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STATE OF WASHINGTON

No. 80020-1  
COA No. 57407-8-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

L.U. (D.O.B. 02/17/89),

Petitioner.

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SUPREME COURT  
STATE OF WASHINGTON

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

The Honorable Philip Hubbard, Jr., Judge

SUPPLEMENTAL BRIEF OF PETITIONER

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A. ISSUES DISCUSSED IN SUPPLEMENTAL BRIEF

1. Whether L.U. reasonably believed his admissions about the stolen car would not be used against him where detective Mikulcik assured L.U. he would not be charged with offenses relating to the car?

2. Whether L.U.'s convictions for taking a motor vehicle without permission and vehicular prowling involving the same car violate the prohibition against double jeopardy?

B. SUPPLEMENTAL STATEMENT OF FACTS

L.U. confessed to riding in a stolen car while knowing it was stolen and to writing on the car's dashboard a disparaging message about school resource officer Gillette *only after* detective Mikulcik – with whom L.U. has had a friendly relationship since middle school – promised that if L.U. told him about a different crime involving officer Gillette and graffiti,<sup>1</sup> Mikulcik would not charge him with malicious mischief or vandalism of the stolen car. RP 31, 38-40, 44, 46, 54-55. It was Mikulcik's expectation that that L.U. would believe him when he said he would not charge L.U. with vandalism. RP 44. L.U. thought Mikulcik meant “the whole car, the whole charge of the car.” RP 54, 56.

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<sup>1</sup> Apparently, Gillette previously had been the target of graffiti that included a death threat. CP 2. L.U. denied any involvement in this prior graffiti. RP 39-40, 46.

Despite Mikulcik's promise, the state subsequently charged L.U. with taking a motor vehicle without permission and vehicular prowling, *based on the graffiti*. CP 2; Brief of Respondent (BOR), at 13 ("The prosecutor, after initially charging Unga with Taking Motor Vehicle without Permission in the Second Degree, CP 1, 4, later made an independent decision to add on Vehicle Prowling charges based on the graffiti;") see also RP 102-03. Despite L.U.'s argument that Mikulcik's promise of immunity rendered his inculpatory statements involuntary, the court held otherwise and relied on L.U.'s statements to convict him of the charged offenses. RP 119.

C. SUPPLEMENTAL ARGUMENT

1. MIKULCIK'S PROMISE OF IMMUNITY OVERCAME L.U.'S WILL TO RESIST AND BROUGHT ABOUT A CONFESSION NOT FREELY SELF DETERMINED.

The Fifth Amendment provides "[n]o person ... shall be compelled in any criminal case to be a witness against himself." Similarly, article I, section 9 of the Washington State Constitution provides that no defendant in a criminal prosecution can be compelled to take the witness stand and testify against himself.<sup>2</sup> Use of a defendant's involuntary statements at trial violates this fundamental protection. See e.g. Mincey v. Arizona, 437

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<sup>2</sup> This Court has interpreted Article I, section 9 of the Washington State Constitution as coextensive with the protection of the Fifth Amendment. State v. Earls, 116 Wn.2d 364, 374-75, 805 P.2d 211 (1991);

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. Arizona v. Fulminante, 499 U.S. 279, 284-85, 111 S. Ct. 1246, 1251, 113 L. Ed. 2d 302 (1991); State v. Broadaway, 133 Wn.2d 118, 942 P.2d 363 (1997). Circumstances include the condition of the defendant, the defendant's mental abilities, and the conduct of the police – including any promises or misrepresentations the interrogating officers made and the causal relationship between those promises and the confession to determine whether the defendant's will was overborne. Broadaway, 133 Wn.2d at 132. The State bears the burden to prove by a preponderance of the evidence that the confession was voluntary. State v. Robtoy, 98 Wn.2d 30, 35-36, 653 P.2d 284 (1982).

Here, L.U. denied any involvement with the stolen car until Mikulcik's assurance that if L.U. told him about the other offense involving Gillette and graffiti, Mikulcik "wouldn't charge him with the malicious mischief or the vandalism." RP 46. L.U.'s confession about riding in the stolen car and writing the disparaging message followed directly on the heels of this assurance. Considering L.U.'s young age and

his friendly relationship with Mikulcik, Mikulcik's promise of immunity overcame L.U.'s will to resist resulting in an involuntary confession.

Where an express or implied promise not to use statements against, or not to prosecute a declarant is made, and in fact induces the statement, "the promise is of such a nature that it can easily be found to have overcome a person's resistance to giving a statement to authorities." United States v. Conley, 859 F. Supp. 830, 836 (W.D. Pa. 1994).

A promise that statements made will not be used against the declarant purports to remove the specter of proving one's own guilt by making a statement. Such a promise is truly a powerful one, going to the heart of a declarant's reservations about giving a statement.

Conley, 859 F. Supp. at 836.

Accordingly, a promise by a police officer to speak "off the record," particularly when combined with an officer's friendly relationship with the declarant, has been held to overcome the declarant's will such that his resulting statements are involuntary. See e.g. United States v. Walton, 10 F.3d 1024 (3<sup>rd</sup> Cir. 1993). Walton was convicted of conspiracy to traffic in firearms without a license, in part based on his confession to ATF<sup>3</sup> agents. Walton, 10 F.3d at 1026-1027.

Undercover agent Lorenzo Toledo bought a number of guns with defaced serial numbers from Tyrone Morris, who was not licensed to sell

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<sup>3</sup> Bureau of alcohol, tobacco and firearms.

firearms. A firearms examiner recovered the serial numbers for some of the guns, however, and the bureau learned that the guns were originally purchased by Raynard Walton, who was licensed to sell firearms. When Morris was arrested, he named Walton as his source. Walton, 10 F.3d at 1026-27.

ATF conducted a regulatory inspection of Walton's home, pursuant to federal firearms regulations, which provides for yearly inspections and access to purchase and sales records. The agents did not inform Walton that he was suspected of being Morris' source of firearms, and allowed him to believe the inspection was purely regulatory. Walton, at 1027.

At the inspection, agent Toledo was accompanied by agent Kent Montford, whom Walton knew from attending school in the same school system and wrestling in the same program in high school. Walton told the agents he had no records to inspect and that the only two times he purchased firearms had been in 1986 and 1987. After being advised of and waiving his Miranda<sup>4</sup> rights, Walton repeated these assertions in a written statement. As it turned out, invoices later revealed Walton had purchased over 23 firearms in recent months. Walton, at 1027.

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

The next day, Walton called Montford and asked if he could meet him and Toledo at an open area outside the local library to talk to the agents “off the record.” Walton, at 1027. When the agents and Walton subsequently met on a park bench, Montford told Walton, “I’ve known you for a long time. If you want, you can tell us what happened off the cuff.” Walton, at 1027. Although Montford also told Walton he could leave at any time and did not have to say anything until he spoke to an attorney, Walton was not apprised of his Miranda rights as he had been during the regulatory search the previous day. Walton, at 1027.

Five or ten minutes into the meeting, Walton admitted that he provided the firearms Morris sold. He told the agents he had become involved in illegal firearms trafficking because he needed money to buy a house. Walton, at 1027.

One month later, the government charged Walton with conspiracy. Following a suppression hearing, the court denied Walton’s motion to suppress his statements to the ATF agents, even though Montford testified it was his understanding and intention that the agents “weren’t going to use this [the statement] against him [Walton].” Walton, at 1027. Montford only learned that Walton’s statement would be used against him when he met with the Assistant United States Attorney handling the case, who said it could be used. Id.

In determining whether Walton's confession was involuntary, the Third Circuit Court on appeal noted that voluntariness is decided by examining "the statement from Walton's viewpoint." Walton, at 1029. The appropriate inquiry therefore was whether *Walton* reasonably perceived the alleged promise as he asserts. Walton, at 1029 (citing United States v. Shears, 762 F.2d 397, 402 (4<sup>th</sup> Cir. 1985)).

The Third Circuit held that under the totality of the circumstances, a person in Walton's position could easily have been taken in and induced to speak.

The totality of the circumstances in this case points toward coercion. In Miller,<sup>[5]</sup> we recognized that:

Excessive friendliness on the part of an interrogator can be deceptive. In some instances, in combination with other tactics, it might create an atmosphere in which a suspect forgets that his questioner is in an adversarial role, and thereby prompt admission that the suspect would ordinarily make only to a friend, not to police.

Miller, 796 F.2d at 607. . . .

We find it significant that Montford made reference to his prior relationship with Walton as a basis for inviting Walton to speak to the agents "off the cuff." It seems clear that the purpose of such a reference was to provide further assurance to Walton that he could confide in the agents and that what he might tell them would not be used against him. This was borne out by Montford's own testimony that he had given Walton his "word [that the agents] weren't going to use this against him."

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<sup>5</sup> Miller v. Fenton, 796 F.2d 598, 604 (3<sup>rd</sup> Cir. 1986).

Given the circumstances, there was no reason for Walton to disbelieve Montford that nothing he said would be used against him, and to rely instead upon the Miranda warnings he had been given the previous day. Indeed, the Miranda warnings of the previous day and Montford's assurances during the park bench meeting appear exclusive of, and inconsistent with, one another. A person without prior exposure to the criminal justice system, even one with Walton's intelligence and education, could easily be taken in and induced to speak under these circumstances.

Walton, 10 F.3d at 1030 (footnote omitted); accord United States v. Conley, 859 F. Supp. 830, 837 & n.4 (relying on Walton and finding that FBI agent's promise to speak off the record and his friendly manner combined to overcome Conley's reticence about making statements to the FBI).

Although the Walton Court relied to a certain extent on the absence of Miranda warnings in its totality of the circumstances evaluation, the giving of such warnings is not dispositive. On the contrary, the Alaskan appellate court has held that despite the advisement of Miranda rights, the declarant's confession was nevertheless involuntary where it was preceded by intervening assurances from the interviewing officer that the conversation was "off the record." State v. Jones, 65 P.3d 903 (Alaska App. 2003); see also United States v. Rogers, 906 F.2d 189, 192 (5<sup>th</sup> Cir. 1990) (where Rogers was led to believe he would not be prosecuted if he cooperated, his subsequent "waiver of his Fifth

Amendment rights was not made with a full awareness of the consequences of the decision to abandon his rights or with the requisite level of comprehension”).

Whether a declarant is promised his statements will remain confidential or is promised immunity from prosecution, as in the present case, the declarant is made to believe his statements would not be used to prove his guilt in court. State v. Jones, 65 P.3d at 909. Just as the promise to speak off the record induced Walton’s incriminating statements, the promise not to charge L.U. with certain offenses involving the stolen car, such as malicious mischief and vandalism, induced L.U.’s incriminating statements. L.U.’s statements are no less involuntary because he was advised at the beginning of the 30-minute interview of his Miranda rights. “[G]iven the uniquely influential nature of a promise from a law enforcement official not to use a suspect’s inculpatory statement, such a promise may be the most significant factor in assessing the voluntariness of an accused’s confession in the light of the totality of the circumstances.” Walton, 10 F.3d at 1029-30. To a reasonable person without extensive exposure to the criminal justice system – let alone a 16-year-old who had not completed high school – Mikulcik’s assurances not to charge L.U. with crimes involving the car would appear “exclusive of, and inconsistent with” his prior Miranda warnings. See e.g. Conley, 10

F.3d at 1030; Rogers, 906 F.2d at 191-92. As in Walton, the assurances here came from a friend, which merely heightened the coercive nature of the promise.

In its response brief, the state may argue that L.U.'s statement was not rendered involuntary by Mikulcik's promise because it was contingent upon information about some other crime involving officer Gillette, and because it was limited to the "malicious mischief or the vandalism." See e.g. Conley, 859 F. Supp. at 838 (noting that FBI agent's promise was "unqualified and not contingent upon cooperation or truthfulness; it was not limited to specific topics"). For two reasons, this argument should be rejected.

First, L.U. fulfilled the contingency by professing his innocence regarding the other graffiti. Assuming L.U.'s lack of involvement – and there is no evidence to the contrary – his innocence would be the only information L.U. could provide about the other crime. Second, Mikulcik's assurance not to charge L.U. with malicious mischief or vandalism conveyed the message he was uninterested in crimes involving the stolen car. Indeed, L.U. believed Mikulcik meant the "the whole car, the whole charge of the car." RP 54, 56. As indicated in Walton, the appropriate inquiry is whether L.U. reasonably perceived the alleged promise as he asserts; see also United States v. Cahill, 920 F.2d 421, 425-27 (7<sup>th</sup> Cir.

1990), cert. denied, 500 U.S. 934, 111 S.Ct. 2058, 114 L. Ed. 2d 463 (1991) (a defendant's belief that he is speaking under a grant of immunity renders the statement involuntary where the defendant's belief is reasonable). Considering L.U.'s age, experience, and friendly relationship with Mikulcik, it was completely reasonable for him to perceive Mikulcik's offer as extending to all charges involving the car.

Indeed, it would be reasonable for an adult to believe the offer extended to all charges involving the car. See e.g. Smith v. State, 787 P.2d 1038 (Alaska App. 1990). There, Theodore Smith was convicted of driving with a revoked license and reckless driving, based on statements Smith made to an investigating officer. Smith, 787 P.2d at 1038.

Trooper Chilcote was dispatched to a single car accident on the highway. A Honda Civic had veered off the highway and come to rest in a clump of trees. Although the driver was not present, a computer check revealed the car's owner was Smith. Smith, 787 P.2d at 1038.

Smith denied involvement in the accident and claimed that he had loaned the car to his brother-in-law earlier in the evening. He nonetheless agreed to accompany Chilcote to take care of his car. Id. At the accident scene, Smith again denied driving the car. Chilcote suspected otherwise based on Chilcote's perception that Smith had been drinking and a bump on Smith's head consistent with a crack on the car's windshield. After

disclosing his suspicion, however, Chilcote assured Smith that he was “not interested in prosecuting anyone for drunk driving;” he only wanted to find out who had been driving. Smith, 787 P.2d 1039. According to Chilcote, Smith immediately appeared to relax and admitted he had been driving his car when it went off the road. Id.

On appeal, the Alaskan court found Smith’s statements involuntary because the trooper assured Smith he was seeking information for a limited purpose:

Here, Smith found himself in a situation which, although arguably not actually custodial, was at least quasi-custodial. When confronted by police in this setting, his initial response was to completely deny involvement. The police thereafter expressly assured Smith that they were seeking information for limited purposes and had no interest in pursuing a charge of DWI against him. Smith’s confession followed directly on the heels of this assurance. Under the circumstances, we hold that Smith’s confession was plainly induced by the promise of leniency and must consequently be deemed involuntary.

Smith, 787 P.2d at 1039.<sup>6</sup>

The same result should occur here. Just as it would be unreasonable for Smith to perceive of the trooper’s assurance as limited to the precise crime of driving under the influence, it would have been

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<sup>6</sup> The state may argue Smith is unpersuasive because at one point, the opinion quotes language from Bram v. United States, 168 U.S. 532, 542, 18 S. Ct. 183, 186, 42 L. Ed. 568 (1897) (confession is involuntary when “obtained by any direct or implied promises, however slight). From other language in the opinion, however, it is clear the Alaskan court was applying the totality of the circumstances test. Smith, 787 P.2d at 1039.

unreasonable for L.U. to perceive of Milkulcik's assurance as limited to the precise crime of malicious mischief. Milkulcik had set up a dichotomy between the malicious mischief concerning the stolen car and the "other crime" concerning death threats against Gillette. As Mikulcik testified:

My intention 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.

RP 46. No reasonable person in L.U.'s shoes would understand Mikulcik's promise to be as limited as the state would have this Court interpret.

As pointed out in L.U.'s opening appellate brief, it is questionable whether the state can even bring charges under the circumstances here. Brief of Appellant (BOA), at 17 (citing United States v. Brimberry, 744 F.2d 580, 587 (7<sup>th</sup> Cir. 1984). In response, the state cited State v. Reed, 75 Wn. App. 742, 745, 879 P.2d 1000 (1994), which holds that promises by police do not bind the prosecutor. Nevertheless, every agreement by which a witness or accused waives the fifth amendment right against self-incrimination in exchange for a promise by the government is subject to fundamental fairness under the due process clauses of the fifth and fourteenth amendments. State v. Bryant, 146 Wn.2d 90, 104, 42 P.3d

1278 (2002). Fundamental fairness requires that the government scrupulously perform its end of the bargain. Bryant, 146 Wn.2d at 105.

Arguably, the government did not scrupulously perform its end of the bargain when it promised not to charge L.U. with malicious mischief or vandalism to the car but turned around and charged him with taking a motor vehicle without permission and vehicular prowling, offenses involving the same car. The latter purportedly based on the graffiti inside the car. Whether the government's actions fall short of violating fundamental fairness – because it did not specifically charge L.U. with malicious mischief – its actions were sufficiently deceptive to render L.U.'s confession involuntary.

Without the admission of L.U.'s involuntary confession, the state had no evidence he committed the charged crimes. This Court should reverse L.U.'s convictions. See e.g. Walton, 10 F.3d at 1032 (admission of involuntary confession not harmless unless state can prove the confession did not contribute to the defendant's conviction).

2. L.U.'S MULTIPLE CONVICTIONS FOR TMVWOP AND VEHICULAR PROWLING INVOLVING THE SAME CAR VIOLATE THE PROHIBITION AGAINST DOUBLE JEOPARDY.

The United States and Washington State constitutions protect against double jeopardy. U.S. Const. amend. V; Wash. Const. art. 1, § 9. The state may bring multiple charges arising from the same criminal conduct in a single proceeding. State v. Freeman, 153 Wn.2d 765, 770, 108 P.3d 753 (2005) (citing State v. Michielli, 132 Wn.2d 229, 238-39, 937 P.2d 587 (1997)). Courts may not, however, enter multiple convictions for the same offense without offending double jeopardy. Freeman, at 770-71 (citing State v. Vladovic, 99 Wn.2d 413, 422, 662 P.2d 853 (1983) (quoting Albernaz v. United States, 450 U.S. 333, 344, 101 S. Ct. 1137, 67 L. Ed. 2d 275 (1981))). "Where a defendant's act supports charges under two criminal statutes, a court weighing a double jeopardy challenge must determine whether, in light of legislative intent, the charged crimes constitute the same offense." Freeman, 153 Wn.2d at 771 (quoting In re Pers. Restraint of Orange, 152 Wn.2d 795, 815, 100 P.3d 291 (2004)).

To determine legislative intent, this Court first considers any express or implicit legislative intent. Evidence of Legislative intent may be clear on the face of the statute, found in the legislative history, the

structure of the two statutes, the fact the two statutes are directed at eliminating different evils, or any other source of Legislative intent. Freeman, at 773 (citing Ball v. United States, 470 U.S. 856, 864, 105 S. Ct. 1668, 84 L. Ed. 2d 740 (1985)); State v. Calle, 125 Wn.2d 769, 776, 779-80, 888 P.2d 155 (1995).

If Legislative intent is not clear, however, this Court may turn to other aids in determining legislative intent, such as the “same evidence” test, drawn from Blockburger v. United States,<sup>7</sup> to determine whether the offenses “as charged and proved, are the same in law and in fact.” Freeman, 153 Wn.2d at 777. Under this test, if each offense requires proof of a fact not required by the other, and proof of one offense does not necessarily prove the other, the offenses are not the same for double jeopardy purposes. State v. Cole, 117 Wn. App. 870, 875, 73 P.3d 411 (2003).

When applying the Blockburger test, however, this Court does not consider the elements of the crime on an abstract level. “[W]here the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not.” Orange, 152 Wn.2d at 817 (quoting

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<sup>7</sup> Blockburger v. United States, 284 U.S. 299, 52 S. Ct. 180, 76 L. Ed. 306 (1932).

Blockburger, 284 U.S. at 304 (citing Gavieres v. United States, 220 U.S. 338, 342, 31 S. Ct. 421, 55 L. Ed. 489 (1911))).

A person is guilty of taking a motor vehicle without permission in the second degree if he or she, without the permission of the owner or person entitled to possession, intentionally takes or drives away any motor vehicle that is the property of another, *or* he or she voluntarily rides in the motor vehicle with knowledge that it was unlawfully taken. RCW 9A.56.075. A person is guilty of second degree vehicular prowling if, with intent to commit a crime against a person or property therein, he or she enters or remains unlawfully in a vehicle other than a motor home. RCW 9A.52.100.

Whether the elements of the two offenses appear different on an abstract level, proof that L.U. rode in the stolen car while knowing it was stolen necessarily proved he also entered or remained unlawfully with the intent to commit a crime, namely riding in a stolen car. The two offenses therefore are the same for double jeopardy purposes. See e.g. State v. Lass.<sup>8</sup> There, Division Three held that Lass could not be convicted of TMVWOP and vehicular prowling for stealing a truck.

[former] RCW 9A.56.070,<sup>[9]</sup> which defines and prohibits taking a motor vehicle without permission,

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<sup>8</sup> State v. Lass, 55 Wn. App. 300, 777 P.2d 539 (1989).

<sup>9</sup> Now codified as RCW 9A.56.075.

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.

Lass, 55 Wn. App. at 308.

Lass has been on the books for nearly 20 years and the Legislature has not sought to change it. That fact indicates its approval. See Freeman, 153 Wn.2d at 774; cf State v. Coe, 109 Wn.2d 832, 846, 750 P.2d 208 (1998) (noting that certain legislative amendments were passed in response to court's decision).

The Court of Appeals distinguished Lass on the basis that "L.U.'s criminal act involved an injury to property (the graffiti on the dashboard) that was not merely incidental to the crime of taking a motor vehicle without permission."<sup>10</sup> But TMVWOP often involves property damage that is not merely incidental to the crime of taking a motor vehicle without permission. See e.g. State v. Hiett, 154 Wn.2d 560, 115 P.3d 274 (2005).

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<sup>10</sup> State v. L.U., 137 Wn. App. 410, 417, 153 P.3d 894 (2007).

More importantly, however, as the prosecutor argued in closing here, the crime of vehicular prowling was complete upon L.U.'s entry with intent to commit a crime.

I guess I would put it that he admitted on the stand that he entered the car. I would argue that for it to be a vehicle prowling, there actually doesn't have to be a crime committed in the car, there just has to be intent to commit a crime. So even if he didn't in fact – even if Your Honor is convinced by his current testimony, which says that he did not in fact write the graffiti in the car, the state would still hold that it has established a vehicle prowl because he admitted that in King County, presumably on February 7<sup>th</sup> or around then, he had unlawfully entered Ms. Layer's car.

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The prosecutor was absolutely correct. See e.g. State v. Bergeron, 105 Wash.2d 1, 16, 711 P.2d 1000 (1985) (the specific crime or crimes intended to be committed inside burglarized premises is not an element of burglary that must be included in the jury instructions). Accordingly, whether L.U. intended to commit crimes other than riding in a stolen car is irrelevant. Once L.U. unlawfully entered the car to ride in it without permission, no additional steps were required to complete the car prowling charge. This Court should reverse L.U.'s vehicular prowling offense. See e.g. State v. Weber, 159 Wash.2d 252, 269, 149 P.3d 646 (2006) (retaining the offense that carries the greater sentence for double jeopardy violation); RCW 9A.56.075 (TMVWOP in second degree is Class C felony); RCW

9A.52.100 (vehicular prowling in the second degree is gross misdemeanor).

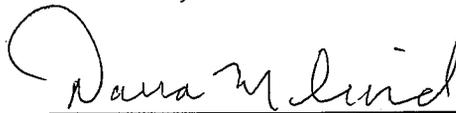
D. CONCLUSION

This Court should reverse L.U.'s convictions because they were based on L.U.'s involuntary confession, in violation of his Fifth Amendment rights. Alternatively, this Court should reverse the vehicular prowling conviction because it violates the prohibition against double jeopardy.

Dated this 11<sup>th</sup> day of March, 2008.

Respectfully submitted,

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Today I deposited in the mails of the United States of America a properly stamped and addressed envelope directed to attorneys of record of the State of Washington appellant/plaintiff containing a copy of the document to which this declaration is attached.

*KC Senior Prosecuting Attorney Dennis McCurdy*  
I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Dana M. Lind  
Name

3-11-08  
Date

Done in Seattle, WA