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No. 64266-9-I

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

STATE OF WASHINGTON,

Respondent,

v.

ABDIRASHI ALI (A.K.A. ABDULLAHI ALI),

Appellant.

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

The Honorable Mary Roberts

BRIEF OF APPELLANT

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A. ASSIGNMENT OF ERROR

The State presented insufficient evidence to prove the essential elements of possession of a stolen motor vehicle as charged in the information.

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

Under the due process clauses of both the federal and state constitutions, the State bears the burden of proving the essential elements of the crime charged. In a prosecution for possession of a stolen motor vehicle, the State must prove that the defendant possessed the vehicle without the consent of the owner, who is defined as either the “true owner” or the person “who has possession of or any other interest in the property or services involved, and without whose consent the actor has no authority to exert control over the property or services.” Did the State fail to prove this essential element where the vehicle in question was a rental car, the State offered no evidence showing the rental car company had given exclusive authority to any one person to allow another to exert control over the car, and the person who claimed to have rented the car was not the car’s “true owner?”

C. STATEMENT OF THE CASE

In the early morning hours of July 12, 2008, Darren Mihelich, a sergeant with the Washington State Patrol, was working traffic control duty at a construction zone in Seattle, when he saw a silver-colored sports utility vehicle (“SUV”) with two occupants drive the wrong way through the construction area. RP 144, 152.¹ Mihelich shouted at the driver, “What are you doing?” RP 152. The vehicle did not stop but instead moved forward slowly as if to squeeze around Mihelich. RP 156.

Mihelich stopped the vehicle and contacted the driver. He again asked the driver what he was doing, and the driver explained that he was confused. RP 156. While talking with the driver, Mihelich noticed a pervasive aroma of cologne, but despite this strong scent, believed he also smelled the odor of intoxicants. RP 163. The driver had watery, bloodshot eyes and there was an open container of Budweiser beer in the car. RP 164-65. The car’s exterior was covered with a sticky substance and all of the windows of the car were broken. RP 176.

¹ Two consecutively-paginated volumes of transcripts from hearings on August 24, 25, 26, and 27, 2009, are referenced herein as “RP” followed by page number. An additional volume of sentencing transcripts is not cited.

Mihelich asked the driver to identify himself, but he could not produce either a identification card or driver's license. RP 158. The driver did give Mihelich his name, which Mihelich ran through dispatch, along with the license plates of the vehicle. The vehicle was reported stolen, and Mihelich arrested the driver. RP 176-77. The passenger was released at the scene. RP 178. The driver told Mihelich that he had borrowed the car from his cousin. RP 160. Based on these events, appellant Abdirashi Ali was charged with driving under the influence and possession of a stolen vehicle. CP 1-2.

Ali exercised his right to a jury trial on the charged offenses. At the trial, the State called only one witness, Rahill Vora, to testify regarding the possession of a stolen vehicle count. Vora stated that his own car had been damaged and he rented a car from "Budget" in "Kent." RP 76. On July 5, 2008, after this car was in his possession for only a few days, Vora drove to a bar near his house, where he stayed for about three hours. RP 78-79.

Vora testified that when he left the bar, his car keys were missing from his jacket and the rental car was gone. Id. Vora testified that Ali did not have permission to use the car. RP 80-81. The State did not call any witnesses from Budget Rent-a-Car or

elicit any additional evidence from Vora regarding the terms of his rental agreement.²

A jury convicted Ali of both counts as charged. RP 256; CP 25-26. Ali appeals. CP 39.

D. ARGUMENT

THE STATE PRESENTED INSUFFICIENT EVIDENCE TO PROVE THE ESSENTIAL ELEMENTS OF POSSESSION OF A STOLEN MOTOR VEHICLE.

1. The State must prove the essential elements of a criminal offense. Consistent with due process, the State bears the burden of proving each element of a criminal charge beyond a reasonable doubt. Apprendi v. New Jersey, 530 U.S. 466, 490, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000); In Re Winship, 397 U.S. 359, 364, 90 S.Ct. 1068, 25 L.Ed. 2d 368 (1970); State v. Cantu, 156 Wn.2d 819, 825, 132 P.3d 725 (2006); U.S. Const. amends. V, XIV; Const. art. I, § 3. The “crime” for purposes of this analysis is the crime charged in the information. State v. Recuenco, 163 Wn.2d 428, 433, 180 P.2d 1276 (2008); State v. Goodman, 150 Wn.2d 774, 785-86, 83 P.3d 410 (2004).

When the sufficiency of the evidence is challenged on

² Exhibit 1, offered by the State, was the Tukwila Police Department Motor Vehicle Theft form, which did not contain any additional information about the rental agreement.

appeal, the Court examines all of the evidence and decides whether any rational trier of fact could have found guilt beyond a reasonable doubt. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). The evidence must viewed in the light most favorable to the State, with all reasonable inferences construed against the accused. Id.

2. The State presented insufficient evidence to prove the essential elements of possession of a stolen motor vehicle because the State did not show Vora was a person without whose consent Ali had no authority to exert control over the property. A person is guilty of possession of a stolen vehicle if he or she possesses a stolen motor vehicle. RCW 9A.56.068. The related provision regarding possession of stolen property defines this offense as follows: “Possessing stolen property” means knowingly to receive, retain, possess, conceal, or dispose of stolen property knowing that it has been stolen and to withhold or appropriate the same to the use of any person other than the true owner or person entitled thereto.’ RCW 9A.56.140(1).

“Owner” is defined as “a person, other than the actor, who has possession of or any other interest in the property or services involved, and without whose consent the actor has no authority to

exert control over the property or services.” RCW 9A.56.010(9).

Thus, to convict Ali of the crime of possession of a stolen motor vehicle, the State had to prove that he had possession of the SUV “without the permission of the owner or the person entitled to possession thereof.” State v. Hudson, 1 Wn. App. 813, 818, 463 P.2d 786 (1970). Proof that the defendant possesses the property without permission requires competent evidence that the property is taken without the consent of the person who has the right of possession or another interest in the property “without whose consent the actor has no authority to exert control over the property or services.” RCW 9A.56.010(9). The purpose of the requirement that ownership be proved is to ensure that the property was neither abandoned nor owned by the accused, and that it was taken from one who was the owner. People v. McAllister, 334 N.E.2d 885, 887 (Ill. App. 1975).

In this case, the “true owner” of the property was “Budget.” RP 76. The State alleged in the information, however, that “Vora Rahil” [sic] was “the true owner and person entitled thereto.” CP 1. While under statute, Vora could have been a person holding “any other interest in the property or services involved, and without whose consent the actor has no authority to exert control over the

property or services,” the State did not show that he had the sole authority to consent to allow another to exert control over the SUV.

The State did not introduce a copy of the rental agreement into evidence, although presumably it could easily have done so. The State did not call any witness from Budget Rent-a-Car to confirm that Vora had leased that car from the company and was the only person licensed to use it. The prosecutor did not even ask Vora if the rental agreement provided for his sole use and control of the SUV while it was in his custody.

In State v. Blewitt, 37 Wn. App. 397, 680 P.2d 457 (1984), the defendants were convicted of robbing a Budget Rent-a-Car office. Two employees were on duty, including a shuttle bus driver. On appeal, the defendants claimed that the bus driver was not shown to have dominion or control over the property taken. Id. at 398-99. The Court disagreed, reasoning that because “Zeno was proved to be an employee of the owner of the stolen property . . . he had the implied responsibility of exercising control over the employer's property as against all others.” Id. at 399. Here, by contrast, even assuming Vora was proved the person permitted by

"Budget," the car's "true owner," to use the car,³ there was no evidence that he had control over the property "as against all others."

Decisions from other states also establish that the evidence the State adduced at Ali's trial was insufficient to establish Ali possessed the SUV without the consent of the "owner." In Illinois, for example, where property has been stolen from a corporation, the prosecution must allege and prove corporate existence. McAllister 334 N.E.2d at 888. The reasons for this requirement are "(i) to establish that the defendant was not the owner of the property, (ii) to protect the defendant against double jeopardy, and (iii) to inform defendant of the charge against him." Id. These same requirements are recognized in Washington:

The name of the victim, however, is not superfluous in a theft case.... Though not a necessary element of a theft instruction, allegations of ownership must be sufficiently stated in an information to establish that the property was not that of the accused, to protect the accused against a second prosecution for the same crime, and to avoid misleading or embarrassing the accused in the preparation of his or her defense.

State v. Greathouse, 113 Wn. App. 889, 901, 56 P.3d 569 (2002) (quoting State v. Lee, 128 Wn.2d 151, 904 P.2d 1143 (2005)).

³ See argument 3, infra.

In McAllister, the Court found sufficient evidence of theft of merchandise from a discount store without the owner's permission was established because (1) the defendant stipulated that the discount store was a licensed business in Illinois, and (2) a security guard testified that trousers taken from the store belonged to the business. Id. at 887-88.

Similarly, in State v. Wilhite, 587 S.W.2d 321 (Mo. App. E.D. 1979), the defendant was convicted of burglary in connection with stealing items from a storage building on a farm, "the personal property of Gaylon Lawrence." Id. at 322. The prosecution did not call Lawrence to testify, but did call the farm's manager, who testified (apparently without a hearsay objection) that he had seen the title to the premises and that the premises belonged to Lawrence. This evidence was held to be sufficient to establish the ownership element. Id. at 322-24.

The record in this case was devoid of the evidence that saved the prosecutions from the sufficiency challenges in Blewitt, McAllister and Wilhite. There was no evidence to establish what "Budget" was or the nature of the authority conferred upon Vora by the rental contract. Although Vora testified that he did not give Ali permission to use the car, the State apparently failed to recognize

that as a predicate, it had to show Vora was the person who could grant or withhold such permission. This Court should conclude the State did not present sufficient evidence to prove the essential elements of possession of a stolen motor vehicle.

3. The State did not prove Vora was the SUV's "true owner" as charged in the information. Under the "essential elements" rule, "[e]lements" are the facts that the State must prove beyond a reasonable doubt to establish that the defendant committed the charged crime." Recuenco, 163 Wn.2d at 434. "Washington law requires the State to allege in the information the crime which it seeks to establish." Id. The "crime" which the State sought to establish here required the State to prove that Vora was the SUV's "true owner." CP 1. This the State could not prove. Vora was a mere lessee, and not the "true owner" of the SUV. For this reason, too, this Court should conclude the evidence was insufficient to support Ali's conviction.

4. The remedy is reversal and dismissal of the conviction. If an appellate court holds that evidence is insufficient to support a conviction, then double jeopardy bars retrial for that offense, and the matter must be dismissed. Burks v. United States, 437 U.S. 1, 11, 98 S.Ct. 2141, 57 L.Ed.2d 1 (1978). If this Court finds the

evidence insufficient to support the essential elements of possession of a stolen motor vehicle, it must reverse and dismiss Ali's conviction.

E. CONCLUSION

For the foregoing reasons, this Court should reverse and dismiss Ali's conviction.

DATED this 29th day of March, 2010.

Respectfully submitted:


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

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	
v.)	NO. 64266-91-I
)	
ABDIRASHID ALI,)	
)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 29TH DAY OF MARCH, 2010, I CAUSED THE ORIGINAL **OPENING 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 29TH DAY OF MARCH, 2010.

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[Handwritten Signature]

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