

67228-2

67228-2

NO. 67228-2-1

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

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STATE OF WASHINGTON,

Respondent,

v.

MATTHEW G., (D.O.B. 8/25/1994),

Appellant.

---

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

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APPELLANT'S REPLY BRIEF

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A. ARGUMENT.

**1. The State's flimsy distinctions between taking a motor vehicle and theft of a motor vehicle show that the offenses are concurrent**

Offenses are concurrent when any violation of one statute would necessarily violate the other. State v. Shriner, 101 Wn.2d 576, 681 P.2d 237 (1984). Under a prior version of the taking a motor vehicle and theft statutes, this Court held that the two offenses are not concurrent because theft required proof of a particular value and taking a motor vehicle had no element involving value. State v. Walker, 75 Wn.App. 101, 106, 897 P.2d 957 (1994). This distinction no longer applies because there is no "value" element for the newly constituted offense of theft of a motor vehicle. RCW 9A.56.065.

In Walker, the court drew a second distinct between theft and taking a motor vehicle by contending that a necessary element of theft is that of duration. 75 Wn.App. at 107. It reasoned that taking a motor vehicle was intended to involve a relatively brief use of another person's car without permission whereas theft requires that "the motor vehicle is taken for a substantial period of time." Id.

There is common law support for the notion that theft requires the intent to take another person's property for a period of

some substantial duration. See Appellant's Opening Brief at 9-11. But duration is not an express statutory element of theft. RCW 9A.56.065; RCW 9A.56.020 (1) (defining "theft"). In fact, the prosecutor presses this very point as the basis for explaining the sufficiency of the evidence to convict Matthew of taking a motor vehicle notwithstanding its failure to prove Matthew intended to deprive the owner of the car for a substantial period of time. Response Brief at 15.

Taking a motor vehicle requires "the intentional taking of another person's car." State v. Walters, 162 Wn.App. 74, 86, 255 P.3d 835 (2011). "To that end, the statute [taking a motor vehicle in the second degree] simply requires that the defendant (1) intentionally take the vehicle of another (2) without permission. RCW 9A.56.075(1)."

Theft of a motor vehicle is essentially identical, but for the implicit element involving the duration of the intended taking. It requires the taking of another person's vehicle with the intent to deprive the owner of the vehicle. Walker, 75 Wn.App. at 106.

The prosecution claims that taking a motor vehicle is distinct from theft of a motor vehicle because of the intent to take a car, as required for taking a motor vehicle, is different from theft's

requirement of the intent to deprive a car's owner of her car. This is a meaningless distinction. By intending to wrongfully take the car, the perpetrator intends the result: i.e., the owner's inability to use it.

“‘Intent’ exists only if a known or expected result is also the actor's ‘objective or purpose.’” State v. Caliguri, 99 Wn.2d 501, 506, 664 P.2d 466 (1983) (quoting RCW 9A.08.010(1)(a)). The intentional taking of another person's car without permission means that the perpetrator intends the result, which is to deprive the owner of its use. This intent is equivalent to the intent required for the general offense of theft of a motor vehicle.

As explained in Matthew's Opening Brief, the penalty differences for taking a motor vehicle as opposed to theft of a motor vehicle are substantial. Opening Brief at 20. A conviction for the general and greater offense of theft of a motor vehicle means the difference between institutional confinement in a state-run juvenile facility versus a few days of detention in a local detention center. Id. (citing RCW 13.40.380(2)(c), (3)(c)). The special statute must prevail over the general statute when any commission of the general also satisfies the elements of the specific statute. Shriner, 101 Wn.2d at 583. Matthew's conviction for theft of a motor vehicle also satisfies the elements of theft of a motor vehicle, and the

same can be said for any person who commits theft of a motor vehicle, because both require the intentional taking of another person's car. The arbitrariness in prosecuting a person for the general offense and the great difference in punishment based on proof of the same elements violates Matthew's right to equal protection of the law. See generally State v. Karp, 69 Wn.App. 369, 373, 848 P.2d 1304 (1993).

**2. If theft of a motor vehicle requires the intent to deprive the car's owner for some duration of time, the prosecution did not prove the elements of theft of a motor vehicle.**

The State did not prove Matthew intended to take Steve Rubey's truck for a substantial period of time. The prosecution asks this Court to infer that finding from the trial testimony, but the juvenile court was the fact-finder and the court entered written findings of fact. CP 62-71. Those findings are entitled to deference and are presumed to be complete. State v. Armenta, 134 Wn.2d 1, 14, 948 P.2d 1280 (1997); In re Marriage of Olivares, 69 Wn.App. 324, 334, 848 P.2d 1281, rev. denied, 122 Wn.2d 1009 (1993).

The court's failure to make a factual finding is presumed to be a purposeful omission that shows the party with the burden of proof did not prove the allegation. The "lack of an essential finding

is presumed equivalent to a finding against the party with the burden of proof.” In re Welfare of A.B., 168 Wn.2d 908, 927, 232 P.3d 1104 (2010); see Armenta, 134 Wn.2d at 14 (“In the absence of a finding on a factual issue we must indulge the presumption that the party with the burden of proof failed to sustain their burden on this issue.”)

The court did not find the prosecution proved Matthew intended to keep the car permanently. CP 69-71. The court did not find Matthew intended to deprive the car’s owner of the car for a substantial period of time. Id. In fact, the court may have thought Matthew drove the car far longer than he intended because he was being chased by someone. The court’s failure to find Matthew intended to deprive the owner of the car for any significant duration was a perfectly reasonable assessment of the case, not an oversight.

The extent of Matthew’s intent to deprive the owner of the car was a contested factual issues in this case. He returned the car to the place where the owner had left it, with the key inside. 5/2/11RP 12, 16; CP 68. Other than the time he was seen driving it passed Anna Lease’s home and as he tried to escaped from Lease’s fiancé who chased him, Matthew was not observed driving

the car. 5/2/11RP 28, 40, 101. He did not leave it in a place that would deprive the owner of the car's use for a continued, substantial period of time. If theft of a motor vehicle is distinct from taking a motor vehicle because it contains a greater element of the intent to deprive the owner of a car for a substantial period of time, as the State claims for purposes of distinguishing theft from taking a motor vehicle, the State did not prove this intent to the fact-finder. His adjudication is not supported by substantial evidence of all necessary elements and must be dismissed.

B. CONCLUSION.

For the above-stated reasons and as set forth in Matthew G.'s Opening Brief, his adjudication for theft of a motor vehicle does not rest on sufficient proof and must be vacated. Alternatively, the failure to charge him with the specific statute also requires the vacation of his adjudication for general offense of theft of a motor vehicle.

DATED this 7<sup>th</sup> day of February 2012.

Respectfully submitted,



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

STATE OF WASHINGTON,	)	
	)	
RESPONDENT,	)	
	)	
v.	)	NO. 67228-2-I
	)	
MATTHEW S. G.,	)	
	)	
JUVENILE APPELLANT.	)	

**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, DECLARE THAT ON THE 17<sup>TH</sup> DAY OF FEBRUARY, 2012, 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 17<sup>TH</sup> DAY OF FEBRUARY, 2012.

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