

64266-9

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NO. 64266-9-1

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

ABDIRASHI M. ALI
(aka ABDULLAH M. ALI)

Appellant.

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COURT OF APPEALS
DIVISION ONE
FILED
CLERK

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

APPELLANT'S REPLY BRIEF

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A. ARGUMENT.

The State failed to prove Mr. Ali's possession was unlawful because (1) the state failed to establish Vora was the "true owner" of the vehicle and (2) the State failed to establish Vora had the exclusive authority to preclude others from operating the vehicle Mr. Ali possessed. RCW 9A.56.140(1). The prosecutor acknowledged these shortcomings in the proof, yet offered no support for its positions. Without proof Vora was the "true owner" of the vehicle or was granted exclusive authority over the car, no rational jury could find Mr. Ali unlawfully possessed the vehicle. Id.

1. THE STATE PROVIDED INSUFFICIENT EVIDENCE TO PROVE VORA OWNED THE MOTOR VEHICLE.

The State seeks to avoid the shortcomings in its proof by inferring renters are always "owners" under the statute and erroneously applying Blewitt's "totality of circumstances" test. Br. of Resp. at 2-4; RCW 9A.56.101(9); State v. Blewitt, 37 Wn. App. 397, 680 P.2d 457 (1984).

When discussing whether Vora owned the vehicle, the State inferred that because Vora had rented the vehicle and possessed it for several days, Vora was entitled to exercise full and exclusive dominion and control over the vehicle. Br. of Resp. at 2-3. This inference is unsupported by the record because it ignores Vora's

limited contractual relationship with the rental agency. Merely renting the vehicle is not sufficient to establish ownership under RCW 9A.56.010(9). Plain usage and specific statutory definitions distinguish between the “true owner” and others who may be entitled to exclusive possession. Id.; RCW 9A.56.140(1).

Having established that Vora was not the “true owner,” if the State wanted to prove there was a right to exclusive possession, it was obliged to present the rental agreement which defined those rights. Id. Absent the rental agreement, the State failed to show Vora was entitled to exercise full or exclusive dominion and control over the vehicle.

The State has now suggested that because Mr. Ali did not challenge the scope of Vora’s ownership interest during trial, the issue cannot be raised on appeal. Br. of Resp. at 3. However, Mr. Ali may always challenge the sufficiency of the State’s proof on direct appeal because a conviction on insufficient evidence is a manifest constitutional error. RAP 2.5; State v. Young, 50 Wn.App. 107, 111, 747 P.2d 486 (1987).¹ Accordingly, this Court should examine whether the State proved Vora, given his limited right to

¹ The State always carries the burden of proof in criminal matters. Apprendi v. New Jersey, 530 U.S. 466, 490, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000). This court reviews the sufficiency of evidence claims to determine whether a rational trier of fact could have found all the essential elements of the crime beyond a reasonable doubt. State v. Green, 94 Wn.2d 216, 221, 616 P.2d

the rental vehicle, also had the power of exclusion essential to establishing Mr. Ali's possession was unlawful. Because the State did not provide sufficient evidence to prove Vora owned the vehicle or had an exclusive right to possession, it failed to meet its burden whether or not Ali addressed the issue during trial.

Furthermore, when arguing Vora owned the vehicle, the State claims it is unrefuted that Vora "possessed" the vehicle. Br. of Resp. at 4. Mere possession, however, is not sufficient to establish ownership for purposes of RCW 9A.56.010(9). The State must also show Vora was the person "without whose consent" Ali had "no authority to exert control" over the vehicle. Id. Without establishing the nature of Vora's rental agreement with Budget Rent-a-Car, the prosecution cannot show Vora "had authority to exert control" over the vehicle. Id.

Finally, the state erroneously applied State v. Blewitt's "totality of circumstances" test and incorrectly asserted Vora satisfied the requirements for dominion and control over the vehicle. Br. of Resp. at 4; Blewitt, 37 Wn. App. at 399 (stating that whether a person had constructive possession—and thus dominion and control as against all others—is determined by viewing the totality of the circumstances). It was never disputed that Vora

628 (1980).

rented the vehicle from Budget Rent-a-Car. RP 76. The evidence in its totality never established Vora had “control” over the vehicle as against all others because he was a mere renter, not an owner. Id. The State cannot prove otherwise without providing the terms of Vora’s rental agreement. Because the State never presented the rental agreement, there was insufficient evidence to prove Vora “owned” the vehicle within the meaning of the statute.

The State failed to prove Vora was the “true owner” of the vehicle and did not present any additional evidence to establish his limited right to possession was an exclusive one. RCW 9A.56.140(1). Presenting the rental agreement to the trial court would not have constituted a hardship on the state and would have clarified the extent of Vora’s possession of the vehicle. Without sufficient evidence to prove ownership, no rational jury could find Ali possessed the vehicle against the owner’s will.

2. THE STATE PROVIDED INSUFFICIENT EVIDENCE TO PROVE VORA HAD THE EXCLUSIVE POWER TO AUTHORIZE MR. ALI’S POSSESSION.

The State fails to answer the question of whether Vora retained the exclusive power to authorize Mr. Ali’s possession of the vehicle. When arguing only Vora had the power to authorize Ali’s possession of the rented vehicle, the State cited a string of

irrelevant facts that did not lead to the conclusion Vora had such power. These included that Vora rented a vehicle, had done so for several days, drove the vehicle to a bar, left the keys in his jacket, discovered the keys and vehicle missing, did not know Ali, and did not give Ali permission to possess the keys or vehicle. Br. of Resp. at 2. None of these facts individually or collectively establish whether Vora had the exclusive power to give Ali permission to possess the vehicle. Without establishing Vora had the exclusive power to authorize Mr. Ali's possession of the vehicle, no rational jury could find that he possessed the vehicle against the owner's will.

The State incorrectly applied State v. Greathouse, 113 Wn.App. 889, 901, 56 P.3d 569 (2002) and State v. Lee, 128 Wn.2d 151, 904 P.2d 1143 (1995), to minimize its burden of proof. These cases suggest that for theft and larceny cases, the State need not prove the person deprived of the property was the true owner. Instead, it is sufficient to show the property did not belong to the defendant. Id. However, Greathouse and Lee do not speak to the offense of unlawful possession of stolen property. For the possession of stolen property to be unlawful under the statute, it must necessarily be against the will of the "true owner". RCW 9A.56.140(1).

In State v. Gonzalez, 133 Wn.App. 236, 243, 148 P.3d 1046, 1049 (2006), this Court found that undisputed evidence showing Mr. Gonzalez possessed a car without the owner's permission was sufficient to sustain his conviction. Absent such undisputed evidence, the State is unable to prove the possession here was unlawful. The State presented no evidence to suggest Vora was the "true owner" of the rental vehicle, nor did the prosecution establish he was the person "without whose consent" Mr. Ali had "no authority to exert control" over the vehicle. RCW 9A.56.140(1); RCW 9A.56.010(9). Accordingly the evidence is insufficient to show Mr. Ali possessed a stolen vehicle without the true owner's permission.

The claim that Vora's failure to authorize Mr. Ali's possession of the car rendered Mr. Ali's possession unlawful fails because of the absence of evidence establishing Vora had the exclusive power to authorize possession by third persons. If Vora lacked the power to prohibit Mr. Ali's possession, then no rational jury could conclude that Mr. Ali possessed the vehicle against the true owner's will. The State did not present any other witnesses or evidence to support the claim that Ali unlawfully possessed the vehicle; accordingly, the evidence is insufficient to sustain a conviction.

3. ABSENT PROOF VORA OWNED THE VEHICLE OR WAS IN AN EXCLUSIVE POSITION TO AUTHORIZE MR. ALI'S POSSESSION, THIS COURT SHOULD FIND THERE WAS INSUFFICIENT EVIDENCE TO SUSTAIN A CONVICTION FOR UNLAWFUL POSSESSION OF THE VEHICLE

To sustain a conviction, the State must prove all elements of the offense beyond a reasonable doubt. In re Winship, 397 U.S. 358, 25 L.Ed.2d 368, 90 S.Ct. 1068 (1970). The State provided insufficient evidence to show Vora owned the vehicle and he had the exclusive power to authorize Ali's possession of the vehicle. Absent proof of these elements, no rational jury could find that Ali possessed the vehicle against the will of the owner. Accordingly, we ask this Court to reverse and dismiss Ali's conviction.

B. CONCLUSION.

Mr. Ali requests this court reverse his conviction for possession of a stolen vehicle and remand for dismissal of the underlying cause.

DATED this 22nd day of July 2010.

Respectfully submitted,



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

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	NO. 64266-9-I
v.)	
)	
ABDIRASHID ALI,)	
)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 22ND DAY OF JULY, 2010, 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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SIGNED IN SEATTLE, WASHINGTON THIS 22ND DAY OF JULY, 2010.

X _____ 

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