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No. 64873-0-I

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

STATE OF WASHINGTON,  
Respondent,  
v.  
DAVID P. FENDICH,  
Appellant.

COURT OF APPEALS  
STATE OF WASHINGTON  
2010 SEP 30 PM 4:59

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

APPELLANT'S OPENING BRIEF

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**TABLE OF CONTENTS**

A. **SUMMARY OF ARGUMENT** ..... 1

B. **ASSIGNMENTS OF ERROR**..... 2

C. **ISSUES PERTAINING TO ASSIGNMENTS OF ERROR** ..... 3

D. **STATEMENT OF THE CASE** ..... 3

E. **ARGUMENT** ..... 7

    1. THE FRUITS OF THE WARRANTLESS SEARCH INCIDENT TO ARREST SHOULD HAVE BEEN SUPPRESSED, AS THE OFFICER DID NOT HAVE PROBABLE CAUSE TO ARREST MR. FENDICH FOR THE CRIME OF POSSESSION OF A STOLEN VEHICLE..... 7

        a. A warrantless search incident to arrest is unlawful if the arrest is made without probable cause..... 8

        b. Officer Gendreau did not have probable cause to arrest Mr. Fendich for the crime of possession of a stolen vehicle, because the facts were insufficient to show that Mr. Fendich possessed the vehicle or that he knew it was stolen ..... 11

        c. The evidence seized during the unlawful search incident to arrest must be suppressed..... 16

    2. CHARGING AND CONVICTING MR. FENDICH TWICE FOR THE CRIME OF THIRD DEGREE POSSESSION OF STOLEN PROPERTY VIOLATED HIS CONSTITUTIONAL RIGHT TO BE FREE FROM DOUBLE JEOPARDY, WHERE HE COMMITTED ONLY A SINGLE UNIT OF THE CRIME..... 17

        a. The State may not prosecute and convict a person twice where he commits only a single unit of the crime..... 17

        b. Mr. Fendich committed only a single unit of the crime of third degree possession of stolen property, where his

possession of two separate driver's licenses was simultaneous and continuous.....	19
F. <u>CONCLUSION</u> .....	21

## **TABLE OF AUTHORITIES**

### **Constitutional Provisions**

Const. art. 1, § 7.....	9
Const. art. 1, § 9.....	18
U.S. Const. amend. 4.....	8
U.S. Const. amend. 5.....	18

### **Washington Supreme Court**

<u>State v. Adel</u> , 136 Wn.2d 629, 965 P.2d 1072 (1998).....	18, 19
<u>State v. Afana</u> , 169 Wn.2d 169, 233 P.3d 879 (2010).....	16
<u>State v. Gocken</u> , 127 Wn.2d 95, 896 P.2d 1267 (1995).....	18
<u>State v. Grande</u> , 164 Wn.2d 135, 187 P.3d 248 (2008).....	9, 10, 11, 14, 16
<u>State v. Johnson</u> , 71 Wn.2d 239, 242, 427 P.2d 705 (1967).....	9
<u>State v. Jones</u> , 146 Wn.2d 328, 45 P.3d 1062 (2002).....	12
<u>State v. O'Neill</u> , 148 Wn.2d 564, 62 P.3d 489 (2003).....	9, 16
<u>State v. Parker</u> , 79 Wn.2d 326, 485 P.2d 60 (1971).....	7, 9, 10
<u>State v. Tili</u> , 139 Wn.2d 107, 985 P.2d 365 (1999).....	18
<u>State v. White</u> , 97 Wn.2d 92, 110, 640 P.2d 1061 (1982).....	16
<u>State v. Winterstein</u> , 167 Wn.2d 620, 220 P.3d 1226 (2009).....	16
<u>State v. Womac</u> , 160 Wn.2d 643, 160 P.3d 40 (2007).....	21

### Washington Court of Appeals

<u>State v. Enlow</u> , 143 Wn. App. 463, 469, 178 P.3d 366 (2008) .....	12
<u>State v. Lakotiy</u> , 151 Wn. App. 699, 214 P.3d 181 (2009), <u>rev. denied</u> , 228 P.3d 19 (2010) .....	12
<u>State v. McReynolds</u> , 117 Wn. App. 309, 71 P.3d 663 (2003) .....	20
<u>State v. Plank</u> , 46 Wn. App. 728, 731 P.2d 1170 (1987) .....	8, 12, 13
<u>State v. Rodriguez-Torres</u> , 77 Wn. App. 687, 893 P.2d 650 (1995) .....	10
<u>State v. Summers</u> , 45 Wn. App. 761, 728 P.2d 613 (1986) .....	12

### United States Supreme Court

<u>Benton v. Maryland</u> , 395 U.S. 784, 89 S.Ct. 2056, 23 L.Ed.2d 707 (1969) .....	18
<u>Chimel v. California</u> , 395 U.S. 752, 89 S.Ct. 2034, 23 L.Ed.2d 685 (1969) .....	8
<u>Johnson v. United States</u> , 333 U.S. 10, 68 S.Ct. 367, 92 L.Ed. 436 (1948) .....	10
<u>United States v. Bell</u> , 349 U.S. 81, 75 S.Ct. 620, 99 L.Ed. 905 (1955) .....	18, 19
<u>United States v. Universal C.I.T. Credit Corp.</u> , 344 U.S. 218, 73 S.Ct. 227, 229, 97 L.Ed 260 (1952) .....	18, 19
<u>Wong Sun v. United States</u> , 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963) .....	8, 10, 16

### Statutes

RCW 9A.56.160 .....	3, 20
RCW 9A.56.010(1) .....	3

RCW 9A.56.068 .....	7, 11
RCW 9A.56.140 .....	3, 7, 11, 20
RCW 9A.56.160 .....	3, 20
RCW 9A.56.170 .....	20

**Rules**

RAP 2.5.....	19
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**A. SUMMARY OF ARGUMENT**

A police officer observed David Fendich and another person approach a stolen vehicle in the parking lot of a motel. The officer saw Mr. Fendich open the passenger-side rear door and place a backpack onto the seat, and saw the other person open the driver's-side rear door and place a jacket onto the seat before opening the driver's door. The officer then arrested Mr. Fendich for the crime of possession of a stolen vehicle and searched him incident to arrest, discovering contraband.

The arrest was unlawful, because the facts known to the officer were not sufficient to establish probable cause to arrest Mr. Fendich for the crime of possession of a stolen vehicle. At best, the facts show Mr. Fendich was about to ride as a passenger in the vehicle, but merely riding as a passenger in a stolen vehicle is not sufficient to establish possession of the vehicle. Because the arrest was unlawful based on insufficient probable cause, the search incident to arrest was also unlawful and the evidence seized should have been suppressed.

In addition, Mr. Fendich's two convictions for third degree possession of stolen property violate his constitutional right to be

free from double jeopardy, where his possession of two stolen driver's licenses was simultaneous and continuous.

**B. ASSIGNMENTS OF ERROR**

1. The court erred in concluding, "The officer had probable cause to arrest the defendant for possession of [a] stolen vehicle." CP 157.

2. The court erred in concluding, "Placing personal items into the car provided the basis for probable cause. Had the defendant only been near the vehicle, probable cause to arrest the defendant would not have existed." CP 157.

3. The court erred in concluding, "The subsequent search of the defendant's person was proper." CP 157.

4. The court erred in denying Mr. Fendich's motion to suppress the items found in the search incident to arrest. CP 157.

5. The officer's warrantless search of Mr. Fendich violated his state and federal constitutional right to be free from unreasonable searches and seizures.

6. Prosecuting and convicting Mr. Fendich twice for the crime of possession of stolen property in the third degree violated his state and federal constitutional right to be free from double jeopardy.

**C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

1. Whether the officer had probable cause to arrest Mr. Fendich for the crime of possession of a stolen vehicle, where the officer was aware of no facts indicating that Mr. Fendich had possession of the vehicle or that he knew it was stolen.

2. Whether Mr. Fendich's two convictions for third degree possession of stolen property violate his constitutional right to be free from double jeopardy, where his possession of two stolen driver's licenses was simultaneous and continuous.

**D. STATEMENT OF THE CASE**

The State charged Mr. Fendich with five counts of second degree possession of stolen property (RCW 9A.56.160(1)(c), RCW 9A.56.140(1), and RCW 9A.56.010(1)) and two counts of third degree possession of stolen property (RCW 9A.56.170 and RCW 9A.56.140(1)).<sup>1</sup> CP 8-12. The charges were based on five stolen credit cards and two stolen driver's licenses a police officer found in Mr. Fendich's coat pocket during a warrantless search incident to his arrest for a separate crime. CP 4.

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<sup>1</sup> The State also charged Mr. Fendich with one count of possession of burglary tools and an additional count of third degree possession of stolen property, but those counts were later dismissed. 9/15/09RP 184; 12/10/09RP 28.

Prior to trial, Mr. Fendich filed a motion to suppress the evidence seized during the search incident to arrest and a CrR 3.6 hearing was held. CP 15-27. Des Moines Police Officer Fred Gendreau testified that he was on patrol on the morning of January 8, 2009. 9/14/09RP 23-24. He overheard on the radio that another officer was dispatched to a report of a stolen vehicle. 9/14/09RP 24. The vehicle had been stolen a few hours earlier. 9/14/09RP 25, 38. Officer Gendreau noted the license plate number of the stolen vehicle and decided to drive around to see if he could find it. 9/14/09RP 24. A short time later, he spotted the vehicle in the parking lot of the Sea-Tac Value Inn in Des Moines. 9/14/09RP 24-25.

Officer Gendreau got out of his car and positioned himself behind some bushes where he could observe the stolen vehicle without being seen. 9/14/09RP 25. About five minutes later, he saw two people, Mr. Fendich and a woman named Kimberly Portra, approach the vehicle. 9/14/09RP 26. Mr. Fendich opened the right rear passenger door and placed a backpack on the back seat. 9/14/09RP 26. Ms. Portra opened the left rear passenger door and placed a jacket on the seat. 9/14/09RP 96. Ms. Portra then opened the driver's door. 9/14/09RP 26. At that point, Officer

Gendreau assumed the two were about to get into the car and leave. 9/14/09RP 26, 45. He returned to his car, momentarily losing sight of the couple, then drove around the block and entered the parking lot of the motel. 9/14/09RP 27, 46.

When Officer Gendreau entered the parking lot, he saw Mr. Fendich in the center of the lot, some distance from the stolen car; he did not see Ms. Portra. 9/14/09RP 28. The officer exited his car and walked toward Mr. Fendich, ordering him to the ground. 9/14/09RP 28, 52. The officer was carrying a rifle, which was pointed downward to the ground in Mr. Fendich's direction. 9/14/09RP 30. 51-52. As the officer approached, he saw Ms. Portra standing behind Mr. Fendich, and he ordered her to the ground as well. 9/14/09RP 30-31. The officer arrested Mr. Fendich for possession of a stolen vehicle and placed him in handcuffs. 9/14/09RP 33, 59. He searched him incident to arrest and found five credit cards and two driver's licenses belonging to other people in Mr. Fendich's jacket pocket. 9/14/09RP 34-35, 59, 73.

Defense counsel argued the search incident to arrest was unlawful, because the officer did not have probable cause to arrest Mr. Fendich for the crime of possession of a stolen vehicle. 9/14/09RP 88, 93. The court said the issue was a "close call" but

found the officer had probable cause. 9/14/09RP 100-01. The court elaborated, "I do think at the time that Officer Gendreau arrived on the scene and saw these individuals placing personal items into a vehicle, that the police knew it had been reported stolen, and that gave him enough at that point to arrest these individuals." 9/14/09RP 101. In a written ruling, the court concluded, "Placing personal items into the car provided the basis for probable cause. Had the defendant only been near the vehicle, probable cause to arrest the defendant would not have existed." CP 157.<sup>2</sup>

At the jury trial, Laura Waite testified that on January 7, 2009, at around 9:00 p.m., someone broke into her locker at L.A. Fitness while she was working out. 12/15/09RP 56. Her wallet and other items were taken. 12/15/09RP 57. Inside the wallet were her credit cards, driver's license, and her mother's driver's license, which were later found in Mr. Fendich's jacket pocket. 12/15/09RP 57-58; Exhibit 8.

The jury was unable to reach a verdict and a mistrial was declared. CP 85-86. After a second trial, the jury found Mr. Fendich guilty of all counts as charged. CP 134-49.

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<sup>2</sup> A copy of the trial court's written findings of fact and conclusions of law is attached as an appendix.

E. ARGUMENT

1. THE FRUITS OF THE WARRANTLESS SEARCH INCIDENT TO ARREST SHOULD HAVE BEEN SUPPRESSED, AS THE OFFICER DID NOT HAVE PROBABLE CAUSE TO ARREST MR. FENDICH FOR THE CRIME OF POSSESSION OF A STOLEN VEHICLE

To convict a person of the crime of possession of a stolen motor vehicle, the State must prove beyond a reasonable doubt both that the person possessed the vehicle and that he knew it was stolen. RCW 9A.56.068; RCW 9A.56.140(1). In order to prove a police officer had probable cause to arrest a person for the crime, the State need not establish these elements beyond a reasonable doubt, but the State must still show that the officer was aware of facts sufficient to warrant a person of reasonable caution in a belief that the person to be arrested was committing the offense. State v. Parker, 79 Wn.2d 326, 328-29, 485 P.2d 60 (1971).

Here, testimony at the CrR 3.6 hearing establishes, and the trial court found, that Officer Gendreau knew only that Mr. Fendich approached the stolen car and placed a backpack on the back seat of the passenger side of the car. A person of reasonable caution might conclude from this information that Mr. Fendich was about to ride as a passenger in the car. But case law holds that merely

riding as a passenger in a stolen car is not sufficient to show the person has possession of it. State v. Plank, 46 Wn. App. 728, 733, 731 P.2d 1170 (1987). Officer Gendreau was aware of no additional facts indicating that Mr. Fendich ever drove the car or had dominion and control over it. He was also aware of no additional facts indicating that Mr. Fendich knew the car was stolen. Therefore, the officer did not have probable cause to arrest Mr. Fendich for possessing a stolen vehicle and the evidence seized during the search incident to arrest should have been suppressed.

a. A warrantless search incident to arrest is unlawful if the arrest is made without probable cause. The Fourth Amendment protects individuals from unreasonable searches and seizures. U.S. Const. amend. 4. A lawful custodial arrest creates a situation justifying the contemporaneous warrantless search of the arrestee and of the immediately surrounding area. Chimel v. California, 395 U.S. 752, 763, 89 S.Ct. 2034, 23 L.Ed.2d 685 (1969). But an arrest is unlawful, and hence unreasonable for purposes of the Fourth Amendment, if it is not based upon probable cause. Wong Sun v. United States, 371 U.S. 471, 479, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963). The exclusionary rule requires

suppression of all evidence directly obtained as the result of an unlawful arrest. Id. at 485.

Article 1, section 7 of the Washington Constitution provides that "[n]o person shall be disturbed in his private affairs, or his home invaded, without authority of law." Under article 1, section 7, police searches conducted without a warrant are per se unreasonable subject only to a few specific established and well-delineated exceptions, which are limited and narrowly drawn. Parker, 139 Wn.2d at 496. One such exception is a search incident to a lawful arrest. Id. at 496-97. "It is the fact of arrest itself that provides the 'authority of law' to search, therefore making the search permissible under article 1, section 7." Id.

But "[a] lawful arrest is a prerequisite to a lawful search" incident to arrest. State v. Grande, 164 Wn.2d 135, 139-40, 187 P.3d 248 (2008) (citing State v. Johnson, 71 Wn.2d 239, 242, 427 P.2d 705 (1967)). "[W]hile the search incident to arrest exception functions to secure officer safety and preserve evidence of the crime for which the suspect is arrested, in the absence of a lawful custodial arrest a full blown search, regardless of the exigencies, may not validly be made." State v. O'Neill, 148 Wn.2d 564, 585, 62 P.3d 489 (2003). An arrest is unlawful, and hence a search

incident to arrest is unlawful, if the arrest is not based upon probable cause. Grande, 164 Wn.2d at 142-43.

Probable cause to arrest exists where the facts and circumstances within the arresting officer's knowledge and of which he has reasonably trustworthy information are sufficient to warrant a person of reasonable caution in the belief that the person to be arrested has committed or is committing an offense. Parker, 79 Wn.2d at 328-29; Wong Sun, 371 U.S. at 479. The question whether probable cause exists is an objective inquiry. State v. Rodriguez-Torres, 77 Wn. App. 687, 693, 893 P.2d 650 (1995).

Probable cause for arrest is measured by the particular facts known to the arresting officer at the time of the arrest. Information or evidence obtained after the arrest cannot be considered in evaluating the existence of probable cause. Johnson v. United States, 333 U.S. 10, 16-17, 68 S.Ct. 367, 92 L.Ed. 436 (1948).

Moreover, probable cause must be specific to the individual who is arrested. Grande, 164 Wn.2d at 141-43. In other words, where two or more people together are engaged in possible criminal activity, the officer must be aware of facts and circumstances indicating that the particular individual to be arrested has committed a crime. Id. In the context of a motor vehicle,

probable cause to arrest the driver does not in itself provide probable cause to arrest a passenger; the officer must have an independent basis to connect the particular passenger to criminal activity. Id.

The burden is on the State to show that a police officer had probable cause to arrest. Grande, 164 Wn.2d at 141. This Court reviews the constitutional question of whether probable cause existed *de novo*. Id. at 140.

b. Officer Gendreau did not have probable cause to arrest Mr. Fendich for the crime of possession of a stolen vehicle, because the facts were insufficient to show that Mr. Fendich possessed the vehicle or that he knew it was stolen. A person commits the crime of possession of a stolen vehicle "if he or she possess [possesses] a stolen motor vehicle." RCW 9A.56.068(1). "'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). Thus, to prove the crime of possession of stolen property, the State must prove that the defendant possessed the property, that the property was in fact stolen, and that the

defendant knew the property was stolen. State v. Plank, 46 Wn. App. 728, 731, 731 P.2d 1170 (1987).

Possession may be actual or constructive. State v. Lakotiy, 151 Wn. App. 699, 714, 214 P.3d 181 (2009), rev. denied, 228 P.3d 19 (2010). "Actual possession" means that the goods were in the personal custody of the defendant. Id. "Constructive possession" means that the goods were not in actual, physical possession, but the defendant had dominion and control over them. Id. "Dominion and control means that the object may be reduced to actual possession immediately." Id. (quoting State v. Jones, 146 Wn.2d 328, 333, 45 P.3d 1062 (2002)).

Dominion and control and hence constructive possession is determined by the totality of the circumstances. State v. Summers, 45 Wn. App. 761, 763-64, 728 P.2d 613 (1986). Exclusive control of the stolen property is not necessary to establish constructive possession, but mere proximity to the property or one's presence at the place where it is found, without proof of dominion and control over the property or the premises, is not sufficient proof of possession. Id. at 765; State v. Enlow, 143 Wn. App. 463, 469, 178 P.3d 366 (2008).

This Court has held unequivocally that riding as a passenger in a stolen vehicle that is driven by someone else is not sufficient to establish possession of the vehicle. Plank, 46 Wn. App. at 733.

Here, under the authorities cited, the facts and circumstances were not sufficient to establish probable cause to arrest Mr. Fendich for the crime of possession of a stolen motor vehicle. First, a person of reasonable caution would not conclude that Mr. Fendich possessed the car. Officer Gendreau spotted the car parked in a motel parking lot. 9/14/09RP 24-25. While he observed the car from a nearby location, he saw Mr. Fendich walk toward the car, open the right rear passenger-side door, and place a backpack on the seat. 9/14/09RP 26. He also saw Ms. Portra open the left rear passenger door and place a jacket on the seat, and then open the driver's door. 9/14/09RP 26. These facts suggest, at best, that Mr. Fendich was about to ride as a passenger in the car. But riding as a passenger in a car is not sufficient to establish possession of the car. Plank, 46 Wn. App. at 733.

The officer was aware of no other facts suggesting that Mr. Fendich had possession of the car. Mr. Fendich did not own or have dominion and control over the premises where the car was found—a motel parking lot. The officer did not see Mr. Fendich

with any car keys and no keys were found on his person.

9/14/09RP 44. The officer did not see Mr. Fendich open any of the other doors to the car and never saw him attempt get into the car.

9/14/09RP 44-45. The officer did see Ms. Portra open the driver's door, but this suggests *Ms. Portra* was about to drive the car, not Mr. Fendich. As stated, probable cause must be specific to the individual who is arrested. Grande, 164 Wn.2d at 141-43. Even if the officer had probable cause to believe Ms. Portra had possession of the vehicle, because she was about to drive it, this does not establish that Mr. Fendich had possession of the vehicle.

The trial court concluded that because Mr. Fendich placed a backpack on the back passenger-side seat of the car, this was sufficient to establish probable cause. CP 157. The trial court's ruling is in error. If merely riding as a passenger in a car is not sufficient to establish possession of it, then logically, merely placing personal items inside a car is not sufficient to establish possession. Again, placing a backpack on the back passenger-side seat of the car suggests Mr. Fendich was about to ride in the car as a passenger. Because no other facts suggest Mr. Fendich possessed the car, and because merely riding as a passenger is

not sufficient to establish possession, the officer had no reasonable basis to conclude Mr. Fendich possessed the car.

In addition, the facts were not sufficient to show Mr. Fendich knew the car was stolen. The car had been stolen from a different location a few hours before Officer Gendreau found the car in the motel parking lot. 9/14/09RP 25, 38. The officer had received no description of the suspects and did not know who stole the car.<sup>3</sup> 9/14/09RP 39, 42. While the officer was waiting behind the bushes and watching the car, he could see into the vehicle and saw that the ignition had not been "punched." 9/14/09RP 42. The windows of the car were not broken. 9/14/09RP 49. In other words, nothing about the car's appearance suggested it was stolen. No other facts indicate Mr. Fendich knew the car was stolen. Therefore, the facts were not sufficient to warrant a person of reasonable caution in concluding Mr. Fendich had that knowledge.

In sum, the facts and circumstances known to Officer Gendreau at the time of the arrest were not sufficient to warrant a person of reasonable caution in concluding Mr. Fendich committed the crime of possession of a stolen vehicle. Because the arrest

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<sup>3</sup> Mr. Fendich was never charged with stealing the car.

was unlawful, the search incident to arrest was also unlawful.

Grande, 164 Wn.2d at 139-40; O'Neill, 148 Wn.2d at 585.

c. The evidence seized during the unlawful search incident to arrest must be suppressed. As stated, the Fourth Amendment's exclusionary rule requires suppression of all evidence directly obtained as the result of an unlawful arrest. Wong Sun, 371 U.S. at 485. In addition, "Washington's exclusionary rule is 'nearly categorical.'" State v. Afana, 169 Wn.2d 169, 180, 233 P.3d 879 (2010) (quoting State v. Winterstein, 167 Wn.2d 620, 636, 220 P.3d 1226 (2009)). Article 1, section 7 "clearly recognizes an individual's right to privacy with no express limitations." Afana, 169 Wn.2d at 180 (quoting State v. White, 97 Wn.2d 92, 110, 640 P.2d 1061 (1982)). Thus, where an officer does not have the requisite "authority of law" to conduct a search, any evidence seized must be suppressed. Afana, 169 Wn.2d at 180. That is the remedy here.

2. CHARGING AND CONVICTING MR. FENDICH TWICE FOR THE CRIME OF THIRD DEGREE POSSESSION OF STOLEN PROPERTY VIOLATED HIS CONSTITUTIONAL RIGHT TO BE FREE FROM DOUBLE JEOPARDY, WHERE HE COMMITTED ONLY A SINGLE UNIT OF THE CRIME

Mr. Fendich was charged and convicted of two separate counts of third degree possession of stolen property, based on his possession of two driver's licenses, one belonging to Laura Waite and the other to her mother, which were both stolen from Ms. Waite's locker at the same time. 9/14/09RP 34-35, 59, 73; 12/15/09RP 57-58; Exhibit 8; CP 10-11 (information); CP 129-30 ("to convict" jury instructions). But simultaneous possession of various items of property stolen from multiple owners constitutes one unit of prosecution of the crime. State v. McReynolds, 117 Wn. App. 309, 335-36, 71 P.3d 663 (2003). Therefore, Mr. Fendich's two convictions for third degree stolen property violated his constitutional right to be free from double jeopardy.

a. The State may not prosecute and convict a person twice where he commits only a single unit of the crime. The Double Jeopardy Clause of the United States Constitution provides that no individual shall "be twice put in jeopardy of life or limb" for the same

offense. U.S. Const. amend. 5.<sup>4</sup> Washington's constitution provides that no individual shall "be twice put in jeopardy for the same offense." Const. art. 1, § 9. The state constitutional prohibition against double jeopardy offers the same scope of protection as its federal counterpart. State v. Gocken, 127 Wn.2d 95, 107, 896 P.2d 1267 (1995).

Double jeopardy principles prohibit prosecution of multiple charges under the same statute if the defendant commits only one unit of the crime. United States v. Bell, 349 U.S. 81, 83, 75 S.Ct. 620, 99 L.Ed. 905 (1955); State v. Adel, 136 Wn.2d 629, 633-34, 965 P.2d 1072 (1998). When an individual is charged with multiple counts of the same offense, the court must determine the "unit of prosecution" the Legislature intended as the punishable act under the statute. United States v. Universal C.I.T. Credit Corp., 344 U.S. 218, 221, 73 S.Ct. 227, 229, 97 L.Ed 260 (1952); Adel, 136 Wn.2d at 634.

The unit of prosecution set forth in the statute will be either an act or a course of conduct. Universal C.I.T. Credit, 344 U.S. at 221-22; Adel, 136 Wn.2d at 634. Where the statute defines the

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<sup>4</sup> The Fifth Amendment's double jeopardy protection is applicable to the states through the Fourteenth Amendment. Benton v. Maryland, 395 U.S. 784, 787, 89 S.Ct. 2056, 23 L.Ed.2d 707 (1969).

crime as a course of conduct, prosecutors may not divide the crime into "a series of temporal or spatial units." Adel, 136 Wn.2d at 635 (quoting Brown v. Ohio, 432 U.S. 161, 169, 97 S.Ct. 2221, 53 L.Ed.2d 187 (1977)).

The Legislature must "clearly and without ambiguity" intend to turn a series of similar transactions into multiple offenses. Adel, 136 Wn.2d at 634-35 (citing Bell, 349 U.S. at 84). The Legislature must state its intent to create multiple offenses in "language that is clear and definite." Universal C.I.T. Credit, 344 U.S. at 221-22.

If the Legislature's intent is not clear, this Court must apply the "rule of lenity" and resolve the ambiguity in favor of concluding there was only one offense. Adel, 125 Wn.2d at 634-35; Bell, 349 U.S. at 83-84; Universal C.I.T. Credit, 344 U.S. at 221-22.

Although Mr. Fendich did not raise a double jeopardy challenge below, he may raise the issue for the first time on appeal, as it is a manifest error affecting a constitutional right. State v. Bobic, 140 Wn.2d 250, 257, 996 P.2d 610 (2000); RAP 2.5.

b. Mr. Fendich committed only a single unit of the crime of third degree possession of stolen property, where his possession of two separate driver's licenses was simultaneous and continuous. Mr. Fendich was charged and convicted of two counts

of possession of stolen property in the third degree pursuant to RCW 9A.56.140(1) and RCW 9A.56.170. CP 11-12. A person commits the crime of third degree possession of stolen property if he "possesses . . . stolen property." RCW 9A.56.170(1)(a); CP 128. "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); CP 128.

Where the State charges a continuous, simultaneous possession of various items of stolen property, the unit of prosecution is a single possession. McReynolds, 117 Wn. App. at 339-40. In McReynolds, defendants were convicted of multiple counts of possession of stolen property, where they possessed multiple items belonging to various individuals over the same two-week period. Id. at 332-33. Under those circumstances, the charges encompassed a single continuous course of conduct. Id. at 339-40.

Here, as in McReynolds, Mr. Fendich was convicted more than once for a single, simultaneous and continuous possession of

multiple separate items of property. His two convictions therefore violated the prohibition against double jeopardy.

The remedy for a double jeopardy violation is to vacate the offending conviction. State v. Womac, 160 Wn.2d 643, 658-60, 160 P.3d 40 (2007). Thus, one of the two convictions for third degree possession of stolen property must be vacated.

**F. CONCLUSION**

The police officer's search of Mr. Fendich incident to arrest was unlawful, where the arrest itself was unlawful based on insufficient probable cause. Thus, the fruits of the search should have been suppressed. All of the convictions must therefore be reversed.

In addition, because the two convictions for third degree possession of stolen property violate the constitutional prohibition against double jeopardy, one of the convictions must be vacated.

Respectfully submitted this 30th day of September 2010.

  
MAUREEN M. CYR (WSBA 28724)  
Washington Appellate Project - 91052  
Attorneys for Appellant

# **APPENDIX**

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,  
  
Plaintiff,  
  
vs.  
  
DAVID P. FENDICH,  
  
Defendant,

No. 09-1-02660-9 KNT  
FINDINGS OF FACT AND  
CONCLUSIONS OF LAW  
ON CrR 3.6

A hearing on the admissibility of evidence was held on September 14, 2009, before King County Superior Court Judge Mary Roberts. After considering the evidence submitted by the parties, including the testimony of Officer Gendreau and the testimony of the defendant, and hearing argument from counsel, the court makes the following findings of fact and conclusions of law as required by CrR 3.6:

A. Findings of fact

1. On January 8, 2009, Des Moines Police Department Officer Fred Gendreau learned of the report of a stolen vehicle.
2. Within four hours, he saw the vehicle parked in the parking lot of the SeaTac Value Inn.

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW - 1.

Daniel T. Satterberg, Prosecuting Attorney  
Norm Maleng Regional Justice Center  
401 Fourth Avenue North  
Kent, Washington 98032-4429

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3. The officer observed the defendant and Kimberly Portra putting personal items into the vehicle.

4. Ms. Portra placed items into the rear driver's side, and the defendant placed items into the rear passenger's side.

B. Conclusions of law

1. The officer had probable cause to arrest the defendant for possession of stolen vehicle.

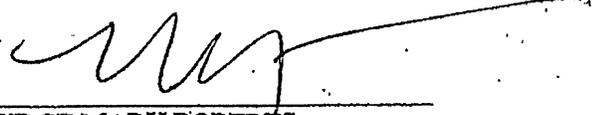
2. Placing personal items into the car provided the basis for probable cause. Had the defendant only been near the vehicle, probable cause to arrest the defendant would not have existed.

3. The subsequent search of the defendant's person was proper.

4. The court denies the defendant's motion to suppress the evidence seized by the officer.

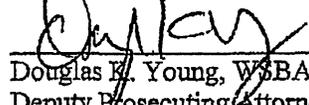
In addition to the above written findings and conclusions, the court incorporates by reference its oral findings and conclusions.

Signed this 26th day of March, 2010.



JUDGE MARY ROBERTS

Presented by:

  
Douglas E. Young, WSBA# 23586  
Deputy Prosecuting Attorney

Approved for entry:

  
J. Steven Adams, WSBA# 32566  
Attorney for Defendant

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW - 2

Daniel T. Satterberg, Prosecuting Attorney  
Norm Maleng Regional Justice Center  
401 Fourth Avenue North  
Kent, Washington 98032-4429

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

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STATE OF WASHINGTON,	)	
	)	
Respondent,	)	
	)	NO. 64873-0-I
v.	)	
	)	
DAVID FENDICH,	)	
	)	
Appellant.	)	

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**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 30<sup>TH</sup> DAY OF SEPTEMBER, 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:

[X] KING COUNTY PROSECUTING ATTORNEY APPELLATE UNIT KING COUNTY COURTHOUSE 516 THIRD AVENUE, W-554 SEATTLE, WA 98104	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____
[X] DAVID FENDICH 32605 49 <sup>TH</sup> CT SW FEDERAL WAY, WA 98023	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____

**SIGNED** IN SEATTLE, WASHINGTON THIS 30<sup>TH</sup> DAY OF SEPTEMBER, 2010.

X \_\_\_\_\_ 

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