

FILED
SUPREME COURT
STATE OF WASHINGTON
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NO. 99008-5

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

MICHAEL ALEXANDER GONZALES,

Petitioner.

ANSWER TO
PETITION FOR REVIEW

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I. IDENTITY OF RESPONDENT

The State of Washington, respondent, asks that review be denied.

II. STATEMENT OF THE CASE

The facts are correctly set out in the Court of Appeals opinion.

III. ARGUMENT

THE RESOLUTION OF A FACTUAL ISSUE IN AN UNPUBLISHED OPINION DOES NOT WARRANT REVIEW.

The petitioner contends that the evidence was insufficient to prove one of the means of committing first degree trafficking in stolen property. That crime is defined by RCW 9A.82.050(1):

A person [(a)] who knowingly initiates, organizes, plans, finances, directs, manages, or supervises the theft of property for sale to others, or [(b)] who knowingly traffics in stolen property, is guilty of trafficking in stolen property in the first degree.

(The bracketed letters have been added for ease of reference.) The term "traffic" is defined in RCW 9A.82.010(19):

"Traffic" means to sell, transfer, distribute, dispense, or otherwise dispose of stolen property to another person, or to buy, receive, possess, or obtain control of stolen property, with intent to sell, transfer, distribute, dispense, or otherwise dispose of the property to another person.

The statute defining first degree trafficking in stolen property has been construed as establishing two alternative means. Alternative (a) relates to “facilitating or participating in the theft of property so that it can be sold.” Alternative (b) relates to “transferring possession of property knowing that it has been stolen.” State v. Owens, 180 Wn.2d 90, 97 ¶ 12, 323 P.3d 1030 (2014).

The petitioner contends that the evidence was insufficient to establish alternative (a). His argument, however, focuses on the wrong question. He argues that his transaction with the pawn shops constituted loans, not sales. Under alternative (a), however, the question is not whether the perpetrator *actually* sold the stolen property. Rather, the question is whether he “knowingly initiate[d] ... the theft of property for sale to others.” This portion of the statute focuses on the purpose of the theft. If a person initiates the theft of property for sale, he is guilty under alternative (a) — even if the property is recovered before the sale is consummated. (Conversely, a person who sells or transfers stolen property is guilty under alternative (b) — even if the intent to sell or transfer arose after the property was acquired.)

In the present case, there was ample evidence that the petitioner initiated the theft of property for sale. According to his statement, he took tools and pawned them to get drug money. Ex. 9A. The evidence showed that if he failed to redeem the tools within a specified time, the pawn shops would acquire complete ownership. 2 Trial RP 222, 241. If he redeemed the tools, however, he would not get money. Rather, the transactions would cost him hundreds of dollars in finance fees. See ex. 1 – 8 (showing finance fees needed for redemption). A jury could reasonably infer that the petitioner did not steal the tools for the purpose of *spending* money to keep them. Rather, he did so for the purpose of transferring apparent title for money – that is, for the purpose of sale.

The Court of Appeals correctly determined that the evidence allowed a reasonable jury to find that the defendant initiated the theft or property for sale. The court's resolution of a factual issue in an unpublished opinion does not warrant review by this court.

IV. CONCLUSION

The petition for review should be denied.

Respectfully submitted on October 7, 2020.

ADAM CORNELL
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IN THE SUPREME COURT
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STATE OF WASHINGTON

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MICHAEL ALEXANDER GONZALES,

Petitioner.

No. 99008-5

DECLARATION OF DOCUMENT
FILING AND E-SERVICE

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The undersigned certifies that on the 7th day of October, 2020, affiant sent via e-mail as an attachment the following document(s) in the above-referenced cause:

ANSWER TO PETITION FOR REVIEW

I certify that I sent via e-mail a copy of the foregoing document to: The Supreme Court via Electronic Filing and to the attorney(s) for the Petitioner; Washington Appellate Project; wapofficemail@washapp.org; tiffinie@washapp.org

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 7th day of October, 2020, at the Snohomish County Office.



Diane K. Kremenich
Legal Assistant/Appeals Unit
Snohomish County Prosecutor's Office

SNOHOMISH COUNTY PROSECUTOR'S OFFICE

October 07, 2020 - 11:02 AM

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