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King County Prosecutor
Appellate Unit

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NO. 57407-8-I

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

STATE OF WASHINGTON,

Respondent,

v.

L.U.,

Appellant.

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

The Honorable James Noe, Judge
The Honorable Philip Hubbard, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The trial court erred in admitting appellant's coerced and involuntary confession.

2. The trial court erred in finding that appellant's confession was knowingly, intelligently, and voluntarily made. CP 56.

3. Appellant's convictions for taking a motor vehicle without permission (TMWOP) and vehicular prowling violate the merger doctrine and the prohibition against double jeopardy.

Issue Pertaining to Assignments of Error

1. In the state's case against appellant for TMVWOP and vehicular prowling, did admission of appellant's confession violate his Fifth Amendment right against self incrimination where: (a) appellant initially denied writing graffiti found in the complainant's stolen car; (b) the interviewing detective subsequently advised appellant he would not be charged with writing the graffiti to the dashboard; and (c) appellant immediately confessed to writing it, as well as other facts from which it could be inferred he rode in the car knowing it was stolen?

2. Do appellant's convictions for TMVWOP and vehicular prowling for one incident involving the same car violate the merger doctrine?

B. STATEMENT OF THE CASE

By an amended information, the King County Prosecutor charged 16-year-old L.U. with second degree TMVWOP and second degree vehicular prowling, allegedly occurring between February 7 and 9, 2005. CP 1, 4, 20-21; RCW 9A.56.075. According to the charging documents, Jean Layer discovered her Honda Civic missing from her workplace at Madrona Elementary School on February 7. The car was found in the parking lot of Foster High School in Tukwila on February 9. CP 2. Written on the dashboard was the following message: "Fuck Officer Gillette 4rm C-loc, Bear, Bam Bam, Don't' trip." CP 2. Officer Gillette is a school resource officer at SeaTac School. CP 8.

On May 26, 2005, Gillette arrested L.U. on an outstanding warrant unrelated to this case. CP 2. Because Gillette suspected that L.U. or one of his friends might have written the message on Layer's dashboard, however, he contacted Detective Ryan Mikulcik to question L.U. about it. RP 27.¹ Apparently, at some time prior, Gillette had been the target of graffiti that included a death threat. CP 2. Gillette suspected L.U. based on "information" he purportedly obtained that L.U. and his friends were

¹ Unless indicated otherwise, "RP" refers to the CrR 3.5 and adjudicatory hearings held on October 17, 2005.

involved in "gang activity that included graffiti." CP 2. The charges herein stem from statements L.U. subsequently made to Mikulcik. CP 2.

In advance of L.U.'s adjudicatory hearing, he moved to suppress his statements on grounds they were coerced and involuntary. CP 7-19. A CrR 3.5 hearing was held at the beginning of L.U.'s adjudicatory hearing on October 17, 2005.

Mikulcik testified that he first advised L.U. of his constitutional rights, including the juvenile warning. RP 28. After L.U. signed a form waiving his rights, Mikulcik showed L.U. a picture of the dashboard message and asked whether L.U. wrote it. RP 35, 37. L.U. said he did not. RP 37.

During the course of the ensuing 30-minute interview, Mikulcik asked inter alia what the word "4rm" meant. L.U. said it meant "from," and that he also writes "from" as "4rm." RP 37, 41. RP 37-38.

Mikulcik testified he told L.U. he would not charge him with malicious mischief for the vandalism of Layer's car if L.U. told him "about another crime" not involving Layer's car, but involving Gillette and graffiti. RP 38. According to Mikulcik, his intent was "to find out who was making death threats against Officer Gillette, and I was hoping that he would tell me that, and for that, I wouldn't charge him with the malicious mischief

or the vandalism." L.U. denied committing the other crime, but admitted being in Layer's car, knowing it was stolen, and writing the dashboard message. RP 39-40, 46.

With L.U.'s assistance, Mikulcik subsequently wrote the following statement for L.U.:

I was in a Honda Civic that was stolen. I was in the passenger seat and I cannot remember who was driving. I have been in many stolen cars and I know this one was stolen because the ignition was damaged. I used a marker and wrote on the dash board "F---- Officer [sic] Gillette [sic] 4rm c-loc, bear bam bam, don't [sic] trip," I have not written anything else about officer Gillette and have never written anything threatening. This is the only thing I have written about him. I hope it wasn't take [sic] as a threat or the wrong way.

CP 9; RP 40-41.

Mikulcik acknowledged that he and L.U. have a friendly relationship and that he treated him "as a friend" during the interview. RP 31, 44. It was Mikulcik's expectation that L.U. would believe him when he said he would not charge L.U. with vandalism. RP 44.

L.U. testified at the CrR 3.5 hearing as well. Like Mikulcik, L.U. testified that he initially said no when asked if he was the dashboard writer. RP 53. Mikulcik asked L.U. about Layer's car, as well as other graffiti. RP 57. As similarly testified to by Mikulcik, L.U. admitted writing on Layer's dashboard only after Mikulcik said, "if you admit saying that you

did this, then you would . . . you won't get charged with the graffiti." RP 54. L.U. thought he meant the "whole car, the whole charge of the car." RP 54, 56. And because L.U. had known Mikulcik since middle school, he thought Mikulcik "was going to be okay with it," meaning he would "drop all the charges." RP 54-55.

At the close of the CrR 3.5 testimony, L.U. argued that his will was overborne by Mikulcik's promise of immunity and that his statement was therefore involuntary and inadmissible.

So was there an overcoming or overbearance of of Sola's [L.U.'s] will? We know that he started out saying he did not write the graffiti. We know that he did write the graffiti. Something changed that. In between the two times, both Sola and the detective admit that the detective did promise him that he would not charge him with the graffiti. Sola has testified that's why he changed his mind and said what he did. That's why, because he got the promise, that he wouldn't be charged. That is an overbearance of his will to resist.

The state has argued that, oh, deceit is used all the time in police interrogations, and it's true. But this is more than a deceit about what evidence the police officer might have in order to convince the accused person or the suspect to change his mind. This is a promise, a fair-faced promise not to file charges.

It puts an interviewee or interrogator -- somebody who's being interrogated, it puts them in a total frame of mind, it doesn't matter what I say, I'm not going to be charged for it. It doesn't matter if I admit to something even that I did not do. Why not? I want to get out of this room, a very small interview room as it was, 4-foot by 4-foot, according to the detective.

RP 80-81.

The court sided with the state, however, reasoning that the courts had approved of more significant or serious police deceptions than the one used against L.U. RP 83. Consistent with its oral ruling, the court subsequently entered the following finding of fact and conclusion of law:

FINDINGS OF FACT¹

...

When Detective Mikulcik told the respondent he would not be charged with the graffiti to the dashboard, the respondent admitted to doing it.

...

¹ While the respondent did testify at the fact-finding and disputed the substance of his confession, there were not material disputes of fact for purposes of the hearing pursuant to CrR 3.5.

...

CONCLUSIONS OF LAW

...

While Detective Mikulcik's statement that he would not charge the respondent with the graffiti to the dashboard may have been deceptive to some extent, some police deception is permitted by the Washington courts under State v. Burkins, 94 Wn. App. 677, [973 P.2d 15] (1999). Here, Detective Mikulcik's conduct was not so overbearing as to overcome the respondent's will to resist. The respondent knowingly, intelligently, and voluntarily waived his right to remain silent when he made the written confession, so the confession is admissible in the state's case-in-chief.

CP 46.

Mikulcik was recalled to testify during the state's case-in-chief to recount more fully his interview with L.U. Mikulcik testified that his purpose was to discuss two specific cases involving vandalism and officer Gillette: one on a wall, the other in Layer's car. RP 85, 101. Neither the prosecutor nor defense counsel questioned Mikulcik regarding what he asked L.U. specifically about the wall, however.

After L.U. initially denied writing on Layer's dashboard, Mikulcik directed him to write the words "Officer Gillette" and "4rm." RP 86-87. According to Mikulcik, L.U.'s handwriting was "similar" to that on the dashboard. RP 86. L.U. correctly spelled "Officer Gillette," however.² RP 90-91.

Mikulcik testified he discussed the similarities with L.U. and "told him that if he did admit to the graffitis [sic] -- and in my questioning, I was concerned more about the threats that were made, that's the more serious of the crime because it involves an officer -- that I wasn't going to worry about the vandalism[.]" RP 88. It was at that point L.U. admitted he wrote the message on Layer's dashboard. RP 88.

L.U. testified he got into Layer's Civic at Madrona Elementary School. RP 92. The car was parked, but L.U. saw a bunch of people

² On the dashboard, Officer Gillette was misspelled as: "Oficer Gilette." CP 2.

getting into it. RP 93. L.U. sat in the rear passenger seat for approximately 5-10 minutes. RP 94. L.U. noticed the damaged ignition and knew the car was stolen. RP 94. L.U. got out of the car while it was still stationary in the parking lot. RP 95. He never rode in the car. RP 94-95.

L.U. also denied writing on the dashboard. He testified he told Mikulcik otherwise because "he offered me that if you admit to this, then I'll drop the charge of the graffiti." RP 96. Mikulcik and L.U. had been discussing the fact the car was stolen, and L.U. thought Mikulcik's offer of immunity "meant the whole charge about the car." RP 96. As further testified to by L.U.:

Well, how he said it, I thought he was on the same page as me, so I don't know. I thought he meant by graffiti and all the cars that he was asking me about, that it would all be dropped.

RP 99.

Based on L.U.'s written statement, the court found him guilty of vehicular prowling. RP 118. Based on L.U.'s written statement that he did not remember "who was driving," and based on the fact that someone must have driven the car from Madrona Elementary School to Foster High School, the court also found L.U. guilty of TMVWOP. RP 118-19. The court imposed standard range sentences consisting of local sanctions. At a subsequent hearing, the court ordered L.U. to pay \$3,099.97 in

restitution. Supp. CP __ (sub. no. 48, Order of Restitution, 1/17/06). This appeal follows. CP 24-43.

C. ARGUMENT

1. L.U.'S CONFESSION WAS INDUCED BY DETECTIVE MIKULCIK'S PROMISE OF IMMUNITY AND THEREFORE INVOLUNTARY.

The Fifth Amendment provides "[n]o person ... shall be compelled in any criminal case to be a witness against himself." Malloy v. Hogan, 378 U.S. 1, 84 S. Ct. 1489, 12 L. Ed. 2d 653 (1964). Use of an offender's involuntary statements at trial violates this fundamental protection. See, e.g., Mincey v. Arizona, 437 U.S. 385, 98 S. Ct. 2408, 57 L. Ed. 2d 290 (1978); Mead School Dist. 354 v. Mead Education Ass'n, 85 Wn.2d 278, 534 P.2d 561 (1975). In determining whether a confession is involuntary, the inquiry is whether, under the totality of the circumstances, the confession was coerced. State v. Broadaway, 133 Wn.2d 118, 942 P.2d 363 (1997); State v. Rupe, 101 Wn.2d 664, 678-79, 683 P.2d 571 (1984). Circumstances include the condition of the defendant, the defendant's mental abilities, and the conduct of the police. Id.

In assessing the totality of the circumstances, a court must consider any promises or misrepresentations made by the interrogating officer. Broadaway, 133 Wn.2d at 132 (citing United States v. Springs, 17 F.3d

192, 194 (7th Cir.), cert. denied, 513 U.S. 955, 115 S. Ct. 375, 130 L. Ed. 2d 326 (1994); United States v. Walton, 10 F.3d 1024, 1028-29 (3d Cir. 1993)). The court must determine whether there is a causal relationship between the promise and the confession. Broadaway, 133 Wn.2d at 132 (citing Walton, 10 F.3d at 1029-30). The inquiry is whether the defendant's will was overborne. Broadaway, 133 Wn.2d at 132 (citing Rupe, 101 Wn.2d at 679).

A promise of immunity may invalidate the defendant's resultant confession. See, e.g., State v. Setzer, 20 Wn. App. 46, 579 P.2d 957 (1978), overruled on other grounds in, Broadaway, 133 Wn.2d at 132. In Setzer, the court referenced the applicable standard for determining voluntariness as depending "'upon its free and voluntary nature; "that is, (it) must not be extracted by any sort of threats or violence, nor obtained by any direct or indirect promises, however slight, nor by the exertion of any improper influence.'" Setzer, 20 Wn. App. at 49 (quoting Bram v. United States, 168 U.S. 532, 542-43, 18 S. Ct. 183, 187, 42 L. Ed. 568 (1897)). Our Supreme Court has since stated that the Bram standard is not the correct standard:

The United States Supreme Court recently explained that this standard from Bram "under current precedent does not state the standard for determining the voluntariness of a confession." Arizona v. Fulminante, 499 U.S. 279, 285, 111 S.

Ct. 1246, 1251, 113 L. Ed. 2d 302 (1991). Instead, the inquiry is whether, under the totality of the circumstances, the confession was coerced.

Broadaway, 133 Wn.2d at 132.

As explained above, however, under the totality of the circumstances test, the court must still consider any promises and the relationship between any such promise and the confession to determine whether the defendant's will was overborne. That relationship is in fact what the Setzer court considered in concluding that Setzer's confession was involuntary. Accordingly, the court's analysis in that case is still persuasive.

Setzer was arrested inside the Churchill Glove Factory in Centralia by officers responding to a silent alarm at the factory. He was advised of his constitutional rights and elected to remain silent. An impound inventory of Setzer's car revealed evidence linking him to the burglary of Countyman Motors, a prior unresolved case. Two days later, detective Stoner confronted Setzer, who was still in custody. Stoner repeated the Miranda³ rights and advised Setzer that if he confessed to the Churchill burglary, the state would not charge him with the Countryman burglary. Aware of his prior out-of-state felonies and wary of a potential habitual criminal charge, however, Setzer again expressed his desire to remain silent. Stoner

³ Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

expressed to Setzer that his caution was unfounded, because as Stoner understood the law, the state would have to prove two prior Washington State convictions to charge Setzer as a habitual offender.

When asked at the omnibus hearing who started the discussion about habitual criminal charges, Setzer replied:

I believe that I had made the statement that I had probably better not saying [sic] anything because of the habitual criminal deal and Sgt. Stoner informed me that any way I looked at it I was going to be doing time anyway and that they had to have two prior Washington convictions.

Setzer, 20 Wn. App. at 48.

Setzer thereupon accepted Stoner's offer of immunity for the Countryman burglary, confessed to it, and made a written confession to the Churchill burglary. In the order on the omnibus hearing, the court ruled Setzer's confession could be offered "as voluntary admissions of the defendant subsequent to appropriate and adequate advisories of constitutional rights." Id.

At trial, Setzer's confession was offered to impeach his direct testimony. Setzer was convicted of second degree burglary and subsequently held to be a habitual criminal based on an amended information and proof of four out-of-state felony convictions. Id.

In finding Setzer's confession involuntary, the appellate court focused on the direct connection between the promise and the confession.

For two days the defendant exercised his right to remain silent, then he suddenly confessed after Detective Stoner recited the prosecutor's offer of immunity and assured defendant that two prior Washington felonies were necessary before he could be classified a habitual criminal. Inferentially, defendant was told that unless he was convicted of both the Churchill and Countryman burglaries he could not be declared a habitual criminal, absent the requisite number of prior felony convictions. Furthermore, defendant's initial reluctance to discuss the Countryman burglary was prompted by his desire not to be charged as a habitual criminal; and his initiation of the discussion concerning this potential status highlights his awareness of the nature and significance of the recidivist statute. The spontaneity of the confession and the defendant's awareness of the statute's ramifications, added to the offer of immunity, distinguishes this confession from a "purge of conscience."

Setzer, 20 Wn. App. at 50 (citation omitted).

Like Setzer's confession, L.U.'s was the direct result of an officer's promise of immunity. Detective Mikulcik and L.U. both testified L.U. initially denied writing on the dashboard. Mikulcik further testified that it was not until he told L.U. he would not charge him with the malicious mischief for the vandalism of Layer's car if L.U. told him about another crime -- apparently some other graffiti on a wall -- that L.U. confessed to being in the stolen Honda and writing on its dashboard. L.U.'s understanding of Mikulcik's offer was slightly different. He testified he did not

confess to writing on Layer's dashboard until after Mikucik promised him, "if you admit saying that you did this, then you would . . . you won't get charged with the graffiti." RP 54.

It appears Mikulcik hoped L.U. would confess to facts supporting a felony harassment charge. Whether L.U.'s understanding of Mikulcik's precise offer was somewhat mistaken, his statement was nevertheless involuntary because his understanding of having immunity for charges relating to Layer's car was entirely reasonable. See, e.g., United States v. Cahill, 920 F.2d 421, 427 (7th Cir. 1990) ("A defendant's perception that he is providing testimony under a grant of immunity does not make the statement involuntary, unless the perception was reasonable).

Mikulcik asked L.U. about two separate instances of graffiti: one purportedly on a wall somewhere; and one in Layer's car. But from the testimony of both Mikulcik and L.U., it appears they focused predominately on the graffiti in Layer's car. That was the message Mikulcik had L.U. copy in his own handwriting. It was the purported existence of similarities between that message and L.U.'s own handwriting that the two discussed. During direct testimony, Mikulcik testified that he told L.U. that if he admitted to "the graffiti[s] [sic]," he "wasn't going to worry about the vandalism." L.U. accordingly admitted to the graffiti that he had authored

-- in Layer's car. Regardless of Mikulcik's subjective intent or expectation in offering immunity, it was his offer that led directly to L.U.'s confession. This direct connection shows L.U.'s will was overborne and his statement therefore involuntary.

In response, the state may argue as it did below that this case is no different than one involving police deception or a ruse. As was argued by the state:

But "[d]eception alone does not make a statement inadmissible as a matter of law," Burkins, 94 Wn. App. at 695.

Courts have held confessions to be voluntary when police falsely told a suspect that his polygraph examination showed gross deceptive patterns, when police told a suspect that a co-suspect named him as the triggerman, and when police concealed the fact that the victim had died.

Id. at 695-96. The police tactics here do not even rise to this level of deception, considering that Detective Mikulcik did (though he was under no obligation to) abide by his agreement and did not refer the Malicious Mischief charge to the King County Prosecutor.

Supp. CP __ (sub. no. 25, State's Response to Respondent's Motion to Suppress Confession, 10/12/05). The comparison is inept, however, and should be rejected.

First, Mikulcik did not keep his "word" (RP 44-45) as he claimed or "abide" by his agreement as the prosecutor claimed. The state eventually charged L.U. with vehicular prowling, which requires that the individual

unlawfully enter the car with the intent to commit a crime against property therein. RCW 9A.52.100. The state argued that the writing on the dash supplied evidence of that intent. CP 50; RP 106. Moreover, it is unreasonable to presume that Mikulcik's offer of immunity would be interpreted by L.U. as extending solely to the malicious mischief offense and not riding in the stolen car. Accordingly to Mikulcik's own testimony, he told L.U. he would not charge him with the vandalism of Layer's car if he confessed to it. Obviously, L.U. could not admit to authoring the graffiti without also placing himself in the stolen car. L.U.'s understanding that Mikulcik's offer related to "whole car, the whole charge of the car" was reasonable. RP 54, 56.

Second, there is an inherent difference between a police officer exaggerating the strength of the state's evidence and a police officer making a false offer of immunity to a suspect. See, e.g., Setzer, 20 Wn. App. at 51 (confession induced by thrusting before the defendant a false expectation that by confessing he becomes immune to an enhanced penalty is inherently suspect and necessarily untrustworthy) (citing Lutton v. Smith, 8 Wn. App. 822, 509 P.2d 58 (1973)). Indeed, such confessions are involuntary as a matter of law in Oregon.

When a confession to a crime is obtained as the result of an offer of immunity as to that crime, there is no further factual

inquiry as to whether the confession was voluntarily made; the legal assumption is that the defendant's will was overborne. As a matter of law, the confession is held to be involuntary.

State v. Aguilar, 133 Or. App. 304, 307, 891 P.2d 668 (1995); see also United States v. Gonzales, 736 F.2d 981 (4th Cir. 1984) (if the defendant's testimony was induced by the government's promise of immunity, it is involuntary and must be suppressed).

In fact, it is questionable whether the state can even bring charges under the circumstances here. The Seventh Circuit has held that the prosecution of a defendant based on direct or indirect testimony taken after a specific promise of immunity warrants dismissal of the indictment. United States v. Brimberry, 744 F.2d 580, 587 (7th Cir. 1984). As noted by that court, "it is 'beyond question that, in our system of justice, any agreement made by the government must be scrupulously performed and kept." Id., at 587.

The government's actions in this case of informing L.U. that he would not be charged with vandalizing Layer's car and then using his resultant admissions against him cannot be condoned. L.U.'s statements were involuntary and the trial court erred in allowing the state to use them against him. Without L.U.'s coerced confession, the government had no case. L.U.'s convictions should both be reversed. Because the subsequent

order of restitution was based on the convictions, it, too, must be reversed. State v. Ager, 75 Wn. App. 843, 847 n.4, 880 P.2d 1017 (1994) (restitution order vacated where it was based in part on reversed counts), reversed on other grounds, 128 Wn.2d 85, 904 P.2d 715 (1995).

2. L.U.'S CONVICTIONS FOR TMVWOP AND VEHICULAR PROWLING VIOLATE THE MERGER DOCTRINE.

The merger doctrine is a judicially created device "'designed to prevent an unnatural elevation of the "true" crime charged.'" State v. Eaton, 82 Wn. App. 723, 729, 919 P.2d 116 (1996) (quoting State v. Slemmer, 48 Wn. App. 48, 56, 738 P.2d 281 (1987)). It is used to determine whether the Legislature intended that multiple punishments be imposed for a single act that violates several statutory provisions. State v. Johnson, 92 Wn.2d 671, 678-79, 600 P.2d 1249 (1979), overruled in part by State v. Sweet, 138 Wn.2d 466, 980 P.2d 1223 (1999).

In Johnson, the court held that when an offense is proven which elevates another crime to a higher degree,

an additional conviction cannot be allowed to stand unless it involves some injury to the person or property of the victim or others, which is separate and distinct from and not merely incidental to the crime of which it forms an element.

Johnson, 92 Wn.2d at 680.

Because no steps additional from those required for taking a motor vehicle without permission are required to commit vehicular prowling, the two offenses merge. State v. Lass, 55 Wn. App. 300, 777 P.2d 539 (1989). In other words, any time someone commits TMVWOP, he or she necessarily commits vehicular prowling as well. The Legislature did not intend to punish for both, however.

Lass was convicted of TMVWOP and vehicular prowling for stealing a truck. On appeal, the merger doctrine required reversal of the vehicular prowling conviction:

[former] RCW 9A.56.070,^[4] which defines and prohibits taking a motor vehicle without permission, requires a showing that the motor vehicle taken did not belong to the defendant and that it was intentionally taken without the owner's permission or rightful possession. State v. Jamerson, 74 Wash.2d 146, 443 P.2d 654 (1968); State v. Medley, 11 Wash.App. 491, 524 P.2d 466 (1974). Second degree vehicle prowling requires a showing of unlawfully entering or remaining in a motor vehicle with intent to commit a crime therein. RCW 9A.52.100. Mr. Lass had to unlawfully enter the truck in order to take it without permission. We find no additional steps were necessary to complete both charges; hence, merger is proper.

The vehicle prowling conviction must be reversed.

Lass, 55 Wn. App. at 308. L.U.'s vehicle prowling conviction must also be reversed.

⁴ Now codified as RCW 9.56.075.

In response, the state may argue that there was additional injury to Layer's property -- *i.e.* the graffiti on the dashboard -- which allows the vehicular prowling conviction to stand on its own. As an initial matter, however, vehicular prowling itself does not require an additional damage to property. Upon unlawfully entering the vehicle with the intent to drive it or ride in it, the crime is complete. In any event, property damage is incidental to TMVWOP, as is evident from the numerous restitution cases where the underlying crime is TMVWOP. See, e.g., State v. Hiatt, 154 Wn.2d 560, 115 P.3d 274 (2005). L.U.'s conviction for vehicular prowling should be reversed.

D. CONCLUSION

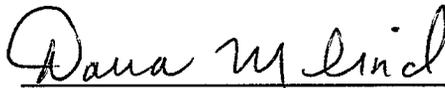
Appellant's involuntary confession was wrongly admitted. Assuming the state can make a prima facie case without it, this Court should reverse and remand appellant's convictions for a new trial. If this Court disagrees

that L.U. is entitled to a new trial, his vehicular prowling conviction should be reversed and dismissed under the merger doctrine.

DATED this 22nd day of May, 2006.

Respectfully submitted,

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