that they opened the garage within 5-7 minutes of his arrival. 3RP 58-60, 64. Walter testified that he was dispatched at 5:56 p.m. and estimated that officers searched the Lexus 15-30 minutes later. 4RP 47.

[10] Exhibit 16 was the trial exhibit, but the same exhibit was pretrial exhibit 5. 4RP 51; CP 178.

garage and at risk of an ambush by a suspect hidden inside. 3RP 63. Officers had to act quickly to secure the scene for their own and the public's safety.

Overall, this was a sufficiently serious offense with unique circumstances calling for quick action. Similar to the situation presented in Patterson, where officers searched a parked, secured, and unoccupied car that was connected with a very recent burglary, the officers' entry of the garage was justified. 112 Wn.2d at 735-37.

In the alternative, should this Court find that the officers' entry into the garage to arrest Hankerson was not justified, the admission of Antonio Guerrero's identification of Hankerson was harmless error. A constitutional error is harmless when the appellate court is convinced beyond a reasonable doubt that a reasonable jury would have reached the same result in the absence of the error. Chapman v. California, 286 U.S. 18, 24, 87 S. Ct. 824, 17 L. Ed. 2d 705 (1967); State v. Guloy, 104 Wn.2d 412, 425, 705 P.2d 1182 (1985). The inquiry focuses on whether the untainted evidence is so overwhelming that it necessarily leads to a finding of guilt. State v. Le, 103 Wn. App. 354, 367, 12 P.3d 653 (2000).

In Le, this Court concluded that the trial court erred by admitting an officer's post-arrest identification of the defendant

where the court had found that exigent circumstances did not allow the officers' entry into his home to arrest him. 103 Wn. App. 656. Yet, the admission of the identification was harmless given the other evidence. Id. The officer testified that she had gotten a very good look at the defendant before he fled the scene of the burglary. Id. She had seen him from a short distance in broad daylight for approximately ten seconds. Id. at 367-68. Another neighbor had seen a young man run through his yard and into a house, which turned out to be the defendant's house. Id. at 368. This evidence necessarily led to a finding of guilt. Id.

The untainted evidence in this case is arguably more overwhelming than in Le. Michelle Antioquia, the codefendant, testified that after she and Hankerson had retreated to the garage with the Honda, Hankerson had the idea to drive to a nearby dealership. 7RP 127-28. Hankerson parked the Honda around the corner from the dealership, then disappeared for a few minutes. 7RP 128-29. He returned with the Lexus. 7RP 128-29. Hankerson then switched the license plate and his belongings from the Honda to the Lexus. 7RP 128. They then drove the Lexus back to the garage. 7RP 130.

Police arrived minutes after they returned to the garage; so quickly that Hankerson had not had time to completely shut the garage door. 7RP 130. She testified that they heard the police and Hankerson told her to lie down on the mattress and act like they were sleeping. 7RP 131.

Antioquia's testimony and the officers' testimony that they tracked the Lexus to the garage and saw the partially-open garage door is sufficiently overwhelming to necessarily lead to a finding of guilt. Thus, even if this Court concludes that the entry was unlawful, Hankerson's conviction for first degree taking a motor vehicle without permission, count 5, should be affirmed.

## 4. OFFICERS LAWFULLY SEIZED THE RANGE ROVER AS THEY HAD REASON TO BELIEVE IT WAS USED IN THE COMMISSION OF A FELONY AND THAT IT WAS ABANDONED.

Hankerson next contends that the officers unlawfully seized the Range Rover because they did not have the authority to impound the vehicle and it had not been voluntarily abandoned. His claim fails for three reasons. First, Hankerson does not have standing to challenge the seizure because he did not possess it at the time it was seized. Second, officers lawfully impounded the Range Rover because they had probable cause to believe that it

was stolen and had been used in commission of the felony of attempting to elude. Third, the Range Rover was voluntarily abandoned at the dead-end street.

a. Hankerson Does Not Have Standing To Contest The Seizure Of The Range Rover.

In order to challenge the validity of a search or seizure, a defendant must have a legitimate expectation of privacy in the area searched or the item seized. Rakas v. Illinois, 439 U.S. 128, 143, 99 S. Ct. 421, 430, 58 L. Ed. 2d 387 (1978); see also State v. Zakel, 119 Wn.2d 563, 571, 834 P.2d 1046 (1992) (finding no legitimate expectation of privacy in stolen car).

Washington still recognizes the doctrine of automatic standing, although the doctrine has been abolished in federal court. State v. Williams, 142 Wn.2d 17, 22, 11 P.3d 714 (2000); United States v. Salvucci, 448 U.S. 83, 95, 100 S. Ct. 2547, 65 L. Ed. 2d 619 (1980). Automatic standing allows a defendant who does not have a legitimate expectation of privacy in an item to challenge its seizure when: 1) he is charged with an offense which has possession as an essential element, and 2) the defendant was in possession of the contraband at the time of the contested search. Zakel, 119 Wn.2d at 568 (holding that defendant did not have

automatic standing when he did not possess the stolen car at the time of the search).

Similarly, Hankerson cannot meet the second prong of the automatic standing test because he did not have possession of the Range Rover at the time it was seized. While the trial court declined to rule on this issue, the parties argued and briefed it. 4RP 68-69; 5RP 5; Supp. CP __ (sub no. 86, State's Trial Brief, filed April 2, 2012). Therefore, this Court may affirm on these grounds. See State v. Avery, 103 Wn. App. 527, 537, 13 P.3d 226 (2000) (the appellate court can affirm on any ground supported by the record).

Hankerson was not in the Range Rover nor was he located anywhere nearby when it was seized following a pursuit from Seattle to Bellevue. 3RP 35-38; 4RP 9-10, 12-13; CP 182. Auto Quest legally owned the Range Rover and had not given Hankerson permission to drive it. 3RP 47-48; CP 182.

As in Zakel, Hankerson did not possess the Range Rover *at the time of the seizure.* Therefore, he cannot meet the second prong of the automatic standing test and cannot challenge the seizure. See Zakel, 119 Wn.2d at 570.

b. Officers Lawfully Impounded The Range Rover Because There Was Probable Cause To Believe It Was Stolen Or Used In The Felony Of Attempting To Elude A Pursuing Police Vehicle.

Warrantless searches and seizures are per se unreasonable aside from a few narrowly drawn exceptions. State v. Tyler, 177 Wn.2d 690, 698, 302 P.3d 165 (2013). One of these exceptions is a valid impound and inventory search of a vehicle. Id. Police may lawfully impound a vehicle:

> (1) as evidence of a crime, when the police have probable cause to believe the vehicle has been stolen or has been used in the commission of a felony offense;
> (2) under the 'community caretaking function' if (a) the vehicle must be moved because it has been abandoned, impedes traffic, or otherwise threatens public safety or if there is a threat to the vehicle itself and its contents of vandalism or theft, *and* (b) the defendant, the defendant's spouse, or friends are not available to move the vehicle. . . .

Id. (emphasis in original).

"Probable cause exists where the facts and circumstances within the arresting officer's knowledge and of which the officer has reasonably trustworthy information are sufficient to warrant a person of reasonable caution in a belief that an offense has been committed." State v. Terrovona, 105 Wn.2d 632, 643, 716 P.2d

295 (1986). A bare suspicion of criminal activity is not sufficient, but probable cause is not a technical inquiry. Id.

i. Officers had probable cause to believe the Range Rover was stolen.

Here, Trooper Bennett had probable cause to believe that the Range Rover was stolen based on his and his fellow officers' observations of the vehicle. 5RP 5; CP 182. SPD Officer Hanson had seen the Range Rover, which was missing front and back license plates, parked inappropriately in a normally vacant lot known as a dumping ground for stolen vehicles. 3RP 29-32; 5RP 2; CP 181-82. The driver appeared nervous upon seeing Hanson and eluded him by driving the wrong way down a one-way street. 3RP 32-33. The driver fled Seattle and WSP troopers picked up the pursuit in Bellevue. 3RP 34-36; 4RP 5-6; 5RP 3; CP 182.

Troopers observed more extreme driving by the Ranger Rover as witnesses reported the driver proceeded down a busy bike path on a summer afternoon to avoid police. 4RP 5-7; 5RP 4; CP 182. Bennett eventually found the Range Rover abandoned on a dead-end street. 4RP 9; 5RP 4; CP 182. The temporary license tag, which was barely visible in the rear window due to the dark tint,

returned to another vehicle in another city. 4RP 10; 5RP 4; CP 182. The VIN was not visible on the front dash. 4RP 10; 5RP 4; CP 182. No one was around the vehicle or in the surrounding area. 4RP 12-13; 5RP 5; CP 182. A neighbor did not recognize the vehicle nor had he seen anyone near it. 4RP 12-13.

Taken together, these facts and circumstances established probable cause that the Range Rover had been stolen. Therefore, police lawfully impounded the Range Rover.

ii. Officers had probable cause to believe the Range Rover had been used in the felony of attempting to elude police.

In addition, Bennett, through the facts relayed to him by dispatch from Hanson and other troopers, had probable cause to believe that the Range Rover had attempted to elude police, a felony.[11] RCW 46.61.024(1); see State v. Ortega, 177 Wn.2d 116, 127, 297 P.3d 57 (2013) (officers may rely on cumulative knowledge of their fellow officers in making a felony arrest).

By the time Bennett located the Range Rover, he had learned that the driver had eluded SPD Officer Hanson in Seattle

[11] While the trial court found that the Range Rover was lawfully impounded because the officers believed it had been stolen, the record supports that the Range Rover was also used in the commission of the felony of attempting to elude and was evidence of that crime. CP 182-83. Thus, this Court can also affirm on that basis. See Avery, 103 Wn. App. at 537.

and had been pursued from Seattle to south Bellevue. 3RP 33-37; 4RP 5-14; 5RP 3; CP 182. These facts were relayed to the WSP. 3RP 36-37; 5RP 3; CP 182.

Based on these facts, Bennett had probable cause to believe that the Range Rover had been used in the commission of the felony of attempting to elude a pursuing police officer. See RCW 46.61.024. He was entitled to seize the Range Rover as evidence.

c. Officers Lawfully Seized The Range Rover Because It Had Been Voluntarily Abandoned.

Abandoned property is also an exception to the warrant requirement. State v. Evans, 159 Wn.2d 402, 407, 150 P.3d 105 (2007). "Needing neither a warrant nor probable cause, law enforcement officers may retrieve and search voluntarily abandoned property without implicating an individual's rights under the Fourth Amendment or article 1, section 7 of our state constitution." State v. Reynolds, 144 Wn.2d 282, 287, 27 P.3d 200 (2001). The focus of the inquiry is on the combination of act and intent. State v. Hamilton, 179 Wn. App. 870, 885, 320 P.3d 142 (2014).

To challenge a seizure of abandoned property, a defendant must first show: 1) that he had an actual, subjective expectation of

privacy in the item, and 2) that society recognizes that expectation of privacy as reasonable. Id. at 409. This question is separate from the question of automatic standing. Id. at 406-07.

Hankerson cannot meet this two-part test because he did not have a reasonable expectation of privacy in the stolen Range Rover. Society does not recognize the right of a thief to privacy in a stolen car. See Rakas, 439 U.S. at 143 n.12 (noting that "a burglar plying his trade in a summer cabin during the off season may have a thoroughly justified subjective expectation of privacy, but it is not one which the law recognizes as 'legitimate.'"); see also Zakel, 119 Wn.2d at 571 (no right to privacy in a stolen vehicle); see also State v. Jacobs, 101 Wn. App. 80, 87, 2 P.3d 974 (2000) (finding no reasonable expectation of privacy where the defendant's presence at the scene of the search is illegal).

While Hankerson correctly asserts that society recognizes that an individual may have a reasonable expectation of privacy in a vehicle that he does not own, his case is far different. App. Br. at 32. If he were a passenger or borrowing the car, then he may have had a reasonable expectation of privacy. See Minnesota v. Olson, 495 U.S. 91, 96-97, 110 S. Ct. 1684, 109 L. Ed. 2d 85 (1990) (holding that an overnight guest may have a reasonable

expectation of privacy); see also State v. Link, 136 Wn. App. 685, 693, 150 P.3d 610 (2007) (holding that a defendant had a reasonable expectation of privacy at his girlfriend's home). But, Hankerson had no legal right to occupy or possess the Range Rover. Because he cannot meet this threshold test, Hankerson cannot challenge the seizure of the abandoned Range Rover.

### 5. THE TRIAL COURT PROPERLY ADMITTED THE VIDEO SHOWING HANKERSON LEAVING THE GARAGE IN FRONT OF THE STOLEN LEXUS.

Hankerson contends that the trial court abused its discretion in admitting the dash-camera video showing Hankerson's arrest as it was unduly prejudicial. This claim should be rejected. The trial court properly admitted the video, Ex. 16. Even if it was error to admit the video, any error was harmless in the context of the other admissible evidence.

The appellate court reviews a trial court's decision to admit evidence under an abuse of discretion standard. State v. Stenson, 132 Wn.2d 668, 701, 940 P.2d 1239 (1997). A trial court will not be reversed unless its decision "is manifestly unreasonable or based upon untenable grounds or reasons. . . ." Id.

Relevant evidence is evidence that has any tendency to make the existence of any fact of consequence to the determination of the action more or less probable than it would be without the evidence. ER 401. ER 403 states that relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

Here, the trial court did not abuse its discretion in admitting the video showing officers entering the garage and arresting Hankerson. The video was from Officer Stone's dash-camera and was shown during his testimony.[12] 6RP 96-112, 116; 7RP 45-50; Ex. 16. It was relevant because it showed Hankerson's proximity to the very recently stolen Lexus. 6RP 112-13; Ex. 16.

The video shows the officers arriving, contacting the two individuals near the Lexus, entering the garage, and then removing Hankerson and Antioquia. Ex. 16 at 5:46-24:29. Officers Brathwait and Ortiz briefly draw their firearms while Stone opens the garage door. Ex. 16 at 21:17-21:54. They did so due to their concern that

[12] The video shown was the file labeled 7446 on Ex. 16, which was Stone's badge number. 6RP 111-12; Ex. 16. Exhibit 16 has two other files which are not at issue on appeal. Ex. 16.

the suspects could be armed inside the garage. 6RP 108; 7RP 47-48. Officers pat Hankerson down and then handcuff him before he is led out of frame. Ex. 16 at 21:42-24:29. In total, the officers are seen with firearms drawn for thirty-seven seconds. Ex. 16 at 21:17-21:54. Hankerson is seen in handcuffs for less than a minute and a half. Ex. 16 at 23:06-24:29.

Hankerson asserts that the video is prejudicial because it shows officers with drawn firearms and Hankerson's arrest. App. Br. at 35. Yet, Hankerson did not object to testimony to these same facts by officers. 6RP 108-10; 7RP 45-50. As the trial court found, the probative value of the video outweighed the minimal prejudice of showing officers with drawn firearms and Hankerson's arrest. 6RP 118. The trial court did not abuse its discretion in admitting the video.

If this Court finds that the trial court did abuse its discretion in admitting Ex. 16, any error was harmless. An evidentiary error not of constitutional magnitude is subject to the non-constitutional harmless error standard. State v. Everybodytalksabout, 145 Wn.2d 456, 468-69, 39 P.3d 294 (2002). "The error is harmless if the evidence is of minor significance compared to the overall evidence as a whole." Id.

The portion of the video which Hankerson contends requires reversal of his four convictions, only one of which involved the Lexus, was approximately 3 minutes. Ex. 16 at 21:17-24:30. The trial lasted six days and fourteen witnesses testified. Any error in admitting the video was harmless considering all of the testimony, the brief portion of the video, and the other testimony to these same facts. Reversal is not required.

## D. CONCLUSION

For all of the foregoing reasons, the State respectfully asks this Court to affirm Hankerson's convictions.

DATED this 2nd day of December, 2014.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: _____
STEPHANIE D. KNIGHTLINGER, WSBA #40986
Senior Deputy Prosecuting Attorney
Attorneys for Respondent
Office WSBA #91002

# APPENDIX A

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

| | |
|---|---|
| STATE OF WASHINGTON,<br><br>Plaintiff,<br><br>vs.<br><br>SENAI HANKERSON,<br><br>Defendant, | No. 11-1-07139-8 SEA<br><br>WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW ON CrR 3.6 MOTION TO SUPPRESS PHYSICAL, ORAL OR IDENTIFICATION EVIDENCE |

A hearing on the admissibility of physical, oral, or identification evidence was held on April 2, 3, and 4, 2012, before the Honorable Judge Michael Trickey. After considering the evidence submitted by the parties and hearing argument, to wit: motion to suppress evidence found in the 2007 Range Rover, evidence found in the garage, and evidence found in the 2007 Lexus,

the court makes the following findings of fact and conclusions of law as required by CrR 3.6:

I. THE FACTS:

1. At about 11:55 a.m. on July 2, 2011, Seattle Police Officer Brian Hanson entered a private church parking lot located at the intersection of 8th Avenue N.E. and NE 56th Street in Seattle. He was driving a fully marked police vehicle.
2. Although the parking lot is usually unoccupied, Hanson observed a grey Range Rover backed into a parking space.
3. The Range Rover's windows were tinted and there was no front license plate.
4. Hanson saw two black males in the front seats.



**Daniel T. Satterberg**, Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000, FAX (206) 296-0955

5. As the vehicle drove by Hanson and out of the parking lot, he saw that there was no back license plate, and the tinted windows were so dark that he could not see a temporary plate.
6. Hanson followed the vehicle and attempted to stop it by turning on his emergency lights and siren.
7. The Range Rover did not stop and at times exceeded the speed limit before getting on the freeway. Hanson eventually turned off his emergency equipment because the situation did not meet department policy for a high-speed chase.
8. Hanson followed the Range Rover as it headed southbound on Interstate 5, and then east on 520. The Range Rover's speed exceeded 60 miles per hour, and at one point reached 75 miles per hour.
9. Hanson continued to follow the Range Rover until it got onto southbound Interstate 405. Along the way, both Washington State Patrol and Bellevue Police officers joined in following the Range Rover. All of the officers were in radio communication with dispatch, sharing their observations.
10. Trooper Bennett managed the State Patrol's response. He received the call that there was a Range Rover on 520 with no plates. Shortly after, there were possible reports of a Range Rover being driven on a bike trail around the Coal Creek Park exit. This exit is between Bellevue and Renton on I-405.
11. Troopers found the Range Rover on a residential street near the bike path. They could not read the VIN, but noticed that there were no plates.
12. There was front-end damage to the vehicle, which had not been there when Officer Hanson originally saw the Range Rover in the parking lot.
13. Officers searched the area, but could not find anyone associated with the vehicle. It appeared to be abandoned.
14. Trooper Bennett believed that the Range Rover was stolen.
15. Troopers sealed the vehicle and towed it to a secure location.
16. Police discovered that the vehicle was owned by Auto Quest, an automobile dealership in Seattle.
17. On July 15, 2011, Auto Quest owner Craig Ludy discovered the Range Rover was missing from their lot and reported it stolen. On that same day, Ludy gave written consent to search the Range Rover.
18. On July 21, 2011, officers searched the Range Rover. During that search, officers lifted latent prints from inside the vehicle.
19. On July 10, 2011, Craig Ludy discovered that a 2007 Lexus had been taken off the Auto Quest lot without permission. He called 911 at around 5:00 p.m. At around 5:30, an officer had Ludy sign a consent-to-search vehicle.
20. The Lexus was equipped with a LoJack system, which was activated once the vehicle was reported stolen.
21. Officers followed the LoJack signal for several minutes, eventually arriving at 15th Avenue South and South Bayview Street, in the Beacon Hill neighborhood of Seattle.
22. Officers arrived at around 6:00 p.m. They initially contacted two individuals near the Lexus and a 1991 Honda. Those individuals reported that a black male and white female with blond hair had jumped out of the Lexus and gone into a garage.
23. A neighbor also reported that a black man and white female had recently left the Lexus and gone into the garage.



**Daniel T. Satterberg**, Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000, FAX (206) 296-0955

24. The Lexus was parked near the garage. The Lexus's doors were locked.
25. The garage door was partially opened.
26. Officers believed that there were two people in the garage, and that those people were connected with the stolen Lexus.
27. Officers could not see into the garage, and did not know whether the occupants were armed. They were concerned about their safety as long as the garage was occupied and the door was partially opened.
28. One officer opened the garage door, and the officers saw the defendant and Michelle Antioquia on a mattress in the garage.
29. Officers entered the garage and arrested the defendant and Antioquia.
30. Officers then briefly returned to the garage. One officer saw a tab sticking out from under the mattress where the defendant and Antioquia had been found. He removed the tab and found a car key.
31. Officers subsequently used the key to open the Lexus, where they found the defendant's cell phone and charger.
32. The defendant admitted that the phone and the charger belong to him.

2. CONCLUSIONS OF LAW AS TO THE ADMISSIBILITY OF THE EVIDENCE SOUGHT TO BE SUPPRESSED:

1. The Range Rover was properly impounded on July 2, 2011.
2. The search of the Range Rover was based on valid consent of the owner, and was therefore lawful.
3. The motion to suppress the fingerprints recovered from the Range Rover is denied.
4. Officers lawfully opened the garage door on July 10, 2011, and arrested the defendant.
5. The defendant has standing to challenge the search of the garage and the search of the Lexus.
6. The sweep of the garage after the defendant was in custody was unlawful. Therefore, the key is suppressed.
7. The search of the Lexus was the fruit of the unlawful seizure of the key. Therefore, the cell phone and charger are suppressed. The defendant's statements about the phone are also suppressed.



**Daniel T. Satterberg**, Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000, FAX (206) 296-0955

In addition to the above written findings and conclusions, the court incorporates by reference its oral findings and conclusions.

Signed this 8th day of October, 2014.

JUDGE

Presented by:

38720
Deputy Prosecuting Attorney Bridgett Maryman

35544
Attorney for Defendant
Phillip Griffin



**Daniel T. Satterberg,** Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000, FAX (206) 296-0955

## Court, Allred

**From:** Maryman, Bridgette
**Sent:** Wednesday, October 08, 2014 9:40 AM
**To:** Court, Allred
**Cc:** griffinp143@gmail.com
**Subject:** State v. Senai Hankerson, #11-1-07139-8

**Follow Up Flag:** Follow up
**Flag Status:** Flagged

The above case was tried before Judge Trickey in April of 2012. Last month, I was notified by my office's appellate unit that we had not entered CrR 3.6 findings following trial. It's my understanding that Judge Allred has taken over Judge Trickey's department and should therefore be the one to sign off on the findings.

In order to prepare these findings, I reviewed the transcript from the CrR 3.6 hearing. I have not reviewed the briefs on appeal because I wanted to avoid any possibility of tailoring the findings. Trial counsel, Phillip Griffin, agreed with the findings and signed off on them. I am hoping that Judge Allred can sign them soon, so as to avoid any delay in the pending appeal.

Attached are the signed proposed findings, as well as the transcripts from the CrR 3.6 hearing, in case Judge Allred would like to review them. To streamline things, I'll note that Judge Trickey made his findings on April 4, 2012 (pages 1-11).

Thank you very much.
Bridgette


Hankerson signed findings.pdf


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71161-0 HANKERSON 4....


71161-0 HANKERSON 4....

Bridgette Maryman
Deputy Prosecuting Attorney, Domestic Violence Unit
Phone: 206-477-1193
***Please note my new phone number****

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

| | |
|---|---|
| STATE OF WASHINGTON,<br><br>Plaintiff,<br><br>vs.<br><br>SENAI HANKERSON,<br><br>Defendant. | No. 11-1-07139-8 SEA<br><br>DECLARATION OF DEPUTY PROSECUTING ATTORNEY |

I, the undersigned, hereby declare that I am 18 years of age, I am competent to testify in a court of law, and I am familiar with the facts contained herein:

1. I am a Deputy Prosecuting Attorney with the King County Prosecutor's Office.

2. I was the trial attorney in the above captioned case.

3. I was contacted by my office's appellate unit on September 8, 2014 and informed that findings of fact and conclusions of law, pursuant to CrR 3.6 could not be located in the electronic court record or the original prosecutor's file. I verified that the documents were not included in the electronic court file. I searched my electronic files and could not locate these documents.



**Daniel T. Satterberg**, Prosecuting Attorney
Norm Maleng Regional Justice Center
401 Fourth Avenue North
Kent, Washington 98032-4429

4. On September 14, 2014, I obtained transcripts for the trial days that contained the pretrial hearings in this case. I reviewed the transcripts for those days and located the portions relevant to the findings of fact and conclusions of law pursuant to CrR 3.6.

5. Between October 4 and October 7, 2014, I drafted findings of fact and conclusions of law based on the transcripts referenced in (4) above.

6. On October 7, 2014, I presented these findings and conclusions to Phillip Griffin, the defendant's trial attorney. We did not discuss the appeal. On that same day, Mr. Griffin told me that he agreed with the proposed findings and sent a signed copy to me.

7. On October 8, 2014, I presented the signed findings and conclusions to the Honorable Chad Allred, who had assumed the Department 34 caseload from the trial judge, the Honorable Michael Trickey. I also sent a copy of the relevant transcripts. The findings were signed by the court and entered.

6. I have not reviewed the appellate file or any documents related thereto in the above captioned case. I have not spoken with anyone regarding the appellate issues being raised in the above captioned case. I have no knowledge of any appellate issue being raised in this matter.

Under penalty of perjury under the laws of the State of Washington, I certify that the foregoing is true and correct. Signed and dated by me this 8th day of October, 2014, at Seattle, Washington.

Bridgette E. Maryman WSBA #38720
Deputy Prosecuting Attorney



**Daniel T. Satterberg**, Prosecuting Attorney
Norm Maleng Regional Justice Center
401 Fourth Avenue North
Kent, Washington 98032-4429

Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Whitney Rivera, the attorney for the appellant, at 1511 Third Ave, Ste 701, Seattle, WA, 98101, containing a copy of the Brief of Respondent, in State v. Senai Dennis Hankerson, Cause No. 71161-0, in the Court of Appeals, Division I, for the State of Washington.

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

Dated this 3 day of December, 2014.

Name
Done in Seattle, Washington