

FILED
DEC 03, 2012
Court of Appeals
Division III
State of Washington

30786-7-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

DAVID M. LUST, APPELLANT

APPEAL FROM THE SUPERIOR COURT

OF FERRY COUNTY

APPELLANT'S REPLY BRIEF

Janet G. Gemberling
Attorney for Appellant

JANET GEMBERLING, P.S.
PO Box 9166
Spokane, WA 99209
(509) 838-8585

INDEX

A.	ARGUMENT	1
B.	CONCLUSION.....	1

TABLE OF AUTHORITIES

OTHER CASES

SENELUS V. STATE, 994 So.2d 493 (Fla.Dist.Ct.App.2008) 1

A. ARGUMENT

Respondent contends that prosecution for theft of a purse does not bar prosecution for theft of its contents as a separate crime:

Thus, there is no cited case holding conviction for theft of a motor vehicle as a bar to prosecution for theft of the firearm found inside the vehicle. Nor is there a case holding conviction for possession of a stolen motor home as barring prosecution for theft of the stolen items inside the motor home. Where the unit of prosecution is different, the crimes are not the same.

Resp. Br. at 5.

Indeed there does not appear to have been a Washington case in which an individual has been charged with the theft of both a container and its contents as two or more separate crimes. This may be because, for whatever reason, such prosecutions are rare. The Florida courts, in which the issue has been considered, conclude that the offenses merge. *See Senelus v. State*, 994 So.2d 493, 494 (Fla. Dist. Ct. App. 2008) (theft of the contents of a vehicle or purse merges with theft of the vehicle or purse).

B. CONCLUSION

Having secured Mr. Lust's conviction for stealing a purse, the State violated his constitutional right to be free from multiple prosecutions

for the same offense when it sought and obtained subsequent convictions
for stealing the contents of the purse.

Dated this 14th day of November, 2012.

JANET GEMBERLING, P.S.



Janet G. Gemberling #13489
Attorney for Appellant

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON,

DIVISION III

STATE OF WASHINGTON,)	
)	
Respondent,)	No. 30786-7-III
)	
vs.)	CERTIFICATE
)	OF MAILING
DAVID M. LUST,)	
)	
Appellant.)	

I certify under penalty of perjury under the laws of the State of Washington that on December 3, 2012, I served a copy of the Appellant's Reply Brief in this matter by email on the following party, receipt confirmed, pursuant to the parties' agreement:

L. Michael Golden
cnelson@wapa-sep.wa.gov

I certify under penalty of perjury under the laws of the State of Washington that on December 3, 2012, I mailed a copy of the Appellant's Brief in this matter to:

David M. Lust
PO Box 846
Republic WA 99166

Signed at Spokane, Washington on December 3, 2012.


Janet G. Gemberling
Attorney at Law