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62521-7

JUL 06 2009

King County Prosecutor  
Appellate Unit

NO. 62521-7-1

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

FILED  
COURT OF APPEALS DIV. 1  
STATE OF WASHINGTON  
2009 JUL -27 PM 3:56

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STATE OF WASHINGTON,

Respondent,

v.

BRENDA STEWART,

Appellant.

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

The Honorable Monica Benton, Judge

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REPLY BRIEF OF APPELLANT

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JENNIFER J. SWEIGERT  
Attorney for Appellant

NIELSEN, BROMAN & KOCH, PLLC  
1908 East Madison  
Seattle, WA 98122  
(206) 623-2373

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A. ARGUMENT IN REPLY

STEWART’S AGREEMENT TO PAY RESTITUTION FOR  
“ANY UN-RECOVERED PROPERTY” DOES NOT INCLUDE  
UNCHARGED CRIMES.

The State argues that because there was no un-recovered property from the charged crime, Stewart’s agreement to pay restitution for “un-recovered property” necessarily indicates agreement to pay for un-recovered property from other uncharged incidents. This argument should be rejected. First, Stewart agreed to pay for “any un-recovered property” as opposed to simply “un-recovered property” or “the un-recovered property.” CP 28. This phrasing includes the possibility that there was no un-recovered property and does not necessarily imply agreement to pay for prior incidents.

The State’s argument would perhaps be stronger if the original information had charged these other incidents and if those charges were dismissed in return for the guilty plea and agreement to pay restitution. But that is not the case. Even the original information charged Stewart only with burglary on or about Jan. 1, 2008. CP 1. The plea agreement does not indicate an agreement to pay restitution for prior uncharged incidents. As noted in the opening brief, any ambiguity in the plea agreement must be strictly construed against the State as the drafter. State v. Bisson, 156 Wn.2d 507, 522, 130 P.3d 820 (2006). Even the restitution order itself

does not refer to other incidents, but states that the restitution is for  
“copper pipe and wire stolen 1/1/08.” CP 12.

Stewart agreed to pay restitution for any damage to the building from  
the burglary. There was none. She also agreed to pay restitution for un-  
recovered property from the burglary. Again, there was none. Therefore,  
the proper amount of restitution is zero.

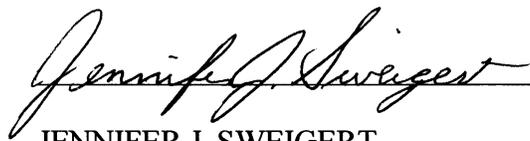
B. CONCLUSION

For the foregoing reasons and the reasons stated in the Brief of  
Appellant, Stewart requests this Court reverse the restitution order.

DATED this 7<sup>th</sup> day of July, 2009.

Respectfully submitted,

NIELSEN, BROMAN & KOCH, PLLC



JENNIFER J. SWEIGERT  
WSBA No. 38068  
Office ID No. 91051  
Attorney for Appellant

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION I**

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STATE OF WASHINGTON,	)	
	)	
Respondent,	)	
	)	
v.	)	COA NO. 62521-7-1
	)	
BRENDA STEWART,	)	
	)	
Appellant.	)	

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**DECLARATION OF SERVICE**

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 7<sup>TH</sup> DAY OF JULY, 2009, I CAUSED A TRUE AND CORRECT COPY OF THE **REPLY BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X]      BRENDA STEWART  
            23201 DOCKTON ROAD SW  
            VASHON ISLAND, WA 98070

**SIGNED** IN SEATTLE WASHINGTON, THIS 7<sup>TH</sup> DAY OF JULY, 2009.

x *Patrick Mayovsky*

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