Form 9. Petition for Review
[Rule 13.4(d)]

Supreme Court No. 97840-9

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

State of Washington
_____, Respondent

v.

Kevin A. Stanfield
_____, [Petitioner or Appellant]

PETITION FOR REVIEW

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I. IDENTITY OF PETITIONER

Kevin A. Stanfield asks this court to accept review of the Court of Appeals decision 10/22/2019 termination review designated in Part B of this petition. Case NO. 51724-8-II. Discretionary review by the Washington Supreme Court pursuant to RAP 13.4.

II. COURT OF APPEALS DECISION

All of the court of appeals decision. A copy of the decision is in the Appendix at pages A-_Page 1__ through _Page 11__. A copy of the order denying petitioner's motion for reconsideration is in the Appendix at pages A-1___ through 11___. Upholding the lower court's decision.

III. ISSUES PRESENTED

A. Whether this Court should grant review because the Court of Appeals' construction of RCW 9.94A.753 conflicts with this Court's statutory construction precedents and the intent of RCW 9.94A.753 did the court err? Can restitution be ordered on uncharged offenses? Did the state err in causal connection?

B. Whether this Court should grant review because the Court of Appeals' Does the State of Washington prosecuting attorney failure to provide all of the law as written including the defense part the of RCW 46.61.024(2)(b) to the Jury did the court err?

C. Whether this Court should grant review because the Court of Appeals' Can the court and Pierce county Sheriffs violate the 5th amendment rights of an uncoherent brain injured person who is in the hospital under a doctor's care? The records show the defendant was interrogated while in the hospital for 24 hours. Did the court err?

D. Whether this Court should grant review because the Court of Appeals' Does the State of Washington and Pierce County sheriffs err in violation the 4th amendment rights of the defendant and the people of the state? Does the actions violated his rights under article I, section 7 of the Washington Constitution. Did the court and state law err?

E. Whether this Court should grant review because the Court of Appeals' Does the State of Washington err in violation the 8th amendment rights of the defendant?

F. Whether this Court should grant review because the Court of Appeals' Does the state of Washington and Pierce county sheriffs err in violation the 2nd Amendment rights and Article I, section 24 of the state Constitution to bear arms in defense of self or others. Did the state err?

G. Whether this Court should grant review because the Court of Appeals'. Does RCW 46.61.024(1)(2) violate the 4th amendment and 8th amendments by giving unreasonably arbitrary powers to the state and police? Is the law unconstitutional?

H. Whether this Court should grant review because the Court of Appeals'. Can the Pierce County Sherriff attempt to kill the defendant in PIT maneuver? Did the officer violate Washington states pursuit policy? Is the state in err by allowing violations of the Bill of rights?

I. Whether this Court should grant review because the Court of Appeals'. Can the officer lie under oath and charge the defendant with assault of the officer, and the defendant be found not guilty of it, and the credulity of the office not be taken into account by the jury and the state? Rule ER 608(A)(1)(2)

J. Whether this Court should grant review because the Court of Appeals'. Can the Officer hit another car on unsafe weather and road condition and that evidence of the same colored car not be allowed into evidence?

K. Whether this Court should grant review because the Court of Appeals'. Can the state sell the pierce county police car that is evidence without the defendant being able to inspect it before trail then charge the defendant huge amounts of money for this evidence? Is the state in err?

L. Whether this Court should grant review because the Court of Appeals'. The evidence in the 911 calls there is no sirens heard giving raise that the defendant reasonable doubt he commit the crime. Did the court err?

M. Whether this Court should grant review because the Court of Appeals'. Does the defendant have a right of Defense against Unlawful Arrest? Did the state err? Does this right conflict with RCW 46.61.024(1) is the state in err?

IV. Statement of the Case

A. STATEMENT OF FACTS

March of 2016 A Pierce County Sheriff officer was responding to a 911 calls that was not a fight and no one was hurt, but there was an attempted to steal Stanfield's wallet.(court record) The officer testified he has Stanfield wallet, why has this evidence not been returned to Stanfield and why do the officer still have it? (Court record) The Sherriff chased after the victim of an assault Stanfield on to HWY 512 . No sirens are heard on the 911 calls and Stanfield disputed ever hearing siren. (Court record) While Stanfield was in a corner on ramp and trying to find a place to stop the officer did a PIT maneuver in heavy traffic and hazardous road conditions, with no place to go and trying to keep from hitting other cars. In other words the defendant had to react to the PIT. (Court record) Stanfield got into grass and was trying to stop but started to slide and hit a sign that he did not know as there. (Court record) The reason the officer Bett's gave for the PIT on the defendant was "because he did not want me to get on I-5". At one point officer Bett's is passing the defendant as reported in the accident report, and this mean Stanfield did not know the officer was after him. There is no warrant for the search and seizer of Stanfield's car or weapons, or business equipment, or is there a warrant for his arrest. Stanfield was badly injured and has a head injury among other serious injuries. The officer charged Stanfield with hitting the sheriff's car assault and was charged with assault of the clerks. Stanfield was found not guilty of all assault charges. There is no way Stanfield hit the police car as his car was already disabled and Stanfield does not remember hitting the sign was uncoherent. Stanfield disputes going the speed the officer contends there is no evidence to support the officer statement. While in the hospital the Sherriff department interrogated a brain injured person for 24 hours (court records) Stanfield was not free to leave as he was under arrest and had multiple serious injuries. Stanfield has no memory of any of these officers while in the hospital or after the car accident. Please refer to trail as all of this is in the court record. Stanfield has asked recently and repeatedly for these records and have not received them. While incoherent the sheriff wrote two tickets no proof of insurance and reckless driving, defendant has any memory of this. There is no proof the defendant was speeding or running away from police. Any statement made by the brain injured person while being interrogated in a hospital may not be used. This mean the 1st officer that stated I made statements is hearsay and the state is in err if it allows this statement into evidence. All can be verified by court records, the state is in err?

In addition it was found out that the sheriff hit another car that was the same color of the defendants. Issue of bad faith as this should have been brought up at trail. Was disputed by the defendant with the Insurance commissioner a record is available as they blamed the defendant when it was the sheriffs poor decision and gross Negligent. This car of the same color was mentioned in court trail, but not given as evidence. This would not have held up to the theory of the officer and assault of the officer.

B. SUMMARY OF ARGUMENT

Stanfield K was found guilty of attempting to elude police. The Trial court imposed $24,873.50 plus interest in restitution for damage caused as a result of law enforcement's decision to physically stop the vehicle Stanfield K was driving by ramming their patrol cars into him. Questions as to 4th amendment, 5th amendment, 8th amendment, excessive fines and fees, due process, Washington states constitution, article I, section 7 of the Washington Constitution., Article I, section 24 of the state Constitution to bear arms in defense of self or others. Is the state in error?

Because Stanfield act of eluding did not directly cause the property damage at issue, the trial court did not have authority to impose restitution and this Court should reverse. Due to qualified immunity, the exclusionary rule is often a defendant's only remedy when police officers conduct an unreasonable search or violate their Miranda rights.

C. ISSUE PERTAINING TO ASSIGNMENTS OF ERROR

A trial court's order of restitution is authorized by statute only if a causal connection exists between the crime and the loss at issue. Our Supreme Court recently held legal causation is different in criminal law than in tort law, and requires that the defendant directly caused the harm. Is the trial court's order of restitution invalid where law enforcement's decision to ram their patrol cars into Stanfield K vehicle, and not Stanfield's attempt at eluding, was the direct cause of the damage?Is the state in error?

V. ARGUMENTS

The trial court lacked the authority to impose restitution because Stanfield act of eluding did not cause the damage to the vehicles.

a. A restitution order is valid only if the costs imposed on the defendant are directly related to the charged crime.

The authority to impose restitution is not an inherent power of the court but is instead derived from statutes. *State v. Gray*, 174 Wn.2d 920, 924, 280 P.3d 1110 (2012). Pursuant to RCW 9.94A.753(3) "Except as provided in subsection (6) of this section, restitution ordered by a court pursuant to a criminal conviction shall be based on easily ascertainable damages for injury to or loss of property, actual expenses incurred for treatment for injury to persons, and lost wages resulting from injury. Restitution shall not include reimbursement for damages for mental anguish, pain and suffering, or other intangible losses, but may include the costs of counseling reasonably related to the offense. The amount of restitution shall not exceed double the amount of the offender's gain or the victim's loss from the commission of the crime." Thus, a court's order of restitution is authorized by statute only if a causal connection exists between the crime and the loss at issue. *State v. Hiett*, 154 Wn.2d 560, 565, 115 P.3d 274 (2005).

"[R]estitution may be ordered only for losses incurred as a result of the precise offense charged." *State v. Woods*, 90 Wn. App. 904, 907, 953 P.2d 834 (1998) (quoting *State v. Miszak*, 69 Wn. App. 426, 428, 848 P.2d 1329 (1993)). It cannot be imposed for the general scheme or acts connected to the charged crime. *Id.* When the costs imposed on the defendant are not directly related to the crime of conviction, this Court has repeatedly reversed. *State v. McCarthy*, 178 Wn. App. 290, 297, 313 P.3d 1247 (2013).

When a respondent challenges the legal basis for an award of restitution, this Court does not defer to the trial court. *Id.* at 296; *see also State v. Oakley*, 158 Wn. App. 544, 552, 242 P.3d 886 (2010) (issue is properly addressed *de novo*); *State v. Tobin*, 161 Wn.2d 517, 524, 166 P.3d 1167 (2007) (the application of an incorrect legal analysis constitutes an abuse of discretion).

A. This Court should find restitution is not appropriate where the act was not the direct cause of the police car grossly Negligent.

The trial court ordered Stanfield to pay $24,873.50 plus interest In restitution, relying in part on *Hiett* to find a sufficient causal connection existed between the crime charged and the property damage. However, although the court in *Hiett* found there was a sufficient causal connection under the facts of that case, the court did not determine whether principles of proximate clause apply in restitution cases. *See Hiett*, 154 Wn.2d at 566 (finding that a sufficient causal connection existed "[w]ithout deciding whether principles of proximate cause or the superseding cause apply in the criminal restitution context").

Proximate cause is more commonly addressed in tort actions, and "consists of cause in fact and legal causation." *Hertog, ex rel. S.A.H. v. City of Seattle*, 138 Wn.2d 265, 282, 979 P.2d 400 (1999). "Cause in fact concerns 'but for' causation, events the act produced in a direct unbroken sequence which would not have resulted had the act not occurred." *Id.*

In contrast, "[l]egal causation 'rests on considerations of policy and common sense as to how far the defendant's responsibility for the consequences of its actions should extend.'" *Id.* at 283 (quoting *Taggart v. State*, 118 Wn.2d 195, 226, 822 P.2d 243 (1992)).

Legal causation is intertwined with the question of duty, and this principle must be adjusted in the criminal context where the laws serve a different purpose. *See Hertog*, 138 Wn.2d at 284; *State v. Bauer*, 180 Wn.2d 929, 936, 329 P.3d 67 (2014). In *Bauer*, the court determined that "legal cause" in criminal cases is different from, and narrower than, "legal cause" in tort cases. *Id.* at 940. In criminal law, it is typically not sufficient to prove merely that the defendant occasioned the harm. *Id.* at 937. "He must have 'caused' it in the strict sense." *Id.* (internal citation omitted).

While *Bauer* did not involve an order of restitution, its holding suggests that restitution is not appropriate where the act was incapable of "causing injury *directly*." *Id.* at 939 (emphasis added). Thus, courts should use this standard when determining whether a causal connection exists between a juvenile's crime and any alleged loss of property.

B. Stanfield's alleged crime was not the direct cause of the damage to the vehicles.

Stanfield was initially charged with one count of attempting to elude a police vehicle and 3 counts of assault in the 1st degree and 2 count of assault in the 3rd degree. Stanfield did not agree to pay for restitution *see State v. Griffith*, 164 Wn.2d 960, 965, 195 P.3d 506 (2008) (the only exception to the causal requirement is where the defendant has expressly agreed to pay restitution for crimes for which he was not convicted). Or pay for evidence that the defendant was not allowed to inspect before trail.

The trial court imposed restitution for the damage to the police vehicles. That was sold at action without the defendant being able to inspect the car or get computer information from. Bad faith issue as this information would have proven Stanfield's did not hit the officer's car and what speed he was going. None of this damage was directly caused by Stanfield attempting to elude but by the officer's accident after Stanfield was already badly injured and car was disabled. The crime of attempting to elude is committed by:

> 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.

RCW 46.61.024(1).

The damage to the police vehicles the vehicle driven by Stanfield was not directly caused by Stanfield failure to stop for the police. Instead, this damage was the direct result of law enforcement's decision to pursue Stanfield when other motorists and pedestrians were present, and intentionally ram into the Stanfield was driving. The weather was wet and very dangerous. The officer hit another car after the PIT then said that the damage of the same colored car was from Stanfield's car, Stanfield was found not guilty of hitting the police car. Credibility issue as the witness has been impeached and bad faith issue.

RCW 46.61.024(2)(b)

> It is an affirmative defense to this section which must be established by a preponderance of the evidence that: (a) A reasonable person would not believe that the signal to stop was given by a police officer; and (b) driving after the signal to stop was reasonable under the circumstances.

Stanfield has rapidly denied he even know the officer was behind him until the PIT no sirens, and under the circumstances was not a safe place to stop, as it is unclear why the officer would be after the victim of a crime to begin with. But was the far right lane and coming into a corner the merging of HWY 512 and I-5, trying to find a place to stop until the officer purposely ran him off the road. RCW 46.61.024(2)(b) was not given in writing to the jury or court. A person must be able to find a safe place to stop before an officer tries to kill them. If the defendant is on I-5 Washington state patrol has jurisdiction not Pierce County Sheriff's. The reasoning this is a federal HWY.

In hit and run cases, this Court has found restitution may not be ordered for damage caused by the accident because the driver's fault in causing the accident is independent of the hit and run charge. Stanfield did not hit and run any cars, but brings this up as argument, *See, e.g., State v. Hartwell*, 38 Wn. App. 135,141, 684 P.2d 778 (1984) (overruled on other grounds).

Similarly, a driver's decision to elude police is independent of an officer's decision to cause damage by ramming into the vehicle. Officers are not required to physically stop vehicles that fail to obey a signal to stop. In fact, Pierce county sheriffs are instructed to exercise "[g]ood judgment and common sense" before pursuing a fleeing vehicle. (Washington state pursuit policy) They should initiate a pursuit only under certain conditions and should consider several factors when determining whether to engage a vehicle in pursuit, invoke certain tactics, or terminate a pursuit. (Washington state pursuit policy).These factors include the seriousness of the offense and the safety of the public, both of which weighed against engaging

Officer Bett's in a police chase. (Washington state pursuit policy).Law enforcement's decision to pursue Stanfield and repeatedly slam into the vehicle, at one point forcing it to other car in a heavily traffic area. Stanfield evaded the hitting the other cars after being forced by the PIT maneuver off the road.

Law enforcement's decision to pursue Stanfield and the accident of the police officer after he had passed and hit another car is the issue, is the direct cause of the loss of property at issue.

In addition Pierce County Sheriffs cars are insured and if any damage does happen to them the tort law would cover them for the officers accident rather caused by the defendant or not. As the Police car was inspected by the insurance company as stated in the Restitution paper work.

The alleged crime committed by Stanfield did not directly cause the loss and the trial court did not have the authority to impose restitution. *See Bauer*, 180 Wn.2d 939. This Court should reverse. It the court in err?

C. A causal connection is necessary for restitution to be ordered.

Restitution is allowed only for losses that are causally connected to a crime, and may not be imposed for a general scheme, acts connected with the crime charged, or uncharged crimes unless the defendant enters into an express agreement to pay restitution in the case of uncharged crimes. State v. Kinneman, 155 Wn.2d 272, 119 P.3d 350 (2005). Restitution statute requires sentencing court to find that a victim's injuries were causally connected to a defendant's crime before ordering a defendant to pay restitution for the expenses which resulted; a causal connection is not established simply because a victim or insurer submits proof of expenditures. State v. Dennis, 101 Wn. App. 223, 6 P.3d 1173 (2000). Assault victim's medical reports, merely stating the name of the service provider, the service date, date paid, billed amount, and amount paid, were insufficient to link the charged amounts to any particular symptoms or treatments, as was required to support restitution order. State v. Hahn, 100 Wn. App. 391, 996 P.2d 1125 review granted 141 Wn.2d 1025, 11 P.3d 825 (2000). A causal connection between the crime and the victim's claimed damages, as element for restitution, is not established simply because a victim or insurer submits proof of expenditures for replacing property stolen or damaged by the person convicted, because such expenditures may be for items of substantially greater or lesser value than the actual loss. Dedonado, 99 Wn. App. 251. Restitution cannot be imposed based on a defendant's general scheme or acts connected with the crime charged, when those acts are not part of the charge. State v. McCarthy, 178 Wn. App. 290, 313 P.3d 1247 (2013).

There was held to be an insufficient causal connection between a defendant's crimes, three second degree assaults and an attempted drive-by shooting, and the damages to a vehicle and garage door that defendant crashed into to support restitution order, where defendant inflicted the damages while he fled the scene of the assaults and attempted drive-by, crimes that he had committed in a different area of the neighborhood. State v. Oakley, 158 Wn. App. 544, 242 P.3d 886, review denied 171 Wn.2d 1021, 257 P.3d 663 (2010). A restitution order in a theft prosecution arising from defendant's embezzlement of funds from employer, a travel agency, properly included costs of overtime, bookkeeping, accounting, and private detective and attorney services incurred by employer to ascertain the extent of embezzlement; such costs were a reasonable consequence of the crime and thus met the causal connection requirement. State v. Wilson, 100 Wn.App. 44, 995 P.2d 1260 (2000). A restitution order imposed upon defendant convicted of possession of stolen property could include the value of coins which had been in display case which was found in defendant's possession, as it was reasonable to infer that defendant's possession of the stolen display cases resulted in loss of the coins. State v. Mead, 67 Wn. App. 486, 836 P.2d 257 (1992).

D. Can restitution be ordered on uncharged offenses?

The simple answer is no, unless there is another agreement or quid pro quo in place as part of the resolution of the case. A criminal defendant may not be required to pay restitution beyond the crime charged or for other uncharged offenses absent a guilty plea with an express agreement as part of that process to pay restitution for crimes for which the defendant was not convicted. State v. Dauenhauer, 103 Wn. App. 373, 12 P.3d 661, review denied 143 Wn.2d 1011, 21 P.3d 291 (2000). The exception to general rule prohibiting restitution for uncharged crime is where defendant pleads guilty to fewer or lesser crimes and agrees to pay restitution for uncharged crimes that prosecutor agrees not to pursue. State v. Fleming, 75 Wn. App. 270, 877 P.2d 243, petition dismissed 129 Wn.2d 529, 919 P.2d 66 (1994). Restitution may be ordered only for losses incurred as result of precise offense charged. Restitution cannot be imposed based on defendant's general scheme or acts connected with crime charged when those acts are not part of the charge State v. Fleming, 75 Wn. App. 270, 877 P.2d 243, petition dismissed 129 Wn.2d 529, 919 P.2d 66 (1994).

VI. The Due Process Clause of the United States Constitution obligates the prosecution to disclose and retain evidence. ARGUMENTS

The Due Process Clause of the United States Constitution obligates the prosecution to disclose and retain evidence. *Brady v. Maryland* (1963) 373 U.S. 83; *California v. Trombetta* (1984) 467 U.S. 479; and *Arizona v. Youngblood* (1988) 488 U.S. 51. This evidence includes exculpatory evidence, meaning evidence that would help the defendant exonerate himself of the charges or show defendant's reduced role in the crime. When the prosecution destroys or refuses to share such evidence, there is a due process violation regardless of the good faith or bad faith of the prosecution. Brady, supra, p. 87.

Such evidence must be disclosed if it is "material, that is, if there is a reasonable probability the evidence might have altered the outcome of the trial." *United States v. Bagley* (1985) 473 U.S. 667, 682. The prosecuting attorney refused to disclose Video evidence and evidence from the police car like computer readout. There is no speeding ticket or evidence the defendant was speeding just the testimony of the officer, even if the was speeding it does not warrant the use of force and seizure of the defendants Business car and home. The defense has impeached the officer and all testimony may not be used. The court should over turn this conviction. The state is in err.

The statement that the defendant "Got scared when the officer turned his lights on" The defendant made no such statement. If this is from the 1st officers testimony. The defendant was in the hospital with a brain injury at the time and was not free to leave as the police where there 24 hours interrogating him. Depending on the level of coercion used, a forced confession is not valid in revealing the truth. The person being interrogated may agree to the story presented to him or even make up falsehoods himself in order to satisfy the interrogator and discontinue his suffering. Any confession given while a person is under arrest or in custody of law enforcement will not be admissible in court. Nothing contained in this section will bar the admission in evidence of any confession given voluntarily by any person to any person without interrogation or at any time the confessor was not under arrest or detention. Under the Fifth Amendment, suspects cannot be forced to incriminate themselves. And the Fourteenth Amendment prohibits coercive questioning by police officers. So, confessions to crimes that are coerced, or involuntary, aren't admissible against defendants in criminal cases, even though they even though they may be true. The defendant does not remember saying this and is a falsehood. Developments in the Law--Confessions, 79 Harv. L. Rev. 935, 973-82 (1966).

A confession made after interrogation was not truly "voluntary" because all questioning is "inherently coercive," because it puts pressure upon a suspect to talk Thus, in evaluating a confession made after interrogation, the Court must, they insisted, determine whether the suspect was in possession of his own will and self-control and not look alone to the length or intensity of the interrogation. They accused the majority of "read[ing] an indiscriminating hostility to mere interrogation into the Constitution" and preparing to bar all confessions made after questioning. Id. at 156. A possible result of the dissent was the decision in Lyons v. Oklahoma, 322 U.S. 596 (1944), Ashcraft v. State of Tenn. 322 U.S. 143 (1944) Id. at 514. See also Spano v. New York, 360 U.S. 315 (1959), which stressed deference to state-court fact finding in assessing the voluntariness of confessions. The court ruling that the defendant was coherent is in contrast with federal case, as he has a brain injury and in the hospital and could not ask for an attorney to be present. A waver of rights must be voluntary. The state is in err?

VII. Rights under article I, section 7 of the Washington Constitution, and 4th amendment. Arguments

A police officer may not be the cause of an accident and then charge the defendant with reckless diving. that the use of such force in this context would violate defendant's constitutional right to be free from excessive force during a seizure; and that a reasonable jury could so find.

In determining a seizure's reasonableness, the Court balances the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests allegedly justifying the intrusion. United States v. Place, 462 U. S. 696, 703(1983). In weighing the high likelihood of serious injury or death to defendant that Stanfield's actions posed against the actual and imminent threat that respondent posed to the lives of others, there is no imminent threat posed by the defendant. The defendant has no warrants for his arrest, is not in a stolen car and has not used a weapon in anger in an unlawful way, and has no criminal history of assault. The defendant was not speeding; even if the defendant was speeding PIT maneuvers are not to be done over the speed of 35 MPH. Washington State has held that warrantless searches are unconstitutional.

While the defendant was uncoherent the officers got a warrant for Stanfield's blood, this warrant was found to have no probable cause and was dismissed. The search of and seizer of Stanfield's business car is unwarranted and unconstitutional. At trial the court concluded that the officers had conducted the searches and seizures in violation of the standards of the Washington Constitution as established in STATE v. RINGER, 100 Wn.2d 686, 674 P.2d 1240 (1983)

In Arizona v. Gant, 556 U.S. 332, 129 S.Ct. 1710, 173 L.Ed.2d 485 (2009), the United States Supreme Court held that a warrantless automobile search incident to arrest of a recent occupant of the vehicle is proper under the Fourth Amendment to the United States Constitution only (1) when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search or (2) when it is reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle. The first of these exceptions to the warrant requirement mirrors the vehicle search-incident-to-arrest exception under article I, section 7 of the Washington State Constitution. See State v. Patton, 167 Wash.2d 379, 219 P.3d 651 (2009); State v. Buelna Valdez, 167 Wash.2d 761, 224 P.3d 751 (2009) By using the PIT maneuver to search and seize Stanfield's car it is a direct violation of the 4th amendment. In contrast, under our Article 1, Section 7, the key question is whether or not a search is supported by "authority of law"—either a warrant, or a "narrowly applied" exception to the warrant requirement. Here, there is an historical exception to the warrant requirement, allowing searches incident to the arrest of a person.

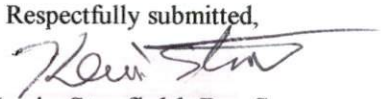
But the exception exists only for the narrow purposes of ensuring that an arrestee can't grab a weapon or destroy evidence. As the Court recognized, those purposes no longer exist once an arrestee is handcuffed and placed in a patrol car. The Court refused to bend the line: "The authority of law to search under article I, section 7 is not simply a matter of pragmatism and convenience." State v. Snapp/Wright 2012. The defense attorney made a motion on the 5th and 4th amendments saying this was a violation of these rights. If police stop a vehicle, then the vehicle's passengers as well as its driver are deemed to have been seized from the moment the car comes to a halt, and the passengers as well as the driver may challenge the constitutionality of the stop. Brendlin v. California, 551 U.S. 249, 263 (2007). By executing the PIT "because he did not want me to get on I-5". The officer has conducted an unlawful search and seizer of the car and defendants business. The defendant has a right to privacy and other qualified immunity's. Discretionary random stops of motorists to check driver's license and automobile registration constitute Fourth Amendment violation Delaware v. Prouse, 440 U.S. 648, 663 (1979) The state is in err?

VIII. Conclusion

The defense is seeking this case overturned as it violation of defense's rights and the rights of the people of the state. This case as presented in facts he has presented as in contrast with the courts and the courts are in err.
The defendant hopes the court will take into consideration all the question given and arguments as the state is in err.

12/06/2019

Respectfully submitted,



Kevin Stanfield, Pro Se

Filed
Washington State
Court of Appeals
Division Two

October 22, 2019

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. KEVIN ARTHUR STANFIELD, Appellant.	No. 51724-8-II UNPUBLISHED OPINION

MELNICK, P.J. — Kevin Stanfield appeals an order of restitution. The restitution resulted from Stanfield's attempting to elude a pursuing police vehicle conviction. At sentencing, the court ordered that he pay $24,873.50 in restitution for damage to a police vehicle.

Stanfield argues that an insufficient causal connection exists between his crime and the damage.

In a statement of additional grounds (SAG), Stanfield further asserts that he received ineffective assistance of counsel, that the deputy's actions during the police chase violated both department policy and his rights under the Fourth Amendment to the United States Constitution, that the State violated double jeopardy, and that the State violated his Fifth Amendment rights. Stanfield additionally asserts that the statute defining the crime attempting to elude a pursuing police vehicle is unconstitutionally vague.

We affirm.

FACTS

One evening, Deputy Nathan Betts pursued Stanfield following an alleged assault Stanfield committed at a gas station. Stanfield refused to stop in response to Betts's lights and sirens. At one point, Stanfield entered a highway and began speeding. He reached speeds between 90 and 100 miles per hour.

Stanfield attempted to enter an Interstate 5 (I-5) northbound onramp, but he spun out into a grass median. After coming to a stop in the median, Stanfield reentered the highway. Betts, who had been pursuing Stanfield, attempted an unsuccessful precision immobilization technique (PIT) maneuver.[1] Stanfield sped away.

Stanfield reached I-5 and drove in the far-right merge-only lane. Betts entered the lane just to the left of Stanfield. Betts eventually pulled nearly level with Stanfield such that his front bumper was near Stanfield's driver's side door. Stanfield then turned into Betts, causing both vehicles to crash.

Betts's vehicle slid across four lanes of traffic and crashed into the concrete center median. Stanfield's vehicle similarly went across the four lanes of traffic and crashed into the center median. However, Stanfield's vehicle went up and over the 4-foot center median, coming to a stop upside down in the I-5 southbound lanes. The police later took Stanfield to the hospital and interviewed him.

The State charged Stanfield with two counts of assault in the second degree, assault in the fourth degree, and attempting to elude a pursuing police vehicle. Stanfield pled not guilty to all charges, and the case proceeded to trial.

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[1] A PIT maneuver is an attempt to disable a vehicle by using the front end of one vehicle to hit the back of the other vehicle to spin it out and stop it.

The court held a pretrial hearing regarding the admissibility of statements Stanfield made to police officers when they interviewed him at the hospital. The State introduced evidence that Stanfield was transported to the hospital shortly after the accident. The police visited Stanfield at the hospital and read him his *Miranda*[2] rights. Stanfield said he understood his rights and agreed to speak. The police then asked Stanfield questions, and he appeared to understand their questions and gave appropriate responses.

Stanfield, on the other hand, presented evidence indicating that he was in poor mental condition when the police interviewed him. For instance, the police acknowledged that he had blood on his face during the interview, and they were also aware that Stanfield had suffered a small brain bleed. Stanfield stated that, as of trial, he had no recollection of the hospital interview.

The court found the statements admissible. It stated:

> [C]learly, the deputy advised [Stanfield] correctly of his rights and indicated that there was no threats, there were no promises, there was no coercion, asked if he wanted to answer questions and he responded yes. And I think he was coherent and seemed to understand what the questions were and what were appropriate in his responses.

2 Report of Proceedings (RP) (Feb. 21, 2018) at 160.[3]

[2] *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

[3] The record does not contain findings of fact and conclusions of law from the hearing.

The statements were later introduced at trial. At the hospital, Stanfield had told the police "he was trying to defend a homeless person [at the gas station,] and those f*****s called the police." 2 RP (Feb. 21, 2018) at 223. Stanfield also told the police "that when [Betts] got behind him and turned on his lights it scared him and he did something stupid." 2 RP (Feb. 21, 2018) at 223.

Stanfield testified that he saw Betts with his lights and sirens on behind him. Stanfield said that he was coming to a stop when Betts attempted the PIT maneuver on him, which scared him so he attempted to flee. Stanfield also testified that he did not see Betts to his left when he merged onto I-5 and crashed into him.

Stanfield did not object to the court's jury instructions. He did not propose an instruction for an affirmative defense[4] to the attempting to elude a pursuing police vehicle charge.

The jury found Stanfield guilty of attempting to elude a pursuing police vehicle but acquitted him of the three other charges.

At Stanfield's sentencing hearing, the State sought restitution in the amount of $24,873.50 for damage to the police vehicle. Stanfield objected. The trial court imposed the State's requested restitution. Stanfield appeals.

ANALYSIS

Stanfield argues that the trial court erred in imposing restitution because the damage to the police vehicle was not caused by his attempt to elude the police. We disagree.

We review a sentencing court's authority to order restitution de novo. *State v. Oakley*, 158 Wn. App. 544, 552, 242 P.3d 886 (2010). A trial court's authority to impose restitution is derived

[4] It is an affirmative defense to the crime of attempting to elude a pursuing police vehicle if "(a) A reasonable person would not believe that the signal to stop was given by a police officer; and (b) driving after the signal to stop was reasonable under the circumstances." RCW 46.61.024(2).

from statute. RCW 9.94A.753; *State v. Enstone*, 137 Wn.2d 675, 682, 974 P.2d 828 (1999). The statute only authorizes a court to impose restitution if a causal connection exists between the defendant's offense and the damage for which restitution is sought. *Enstone*, 137 Wn.2d at 682. Whether the loss is causally connected to the crime for which the defendant was convicted is a question of law which we review de novo. *State v. Acevedo*, 159 Wn. App. 221, 229-30, 248 P.3d 526 (2010).

A causal connection exists if "but for" the offense, the loss or damages to a victim's property would not have occurred. *State v. Tobin*, 161 Wn.2d 517, 524, 166 P.3d 1167 (2007).

Here, the jury found Stanfield guilty of attempting to elude a pursuing police vehicle. In his attempts to elude the police, Stanfield reached almost 100 miles per hour in his vehicle. At one point, the police tried to end the chase by performing a PIT maneuver on Stanfield's vehicle. The maneuver was unsuccessful, and Stanfield continued to flee. Eventually, Stanfield turned his car into Betts's, causing both vehicles to crash. Extensive damage resulted.

We conclude that a causal connection exists between Stanfield's crime and the damage to the police vehicle, and we affirm the order of restitution.

SAG

I. INEFFECTIVE ASSISTANCE OF COUNSEL

Stanfield appears to assert that he received ineffective assistance of counsel because his attorney failed to request the affirmative defense jury instruction to the crime of attempting to elude a pursuing police vehicle. We disagree.

The Sixth Amendment to the United States Constitution and article I, section 22 of the Washington State Constitution guarantee the right to effective assistance of counsel. *Strickland v.*

Washington, 466 U.S. 668, 685-86, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); *State v. Grier*, 171 Wn.2d 17, 32, 246 P.3d 1260 (2011).

We review claims of ineffective assistance of counsel de novo. *State v. Sutherby*, 165 Wn.2d 870, 883, 204 P.3d 916 (2009). To prevail on a claim of ineffective assistance of counsel, the defendant must show both that defense counsel's representation was deficient and that the deficient representation prejudiced the defendant. *Grier*, 171 Wn.2d at 32-33. "Where the claim of ineffective assistance is based upon counsel's failure to request a particular jury instruction, the defendant must show he was entitled to the instruction." *State v. Thompson*, 169 Wn. App. 436, 495, 290 P.3d 996 (2012).

A party is entitled to a jury instruction on a theory of the case when evidence exists in the record to support the party's theory. *State v. Hughes*, 106 Wn.2d 176, 191, 721 P.2d 902 (1986). The trial court views the evidence in the light most favorable to the party requesting the instruction. *State v. Fernandez–Medina*, 141 Wn.2d 448, 455-56, 6 P.3d 1150 (2000).

Here, in order for Stanfield to have been entitled to the instruction, the evidence at trial must have established that a reasonable person would not have believed that Betts was a police officer who signaled Stanfield to stop and that Stanfield's decision to continue driving after the signal was reasonable. RCW 46.61.024(2).

We conclude that the evidence, including Stanfield's testimony, does not support the giving of an instruction on this affirmative defense.

II. VIOLATION OF POLICE MODEL POLICY

Stanfield asserts that Betts violated Washington Association of Sheriffs & Police Chiefs (WASPC) model policy. We reject Stanfield's argument.

Pursuant to RCW 43.101.225, law enforcement officers must be trained on vehicular pursuits. A neighboring statutory provision requires that the law enforcement bodies of the State of Washington "develop a written model policy on vehicular pursuits." RCW 43.101.226(1). Pursuant to this legislative directive, WASPC developed the *WASPC Model Policy—Vehicle Pursuits*, https://www.waspc.org/assets/ProfessionalServices/modelpolicies/vehiclepursuit.pdf. The model policy establishes guidelines in the event of a motor vehicle pursuit and lists numerous factors an officer should consider when deciding to terminate a pursuit, including the seriousness of the offense and safety to the public.

Stanfield does not argue how any alleged violation of the model policy provides him relief. We reject his argument.

III. SEARCH AND SEIZURE

Stanfield asserts that Betts's PIT maneuver was an unlawful seizure under the Fourth Amendment to the United States Constitution.[5] We disagree.

"[A] Fourth Amendment seizure [occurs] . . . when there is a governmental termination of freedom of movement through means intentionally applied." *Brower v. County of Inyo*, 489 U.S. 593, 596-97, 109 S. Ct. 1378, 103 L. Ed. 2d 628 (1989) (emphasis omitted). However, the United States Constitution only prohibits unreasonable searches and seizures. U.S. CONST. amend. IV.

[5] Stanfield does not argue that Betts's actions violated his rights under article I, section 7 of the Washington Constitution.

"The analysis . . . focuses on whether the police have acted reasonably under the circumstances." *State v. Morse*, 156 Wn.2d 1, 9, 123 P.3d 832 (2005).

In *Scott v. Harris*, 550 U.S. 372, 375, 386, 127 S. Ct. 1769, 167 L. Ed. 2d 686 (2007), the Supreme Court concluded that an officer's crashing into the rear of the respondent's fleeing vehicle was reasonable under the circumstances and therefore did not violate the Fourth Amendment. In determining the reasonableness of the police officer's actions, the Court "consider[ed] the risk of bodily harm that [the officer's] actions posed to respondent in light of the threat to the public that [the officer] was trying to eliminate." *Scott*, 550 U.S. at 383. Because crashing into the rear of the respondent's vehicle was less dangerous than other potential methods and because of the sizeable threat the respondent posed to others, the court "ha[d] little difficulty in concluding it was reasonable for [the officer] to take the action that he did." *Scott*, 550 U.S. at 384.

We similarly conclude that Betts's PIT maneuver was reasonable under the circumstances. Due to the speed at which Stanfield fled from the police, along with other factors, he threatened the lives of others. Accordingly, we conclude that Betts's PIT maneuver did not violate Stanfield's rights under the Fourth Amendment.

Furthermore, the police did not obtain any evidence as a result of the allegedly unlawful PIT maneuver. Thus, even if we concluded that the PIT maneuver was unlawful, there is nothing to suppress. We conclude that Stanfield's argument on this issue fails. *Cf. State v. Scherf*, 192 Wn.2d 350, 371, 429 P.3d 776 (2018) (because there were no statements to suppress, the court concluded that "even if a [CrR 3.1] violation occurred, it was harmless").

IV. DOUBLE JEOPARDY

Stanfield asserts that the State violated his rights to be free from double jeopardy when it charged him with attempting to elude a pursuing police vehicle (RCW 46.61.024) and negligent driving in the second degree (RCW 46.61.525). We disagree.

The record does not indicate that the State charged Stanfield with negligent driving in the second degree. Because Stanfield's claim relies on factual allegations that are outside the record of this appeal, we have no ability to assess his arguments. Accordingly, we reject his claim and conclude that any remedy is only available through a personal restraint petition. *State v. Linville*, 191 Wn.2d 513, 525, 423 P.3d 842 (2018).

V. UNLAWFUL INTERROGATION

Stanfield asserts that the police officers' interrogation of him at the hospital after the accident violated his rights under the Fifth Amendment to the United States Constitution. We disagree.[6]

To be valid, a waiver of *Miranda* rights must be voluntarily, knowingly, and intelligently made. *Miranda v. Arizona*, 384 U.S. 436, 444, 479, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966). Whether there has been a valid waiver depends on the totality of the circumstances, including the background, experience, and conduct of defendant. *North Carolina v. Butler*, 441 U.S. 369, 374-75, 99 S. Ct. 1755, 60 L. Ed. 2d 286 (1979).

[6] Stanfield does not assign error to the fact that the court failed to enter findings of fact and conclusions of law after the CrR 3.5 hearing. The absence of written findings is harmless if a trial court's oral ruling is sufficient to permit appellate review. *State v. Weller*, 185 Wn. App. 913, 923, 344 P.3d 695 (2015). Here, the record is sufficient to permit review. Therefore, we conclude that the court's error was harmless.

We review a trial court's denial of a suppression motion in two stages. First, we review the trial court's findings of fact for substantial evidence. *State v. Broadaway*, 133 Wn.2d 118, 130, 942 P.2d 363 (1997). Substantial evidence supports a finding where there is a sufficient quantity of evidence to persuade a rational person of the truth of the finding. *State v. Hill*, 123 Wn.2d 641, 644, 870 P.2d 313 (1994). Unchallenged findings of fact are verities upon appeal. *Hill*, 123 Wn.2d at 644. Second, we determine whether the findings of fact support the trial court's conclusions of law, an issue we review de novo. *State v. Vickers*, 148 Wn.2d 91, 116, 59 P.3d 58 (2002).

It appears that Stanfield only challenges the court's finding that he was sufficiently coherent and the court's conclusion that he made a voluntary, knowing, and intelligent waiver. Therefore, the court's other findings are deemed verities.

We first conclude that substantial evidence supports the court's findings. We next conclude that the court's findings of fact support its conclusion that Stanfield made a voluntary, knowing, and intelligent waiver when he subsequently agreed to speak with the police. Accordingly, the trial court did not err in finding Stanfield's statements admissible.

VI. VAGUENESS

Stanfield asserts that the statute defining the crime of attempting to elude a pursuing police vehicle, RCW 46.61.024, is unconstitutionally vague because it uses the term "immediately." We disagree.

In *State v. Sherman*, 98 Wn.2d 53, 56-57, 653 P.2d 612 (1982), the court rejected the identical argument that Stanfield makes here. The court held that the term "immediately" in RCW 46.61.024 does not render the statute unconstitutionally vague. *Sherman*, 98 Wn.2d at 57; *see also*

State v. Mather, 28 Wn. App. 700, 702-03, 626 P.2d 44 (1981) (same). We similarly reject Stanfield's assertion.

We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Melnick, P.J.

We concur:

Glasgow, J.

Fearing, J.

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