

05465-9

05465-9

NO. 65465-9-1

THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,
Respondent,
v.
TYSON SPRING,
Appellant.

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

REPLY BRIEF

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A. ARGUMENT

1. WHERE THERE WAS INSUFFICIENT EVIDENCE TO CONVICT TYSON SPRING OF FORGERY, REVERSAL MUST BE GRANTED.

a. The evidence was insufficient to convict Mr. Spring of forgery. The State was required to prove that, with the intent to injure or defraud, Mr. Spring offered written instruments which he knew to be forged. RCW 9A.60.020(1)(a),(b). Mr. Spring was charged with offering forged odometer disclosure/release of title forms and affidavit of loss/release of interest forms as to Mark Horne (counts 14 and 15). CP 45-54. Because there was no evidence that Mr. Spring intended to defraud Mr. Horne by offering these documents to facilitate the sale of Mr. Horne's vehicle without his consent, and because these documents were consistent with Mr. Horne's intentions, these forgery convictions must be reversed and dismissed. Cf. State v. Soderholm, 68 Wn. App. 363, 374, 842 P.2d 1039 (1993).

Although in its response, the State argues that there were distinguishing characteristics between the documents signed by Mr. Spring and the hard copies mailed by Mr. Horne, the State fails to address appellant's agency argument. Resp. Brief at 39-40. Mr. Spring signed the two documents on Mr. Horne's behalf, knowing

that his dealership had shuttered its doors before receiving the hard copies by mail from Mr. Horne in Alaska. RP 1328. More importantly, Mr. Spring's intention by preparing the documents for Mr. Horne was clear from his own statements:

At the time I signed these document(s), Mark Horne had already signed the same exact documents and returned them to me in e-mail. So, I did feel like I was authorized to do that. I was trying to hold the deal together. They were threatening to unwind the deal ... and I knew that the documents were in route, so I did think that I was authorized to sign those documents.

RP 1416.

This case is distinguishable from Soderholm, where this Court found the defendant was not authorized to sign documentation as an agent. 68 Wn. App. at 374. In Soderholm, this Court held that a rational trier of fact could have found that the defendant signed the owner's name to the permit application in order to perpetrate a fraud – in that case, in order to conceal the fact that he was not a licensed contractor. 68 Wn. App. at 375.

Here, however, the evidence was clear from both Mr. Horne's and Mr. Spring's testimony that the signatures on the odometer disclosure and release of interest forms were only offered in order to expedite the sale of Mr. Horne's vehicle. Mr. Horne testified that he

had already signed identical forms and placed them in the mail to Mr. Spring, thus evincing his consent to the content of the very forms he later claimed to be forged. RP 231, 255-56. Mr. Spring testified that he offered the odometer disclosure and release of interest forms precisely because Mr. Horne had already authorized him to do so -- both electronically and by telling him that he had signed and placed the forms into the mail. RP 1416.

Mr. Spring offered documents, as authorized as the principal's agent, with the intention of fulfilling the principal's goal: selling his car. This is the very opposite of the *mens rea* required under the forgery statute, which is acting with the intent to injure or defraud. RCW 9A.60.020(1)(a),(b).

b. The prosecution's failure to prove all essential elements requires reversal. The absence of proof beyond a reasonable doubt of an element requires dismissal of the conviction and charge. Jackson, 443 U.S. at 319; Green, 94 Wn.2d at 221. The State argues that for Mr. Horne to sign these documents would have been contrary to his interest. Resp. Brief at 41. Whether or not this is accurate, it does not affect the State's burden to prove that Mr. Spring had the requisite intent to injure or defraud Mr. Horne, which the State clearly failed to do.

The State failed to prove beyond a reasonable doubt that, with the intent to injure or defraud Mr. Horne, Mr. Spring offered written instruments which he knew to be forged. RCW 9A.60.020(1)(a),(b). Absent proof of every essential element, the convictions must be reversed and the charges dismissed. State v. Hundley, 126 Wn.2d 418, 421-22, 895 P.2d 403 (1995).

2. MR. SPRING'S CONSTITUTIONAL RIGHT TO PRESENT A DEFENSE WAS VIOLATED WHEN HIS RIGHT TO PRESENT AN ESSENTIAL EXPERT WITNESS WAS CURTAILED.

a. The proffered expert testimony was relevant to Mr. Spring's defense to the American Marine Bank (AMB) count and would have been helpful to the jury. The due process right to present witnesses has evolved from the right to present a defense, and is limited only to the extent that it does not embrace the right to present irrelevant evidence. U.S. Const. amends. VI, XIV; Const. art. 1, §§ 3; Maupin, 128 Wn.2d 918, 925, 913 P.2d 808 (1996). The trial court has the discretion to determine whether evidence is relevant. However, a defendant's inability to present relevant evidence implicates the fundamental fairness of the proceedings and the error must be analyzed as a due process violation. Maupin, 128 Wn.2d at 924.

Under ER 702, if scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise. See 5B Karl B. Tegland, Washington Practice, Evidence Law & Practice, sec. 702.1, at 31 (4th ed. 1999).

b. Defense counsel's offer of proof was sufficient.

Here, the trial court found that Mr. Spring's former attorney, David Smith, was qualified to be an expert witness as to commercial law and the UCC. RP 1466-67.¹ Defense counsel made an offer of proof, stating that he intended to call David Smith as not only a transactional witness, but also as an expert witness on the UCC, in order to elaborate on the American Marine Bank deal involving the new BMW imported from Germany (count 13). RP 1467-68.²

Commercial law is hardly an area that is easily understood by laypeople in the jury, and it was imperative that Mr. Spring be able to

¹ In response to defense counsel's offer regarding Mr. Smith's qualifications, the trial court stated, "No question. I assume that." RP 1466.

² Defense counsel preserved this issue upon the trial court's preliminary denial of the motion, noting that the court's ruling was critical, and "kind of eviscerates the testimony before the jury." RP 1478.

present evidence concerning the AMB loan to the jury, and to be able to distinguish for the jury between a signature loan and a secured loan – something even many attorneys in the courtroom might not understand. RP 1515-19. Expert testimony on commercial law and the UCC was crucial to the jury's understanding the evidence in this complex case. ER 702.

The State argues that the defense failed to sufficiently preserve this issue in its offer of proof. Resp. Brief at 45-46. However, the trial court allowed a brief proffer as to Mr. Smith's qualifications concerning the UCC and commercial law, RP 1479-90, and then denied the proffer on relevance grounds. RP 1491. The court ruled that the offer of proof had only done "more to enforce my prior view rather than to change it." RP 1491.

Mr. Spring's defense was critically restricted when the trial court denied the motion to permit David Smith to be qualified as an expert witness. The expert testimony of this witness was highly relevant to Mr. Spring's defense – particularly to his explanation concerning the transaction involving the AMB transaction. Mr. Spring had the constitutional right to present this evidence so that the jury had the information needed to determine whether or not the State had met its burden to prove theft in the first degree on

this count. The trial court's ruling thus violated his due process right to present a defense. Maupin, 128 Wn.2d at 924.³

c. The violation of the right to present a defense is not harmless, and reversal is required. A violation of the right to compel witnesses is presumed prejudicial. Maupin, 128 Wn.2d at 924; State v. Burri, 87 Wn.2d 175, 181, 550 P.2d 507 (1976). It is the prosecution's burden to show that the error was harmless beyond a reasonable doubt. Maupin, 128 Wn.2d at 924; Burri, 87 Wn.2d at 175.

Without Mr. Spring's expert witness, no witness could assist the jury in understanding the complex area of the UCC. The error went to the heart of Mr. Spring's defense, particularly on the AMB transaction, and the State cannot demonstrate that the error was harmless beyond a reasonable doubt.

In the alternative, the error may be reviewed as an abuse of discretion. State v. Stenson, 132 Wn.2d 668, 701, 940 P.2d 1239 (1997); see Stevens v. Gordon, 118 Wn. App. 43, 51, 74 P.3d 653 (2003) (admission or exclusion of expert testimony is discretionary).

³ In addition, David Smith was cross-examined at length concerning the American Marine Bank loan. RP 1515-19, 1524-25. However, with only the ability to respond as a transactional witness – and not as an expert on the UCC – the defense was hobbled.

Should this Court determine the error is not a constitutional one, it should determine that the trial court abused its discretion in excluding the expert testimony of David Smith. State v. Powell, 126 Wn.2d 244, 258, 893 P.2d 615 (1995).

The deprivation of Mr. Spring's right to present a critical aspect of his defense in a meaningful fashion was not harmless, and requires reversal. Maupin, 128 Wn.2d at 929-30; Rice, 48 Wn. App. at 12 ("Due process demands that a defendant be entitled to present evidence that is relevant and of consequence to his or her theory of the case").

Due to this violation of Mr. Spring's due process rights, his conviction must be reversed and remanded for a new trial.

3. THE TRIAL COURT VIOLATED MR. SPRING'S EQUAL PROTECTION RIGHTS, CHARGING HIM WITH THE MORE GENERAL FELONY OF FORGERY, RATHER THAN THE SPECIFIC MISDEMEANOR GOVERNING CAR DEALERS.

Statutes are concurrent for purposes of Equal Protection if all the elements to convict under the general statute – here, the forgery statute – are also elements that must be proved for conviction under the more specific statute. State v. Chase, 134 Wn. App. 792, 800, 142 P.3d 630 (2006); State v. Presba, 131 Wn. App. 47, 52, 126 P.3d 1280 (2005); See U.S. Const. amend. 14.

a. Because Mr. Spring's conduct was proscribed by a general and a specific statute, the State could charge only the specific statute. When a specific statute proscribes conduct that is also proscribed by a more general statute, the "general-specific" rule of statutory construction requires the State to prosecute only under the more specific statute. State v. Conte, 159 Wn.2d 797, 803-04, 154 P.3d 194, cert. denied, 552 U.S. 992 (2007); State v. Shriner, 101 Wn.2d 576, 590, 681 P.2d 237 (1984); State v. Danforth, 97 Wn.2d 255, 258, 643 P.2d 882 (1982).

b. RCW 46.70.180(12)(b) and forgery are concurrent statutes. RCW Chapter 46.70, titled Dealers and Manufacturers, contains numerous laws and regulations governing new and used motor vehicle sales. RCW 46.70.005-RCW 46.70.920. In the section's declaration of purpose, it is noted that the legislature has declared that vehicle sales vitally affect the State's economy and that in order to promote the public interest, the State may regulate and license car dealers. RCW 46.70.005. The statute also notes that it is a misdemeanor to violate any of the individual provisions of this chapter, except where expressly provided otherwise. RCW 46.70.170.

Here, Mr. Spring was convicted of four counts of forgery. But the more specific crime enumerated in RCW 46.70.180(12)(b) (Unlawful acts and practices) criminalizes the actual “signing [of] any ... odometer statements, or title documents, or having the name of the buyer’s agent appear on the vehicle purchase order, sales contract, or title.” RCW 46.70.180(12)(b).

Clearly, this is the specific act with which Mr. Spring was charged, in terms of his actions with Mr. Horne and Mr. McKim (counts 14 through 17). However, Mr. Spring was convicted of the more general crime of forgery. Since it is not possible for a person to violate the specific statute without violating the general statute, the statutes are concurrent. Shriner, 101 Wn.2d at 590; Chase, 134 Wn. App. at 800.

The State argues that RCW 46.70.180(12)(b) has a different intent requirement from the forgery statute, and “in fact that statute [the DOL regulation] has no mens rea element at all.” Resp. Brief at 50. The State argues that it follows that the two statutes are not concurrent. Id. The Supreme Court, however, has repeatedly held that crimes without a mens rea – thus, strict liability crimes – are highly disfavored in our system of jurisprudence. See, e.g., State v. Anderson, 141 Wn.2d 357, 367, 5 P.3d 1247 (2000).

“The contention that an injury can amount to a crime only when inflicted by intention is no provincial or transient notion. It is as universal and persistent in mature systems of law as belief in freedom of the human will and a consequent ability and duty of the normal individual to choose between good and evil.” Staples v. United States, 511 U.S. 600, 605, 114 S.Ct. 1793, 128 L.Ed.2d 608 (1994) (quoting Morrisette v. United States, 342 U.S. 250, 250, 72 S.Ct. 240, 96 L.Ed. (1952); State v. Bash, 130 Wn.2d 594, 606, 925 P.2d 978 (1996)).

Here, the two statutes are concurrent. Statutes are concurrent if each violation of the specific statute must result in a violation of the general statute. See, e.g., Chase, 134 Wn. App. at 800. It is RCW 46.70.180(12)(b), the specific statute, that refers to the improper signing of odometer statements and title documents, which is the conduct ascribed to Mr. Spring. CP 45-54. Since the general forgery statute would be violated each time there was a violation of the specific statute, the statutes are concurrent. Shriner, 101 Wn.2d at 580; Chase, 134 Wn. App. at 800.

c. The forgery convictions must be reversed. The remedy for the prosecution of concurrent offenses is that the general convictions be vacated. Shriner, 101 Wn.2d at 580. “[S]ound

principles of statutory interpretation and respect for legislative enactments require that the specific statute prevails to the exclusion of the general.” Id. at 583. Thus, when concurrent statutes cover a defendant’s conduct, the State must charge the defendant only under the more specific statute. Danforth, 97 Wn.2d at 257-58.

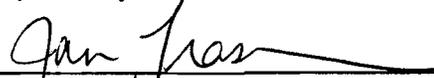
The remedy for the improper prosecution of concurrent offenses requires that the forgery convictions (counts 14-17) be vacated. Shriner, 101 Wn.2d at 580; Danforth, 97 Wn.2d at 257-58.

B. CONCLUSION

For the foregoing reasons, Tyson Spring respectfully requests this Court reverse his convictions and remand the case for further proceedings.

DATED this 3rd day of June, 2011.

Respectfully submitted,



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

STATE OF WASHINGTON,)

Respondent,)

v.)

TYSON SPRING,)

Appellant.)

NO. 65465-9-I

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 3RD DAY OF JUNE, 2011, I CAUSED THE ORIGINAL **REPLY BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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<input checked="" type="checkbox"/> TYSON SPRING 509 ACADEMY DR AUSTIN, TX 78704	<input checked="" type="checkbox"/> U.S. MAIL <input type="checkbox"/> HAND DELIVERY <input type="checkbox"/> _____

SIGNED IN SEATTLE, WASHINGTON THIS 3RD DAY OF JUNE, 2011.

X _____ *gout*

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