

63636-7.

63636-7

NO. 63636-7-I

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

STATE OF WASHINGTON,

Respondent,

v.

JONATHAN HUGGINS,

Appellant.

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King County Prosecutor  
Appellate Unit

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

The Honorable Jim Roger, Judge

REPLY BRIEF OF APPELLANT

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A. ARGUMENT IN REPLY<sup>1</sup>

POSSESSING A STOLEN MOTOR VEHICLE CANNOT SERVE AS THE BASIS OF A CONVICTION FOR POSSESSION OF STOLEN PROPERTY.

Huggins argues his conviction for first degree possession of stolen property (PSP), which was based on his possession of a stolen truck, cannot stand because the PSP statute did not apply to motor vehicles on the alleged date of the crime. Instead, the applicable charge was possession of a stolen vehicle. Brief of Appellant (BOA) at 25-27.

The state apparently misunderstands this argument. According to the state, "Huggins contends that possession of a stolen vehicle and possessing stolen property in the first degree are concurrent offenses . . . ." Brief of Respondent (BOR) at 15. As a result of its apparent misunderstanding, the state fails to address Huggins's argument.

Regardless of what the state contends, the problem in Huggins's case is clear. The state mistakenly charged Huggins with a crime based on conduct that fell outside of the definition of the crime. Neither the prosecutor, defense counsel, nor trial judge realized the mistake. As a result, the jury convicted Huggins of an offense that did not apply to his conduct. This is a violation of Huggins's state and federal constitutional

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<sup>1</sup> Huggins stands on the Brief of Appellant with respect to the remaining arguments.

right to due process. See State v. Aho, 137 Wn.2d 736, 744, 975 P.2d 512 (1999) (possibility defendant was convicted based on act or acts occurring before effective date of charged offense violated due process).

The state maintains Huggins waived the issue by not raising it at trial. BOR 18-20. A manifest error affecting a constitutional right may be raised for the first time on appeal. RAP 2.5(a); State v. Scott, 110 Wn.2d 682, 686, 757 P.2d 492 (1988). An error is "manifest" when it had practical and identifiable consequences at trial. State v. Harris, 154 Wn. App. 87, 94, 224 P.3d 830 (2010).

The error in Huggins's case affected his constitutional right to due process. Aho, 137 Wn.2d at 744. The error also had a practical and identifiable consequence -- it caused a conviction for an offense Huggins did not commit. This Court should therefore reach the merits of Huggins's argument, reverse the conviction, and remand for dismissal with prejudice.

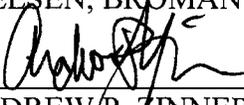
B. CONCLUSION

For the reasons cited herein and in his Brief of Appellant, this Court should reverse Huggins's PSP conviction (count 7) and remand for dismissal with prejudice. For the reasons articulated in the opening brief, this Court should also reverse all other convictions and remand for a new trial.

DATED this 1 day of November, 2010.

Respectfully submitted,

NIELSEN, BROMAN & KOCH, PLLC

  
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Respondent,	)	
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	)	
JONATHAN HUGGINS,	)	
	)	
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 1<sup>ST</sup> DAY OF NOVEMBER, 2010, 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] JONATHAN HUGGINS  
DOC NO. 331470  
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**SIGNED** IN SEATTLE WASHINGTON, THIS 1<sup>ST</sup> DAY OF NOVEMBER, 2010.

x. Patrick Mayovsky