73518-7

No. 73518-7-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

JESSE LEDERLE,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR SKAGIT COUNTY

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. In violation of Mr. Lederle's right to due process of law secured by the Fourteenth Amendment and article I, section 3, the trial court erred in admitting testimony concerning dog-tracking evidence, as it was unreliable.

2. In violation of due process, the trial court relied upon dog-tracking evidence without sufficient corroborating evidence to support a conviction.

3. The State failed to prove beyond a reasonable doubt every essential element of the charges, in violation of Mr. Lederle's Fourteenth Amendment right to due process.

4. The State failed to prove beyond a reasonable doubt that there was "a consistent track from the pickup truck all the way to where the defendant was discovered." (FF 40).

5. The trial court's findings of fact were insufficient to identify Mr. Lederle as the perpetrator of the crimes charged.

6. The trial court erred in concluding the State had proved the element of identity, as the court's findings fail to support the court's conclusions of law. (CL 1, 2).

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. The Fourteenth Amendment guarantee of due process requires that the evidence used to convict a criminal defendant be reliable. Where the State failed to show that a dog that allegedly "tracked" to Mr. Lederle: (1) had a proven record of successful tracks, (2) followed the track of the guilty party, or (3) tracked from the source of the crime location, did the trial court err in finding the dog-tracking evidence met the threshold of admissibility?

2. Because of the uncertain reliability of dog-tracking evidence, Washington courts require that tracking evidence be viewed with caution, unless corroborated by other admissible evidence sufficient to support a conviction. Where identity was the sole contested issue at trial, and where the State relied exclusively on the dog-tracking evidence due to a lack of other evidence connecting Mr. Lederle to the crime, was the evidence presented insufficient to support a conviction?

3. Conclusions of law unsupported by findings of fact cannot stand. The trial court entered no findings of fact to support the inference Mr. Lederle was identified as the perpetrator of the charged crimes. Since identity was the sole contested issue at trial, do the lack

of sufficient findings to support the conclusions of law require reversal?

C. STATEMENT OF THE CASE

On February 23, 2015, someone stole a Ford pickup truck from Draper Valley Farms in Skagit County. RP 26-28.[1] The culprit drove the truck away from the Draper Valley property, past Mount Vernon Police Officer Chester Curry, who was standing on Stewart Street. RP 98. Officer Curry, who was in uniform, hopped into his marked patrol car and engaged the car thief in a chase. RP 102-05. The officer estimated his own speed at 60-70 miles per hour. Id.

When Officer Curry caught up to the stolen truck, the truck had stopped in a residential area. RP 106. The previously new vehicle seemed to be in poor condition; it had blown a tire, was "revving extremely loud," and the officer was "seeing sparking from the rear of the vehicle." RP 104-05. From his patrol car, Officer Curry watched as the driver of the truck opened the driver's side door and fled through a yard. Id. at 106. The officer could not see the driver's face, but he described the driver as male, of medium height and build, and said he was wearing a short-sleeved shirt with bright white on the T-shirt. RP

[1] The verbatim report of proceedings consists of a primary volume from the bench trial conducted on May 4, 2015, which is referred to as "RP."

107. Officer Curry waited in his car and radioed for back-up, including a canine officer. RP 106-07.

Police officers also interviewed Melinda Mason, a Mount Vernon resident, who was standing on her porch smoking a cigarette. RP 17. She called the police when she saw a man coming out of her neighbor's building. Id. Ms. Mason first noticed the police "were in the wrong neighborhood," since she could see the blue and red lights behind her. Id. Following her call, the police arrived near her home with a tracking dog within a few minutes. RP 17. Ms. Mason could not identify the man she saw walking out of her neighbor's building; she described him as a white man wearing a blue shirt. RP 23-24. Ms. Mason testified that she watched the man for five minutes before he walked quickly into the wooded area. RP 22-24.

Approximately 20 minutes after Officer Curry called for back-up, Whatcom County Sheriff Department police officer Jason Nyhus, a K-9 handler, arrived with his dog, Hyde. RP 65. Officer Nyhus instructed Hyde to begin a track, but he did not have Hyde begin the track at the location of the stolen truck, in order to obtain the scent of the suspect, as the officer originally intended. RP 69. Instead, the

officer had Hyde begin at the location where Ms. Mason had seen a man running into the woods. Id. at 69, 88, 91-92.

Although Officer Nyhus did not share any information about his or Hyde's training or their record for successful tracking, he did state that Hyde has been trained "to look for humans." RP 71. Following Officer Nyhus's command, Hyde tracked through Ms. Mason's backyard, tracking in a northeasterly direction until the area became wooded and more remote. RP 71-73. After a short track, Hyde alerted on Mr. Lederle. RP 74. Mr. Lederle did not respond to Officer Nyhus's commands to come out, or to his warnings that the dog would be "deployed" unless Lederle complied. RP 74-75. Officer Nyhus "commanded the dog to bite the suspect," by having the dog bite Mr. Lederle twice – in the forearm and in the buttocks. RP 75. Mr. Lederle yelled, "Why am I being attacked? I was just sleeping here." He also stated that he was a transient. RP 124-25. Upon his arrest, Mr. Lederle was transported to the hospital with several puncture wounds from the attack. RP 61-62, 81-82. Mr. Lederle was wearing a black shirt. RP 137.

No witness confirmed that Mr. Lederle was the same man who had been seen earlier. Officer Curry could not confirm Mr. Lederle

was the driver he had seen exit the stolen truck, and Ms. Mason could not confirm he was the man she had seen walking through her yard. RP 17-18, 24, 107.

Mr. Lederle was charged with attempting to elude a pursuing motor vehicle and possession of a stolen motor vehicle. CP 26-27. He was also charged with several misdemeanors, to which he pled guilty, including resisting arrest and making a false report.[2]

He timely appeals. CP 29.

D. ARGUMENT

THE ADMISSION OF UNRELIABLE "DOG TRACK" EVIDENCE VIOLATED MR. LEDERLE'S DUE PROCESS RIGHT TO A CONVICTION ONLY BY SUFFICIENT EVIDENCE.

a. Reliability of evidence is the cornerstone of due process, which is essential to a fair trial.

An accused person has the right to a fair trial, and this right includes the guarantee that the evidence used to convict him will meet the most basic requirements of fairness and reliability in the ascertainment of guilt or innocence. U.S. Const. amend. XIV; Chambers v. Mississippi, 410 U.S. 284, 302, 93 S.Ct. 1038, 35 L.Ed.2d

[2] Mr. Lederle was charged with making a false report, due to a 911 call made from his cell phone while he was walking in the woods. RP 36-38, 41-45.

297 (1973); see also State v. Ahlfinger, 50 Wn. App. 466, 472-73, 749 P.2d 190 (1988) (upholding exclusion of polygraph evidence, although relevant and helpful to accused's defense, given "the State's legitimate interest in excluding inherently unreliable testimony."). "Due process does not permit a conviction based . . . on evidence so unreliable and untrustworthy that it may be said that the accused had been tried by a kangaroo court." California v. Green, 399 U.S. 149, 187 n. 20, 90 S.Ct. 1930, 26 L.Ed.2d 489 (1970) (Harlan, J., concurring).

In Washington, dog tracking evidence is admissible only if a sufficient evidentiary foundation is laid to demonstrate the evidence's reliability. State v. Loucks, 98 Wn.2d 563, 568, 656 P.2d 480 (1983). The proponent of the evidence must show:

> (1) the handler was qualified by training and experience to use the dog, (2) the dog was adequately trained in tracking humans, (3) the dog has, in actual cases, been found by experience to be reliable in pursuing human track, (4) the dog was placed on track where circumstances indicated the guilty party to have been, and (5) the trail had not become so stale or contaminated as to be beyond the dog's competency to follow.

Id. (quoting State v. Socolof, 28 Wn. App. 407, 411, 623 P.2d 733 (1981)).

The Loucks Court emphasized that the "dangers inherent in the use of dog tracking evidence" can only be alleviated by the presence of

"corroborating evidence identifying the accused," in order to sustain a conviction. 98 Wn.2d at 567.

In Loucks, a police dog trailed a scent from the scene of a burglary to a nearby residence, where the defendant was found sleeping in a stairwell. Id. at 565. The defendant in Loucks was convicted, even though he was excluded as a source for the blood and fingerprints at the burglary scene and nothing else seemed to tie him to the crime. The Supreme Court reversed based on insufficient evidence, holding that in addition to the above conditions for the admission of dog-tracking evidence, such evidence must be supported by sufficient corroborating evidence to sustain a conviction. Id. at 567-69.

A minority of states refuse to admit evidence of dog-tracking altogether, apparently agreeing with Justice Souter: "[t]he infallible dog, however, is a creature of legal fiction." Illinois v. Caballes, 543 U.S. 405, 411, 125 S.Ct. 834, 160 L.Ed.2d 842 (2005) (Souter J., dissenting). In State v. Storm, the Montana Supreme Court decried our country's "vicious" legacy of bloodhounds to track and terrorize fugitive slaves. 125 Mont. 346, 383-84, 238 P.2d 1161 (1951) ("The slaves were kept intimidated, and these dogs were doing their work effectively, regardless of their accuracy."). Montana held the

unreliability of dog-tracking evidence, due to the human trainer's influence over the animal – as well as the court's grave concerns over the brutality of the practice – makes such evidence inadmissible. 125 Mont. at 376.

b. The trial court admitted dog-tracking evidence, although it lacked the proper foundation for admissibility.

This case resembles Loucks, as the trial court admitted dog-tracking evidence without sufficient "corroborating evidence identifying the accused as the perpetrator of the crime." 98 Wn.2d at 567.

Like the defendant in Loucks, no DNA evidence tied Mr. Lederle to the crime scene – here, the stolen vehicle. As in Loucks, no party identified Mr. Lederle as the person driving or exiting the vehicle, or attempting to elude the police. RP 107 (Officer Curry could not see driver or identify him). No witness identified Mr. Lederle as the person walking in the neighborhood, either. RP 17 (Melinda Mason could not see the face of man near neighbor's garage or in woods). The record indicates that no "confirmatory" identification was conducted, once Mr. Lederle was arrested in the woods, in order to verify that he was the same individual that Officer Curry had seen exit the truck. Ms. Mason

testified that although she watched the man in her yard for five minutes, she, too, did not give an identification following Mr. Lederle's arrest. RP 18, 24.

As to the Loucks factors for admissibility of the dog-tracking evidence, the State failed to establish three of the five conditions for admissibility of Officer Nyhus's testimony concerning the tracking. First, as to both factors (2) and (3), the State failed to show the dog was adequately trained in tracking humans, or that "the dog has, in actual cases, been found by experience to be reliable in pursuing human track." Loucks, 98 Wn.2d at 566 (emphasis added).

Unlike in Loucks, or in other cases involving dog-tracking evidence, the canine officer here failed to provide substantive testimony about Hyde's specific training and experience. RP 66-68. Officer Nyhus, although an experienced officer with 16 years in the canine unit alone, conceded that Hyde was "a new dog to me; so I've had him for about a year." RP 66 (explaining he has worked with a total of three dogs over his 16-year career). At the time of the track which led police to Mr. Lederle, Officer Nyhus estimated that Hyde was only 20 months old. RP 85. Perhaps due to Hyde's inexperience,

Officer Nyhus neglected to share whether Hyde had a record for successful tracking of humans leading to arrests, convictions, or at all.

Second, the State did not establish Loucks factor (4): that "the dog was placed on track where circumstances indicated the guilty party to have been." Loucks, 98 Wn.2d at 566. Rather than starting the track at the stolen truck, as Officer Nyhus had intended, the officer testified that he suddenly decided to start the track at the location where the neighbor had seen a figure walking into the woods. RP 88. Therefore, Hyde was not placed on track to pursue the vehicle-thief's scent at all, as required by Loucks. Hyde, rather, was asked to pursue the scent of the person walking into the woods, who ultimately turned out to be Mr. Lederle.

This violates the "conditions precedent" established by Loucks, since if the track does not start at the crime scene (here, the stolen truck), the dog alerting to Mr. Lederle in the woods only connects him to the woods, not to the stolen truck. Loucks, 98 Wn.2d at 566 (dog-track evidence insufficient without other corroborating evidence of identification); Rex A. Stockham, Dennis L. Slavin, & William Kift, Specialized Use of Human Scent in Criminal Investigations, Federal Bureau of Investigation, Forensic Science Communications, Vol. 6, No.

3 (July 2004). As the FBI's own publication cautions: "Identifying someone's scent at a crime scene is not an indication of complicity. It simply establishes a direct or indirect relationship to the scene." Stockham, Slavin, & Kift, FBI, supra.

This Court has only found dog-tracking evidence to be sufficiently corroborated where a proper foundation is shown. See, e.g., State v. Salinas, 169 Wn. App. 210, 223, 279 P.3d 917 (2012). Salinas differed from the instant case in several respects. First, the State established Loucks factor (4) (dog placed to track where guilty party has been). In Salinas, Officer Nyhus, the same canine handler used in the instant case, began the track at the victim, rather than at another location, as occurred here. Salinas, 169 Wn. App. at 215.

Thus, the dog-tracking evidence was admissible in Salinas because, unlike here, the proper foundation for admission was met. 169 Wn. App. 223; Loucks, 98 Wn.2d at 566-68. In addition, as Loucks requires, there was corroborating evidence identifying Mr. Salinas as the perpetrator of the crime. 98 Wn.2d at 567. Mr. Salinas was specifically identified by DNA recovered from the victim and from other items found near the crime scene. Salinas, 169 Wn. App. 223. Therefore, because Salinas satisfied the Loucks factors regarding

admissibility of the dog-tracking evidence, as well as sufficient corroboration of the defendant's identity, it is distinguishable from Mr. Lederle's case.[3]

In sum, the State failed to prove that this specific dog, Hyde, was competent to perform this track, or that the guilty party had been at the location in the woods where Hyde was placed to track. Accordingly, Officer Nyhus's testimony about the dog's tracking effort lacked sufficient foundation to be admitted as evidence of guilt. Loucks, 98 Wn.2d at 566-68.

c. Because the dog-tracking evidence lacked the essential foundation for admissibility, Mr. Lederle was convicted based upon insufficient evidence; the remedy is reversal.

Unlike dog-tracking evidence properly admitted, the track in the instant case was admitted without the required "conditions precedent to admissibility." Loucks, 98 Wn.2d at 566 (citing Socolof, 28 Wn. App. at 411). Because the record fails to show the experience or the track record of the dog, as well as because the track was initiated at the

[3] In the instant case, although DNA samples were taken from the stolen truck, the record does not indicate any was a match for Mr. Lederle. In addition, although the State presented testimony concerning a bottle recovered from the ground, there was, likewise, no DNA connecting Mr. Lederle to the bottle. RP 117-18.

wrong location, the evidence lacked the essential foundation for admissibility.

Without the dog track, there was insufficient corroboration of identity. Id. The State may argue that following Mr. Lederle's arrest, Officer Nyhus brought Hyde over to the stolen truck and had the dog track from the truck to the location in the woods where they had started the original track, in order "to confirm that was the right suspect." RP 78. The officer explained how he had "applied Hyde at the driver's door," before having him track back to the location where Mr. Lederle had been apprehended in the woods. RP 79. This explanation, however, offers nothing to corroborate the identification of Mr. Lederle.

Whether or not Officer Nyhus brought the dog over to the stolen vehicle following Mr. Lederle's arrest and then had the dog pick up the scent of the driver, this was immaterial, as the dog was already covered with Mr. Lederle's DNA by then, having bitten Mr. Lederle repeatedly during the arrest. RP 75 ("It's *fass* is the command that's the German command for bite and hold ... In the right forearm is where he originally bit him.").

At trial, even Officer Nyhus admitted that the second "confirmatory" track was unlikely to lead to a different result from the original track, since the dogs are rewarded for tracking the same person. "They [the dogs] are more inclined to track the person they just tracked because they are basically rewarded for finding them." RP 93.[4]

Given the lack of corroboration or foundation for the dog-tracking evidence, as well as the failure of any witness to identify Mr. Lederle, this Court should conclude that there was insufficient evidence to convict Mr. Lederle of either charge.

A conviction may not be entered in the absence of proof beyond a reasonable doubt of every essential element of a crime charged. In re Winship, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970); State v. Cantu, 156 Wn.2d 819, 825, 132 P.3d 725 (2006). An accused person's fundamental right to due process is violated when a conviction is based upon insufficient evidence. Winship, 397 U.S. at 358; U.S. Const. amend. XIV; Const. art. I, § 3; City of Seattle v. Slack, 113 Wn.2d 850, 859, 784 P.2d 494 (1989). Evidence is sufficient to

[4] During their training, tracking dogs are rewarded with small pieces of hotdog placed in human footsteps every few feet within a trail. RP 90. More experienced police dogs are trained to bite and hold at the end of a track, and although a "bite" of the human target is not exactly a reward, it is considered a motivation for following a human scent. RP 91.

support a conviction only if, "after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Jackson v. Virginia, 443 U.S. 307, 318, 99 S.Ct. 628, 61 L.Ed.2d 560 (1970).

Because the dog-tracking evidence failed to meet the requirements set forth for admission in Loucks, and because the remaining evidence was insufficient to convict, this Court should reverse. 98 Wn.2d at 566-68.

E. CONCLUSION

This Court should reverse Mr. Lederle's convictions as the State failed to prove beyond a reasonable doubt every essential element of the charges.

DATED this 7th day of December, 2015.

Respectfully submitted:

s/Jan Trasen

JAN TRASEN (WSBA 41177)
Washington Appellate Project (91052)
Attorneys for Appellant

APPENDIX

COA # 73518-7

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SUPERIOR COURT OF WASHINGTON

COUNTY OF SKAGIT

STATE OF WASHINGTON, Plaintiff, v. JESSE DEAN LEDERLE, Defendant.	NO. 15-1-00194-8 FINDINGS OF FACT AND CONCLUSIONS OF LAW ON 3.5 HEARING AND TRIAL TO THE COURT

THE COURT having heard the testimony at the bench trial and having considered the evidence and arguments of counsel, makes and enters the following findings:

I. FINDINGS OF FACT

1. The Court has jurisdiction of the parties and the subject matter, since all events material herein occurred in Skagit County, State of Washington.

2. On February 23, 2015 in Skagit County, State of Washington a a Ford 150, 2015 Ford 4-wheeldrive crew cab pickup belonging to Draper Valley Farms was taken from its property on River Bend Road. The location is relatively close to the Walmart in Mount Vernon.

3. This vehicle was used by one of the managers at Draper Valley and was titled in the name of Draper Valley, and there was no evidence that anybody other than a Draper Valley employee had the right to use the vehicle.

4. When the vehicle was taken from the Draper Valley property it was driven into a fire hydrant and there was paint transfer, a blown tire that was eventually mutilated, and a dent in the vehicle.

ORIGINAL

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5. The vehicle was driven across a field and came back on to Stewart Road and proceeded eastbound on Stewart at a high rate of speed.

6. As the vehicle passed the area of a business called Docking Bay, it went by Officer Curry, who was having a conversation with someone in the parking lot. Officer Curry estimated the vehicle passed him at roughly 50 miles per hour.

7. Officer Curry got in his patrol car and lost sight of the vehicle but headed eastbound following on Stewart Road as it turns into Hoag Road.

8. Officer Curry was in a clearly marked patrol vehicle with both siren and overhead lights and Mount Vernon Police indicated on the side of the door.

9. Officer Curry was dressed as a police officer in a police officer's uniform.

10. Officer Curry saw the vehicle as he got to Hoag Road, past Riverside Drive, speeding up to 60 to 75 miles per hour.

11. Officer Curry saw the vehicle cresting the railroad track and could see it going up in elevation up Hoag Hill. The vehicle continued speeding up, and as soon as it crested the hill Officer Curry lost sight of it again.

12. As soon as Officer Curry got over the hill he saw the vehicle a significant distance ahead.

13. Officer Curry was increasingly catching up with the vehicle and saw the vehicle at around the 1500-block of Hoag and Officer Curry accelerated to 60 or 70 miles per hour.

14. Officer Curry closed the gap and as he got to 1700 block he activated his overhead lights. There was no evidence that the siren was used.

15. The vehicle was slowing down significantly and there was sparking from the rear of the vehicle.

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16. The vehicle did not stop on Hoag but almost immediately thereafter the vehicle turned right onto 20th Street and then left into Margaret Court.

17. Officer Curry followed the vehicle and had his overhead lights on for about two blocks. The engine of the vehicle was revving extremely loud, ~~like~~ to capacity, and the sparking was very significant. There were pieces of tire in the street. The brake lights were never seen activated.

18. After the vehicle turned left into the cul-de-sac of Margaret Place, Officer Curry stopped 50 feet or so behind the vehicle.

19. At that point the driver's side door opened and the driver exited, fleeing to the north.

20. Officer Curry identified the person who fled the vehicle as someone of medium height and medium build with a short-sleeved shirt. Officer Curry said that what he saw was bright white on a T-shirt.

21. Rather than pursue whomever it was who left the vehicle Officer Curry stayed there watching the vehicle, radioed all of the information, and called in a dog to track

22. Officer Green arrived on the scene within a couple of minutes, and he and Officer Curry cleared the vehicle finding no one else inside.

23. Officer Curry said nobody else had left the vehicle and, thus, the inescapable conclusion is that there was only one person in the vehicle who was the driver.

24. Officer Green noted the vehicle had had been left running in drive, ~~and~~ so he put it in park, turned the ignition off, and left the keys. Because there had been such extensive damage to it, it probably would have been unable to move.

25. The weather was a dark and cloudy night and officers and set up containment in various locations within the vicinity but to the north and east of Margaret

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Place.

26. Ms. Mason was having a cigarette out on her porch sometime between 10:30 and 11:00 p.m. when she saw a Caucasian man between 500 to 900 feet away with a blue shirt walking from the front of her house across her property.

27. Ms. Mason was unable to identify the man.

28. Roughly a half an hour after the stop, a Whatcom County tracking dog, Hyde, and his trainer, Deputy Jason Nyhus, arrived at Monica Drive where the person had been sighted by Ms. Mason.

29. Almost immediately Hyde picked up a human odor where the person had been walking. The area where he had been sighted was a well-manicured grass area and there were both footprints that could been seen in the grass and apparently a human odor that Hyde began to track.

30. There were not very many people out that night, so the scene had not been contaminated. Officer Nyhus was positive that they were on the proper track.

31. The dog followed a track to a heavily wooded area, and the dog found somebody there. Officers saw jeans and a warning was given, but the person did not come out.

32. The dog was eventually sent in to bite and did bit the person who was found.

33. The person located, was the defendant, Jesse Lederle.

34. Lederle was bitten on both the forearm and the buttocks.

35. Scratches on Lederle's body were consistent with where he was located, which was in a sunken area behind lots of thorny bushes.

36. Lederle did not come out, so officers had to go in and get him. He was asked for his name, which he did not answer.

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37. Lederle made a voluntary, unsolicited statement to the effect of: Why are you bothering me? I'm transient, and I'm sleeping in the woods.

38. Lederle was wearing a dark-colored t-shirt white large white letters. Lederle was taken out of the area and was taken to the hospital so he could be treated

39. To double check the track, Officer Nyhus and Hyde returned back to the location of the truck and Hyde picked up the odor and re-tracked and went precisely back to where the original track had started.

40. Therefore, there was a consistent track from the pickup truck all the way to where the defendant was discovered.

41. After there had been the flight from the vehicle, a call had been made to 911 from the phone number 360-322-2293. It was a hang-up call wherein there was a report that there had been shots fired at a location in Mount Vernon. Brennen Price, the dispatcher, called back. He did not receive an answer. A telephone was taken from the Lederle's person after arrest. The telephone number from which the 911 call was made is the same number as the telephone number of the phone that was taken from Lederle's person.

II. CONCLUSIONS OF LAW FOR 3.5 HEARING

NOW, THEREFORE, the Court concludes that based upon the testimony and evidence, the defendant, Jesse Lederle did make voluntary statements which were no in response to any questions or statements by law enforcement intended to cause an incriminating response. Thus, the defendant's statement "[w]hy are you bothering me? I'm transient, and I'm sleeping in the woods,' is admissible at trial.

III. CONCLUSIONS OF LAW FOR TRIAL

NOW, THEREFORE, the Court concludes that based upon the testimony and evidence, the defendant, Jesse Lederle, committed the following offenses in the following manner:

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1. Count 1: On February 23, 2015, in the County of Skagit, the defendant knowingly possessed a motor vehicle which he knew was stolen. The driver of that vehicle was the defendant. He knew it was stolen because he stole it from Draper Valley Farms. He withheld it from the use of the true owner because he used it himself and took it off of the Draper Valley site. And that these acts occurred in Skagit County in the State of Washington.

2. Count 2: On February 23, 2015, in the County of Skagit, the defendant did attempt to elude a pursuing police vehicle by willfully failing or refusing to stop his vehicle and did drive his vehicle in a reckless manner to elude a pursuing police vehicle after being a visual signal to stop by a uniformed officer vehicle was equipped with lights and sirens. The defendant drove a motor vehicle away from the scene of the theft pretty quickly because he was going 50 miles per hour in a very short period of time. The defendant went right by a clearly identifiable police vehicle with a policeman there in a lighted parking lot. The defendant did not slow down. If anything, he picked up speed to the extent that he could, driving eastbound on to Hoag Road, before he eventually stopped on Margaret Place. Officer Curry was the signaling police officer who was in uniform and his vehicle was equipped with lights and sirens. The defendant knew that there was a police officer behind him but was not initially necessarily sure he was being pursued, but he took off so that he would not be pursued or if he was pursued so he would not be caught. The defendant drove the vehicle recklessly from the time he passed that police vehicle. He was driving on one rim. At some point would able to hear that something is scraping the ground. He was driving a minimum of 50 miles per hour. The defendant was signaled to stop by a uniformed police officer by emergency lights, which came on before the defendant made his right turn. The defendant willfully failed or refused to immediately bring the vehicle to a stop after being signaled to stop. After being signaled he did not stop driving in a reckless manner because he continued his turn, revving up the engine to the top causing sparks to fly in an increased manner.

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When he made that right turn he did not slow down and continued to get to a spot where he could stop the car, and get out, and get away. It was pretty clear to him he was not going much further in that car. And so he brought it to a stop on Margaret just as the police officers were pulling up, gets out of that car and flees out of there as fast as he can, which makes it evident he knew he was being pursued and did not immediately stop.

IV. RULING

Therefore, the Court finds the defendant, Jesse Lederle, guilty of the crime of Possession of a Stolen Motor Vehicle as charged in count I and the Attempting to Elude a Pursuing Police Vehicle as charged in count II.

Dated this 21st day of May, 2015.

Judge John M. Meyer

Presented by:

Erik Pedersen, WSBA#20015
Senior Deputy Prosecutor

Approved as to Form
Notice of Presentment Waived
Robert Roth copy received

Robert Roth, WSBA# 31082
Attorney for Defendant

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,	)	
	)	
Respondent,	)	
	)	NO. 73518-7-I
v.	)	
	)	
JESSE LEDERLE,	)	
	)	
Appellant.	)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 7TH DAY OF DECEMBER, 2015, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X]	ERIK PEDERSEN, DPA SKAGIT COUNTY PROSECUTOR'S OFFICE COURTHOUSE ANNEX 605 S THIRD ST. MOUNT VERNON, WA 98273	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____
[X]	JESSE LEDERLE 853749 AIRWAY HEIGHTS CORRECTIONS CENTER PO BOX 2049 AIRWAY HEIGHTS, WA 99001	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____

SIGNED IN SEATTLE, WASHINGTON THIS 7TH DAY OF DECEMBER, 2015.

X_____

Washington Appellate Project
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Seattle, WA 98101
☎(206) 587-2711