

COURT OF APPEALS  
DIVISION TWO  
OF THE STATE OF WASHINGTON

FILED  
COURT OF APPEALS  
DIVISION II

06 DEC 15 AM 11:05

STATE OF WASHINGTON )

Respondent, )

v. )

Rownan Nicholas )

(your name) )

Appellant. )

34896-9

No. 05-1-06123-7

STATE OF WASHINGTON

BY

[Signature]  
DEPUTY

STATEMENT OF ADDITIONAL  
GROUND FOR REVIEW

I, Mr Rownan, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

Additional Ground 1

INSUFFICIENCY OF PROOF OF ELEMENTS OF CRIME,  
Element #' (1, 2, 3)

Additional Ground 2

Improper instruction to jury.

If there are additional grounds, a brief summary is attached to this statement.

Date: \_\_\_\_\_

Signature: [Signature]

① Def 10

Mr Rownan was charged with possession of Stolen property in the second Degree. The elements are as follows:

- 1) That on or about the 4<sup>th</sup> day of December 2005, the defendant knowingly possessed stolen property
- 2) That the defendant acted with knowledge that the property had been stolen.
- 3) That the defendant withheld or appropriated the property to the use of someone other than the true owner or person entitled thereto
- 4) That the stolen property was an access device
- 5) That the acts occurred in the state of Washington.

Jury instruction Number 6 specifically defines the crime of possession of stolen property in the second Degree. Instruction number 7 element 2 requires that the defendant acted with knowledge that the property had been stolen. Knowledge is an element that must be proved beyond A reasonable doubt.

Since knowledge is a material element of possession of stolen property there must be proof that the defendant had knowledge that the property had been stolen.

During the course of this trial the court took and heard direct testimony from Jason Finly, the alleged victim, that he never reported any of his personal property stolen or missing. Jury instruction number 8 defines stolen as meaning obtained by theft.

Since there was never anything having been reported stolen and the card Number was never obtained by theft it is impossible for the defendant to have known that the access device located on his twin brothers credit card was stolen.

Nowhere in the course of the trial did the state present any type of evidence that the defendant knowingly possessed stolen property, knowing that it had been stolen. The state has not even presented, nor proven that any property had even been stolen. On the contrary, the state has proven that there was no stolen property.

Since there is no stolen property, the defendant could not have possessed stolen property.

As due process requires the state to prove its case beyond a reasonable doubt.

Sufficiency of the evidence is a question of constitutional magnitude. State v Baeza

100 Wash 2d 487 607 P.2d. 646 In a

criminal case, the test for determining the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.

State v Gear 30 Wash App 307, 633 P.2d 930

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Article 1 § 3 of the Washington State Constitution guarantees the right against being deprived of life, liberty, or property without deprives of law. deprives protections mandate that every essential element necessary to constitute the crime charged against an accused must be proven beyond a reasonable doubt. State v. Odum 83 Wash 2d 341, 520 P.2d 195.

A "reasonable doubt" is a doubt for which reason based upon evidence exists. State v. Mann 30 Wash App 412, 633 P.2d 742, 37 Wash 2d 742, 659 P.2d 434.

State has burden of proving, not by creation of mere suspicion, but by competent evidence and beyond reasonable doubt, that accused is guilty of offense charged, and until state has produced evidence of that character and amount it is not incumbent on accused to produce any evidence whatever in support of his innocence. State v. Gillmore 33 Wash 2d 947, 207 P.2d 737.

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State has burden of proving every element of crime charged; no evidence supporting only conjecture as to existence of one or more elements of crime will not support verdict of guilty. State v. Renhard  
71 Wash 2d 670, 430 P.2d 557.

Conviction cannot be based on conjecture, probabilities, or suspicion. State v. Willis  
153 Wash. 323 279 P. 578

The state has the burden to prove every essential element necessary to constitute the crime charged beyond a reasonable doubt. Id. State v. Odum

IN this case, the state must prove beyond a reasonable doubt, that Mr. Rowman possessed stolen property, knowing that it was stolen. Knowing is an essential element that must be proved to protect due process protections.

Sufficiency of the evidence is a question of constitutional magnitude. Id State v. Barza

In a criminal case, the test for determining the sufficiency of the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Id. Steiner v. Sec.

In looking at the evidence of this case in a light most favorable to the prosecution, it shows that Mr. Rownan used his twin brother's credit card and Identification to obtain a motel room. The alleged victim, Jason Finley, testified that none of his property, or access device had ever been reported stolen. The credit card in evidence has Donald Rownan printed on the face. This credit card was located in Donald Rownan's wallet. The motel manager testified that upon contacting Mr. Rownan, and informing him of a "discrepancy" with the use of said credit card, Mr. Rownan immediately paid for the room in cash. Officer Mark A. Waters testified that Mr. Rownan cooperated fully with questions and permission to search the premises. Officer Waters further testified that he had been dispatched for this incident for a possible fraud.

After Mr. Rowman couldn't provide identification that he was <sup>not</sup> Donald Rowman, he was detained and mirandized. The testimony of the officers show that Mr Rowman believed he was under arrest for possible fraud, for using his twin brothers Id and credit card to rent a motel.

Even in looking at the evidence in the light most favorable to the prosecution there has been no sufficient evidence presented, nor testimony provided, that would prove by competent evidence, and beyond a reasonable doubt, that Mr Rowman possessed stolen property with the knowledge that it was stolen. Id State v. Gear; Id State v. Gillingham.

Where there is evidence that supports only conjecture as to existence of one or more elements of a crime (knowledge / knowing), that evidence will not support a guilty verdict, because a conviction cannot be based on conjecture, probabilities, or suspicion. Id State v. Renhard; Id. State v. Willis

A "reasonable doubt" is doubt for which reason based upon evidence exists Id State v. PAM

When Mr Rownan possesses his identical twin brothers wallet, in which was his identical twin brothers ballys Identification, and his identical twin brothers credit card, with Donald Rownan's name on the face there of, there is "reasonable doubt" that Mr Rownan (Nicholas) had knowledge that he was in possession of stolen property. This "reasonable doubt" is based upon the evidence itself, i.e. the credit card and identification found in the wallet. The motel manager testified that Donald Rownan had been staying at the motel for approximately a few days, he denied seeing a brother only the person known to him as Donald. Nick & Donald Rownan are identical twin brothers, there is no evidence that Nicholas Rownan was living at the motel. pursuant to the motel managers testimony, Donald Rownan had been staying there for approximately a few days. Nicholas Rownan using his brothers credit card and identification does not prove that he knowingly possessed stolen property, with the knowledge that it was stolen. It only proves that he assumed his brothers identity, until the state has produced competent evidence of character and weight, beyond a reasonable doubt, that Mr Rownan knowingly possessed

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Stolen property, with the knowledge that it was stolen, it is not incumbent on Mr Rowman to produce any evidence whatever in support of his innocence.

Id state v. Gillingham The state has not met their burden of proving that Mr Rowman possessed stolen property, with the knowledge that it was stolen. Proving knowledge beyond a 'reasonable doubt' is a due process requirement guaranteed under Article 1 § 3 of the Washington State Constitution. Id State v. Bacza Id State v. Adam

ON Feb 8<sup>th</sup> 2006 the Jury returned a verdict of guilty. However, on Feb 7<sup>th</sup> 2006, the Jury was deadlocked and could not make a unanimous verdict. The Jury then produced a note to the court the note stated as follows; we the Jury do not feel we can reach a unanimous verdict. CrR 6.15 f(2) states After deliberations have begun the court shall not instruct the Jury in such a way as to suggest the need for agreement, the consequences of no agreement, or the length of time a jury will be required to deliberate.

the court's response was Please continue deliberating in an effort to reach a verdict.

the jury did not feel they could reach a verdict, so the court must come up with a response that dose not suggest the need for any type of agreement. did the court suggest for an agreement in the response to the jury? yes the court did, the court suggested that they keep deliberating to obtain a verdict, this response suggest that a verdict needed to be made. which allso tells the jury that when they felt they couldnt make a decision that that was not acceptable and they needed to reach an agreement.

for all of the foregoing reasons and conclusions the appellant, Nicholas Rowman respectfully requests that this court reverse and dismiss.

pro se

Nick Rowman