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Court of Appeals
Division I
State of Washington

NO. 73518-7-I

IN THE COURT OF APPEALS – STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON
Respondent,

v.

JESSE DEAN LEDERLE,
Appellant.

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

The Honorable John M. Meyer, Judge

RESPONDENT'S BRIEF

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I. SUMMARY OF ARGUMENT

Jesse Lederle was convicted of Possession of a Stolen Motor Vehicle and Attempting to Elude a Pursuing Police Vehicle for stealing a truck from a business and fleeing from the traffic stop shredding the truck's tires. After he fled into the bushes, Lederle made a false report of gun shots and upon being discovered hiding claimed he was a transient sleeping in the woods.

For the first time on appeal, Lederle claims the dog track evidence lacked sufficient foundation for admission. Lederle failed to claim a lack of foundation for the dog track in the trial court. Sufficient evidence established the dog was trained to properly track and did so in this case. Finally, the clothing worn by Lederle, his attempts to deflect law enforcement by a false 911 call and his false claims upon arrest about just being a transient sleeping in the woods, was just part of the evidence corroborating the dog track.

For these reasons, Lederle's convictions must be affirmed.

II. ISSUES

1. Where a defendant fails to challenge the foundation of dog track evidence in the trial court, can the defendant raise the issue for the first time on appeal?
2. Where the dog was trained to track, had an experienced handler, the dog tracked the defendant, and where other evidence included the

defendant's clothing matching that observed by the officer, the defendant's false reporting of a shooting and false statements upon arrest, was there sufficient evidence to support the trial court's finding that the defendant was the person who eluded police in the stolen truck?

III. STATEMENT OF THE CASE

1. Statement of Procedural History

On February 26, 2015, Jesse Lederle was charged with Possession of Stolen Motor Vehicle, Attempting to Elude a Pursing Police Vehicle, False Reporting and Resisting Arrest, occurring February 23, 2015. CP 26-7.

An officer speaking to a citizen saw a vehicle traveling at a high rate of speed at night without lights with a flat rear tire. CP 2. The officer immediately pursued the vehicle traveling 50 to 60 miles per hour in a 25 mil- per-hour zone. CP 2. The officer activated his emergency lights and the vehicle continued, eventually stopping on a dead end street. CP 2. The driver fled on foot. CP 2. Officers set up containment and learned the vehicle had been stolen nearby that day. CP 2. Officers had a canine tracking dog assist. CP 2. While doing the track a call was placed saying there was a shooting in Mount Vernon. CP 2. The phone number returned to Jesse Lederle. CP 2. The canine tracked from where a witness observed the person to where

Lederle was located. CP 2. Lederle refused to come out of the bushes and resisted arrest. CP 2.

On April 15, 2015, Lederle pled guilty to the misdemeanor charges of False Reporting and Resisting Arrest out of the incident. CP 8, 36-45, 4/15/15 RP 2-6.¹ Lederle waived his right to a jury trial on the felony charges. CP 52, 4/15/14 RP 6-8.

On April 16, 2015, the trial was continued a week due to an officer conflict.

On May 4, 2015, the case proceeded to trial. 5/4/15 RP 10. The trial court found Lederle guilty of Possession of a Stolen Motor Vehicle and Attempting to Elude a Pursuing Police Vehicle. 5/4/15 RP 154.

On May 21, 2015, the trial court sentenced Lederle, based upon his offender score which was 19, for the Possession of a Stolen Motor Vehicle, and 15 on the Attempting to Elude a Pursuing Police Vehicle. CP 10. The trial court sentenced Lederle to 57 months on the Possession of a Stolen Motor Vehicle, 29 months on the Attempting to Elude, suspended sentences of 364 days on the False Reporting and 90 days on the Resisting Arrest,

¹ The State will refer to the verbatim report of proceedings by using the date followed by "RP" and the page number. The report of proceedings in this case are as follows:

4/15/15 RP	Misdemeanor Guilty Plea (in volume with 4/23/15, 5/21/15).
4/16/16 RP	Trial Continuance (in volume with 4/30/15, 5/4/15)
4/23/16 RP	Motion to Recalculate Dates (in volume with 4/15/15, 5/21/15)
4/30/15 RP	Trial Confirmation (in volume with 4/16/15, 5/4/2015)
5/4/15 RP	Trial (in volume with 4/16/15, 4/30/15)
5/21/15 RP	Sentencing (in volume with 4/15/15, 4/23/15).

suspending the sentences on the misdemeanor charges. CP 11, 5/21/15 RP 25.

On May 21, 2015, Lederle timely filed his notice of appeal. CP 29.

2. Summary of Trial Testimony

Officer Chester Curry of the Mount Vernon Police Department was outside talking to a citizen about a suspicious circumstance when he saw a white full-sized pickup truck drive by him at about 50 miles per hour with no headlights and a broken tire. 5/4/15 RP 97-100. Curry pursued the vehicle at 60 to 70 miles per hour to catch up. 5/4/15 RP 101-2. Curry was in uniform in a marked patrol vehicle with lights and siren. 5/4/15 RP 102-3. Curry got about two blocks behind the vehicle when he activated his lights. 5/4/15 RP 104. Curry could hear the engine revving loudly and sparks were coming off the damaged tire. 5/4/15 RP 104-5. The vehicle continued making a turn onto 20th street and accelerated hard, causing extreme sparking with metal and tire being thrown from the damaged tire. 5/4/15 RP 105. The vehicle continued spinning its tires trying to move, but the vehicle stopped moving. 5/4/15 RP 105-6. No brake lights were applied. 5/4/15 RP 105.

Once the vehicle stopped, Curry saw a white male, with a medium build exit the driver's side of the vehicle and flee north through a yard. 5/4/15 RP 106-7. Curry did not get a look at the face of the person, but saw the person was wearing something bright white on a short sleeved T-shirt.

5/4/15 RP 107, 121. Curry did not pursue the person and waited moments for a cover officer to clear the vehicle, finding no one else inside. 5/4/15 RP 107. The engine was still running so another officer reach inside and turned off the truck. 5/4/15 RP 108. Officers checked the immediate area. 5/4/15 RP 108-9. A full vodka bottle was located in the backyard of a house in the direction of where the person fled. 5/4/15 RP 117-8. The homeowner had seen the person who fled the truck in that area. 5/4/15 RP 118.

Containment of the area was set up and a canine was called in to track, arriving about 20 minutes later. 5/4/15 RP 107-8, 128-9. Curry went with the canine officer to a location where a person had been seen, and the dog track was started from there. 5/4/15 RP 109-11, 113. The dog tracked fast making Curry run to keep up. 5/4/15 RP 113. He followed the dog and handler into a green belt where Lederle was found at the base of a big tree. 5/4/15 RP 114. Curry could see a pair of legs sticking out. 5/4/15 RP 114. Curry got a view of Lederle and a bright white lettered T-shirt. 5/4/15 RP 115. Lederle was not compliant with commands and kept struggling. 5/4/15 RP 115. It was not until the canine officer said he was going to reapply the dog that Lederle began complying. 5/4/15 RP 124. Curry was able to holster his Taser and handcuff Lederle. 5/4/15 RP 124.

After Lederle was in custody, he asked Curry “Why are you bothering me? I’m transient and sleeping in the woods.” 5/4/15 RP 125. Lederle also asked why they couldn’t just leave him alone. 5/4/15 RP 125.

Upon arrest, a cell phone was located in Lederle’s pocket. 5/4/15 RP 119. The clothing worn by Lederle was collected and admitted into evidence at trial. 5/4/15 RP 120-3.

Melinda Mason was having a cigarette on her patio at about 10:30 or 11:00 p.m. in February 2015. 5/4/15 RP 16-7. It was dark out when she saw a number of law enforcement on a neighboring block and saw a white man come out from behind a neighbor’s building and head along a grassy area. 5/4/15 RP 17, 22-3. Thinking police were in the wrong area, she called 911 and an officer with a dog came and followed where the man had been. 5/4/15 RP 17-9. When Mason showed them where the man had gone through, “the dog was on the trail already.” 5/4/15 RP 22.

Sean O’Neil of Draper Valley Farms was a maintenance supervisor who got a call from Mount Vernon Police in February of 2015 about a stolen truck. 5/4/15 RP 25-6. O’Neil went on a street near a church on Hoag Road to retrieve the truck sitting in the middle of the road. 5/4/15 RP 27, 32. The truck had damage on the bed above the right rear wheel, a blown passenger rear tire and above the tail light. 5/4/15 RP 31.

O'Neil had last seen the 2015 Ford F-150 owned by Draper Valley Farms at the address of the business near the office. 5/4/15 RP 27, 30. The manager typically used the truck but was out of the area. 5/4/15 RP 28, 33. O'Neil followed tire tracks from where the vehicle was parked to where a fire hydrant was hit. 5/4/15 RP 30-1. O'Neil later saw tire tracks leading through a nearby field and back on to the road. 5/4/15 RP 31.

Officer Benjamin Green was a patrol officer working on February 23, 2015. 5/4/15 RP 46-7. He responded to the area of the truck and saw the truck running with a rear tire sitting on the rim. 5/4/15 RP 48. The truck was in a small cul-de-sac. 5/4/15 RP 48. The vehicle was still in drive and had gouged the road. 5/4/15 RP 51. Green put the vehicle in park and turned it off. 5/4/15 RP 51. Green and another officer checked the nearby area and called in a canine. 5/4/15 RP 52. The canine and officer arrived about a half-hour later. 5/4/15 RP 52. The area is not an area where people are commonly outside at night. 5/4/15 RP 53. Green later set up containment on Hoag Road east of the vehicle and later to the north. 5/4/15 RP 57-8.

Officer Jason Stofcho took Jesse Lederle to the hospital and then to jail. 5/4/15 RP 59-61. Lederle had scratches on his body from thorns, and claimed to have been bitten by the police canine. 5/4/15 RP 62. Stofcho collected Lederle's clothes. 5/4/15 RP 64.

Officer Jason Nyhus was the officer from Whatcom County Sheriff's Office called to assist. 5/4/15 RP 65, 69. Nyhus had worked for the Whatcom County Sheriff's Office for seventeen years and had been a canine officer for sixteen years. 5/4/15 RP 66. Nyhus had been trained with a certified trainer. 5/4/15 RP 67. With each dog, Nyhus had to go through 400 hours of training for 3 to 4 months before attempting to certify a dog and be able to deploy a dog. 5/4/15 RP 67. Nyhus's dog in the present track was his third dog and he had gone through the training with each dog. 5/4/15 RP 67. In sixteen years as a canine officer, Nyhus had thousands of opportunities to deploy a canine. 5/4/15 RP 67.

Nyhus had worked with the canine Hyde, tht dog he had at the time of the track, for a year. 5/4/15 RP 66, 85. Hyde is a generalist dog trained to track humans, do area tracking for humans, building searches, and criminal apprehension as well as searches for evidence. 5/4/15 RP 67. Nyhus had trained and used Hyde in tracking. 5/4/15 RP 68. Hyde had been trained for tracking and had done hundreds of tracks in the year he had been working. 5/4/15 RP 69, 86, 90.

Nyhus trained his dogs to track odors coming off people that are deposited on the ground. 5/4/15 RP 68. The dogs are trained to find the odor and stay with the specific odor until they find the origin, which is a person.

5/4/15 RP 68. Individuals who are fleeing are excited and pumping off more adrenaline and have an enhanced scent. 5/4/15 RP 94.

Nyhus took Hyde to a spot where a witness had seen a person running from the area a couple of blocks from the stolen vehicle. 5/4/15 RP 69. Nyhus decided to start at that location rather than at the vehicle to increase the chance of apprehending the person because that would avoid the need to track from the vehicle and the Mount Vernon Police had already set up a containment. 5/4/15 RP 70.

At the location, Hyde was put on a long line and was prepared to track. 5/4/15 RP 71. The dog knows they are going to track for humans, again through training and actual street application of repetition of the same thing. 5/4/15 RP 71. Nyhus put the dog on a nice maintained lawn which had not been contaminated since the suspect was seen and gave the cue to track. 5/4/15 RP 71. Hyde started showing indications of human odor on the ground exactly where there were footprints in the dew. 5/4/15 RP 72. Hyde began sniffing more intently showing he had a scent with a jerk of his head in the direction of the track. 5/4/15 RP 72. Hyde tracked in a northeast direction and Nyhus could see footprints in the grass. 5/4/15 RP 72. Hyde was tracking intently and began running on the track. 5/4/15 RP 72-3. Nyhus did not recall seeing anyone outside while doing the track. 5/4/15 RP 73. The

track led across street crossings and yards into a heavily wooded area which was a greenbelt. 5/4/15 RP 74.

Hyde found a person concealed in the greenbelt hiding between the roots of a tree partially concealed by blackberries. 5/4/15 RP 74. As Hyde got near, he gave indications the person was nearby and Nyhus gave canine announcements warning the person that a police dog was being deployed and he needed to come out or he would be bit. 5/4/15 RP 75. After three or four warnings, the person did not come out and Nyhus sent the dog in to bite. 5/4/15 RP 75. Hyde grabbed a hold of the person's forearms and he began failing his arms. 5/4/15 RP 75.

After a few seconds of struggle, the person kept asking why he was being attacked and claimed he was just sleeping there. 5/4/15 RP 76. The statements were not in response to questions. 5/4/15 RP 76. The person still did not come out and did not respond to commands, so another officer went in to get the person into handcuffs. 5/4/15 RP 76. The other officer struggled to get the handcuffs on, so Nyhus had the officer step out and deployed the dog to bite again. 5/4/15 RP 76. That resulted in compliance and officers were able to take the person, identified in court as the defendant, into custody. 5/4/15 RP 77-8.

Where the officers encountered Lederle, there were blackberries all around that officers had to climb over, jump through and push away to get to

the defendant. 5/4/15 RP 77. Nyhus did not see any other possessions in the area where the defendant was located. 5/4/15 RP 77.

After locating Lederle, Nyhus wanted to confirm that Lederle had been the driver, so he applied Hyde at the door of the stolen vehicle and directed Hyde to track which was a direction to search for human odor. 5/4/15 RP 78-9. Hyde started to track in the direction where an officer said the person ran. 5/4/15 RP 79. The dog tracked past where officers had recovered a bottle the driver dropped. 5/4/15 RP 79. The dog continued on the track ending up at Francis Lane where Nyhus had begun the original track with Hyde. 5/4/15 RP 79. Hyde wanted to continue on the track he had already been on, but Nyhus pulled him off the track. 5/4/15 RP 95.

Hyde only went on one track from the truck, indicating there was only one person in the truck. 5/4/15 RP 80. Nyhus had Hyde cast for odors near the truck trying to see if there were others who were in the truck. 5/4/15 RP 81. Hyde did not give an indication of other people leaving that area. 5/4/15 RP 81, 95.

Nyhus went to the hospital to look at the dog bites. 5/4/15 RP 81-2. The dog bites were very minor scratches and abrasions. 5/4/15 RP 82. Lederle also had a number of scratches or brush cuts from going through the blackberries. 5/4/15 RP 82.

On cross examination, Nyhus described the manner in which he trained the dog to track human scent using pieces of hot dogs. 5/4/15 RP 90.

Brennan Price was working at Skagit 911 on February 23, 2015, and was aware of the ongoing track of the person who had been pursued by police. 5/4/15 RP 36. While the track was ongoing, he received an emergency call from someone in Mount Vernon stating that shots were fired at a location in Mount Vernon. 5/4/15 RP 36-7. The call was brief for only about 3 seconds and the person hung up. 5/4/15 RP 37. Price tried to call the number, (360)322-2293. 5/4/15 RP 37-8. But the return call went right to voicemail. 5/4/15 RP 38.

Detective Jerrad Ely a trained digital forensic expert examined the phone that was recovered from Lederle upon arrest which was number (360)322-2293. 5/4/15 RP 39-40, 45. Ely downloaded call logs from the phone. 5/4/15 RP 42. There was no log of 911 calls on the phone because of a feature that allows calls to 911 regardless of whether the phone has service and allows a person to avoid revealing to someone who is a captor that 911 was called. 5/4/15 RP 42.

IV. ARGUMENT

1. **Failure to object to the dog track evidence below precludes review.**
 - i. **The defendant's failure to object to admission of the dog track evidence in the trial court precludes raising the issue on appeal.**

Lederle failed to object to the admission of the dog track evidence at the trial court. Despite failing to object below, Lederle argues that the trial court erred in admitting the dog tracking evidence arguing the State failed to lay the required foundation. But because Lederle did not make this foundational objection at trial, he did not preserve the claimed error.

Arguments not raised in the trial court will not be considered on appeal unless they concern a manifest error affecting a constitutional right. RAP 2.5(a)(3), *State v. Sengxay*, 80 Wn. App. 11, 15, 906 P.2d 368 (1995) (failure to timely object at trial waives appellate review of non-constitutional issues). Failure to lay an adequate foundation does not create manifest constitutional error. *State v. Newbern*, 95 Wn. App. 277, 288, 975 P.2d 1041, *rev. denied*, 138 Wn.2d 1018, 989 P.2d 1142 (1999). And the failure to specifically object to an inadequate foundation will not preserve the issue for appeal. *Newbern*, 95 Wn. App. at 288.

- ii. **The admission of the dog track evidence is not a manifest error affecting a constitutional right such that it would be permitted to be raised for the first time on appeal.**

Lederle fails to cite to RAP 2.5(a)(3) to support that he should be permitted to raise the challenge to the dog track evidence for the first time on appeal. This is likely because he would fail to meet the standard.

Bertrand does not show that the instructional error falls within the following RAP 2.5(a)(3) exception to the general error-preservation rule for appeals:

The appellate court may refuse to review any claim of error which was not raised in the trial court. However, a party may raise the following claimed errors for the first time in the appellate court: ... manifest error affecting a constitutional right.

As we recently held in *State v. Grimes*, for this RAP 2.5(a)(3) exception to apply, an appellant must show both that (1) the error implicates a specifically identified constitutional right, and (2) the error is “manifest” in that it had “practical and identifiable consequences” in the trial below. See *Grimes*, 165 Wn. App. at 185-87 (quoting *State v. O’Hara*, 167 Wn.2d 91, 98, 217 P.3d 756 (2009)).

State v. Bertrand, 165 Wn. App. 393, 400, 267 P.3d 511 (2011).

Lederle fails to establish how the foundational objection implicates a constitutional right. He also fails to establish that the claimed error was “manifest,” having practicable and identifiable consequences.

In the absence of establishing the ability to raise the claimed error for the first time on appeal, review of the issue must be denied.

There is also simply a matter of making the trial proceedings meaningful and respecting the trial court. If defense truly thinks the

foundation was not laid, an objection could and should have been made. That would permit the trial judge to rule on the objection and give the opposing side an opportunity to address the objection and remedy the situation. If the State had been unable to remedy the situation, the objection would have been sustained and the dog track evidence excluded, avoiding an appeal and the defendant's confinement. Raising the issue for the first time on appeal defeats the proper role of the trial process.

There is an instinct of fairness due both the trial judge or agency and a litigant's adversary, a sense that one's opponent should have a chance to defend, explain, or rebut some challenged ruling and that the trial judge should have a clear first chance to address the issue. Indeed, if appellate courts were to consider some unpreserved issues but not others, depending on gradations of sympathy, the result would be an extremely uneven playing field.

There is also the canny recognition that if late-blooming issues were allowed to be raised for the first time on appeal, this would be an incentive for game-playing by counsel, for acquiescing through silence when risky rulings are made, and, when they can no longer be corrected at the trial level, unveiling them as new weapons on appeal. Finally, there is an element of institutional self-preservation in closing the door to what could be a flood of open-ended appellate opportunities.

Frank M. Coffin, *On Appeal: Courts, Lawyering, and Judging* 84-85 (1994). In accord with Judge Coffin's sentiments, Washington has long recognized the fundamental fairness of requiring parties to preserve issues they wish to present to the appellate courts for review.

State v. Bertrand, 165 Wn. App. 393, 406-07, 267 P.3d 511 (2011) (Quinn-Brintnall, J. concurring).

2. Since the dog track was significant and not the only evidence relied on to establish the defendant was the person who fled, there was sufficient evidence to find the defendant guilty.

i. There was significant evidence supporting the tracking capability of the handler and dog.

Lederle claims the dog tracking evidence was inadmissible under *State v. Loucks*, 98 Wn.2d 563, 656 P.2d 480 (1983). That case addressed the issue of “whether dog tracking evidence standing alone is sufficient to support a conviction.” *Loucks*, 98 Wn.2d at 566. *Loucks* determined that while dog tracking evidence is admissible, it “must be supported by corroborating evidence.” *Loucks*, 98 Wn.2d at 566. *Loucks* acknowledged a division of authority regarding the admissibility of such evidence, but held that “dog tracking evidence should be admissible where a proper foundation is made showing the qualifications of dog and handler.” *Loucks*, 98 Wn.2d at 566.

In *Loucks* the court adopted five “conditions precedent to admissibility” as follows:

- (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.

Loucks, 98 Wn.2d at 566 (quotation marks and citation omitted).

Here no objection was made to Officer Nyhus's testimony describing his training and experience and that of the dog or of how his police dog was employed to track the sole individual in this case. The State contends that even absent an objection permitting the trial court to address the five factors under *Loucks*, there was sufficient evidence supporting each of the factors.

(1) The handler was qualified by training and experience to use the dog.

Deputy Nyhus had worked as a canine officer for sixteen years and had trained three different dogs. 5/4/15 RP 66-7. With each dog, Nyhus had gone over 400 hours of training before being certified to deploy. 5/4/15 RP 67. Nyhus had thousands of opportunities to deploy a canine over his sixteen years. 5/4/15 RP 67.

(2) The dog was adequately trained in tracking humans.

Hyde was trained as a generalist dog to track humans, do area tracking for humans, building searches, criminal apprehension and searches for evidence. 5/4/15 RP 67, 69. Nyhus had done the more than 400 hour training course with Hyde before he was certified to deploy. 5/4/15 RP 66-8. Nyhus described Hyde as trained to track odors coming off people. 5/4/15

RP 68. Nyhus even described the training process beginning by training Hyde with pieces of hot dogs on human footprints and by repetition by removing the number of hot dog pieces, training Hyde to follow the human scent. 5/4/15 RP 90.

(3) The dog has, in actual cases, been found by experience to be reliable in pursuing human track.

Nyhus testified that Hyde had conducted hundreds of tracks in the year he had been working. 5/4/15 RP 68. Nyhus testified that Hyde had been certified to be deployed. 5/4/15 RP 67. Although Nyhus did not specifically use the words that Hyde had “been found by experience to be reliable in pursuing human track,” the logical inferences from being “certified to deploy” and having “conducted hundreds of tracks” was that Hyde was reliable in tracking humans.

It should also be noted that Nyhus described specific actions that Hyde did demonstrating that Hyde was on the track in this case, such as making a jerk of his head in the direction of the track and intently tracking causing him to run. 5/4/15 RP 72-3.

(4) The dog was placed on track where circumstances indicated the guilty party to have been.

Lederle makes much of the fact that the track began at a point that the person observed a person heading away from the area the officers had been. In fact, the witness perceived that the person she saw was the one

fleeing from police, that is why she reported him. 5/4/15 RP 17-19, 22-3. When Officer Nyhus began the track from that location, he testified there were footprints in the dew in a lawn that was not contaminated. 5/4/15 RP 71-2.

And furthermore, after Hyde had located Lederle hiding in the bushes, Nyhus took Hyde back to the truck. At the truck, Hyde only gave indications of one person being in the truck and one track leading away. 5/4/15 RP 80-1. Hyde followed that track leading away to the location where Nyhus had begun the track where the reporting party saw the person. 5/4/15 RP 79, 95. Contrary to Lederle's assertions on appeal, this is more than a confirmation track, but instead a completion of the track from a location where the suspect was known to be.

(5) The trail had not become so stale or contaminated as to be beyond the dog's competency to follow.

The dog began tracking about 20 minutes after the man fled from the truck. 5/4/15 RP 107-8, 128-9. The dog was placed in an area where there were observed footprints on a well maintained lawn. 5/4/15 RP 69, 71-2. Hyde's actions showed he quickly showed indications of human odor and intently began to track. 5/4/15 RP 72. The intense tracking and running showed Hyde was on a strong track. 5/4/15 RP 72-3. And Nyhus did not see anyone outside in the area while doing the track. 5/4/15 RP 73.

Thus, even had the trial court been called on to rule upon the foundation of the dog track evidence under *Loucks*, there would have been sufficient evidence admitted before the trial court such that the ruling would not have been an abuse of the trial court's discretion.

ii. Other significant evidence corroborated the dog track.

The rule in Washington is that dog tracking evidence must be supported by corroborating evidence; standing alone it is insufficient for a criminal conviction. *State v. Loucks*, 98 Wn.2d 563, 656 P.2d 480 (1983).

State v. Wagner, 36 Wn. App. 286, 287, 673 P.2d 638 (1983).

Although the dog track evidence was significant in this case, it was not the only evidence before the trial court indicating that Lederle was the person who fled from officers. There was significant corroborating evidence.

Officer Curry saw a single individual male flee from the truck. 5/14/15 RP 106-7. The male's build matched that of Lederle. 5/14/15 RP 106-7. Curry saw the driver was wearing bright white on a short sleeved T-shirt. 5/14/15 RP 107, 121. Lederle, upon being located about a half hour later, was wearing a T-shirt that matched that description with white lettering on a dark T-shirt. 5/14/15 RP 115. Lederle was found in the direction the driver fled from the vehicle. 5/14/15 RP 79, 106-7. Containment had been set up in the area to locate anyone. 5/14/15 RP 70, 107-8, 128-9.

That evening at around 11:00 p.m. on February 23, 2015, officers did not see anyone in the area where they were conducting the search. 5/14/15 RP 16-7, 46-7, 73. A civilian perceived that the sole person she saw fleeing at that time was the person officers were looking for. 5/14/15 RP 17-9.

When Lederle was located at the end of the dog track, he was hiding at the root of a large tree in blackberry brambles. 5/14/15 RP 74, 114. Officers had to climb through the vines to get to Lederle causing them to be scratched as was Lederle. 5/14/15 RP 77, 82. Lederle claimed to be a transient sleeping in the woods, but he had no other possessions with him. 5/14/15 RP 125. He was wearing a short sleeved T-shirt at night in the woods. 5/14/15 RP 107, 115, 121.

This evidence supports that Lederle's assertions that he was a transient sleeping in the woods was demonstrably false.

Finally, the phone that Lederle had on his person was used to make a phone call to 911 reporting shots fired in the City of Mount Vernon at the time the canine was conducting the search for Lederle. 5/14/15 RP 119, 36-40, 45. The call to 911 was only 3 seconds and the person hung up. 5/14/15 RP 37. When the 911 operator tried to call back to the cell phone it went right to voicemail. 5/14/15 RP 37-8.

This evidence supports that Lederle made a false 911 report in order to try to draw law enforcement away from a search for him and also refutes that he was just a “transient sleeping in the woods.”


The conviction here was based upon more than dog tracking evidence alone.

V. CONCLUSION

For the foregoing reasons, Jesse Lederle’s convictions for of Possession of a Stolen Motor Vehicle and Attempting to Elude a Pursuing Police Vehicle must be affirmed.

DATED this 11th day of April, 2016.

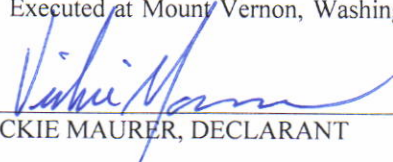
SKAGIT COUNTY PROSECUTING ATTORNEY

By: 
ERIK PEDERSEN, WSBA#20015
Deputy Prosecuting Attorney
Skagit County Prosecutor’s Office #91059

DECLARATION OF DELIVERY

I, Vickie Maurer, declare as follows:

I sent for delivery by; United States Postal Service; ABC Legal Messenger Service, a true and correct copy of the document to which this declaration is attached, to: Jan Trasen, addressed as Washington Appellate Project, 1511 Third Avenue, Seattle, WA 98101. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Executed at Mount Vernon, Washington this 11th day of April, 2016.


VICKIE MAURER, DECLARANT