

63339-2

63339-2

NO. 63339-2-I

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

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HONOLULU DIVISION #1

STATE OF WASHINGTON,

Respondent,

v.

PEDRO POLO,

Appellant.

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

The Honorable Ira J. Uhrig, Judge

BRIEF OF APPELLANT

JENNIFER M. WINKLER
Attorney for Appellant

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TABLE OF CONTENTS

	Page
A. <u>ASSIGNMENTS OF ERROR</u>	1
<u>Issues Pertaining to Assignments of Error</u>	1
B. <u>STATEMENT OF THE CASE</u>	2
C. <u>ARGUMENT</u>	4
1. BECAUSE THE INFORMATION OMITTED AN ESSENTIAL ELEMENT OF POSSESSION OF A STOLEN MOTOR VEHICLE, REVERSAL IS REQUIRED. ...	4
a. <u>Applicable Law</u>	4
b. <u>"Knowledge" is an Essential Element of the Charged Crime</u> .6	6
c. <u>The Charging Document Thus Failed to Notify Polo of An Essential Element</u>	7
2. BECAUSE THE TRIAL COURT FAILED TO ENTER WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW AS REQUIRED BY CrR 3.5, THIS COURT SHOULD REMAND FOR THE ENTRY OF FINDINGS AND CONCLUSIONS.	8
3. THE JUDGMENT AND SENTENCE SHOULD BE CORRECTED TO AMEND A SCRIVENER’S ERROR.....	9
D. <u>CONCLUSION</u>	11

TABLE OF AUTHORITIES

Page

WASHINGTON CASES

<u>State v. Bahl</u> 164 Wn.2d 739, 193 P.3d 678 (2008).....	10
<u>State v. Head</u> 136 Wn.2d 619, 964 P.2d 1187 (1998).....	8, 9
<u>State v. Campbell</u> 125 Wn.2d 797, 888 P.2d 1185 (1995).....	7
<u>State v. Cannon</u> 130 Wn.2d 313, 922 P.2d 1293 (1996).....	8
<u>State v. Couet</u> 71 Wn.2d 773, 430 P.2d 974 (1967).....	7
<u>State v. Gill</u> 103 Wn. App. 435, 13 P.3d 646 (2000).....	4
<u>State v. Hescoek</u> 98 Wn. App. 600, 989 P.2d 1251 (1999).....	9
<u>State v. Hopper</u> 118 Wn.2d 151, 822 P.2d 775 (1992).....	5
<u>State v. Johnson</u> 119 Wn.2d 143, 829 P.2d 1078 (1992).....	5
<u>State v. Kjorsvik</u> 117 Wn.2d 93, 812 P.2d 86 (1991).....	4, 5
<u>State v. Leach</u> 113 Wn.2d 679, 782 P.2d 552 (1989).....	5
<u>State v. Mallory</u> 69 Wn.2d 532, 419 P.2d 324 (1966).....	9

TABLE OF AUTHORITIES (CONT'D)

	Page
<u>State v. McCarty</u> 140 Wn.2d 420, 998 P.2d 296 (2000).....	5, 8
<u>State v. Moavenzadeh</u> 135 Wn.2d 359, 956 P.2d 1097 (1998).....	7
<u>State v. Moten</u> 95 Wn. App. 927, 976 P.2d 1286 (1999).....	10
<u>State v. Rhinehart</u> 92 Wn.2d 923, 602 P.2d 1188 (1979).....	6
<u>State v. Smith</u> 68 Wn. App. 201, 842 P.2d 494 (1992).....	8
<u>State v. Vangerpen</u> 125 Wn.2d 782, 888 P.2d 1177 (1995).....	5
 <u>FEDERAL CASES</u>	
<u>Miranda v. Arizona</u> 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).....	3
<u>United States v. Cina</u> 699 F.2d 853 (7th Cir.) <u>cert. denied</u> , 64 U.S. 991 (1983).....	5
 <u>RULES, STATUTES AND OTHER AUTHORITIES</u>	
CrR 3.5.....	2, 3, 8, 11
Former RCW 9A.56.150(1) (1995)	6
Laws of 2007 ch. 199, § 6.....	6
RCW 9A.56.068	2, 4, 6, 7

TABLE OF AUTHORITIES (CONT'D)

	Page
RCW 9A.56.140	6
RCW 46.20.285	2, 4, 9, 10
RCW 46.61.5055	10
U.S. Const. amend. VI	4
Const. art. I, § 22 (amend. 10)	4
<u>Washington Practice: Washington Pattern Jury Instructions: Criminal</u> <u>WPIC 77.20 (3rd ed. 2008)</u>	7
<u>Washington Practice: Washington Pattern Jury Instructions: Criminal</u> <u>WPIC 77.21 (3rd ed. 2008)</u>	7

A. ASSIGNMENTS OF ERROR

1. The information omitted an essential element of possession of a stolen motor vehicle.

2. The trial court violated CrR 3.5¹ by failing to file written findings of fact and conclusions of law following a hearing on the admissibility of appellant's statements to police officers.

3. The judgment and sentence contains a scrivener's error that should be corrected.

Issues Pertaining to Assignments of Error

1. In charging the appellant with possession of a stolen vehicle, did the State fail to include knowledge as an essential element of the crime?

¹ CrR 3.5 states:

(a) Requirement for and Time of Hearing. When a statement of the accused is to be offered in evidence, the judge at the time of the omnibus hearing shall hold or set the time for a hearing, if not previously held, for the purpose of determining whether the statement is admissible. . . .

. . . .

(c) Duty of Court To Make a Record. After the hearing, the court shall set forth in writing: (1) the undisputed facts; (2) the disputed facts; (3) conclusions as to the disputed facts; and (4) conclusion as to whether the statement is admissible and the reasons therefore.

2. CrR 3.5 requires entry of written findings of fact and conclusions of law following a hearing on the admissibility of statements of the accused. The trial court failed to enter written findings and conclusions after conducting such a hearing. Should this Court remand for entry of written findings and conclusions?

3. The court's judgment and sentence states count 3 "is a felony in the commission of which a motor vehicle was used" for purposes of driver's license revocation under RCW 46.20.285. Appellant's count 3 conviction, driving under the influence, was not a felony but instead a gross misdemeanor. Should the judgment and sentence be corrected?

B. STATEMENT OF THE CASE²

The Whatcom County prosecutor charged appellant Pedro Polo with possession of a stolen motor vehicle³ (count 1), "hit and run" (count 2), driving under the influence (DUI) (count 3), and driving without a valid driver's license (count 4). CP 44-46 (attached as Appendix A); see

² This brief refers to the verbatim report of proceedings as follows: 1RP – 3/31/09; 2RP – 4/1/09; and 3RP – 4/2/09 and 4/6/09.

³ The charging document alleges:

POSSESSION OF A STOLEN VEHICLE, COUNT 1

That on or about [1/24/09, Polo] . . . did possess a stolen motor vehicle in violation of RCW 9A.56.068; which violation is a Class B Felony.

CP 44.

also CP 50-52 (original information charging count 1 as first degree possession of stolen property). On the State's motion, the trial court dismissed counts 2 and 4. 1RP 9; 3RP 398-99; CP 4, 13.

Before trial, the court held a CrR 3.5 hearing on the admissibility of Polo's statements to police officers Boyd and Flynn. 1RP 15-60. The court ruled all Polo's statements to Sergeant Flynn were admissible. The court ruled all Polo's post-Miranda⁴ statements to Deputy Boyd were admissible, but not his pre-Miranda statements made after Boyd handcuffed him. 1RP 59-60. The court complained Boyd's testimony as to when the statements occurred was unclear and urged the State to "be sure [Boyd] is clear at her testimony as to which statements were made when." 1RP 60. The court entered no written findings or conclusions.

A jury convicted Polo of the two remaining counts. CP 23. The court sentenced Polo within the standard range and ordered the sentences on counts 1, a felony, and 3, a gross misdemeanor, to run concurrently. CP 3-20.

The judgment and sentence also states at section 5.7, "The court finds that **Count III** is a felony in the commission of which a motor

⁴ Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

vehicle was used.” CP 17 (attached as Appendix B). Section 5.7 also states:

The court clerk is directed to immediately mark the person’s Washington State Driver’s license or permit to drive, [in] any manner authorized by the department. The court clerk is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke the driver’s license. RCW 46.20.285.

CP 17.

C. ARGUMENT

1. BECAUSE THE INFORMATION OMITTED AN ESSENTIAL ELEMENT OF POSSESSION OF A STOLEN MOTOR VEHICLE, REVERSAL IS REQUIRED.

Even under a liberal reading, the charging document failed to notify Polo that in order to violate RCW 9A.56.068, he must have done so knowingly. This Court should reverse and dismiss the count 1 charge without prejudice.

a. Applicable Law

A charging document must include all essential elements of a crime. U.S. Const. amend. VI; Const. art. I, § 22 (amend. 10);⁵ State v. Kjorsvik, 117 Wn.2d 93, 108, 812 P.2d 86 (1991); State v. Gill, 103 Wn. App. 435, 441-42, 13 P.3d 646 (2000). An "essential element is one

⁵ U.S. Const. amend. VI provides, "In all criminal prosecutions, the accused shall . . . be informed of the nature and cause of the accusation" Const. art. I, § 22 provides, "In criminal prosecutions, the accused shall have the right to . . . demand the nature and cause of the accusation."

whose specification is necessary to establish the very illegality of the behavior[.]" State v. Johnson, 119 Wn.2d 143, 147, 829 P.2d 1078 (1992) (citing United States v. Cina, 699 F.2d 853, 859 (7th Cir.), cert. denied, 64 U.S. 991 (1983)). Essential elements may derive from statutes, common law, or the constitution. State v. McCarty, 140 Wn.2d 420, 425, 998 P.2d 296 (2000); State v. Leach, 113 Wn.2d 679, 689, 782 P.2d 552 (1989). Put another way, to satisfy the rule, a charging document must allege facts supporting every element of the offense and adequately identify the crime charged. Id.

Charging documents that fail to set forth the essential elements of a crime are constitutionally defective. State v. Hopper, 118 Wn.2d 151, 155, 822 P.2d 775 (1992). The remedy is reversal and dismissal without prejudice. State v. Vangerpen, 125 Wn.2d 782, 792-93, 888 P.2d 1177 (1995).

When a charging document is challenged for the first time on appeal, this Court reviews it under a more liberal standard. Kjorsvik, 117 Wn.2d at 105. Under this test, if the missing element cannot be fairly implied from the language in the information, the conviction will be reversed. Id. at 105-06.

b. “Knowledge” is an Essential Element of the Charged Crime.

Adopted in 2007, RCW 9A.56.068 provides, "A person is guilty of possession of a stolen vehicle if he or she [possesses] a stolen motor vehicle." RCW 9A.56.068.

Before 2007, the crime was charged as possession of stolen property. RCW 9A.56.140(1); former RCW 9A.56.150(1) (1995); Laws of 2007 ch. 199, § 6; State v. Rhinehart, 92 Wn.2d 923, 925, 602 P.2d 1188 (1979). Although unpublished cases assert that, as with possession of stolen property, knowledge is an element of the crime, no published case has explicitly set forth the new crime's essential elements.

Consistent with possession of stolen property, however, the pattern jury instruction lists the following elements:

- (1) That on or about _____, the defendant knowingly [received] [retained] [possessed] [concealed] [disposed of] a stolen motor vehicle;
- (2) That the defendant acted with knowledge that the motor vehicle had been stolen;
- (3) That the defendant withheld or appropriated the motor vehicle to the use of someone other than the true owner or person entitled thereto;
- (4) That any of these acts occurred in the State of Washington.

11A Washington Practice: Washington Pattern Jury Instructions: Criminal, 77.21 at 177-78 (3rd ed. 2008); 11A Wash. Prac. WPIC 77.20 at 176 (definitional instruction); CP 32-33 (jury instructions in this case).

“Knowledge” is therefore an essential element of possession of a stolen motor vehicle. See State v. Moavenzadeh, 135 Wn.2d 359, 362, 956 P.2d 1097 (1998) (knowledge is an element of possession of stolen property); see also State v. Couet, 71 Wn.2d 773, 775, 430 P.2d 974 (1967) (knowledge of wrongful taking of automobile is an essential element of the offense of riding in a motor vehicle knowing the same to have been taken without permission of owner or person entitled to possession thereof).

c. The Charging Document Thus Failed to Notify Polo of An Essential Element.

If an information “cannot be construed to give notice of or to contain in some manner the essential elements of a crime, the most liberal reading cannot cure it.” Moavenzadeh, 135 Wn.2d at 363, 956 P.2d 1097 (1998) (quoting State v. Campbell, 125 Wn.2d 797, 802, 888 P.2d 1185 (1995)).

Here, the State alleged only “[t]hat on or about [1/24/09, Polo] . . . did possess a stolen motor vehicle in violation of RCW 9A.56.068.” CP 44. Not even a liberal reading of the information reveals Polo had to act

with knowledge the motor vehicle was stolen. Such constitutionally inadequate notice requires reversal and dismissal without prejudice. McCarty, 140 Wn.2d at 425-26, 428.

2. BECAUSE THE TRIAL COURT FAILED TO ENTER WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW AS REQUIRED BY CrR 3.5, THIS COURT SHOULD REMAND FOR THE ENTRY OF FINDINGS AND CONCLUSIONS.

CrR 3.5(c) states that "[a]fter [a CrR 3.5] hearing, the court shall set forth in writing: (1) the undisputed facts; (2) the disputed facts; (3) conclusions as to the disputed facts; and (4) conclusion as to whether the statement is admissible and the reasons therefore." These findings and conclusions are mandatory and the failure to enter them is error. State v. Smith, 68 Wn. App. 201, 211, 842 P.2d 494 (1992).

The purpose of written findings and conclusions is to ensure efficient and accurate appellate review. State v. Cannon, 130 Wn.2d 313, 329, 922 P.2d 1293 (1996); see State v Head, 136 Wn.2d 619, 622, 964 P.2d 1187 (1998) ("A prosecuting attorney required to prepare findings and conclusions will necessarily need to focus attention on the evidence supporting each element of the charged crime, as will the trial court. That focus will simplify and expedite appellate review.").

The absence of written findings and conclusions in Polo's case prohibits effective appellate review. Even detailed oral findings, which

are lacking here, are not a suitable substitute for the written findings. “A court's oral opinion is not a finding of fact.” State v. Hescock, 98 Wn. App. 600, 605-06, 989 P.2d 1251 (1999). Rather, a trial court’s oral opinion is merely an expression of the court’s informal opinion when rendered. Head, 136 Wn.2d at 622. An oral opinion is not binding unless it is formally incorporated in the written findings, conclusions and judgment. Id. at 622 (citing State v. Mallory, 69 Wn.2d 532, 533, 419 P.2d 324 (1966)).

Remand for entry of written findings and conclusions is the appropriate remedy. Head, 136 Wn.2d at 624. Polo reserves the right to file a supplemental brief should the court’s written findings and conclusions reveal additional grounds for appeal.

3. THE JUDGMENT AND SENTENCE SHOULD BE CORRECTED TO AMEND A SCRIVENER’S ERROR.

Section 5.7 of the judgment and sentence contains a scrivener’s error requiring correction. The court found count 3 was a felony “in the commission of which a motor vehicle was used” for purposes of license revocation under RCW 46.20.285.⁶ CP 17.

⁶ A copy of RCW 46.20.285 is attached as Appendix C.

RCW 46.20.285 provides for a one-year driver's license revocation based on conviction for such a felony,⁷ other enumerated felonies, and other crimes. On the other hand, that statute provides for revocation for a DUI "for the period prescribed in RCW 46.61.5055." RCW 46.20.285(3).

Here, even assuming that count 1 was such a felony, count 3 is not a felony but a gross misdemeanor. RCW 46.61.502(1); CP 12, 44. Moreover, RCW 46.61.5055 controls as to count 3, and the proper period of license revocation would be 90 days. RCW 46.61.5055(9)(a)(i).

This Court should therefore remand to correct the judgment and sentence. See State v. Moten, 95 Wn. App. 927, 929, 935, 976 P.2d 1286 (1999) (remand appropriate to correct scrivener's error referring to wrong statute on judgment and sentence form); see also State v. Bahl, 164 Wn.2d 739, 744, 193 P.3d 678 (2008) (illegal or erroneous sentences may be challenged for the first time on appeal). Provided this court agrees reversal of count 1 is required, the court's section 5.7 finding should be stricken altogether and the appropriate action taken regarding any Abstract of Court Record that was sent to the Department of Licensing. CP 17.

⁷ RCW 46.20.285(4).

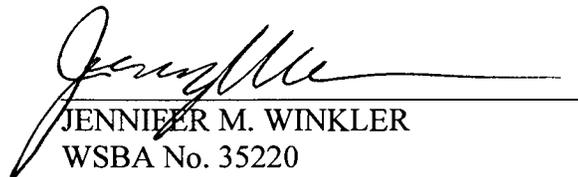
D. CONCLUSION

Because the State failed to list all essential elements of the crime of possession of a stolen motor vehicle, this Court should reverse and dismiss the count 1 charge without prejudice. Moreover, this Court should remand for entry of proper findings of fact and conclusions of law as required by CrR 3.5. Mr. Polo reserves the right to file a supplemental brief should the written findings reveal additional grounds for appeal. Finally, this Court should remand for correction of the scrivener's error.

DATED this 2nd day of October, 2009.

Respectfully submitted,

NIELSEN, BROMAN & KOCH, PLLC


JENNIE M. WINKLER
WSBA No. 35220
Office ID No. 91051
Attorneys for Appellant

APPENDIX A

FILED
COUNTY CLERK

SCANNED 3

2009 MAR 30 AM 10:46

WHATCOM COUNTY
WASHINGTON

BY _____

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR WHATCOM COUNTY

<p>THE STATE OF WASHINGTON,</p> <p style="text-align: center;">Plaintiff.</p> <p style="text-align: center;">vs.</p> <p>PEDRO ENRIQUE POLO,</p> <p style="text-align: center;">Defendant.</p>	<p>)</p>	<p>No.: 09-1-00121-1</p> <p>1st AMENDED (as to Count I only)</p> <p>INFORMATION FOR:</p> <p>POSSESSION OF A STOLEN VEHICLE, COUNT I, HIT AND RUN, COUNT II, DRIVING UNDER THE INFLUENCE, COUNT III and NO VALID DRIVER'S LICENSE, COUNT IV</p>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

ORIGINAL

I, ERIC J. RICHEY, Deputy Prosecuting Attorney in and for Whatcom County, State of Washington, comes now in the name and by the authority of the State of Washington and by this information do accuse **PEDRO ENRIQUE POLO** with the crimes of POSSESSION OF A STOLEN VEHICLE, COUNT I, HIT AND RUN, COUNT II, DRIVING UNDER THE INFLUENCE, COUNT III and NO VALID DRIVER'S LICENSE, COUNT IV, committed as follows:

then and there being in Whatcom County, Washington,

POSSESSION OF A STOLEN VEHICLE, COUNT I

That on or about the 24th day of January, 2009, the said defendant, PEDRO ENRIQUE POLO, then and there being in said county and state, did possess a stolen motor vehicle in violation of RCW 9A.56.068; which violation is a Class B Felony;

HIT AND RUN, COUNT II

That on or about the 24th day of January, 2009, the said defendant, PEDRO ENRIQUE POLO, then and there being in said county and state, did drive a vehicle which was involved in an accident resulting in damage to property fixed or placed upon or adjacent to a public highway, and knowing that he/she had been involved in such accident, the Defendant did fail to take reasonable steps to locate and notify the owner or person in charge of such property of such fact and of the name and address of the operator and owner of the vehicle striking such property, or

WA

1 fail to leave in a conspicuous place upon the property struck a written notice, giving the name
and address of the operator and of the owner of the vehicle so striking the property, or fail to
3 make report of such accident as in the case of other accidents upon public highways of this state;
in violation of RCW 46.52.010, which violation is a Misdemeanor;

5
DRIVING UNDER THE INFLUENCE, COUNT III

7 That on or about the 24th day of January, 2009, the said defendant, PEDRO ENRIQUE POLO,
then and there being in said county and state, did drive a vehicle (a) and had, within two hours
9 after driving, an alcohol concentration of 0.08 or higher as shown by analysis of the person's
breath or blood, and/or (b) while under the influence of or affected by intoxicating liquor or any
11 drug; and/or (c) while under the combined influence of or affected by intoxicating liquor and any
drug; in violation of RCW 46.61.502(1), which violation is a Gross Misdemeanor;

13
NO VALID DRIVER'S LICENSE, COUNT IV

15 That on or about the 24th day of January, 2009, the said defendant, PEDRO ENRIQUE POLO,
then and there being in said county and state, did drive a motor vehicle upon a highway in this
17 state without a valid driver's license and without an expired driver's license or other valid
identifying documentation in his or her possession; in violation of RCW 46.20.005, which
19 violation is a Gross Misdemeanor;

21
23 contrary to the form of the Statute in such cases made and provided and against the peace and
dignity of the State of Washington.

25
27
29 DATED THIS 30th day of March, 2009.

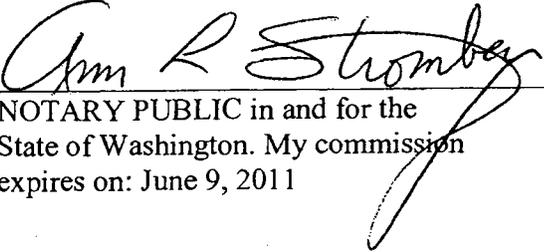
31
33
35 ERIC J. RICHEY, WSBA #22860, Deputy Prosecuting Attorney
in and for Whatcom County, State of Washington

1 STATE OF WASHINGTON)
3) ss.
5 COUNTY OF WHATCOM)

7 I, Eric J. Richey, being first duly sworn on oath, depose and say: that I am a duly
9 appointed and acting Deputy Prosecuting Attorney in and for Whatcom County, State of
11 Washington. I have read the foregoing information; know the contents thereof and the same is
13 true as I verily believe.

11 
13 _____
ERIC J. RICHEY, #22860
Deputy Prosecuting Attorney

15 SUBSCRIBED AND SWORN to before me this 30th day of March, 2009.

17 
19 _____
21 NOTARY PUBLIC in and for the
23 State of Washington. My commission
25 expires on: June 9, 2011

APPENDIX B

otherwise stated. The maximum length of community supervision or community custody pending at any given time shall not exceed 24 months, unless an exceptional sentence is imposed. RCW 9.94A.589

The conditions of community supervision or community custody shall begin immediately unless otherwise set forth here: _____

- 4.7 **OFF LIMITS ORDER** (known drug trafficker) RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the County Jail or Department of Corrections:

V. NOTICES AND SIGNATURES

- 5.1 **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this judgment and sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090
- 5.2 **LENGTH OF SUPERVISION.** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to ten years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional ten years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purposes of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505(5)
- 5.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606
- 5.4 **RESTITUTION HEARING.**
 Defendant waives any right to be present at any restitution hearing (sign initials): _____
 Defendant refuses to waive any right to be present at any restitution hearing.
- 5.5 **COMMUNITY CUSTODY VIOLATION.**
(a) If you are subject to a first or second violation hearing and DOC finds that you committed the violation, you may receive as a sanction up to 60 days of confinement per violation. RCW 9.94A.634.
(b) If you have not completed your maximum term of total confinement and you are subject to a third violation hearing and DOC finds that you committed the violation, DOC may return you to a state correctional facility to serve up to the remaining portion of your sentence. RCW 9.94A.737(2).
- 5.6 **FIREARMS.** You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification, to the Department of Licensing along with the date of conviction or commitment). RCW 9.41.040, 9.41.047
- 5.7 The court finds that **Count III** is a felony in the commission of which a motor vehicle was used. The court clerk is directed to immediately mark the person's Washington State Driver's license or permit to drive, it any in a manner authorized by the department. The court clerk is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke the defendant's driver's license. RCW 46.20.285.
- 5.8 If the defendant is or becomes subject to court-ordered mental health or chemical dependency treatment the defendant must notify DOC and the defendant's treatment information must be shared with DOC for the duration of the defendant's incarceration and supervision. RCW 9.94A.562.

APPENDIX C

Westlaw

West's RCWA 46.20.285

Page 1

C

West's Revised Code of Washington Annotated Currentness

Title 46. Motor Vehicles (Refs & Annos)

▣ Chapter 46.20. Drivers' Licenses--Identicards (Refs & Annos)

▣ Restricting the Driving Privilege

→ **46.20.285. Offenses requiring revocation**

The department shall revoke the license of any driver for the period of one calendar year unless otherwise provided in this section, upon receiving a record of the driver's conviction of any of the following offenses, when the conviction has become final:

- (1) For vehicular homicide the period of revocation shall be two years. The revocation period shall be tolled during any period of total confinement for the offense;
- (2) Vehicular assault. The revocation period shall be tolled during any period of total confinement for the offense;
- (3) Driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug, or under the influence of any other drug to a degree which renders the driver incapable of safely driving a motor vehicle, for the period prescribed in RCW 46.61.5055;
- (4) Any felony in the commission of which a motor vehicle is used;
- (5) Failure to stop and give information or render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another or resulting in damage to a vehicle that is driven or attended by another;
- (6) Perjury or the making of a false affidavit or statement under oath to the department under Title 46 RCW or under any other law relating to the ownership or operation of motor vehicles;
- (7) Reckless driving upon a showing by the department's records that the conviction is the third such conviction for the driver within a period of two years.

CREDIT(S)

[2005 c 288 § 4, eff. July 1, 2005; 2001 c 64 § 6. Prior: 1998 c 207 § 4; 1998 c 41 § 3; 1996 c 199 § 5; 1990 c 250 § 43; 1985 c 407 § 2; 1984 c 258 § 324; 1983 c 165 § 16; 1983 c 165 § 15; 1965 ex.s. c 121 § 24.]

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

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	
vs.)	COA NO. 63339-2-1
)	
PEDRO POLO,)	
)	
Appellant.)	

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 2ND DAY OF OCTOBER, 2009, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

FILED
COURT OF APPEALS DIV. #1
STATE OF WASHINGTON
2009 OCT 2 2 PM 4:11

- [X] WHATCOM COUNTY PROSECUTOR'S OFFICE
 WHATCOM COUNTY COURTHOUSE
 311 GRAND AVENUE
 BELLINGHAM, WA 98227

- [X] PEDRO POLO
 DOC NO. 777665
 AIRWAY HEIGHTS CORRECTIONS CENTER
 P.O. BOX 1899
 AIRWAY HEIGHTS, WA 99001

SIGNED IN SEATTLE WASHINGTON, THIS 2ND DAY OF OCTOBER, 2009.

x *Patrick Mayovsky*