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Jun 08, 2012  
Court of Appeals  
Division III  
State of Washington

NO. 299660-III  
Consolidated with  
NO. 299767  
Consolidated with  
PERSONAL RESTRAINT PETITION  
NO. 303161

COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON

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THE STATE OF WASHINGTON, Respondent

v.

COREY JAVON WILLIAMS, Appellant/Petitioner

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APPEAL/PERSONAL RESTRAINT PETITION  
FROM THE SUPERIOR COURT  
FOR BENTON COUNTY

NO. 09-1-00804-7

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BRIEF OF RESPONDENT

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**I. INTRODUCTION**

The defendant was convicted of Vehicle Theft in the First Degree in Alaska on September 20, 2002. (App. A; CP 28-30). Alaska Statute 11.46.360 provides:

A person commits the crime of vehicle theft in the first degree if, having no right to do so, or any reasonable ground to believe the person has such right, the person drives, tows away, or takes

(1) the car, truck, motorcycle . . . of another.

(App. A; CP 31).

**II. ISSUE**

**A. IS THE ALASKA STATUTE, AS 11.46.360, COMPARABLE TO ANY FELONY IN WASHINGTON STATE?**

**III. ARGUMENT**

*The burden of proof:*

The State must prove by a preponderance of the evidence that the defendant's out-of-state conviction is comparable to a Washington felony. *State v. Jackson*, 129 Wn. App. 95, 105, 117 P.3d 1182 (2005).

*The two-part test:*

There is a two-part test to determine whether foreign convictions are comparable to a Washington felony.

First, a sentencing court compares the legal elements of the out-of-state crime with those of the Washington crime. If the crimes are so comparable, the court counts the defendant's out-of-state conviction as an equivalent Washington conviction.

If the elements of the out-of-state crimes are different, then the court must examine the undisputed facts from the record of the foreign conviction to determine whether that conviction was for conduct that would satisfy the elements of the comparable Washington crime. *State v. Larkins*, 147 Wn. App. 858, 862-63, 199 P.3d 441 (2008).

*The elements of the Alaska statute and various Washington statutes on Taking a Motor*

Vehicle without the Owner's Permission are comparable.

Elements:

<u>Alaska Statute,</u> <u>AS 11.46.360</u> (App. A).	<u>Washington Statute</u> <u>RCW 9A.56.075</u> (App. B).
1 a) Having no right to do so, or b) any reasonable ground to believe he has such a right, 2) drives, tows away or takes, 3) a car, truck, etc.	1) Without permission of the owner, 2) intentionally takes or drives away 3) a motor vehicle.

The case of *State v. Walters*, 162 Wn. App. 74, 255 P.3d 835 (2011) is instructive. In *Walters* the defendant had been found guilty of a Nevada statute on "Unlawful Taking of a Motor Vehicle." (App. C). That statute mirrors the Alaska statute; neither specifically state that the "taking or driving away" be intentional. The *Walters* Court held that both the Nevada and Washington statutes punished "joyriding," the act of taking another's vehicle without permission,

but not necessarily with the intent to permanently deprive the owner. *Id.* at 86.

Both the Alaska and Washington statutes require the same elements. In both, the defendant must have no right to the vehicle, and drive or take it away. The defendant argues that the Washington statute requires the taking be intentional. However, the *Taking Motor Vehicle Without Owner's Permission* statute has never required specific intent to permanently deprive the owner. *State v. Franks*, 74 Wn.2d 413, 417, 445 P.2d 200 (1968). Further, the Alaska statute requires a deliberate act: driving, towing, or taking another's vehicle.

*The defendant's reliance on In re the Personal Restraint of Lavery is misplaced.*

In *Lavery*, 154 Wn.2d 249, 111 P.3d 837 (2005), the defendant had been convicted of Bank Robbery under 18 U.S.C. § 2113, which provides:

**(a)** Whoever, by force and violence, or by intimidation, takes, or attempts to take, from the person or presence of another, or obtains or attempts to

obtain by extortion any property or money or any other thing of value belonging to, or in the care, custody, control, management, or possession of, any bank, credit union, or any savings and loan association; or

Whoever enters or attempts to enter any bank, credit union, or any savings and loan association, or any building used in whole or in part as a bank, credit union, or as a savings and loan association, **with intent to commit in such bank,** credit union, or in such savings and loan association, or building, or part thereof, so used, **any felony affecting such bank,** credit union, or such savings and loan association and in violation of any statute of the United States, or any larceny--

Shall be fined under this title or imprisoned not more than twenty years, or both. (Emphasis added)

18 U.S.C.A. § 2113. (App. D).

Thus, under the federal bank robbery statute, a person entering a bank intending to pass a forged check would be guilty of bank robbery. That act, entering a bank intending to pass a forged check, would not be a Robbery under RCW 9A.56.200 or 9A.56.210. The situation is not the same here: under both the Alaska and

Washington statutes, the defendant could only be guilty if he deliberately drove or took away another's vehicle.

*The defendant's argument that Washington's "Theft of a Motor Vehicle" statute is not comparable to the Alaska statute is a straw-man argument.*

The State should have suggested to the trial court that the *Taking Motor Vehicle without the Owner's Permission* statute was a better fit than the *Theft of a Motor Vehicle* statute. However, it is clear that if an out-of-state conviction is comparable to any Washington felony, it should be included in the offender score. See RCW 9.94A.525(3); *State v. Ford*, 137 Wn.2d 472, 973 P.2d 452 (1998) (comparing the elements of the out-of-state offense to the elements of *potentially* comparable Washington crimes).

**IV. CONCLUSION**

The trial court's finding and conclusion that the Alaska crime is comparable to a Washington crime is correct. The Judgment and Sentence should be not be disturbed.

**RESPECTFULLY SUBMITTED** this 8th day of June  
2012.

**ANDY MILLER**

Prosecutor

Handwritten signature of Terry J. Bloor in black ink, written over the typed name.

**TERRY J. BLOOR, Chief**

Prosecuting Attorney

Bar No. 9044

OFC ID No. 91004

# **APPENDIX A**

**ALASKA STATUTE**

**AS 11.46.360**

Alaska Statutes.

Title 11. Criminal Law

Chapter 46. Offenses Against Property

Section 360. Vehicle Theft in the First Degree.

previous: Section 350. Definition.

next: Section 365. Vehicle Theft in the Second Degree.

## **AS 11.46.360. Vehicle Theft in the First Degree.**

**(a)** A person commits the crime of vehicle theft in the first degree if, having no right to do so or any reasonable ground to believe the person has such a right, the person drives, tows away, or takes

**(1)** the car, truck, motorcycle, motor home, bus, aircraft, or watercraft of another;

**(2)** the propelled vehicle of another and

**(A)** the vehicle or any other property of another is damaged in a total amount of \$500 or more;

**(B)** the owner incurs reasonable expenses as a result of the loss of use of the vehicle, in a total amount of \$500 or more; or

**(C)** the owner is deprived of the use of the vehicle for seven days or more;

**(3)** the propelled vehicle of another and the vehicle is marked as a police or emergency vehicle; or

**(4)** the propelled vehicle of another and, within the preceding seven years, the person was convicted under

**(A)** this section or AS 11.46.365 ;

**(B)** former AS 11.46.482 (a)(4) or (5);

**(C)** former AS 11.46.484 (a)(2);

**(D)** AS 11.46.120 - 11.46.140 of an offense involving the theft of a propelled vehicle; or

**(E)** a law or ordinance of this or another jurisdiction with elements substantially similar to those of an offense described in (A) - (D) of this paragraph.

**(b)** In this section,

**(1)** "aircraft" has the meaning given in AS 02.15.260 ;

**(2)** "all-terrain vehicle" means a propelled vehicle that has three or more wheels or two or more tracks or treads, is less than 75 inches in width, has a dry weight of 800 pounds or less, is equipped with low pressure tires or rubberized or metal tracks or treads, and is designed primarily for travel over unimproved terrain;

**(3)** "motorcycle" means a vehicle having a seat or saddle for the use of the rider, designed to travel on not more than three wheels in contact with the ground, and having an engine with more than 50 cubic centimeters of displacement; "motorcycle" does not include a tractor or an "all-terrain vehicle";

**(4)** "watercraft" means a propelled vehicle used or capable of being used as a means of transportation, for recreational or commercial purposes, on water; in this paragraph, "watercraft" does not include a shallow draft propelled vehicle not more than 12 feet in length with an inboard motor powering a water jet pump as its primary means of propulsion that is designed to carry not more than two persons who sit, stand, or kneel on the vehicle.

**(c)** Vehicle theft in the first degree is a class C felony.

# **APPENDIX B**

**WASHINGTON STATUTE**

**RCW 9A.56.075**

## RCW 9A.56.075

### **Taking motor vehicle without permission in the second degree.**

(1) A person is guilty of taking a motor vehicle without permission in the second degree if he or she, without the permission of the owner or person entitled to possession, intentionally takes or drives away any automobile or motor vehicle, whether propelled by steam, electricity, or internal combustion engine, that is the property of another, or he or she voluntarily rides in or upon the automobile or motor vehicle with knowledge of the fact that the automobile or motor vehicle was unlawfully taken.

(2) Taking a motor vehicle without permission in the second degree is a class C felony.

[2003 c 53 § 73.]

Notes:

**Intent -- Effective date -- 2003 c 53:** See notes following RCW 2.48.180.

# **APPENDIX C**

**NEVADA STATUTE**

**NRS 205.2715**

## CHAPTER 205 - CRIMES AGAINST PROPERTY

### MOTOR VEHICLES

**NRS 205.271 “Owner” defined.** As used in NRS 205.2715, 205.273 and 205.274, the word “owner” means a person having the lawful use or control or the right to the use and control of a vehicle under a lease or otherwise for a period of 10 or more successive days. (Added to NRS by 1963, 886; A 1969, 531; 1975, 143)

**NRS 205.2715 Unlawful taking of vehicle: Inference; penalty.**

1. Every person who takes and carries away or drives away the vehicle of another without the intent to permanently deprive the owner thereof but without the consent of the owner of such vehicle is guilty of a gross misdemeanor.
2. Every person who is in possession of a vehicle without the consent of the owner of such vehicle may reasonably be inferred to have taken and carried away or driven away the vehicle.
3. “Vehicle” as used in this section means every device in, upon or by which any person or property is or may be transported or drawn upon a public highway, waterway or airway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.

(Added to NRS by 1973, 1686; A 1983, 718)

# **APPENDIX D**

**18 U.S.C. § 2113**

Title 18. Crimes and Criminal Procedure (Refs & Annos)  
Part I. Crimes (Refs & Annos)  
Chapter 103. Robbery and Burglary (Refs & Annos)

Effective: November 2, 2002

18 U.S.C.A. § 2113

§ 2113. Bank robbery and incidental crimes

Currentness

**(a)** Whoever, by force and violence, or by intimidation, takes, or attempts to take, from the person or presence of another, or obtains or attempts to obtain by extortion any property or money or any other thing of value belonging to, or in the care, custody, control, management, or possession of, any bank, credit union, or any savings and loan association; or

Whoever enters or attempts to enter any bank, credit union, or any savings and loan association, or any building used in whole or in part as a bank, credit union, or as a savings and loan association, with intent to commit in such bank, credit union, or in such savings and loan association, or building, or part thereof, so used, any felony affecting such bank, credit union, or such savings and loan association and in violation of any statute of the United States, or any larceny--

Shall be fined under this title or imprisoned not more than twenty years, or both.

**(b)** Whoever takes and carries away, with intent to steal or purloin, any property or money or any other thing of value exceeding \$1,000 belonging to, or in the care, custody, control, management, or possession of any bank, credit union, or any savings and loan association, shall be fined under this title or imprisoned not more than ten years, or both; or

Whoever takes and carries away, with intent to steal or purloin, any property or money or any other thing of value not exceeding \$1,000 belonging to, or in the care, custody, control, management, or possession of any bank, credit union, or any savings and loan association, shall be fined under this title or imprisoned not more than one year, or both.

**(c)** Whoever receives, possesses, conceals, stores, barter, sells, or disposes of, any property or money or other thing of value which has been taken or stolen from a bank, credit union, or savings and loan association in violation of subsection (b), knowing the same to be property which has been stolen shall be subject to the punishment provided in subsection (b) for the taker.

**(d)** Whoever, in committing, or in attempting to commit, any offense defined in subsections (a) and (b) of this section, assaults any person, or puts in jeopardy the life of any person by the use of a dangerous weapon or device, shall be fined under this title or imprisoned not more than twenty-five years, or both.

**(e)** Whoever, in committing any offense defined in this section, or in avoiding or attempting to avoid apprehension for the commission of such offense, or in freeing himself or attempting to free himself from arrest or confinement for such offense, kills any person, or forces any

person to accompany him without the consent of such person, shall be imprisoned not less than ten years, or if death results shall be punished by death or life imprisonment.

**(f)** As used in this section the term “bank” means any member bank of the Federal Reserve System, and any bank, banking association, trust company, savings bank, or other banking institution organized or operating under the laws of the United States, including a branch or agency of a foreign bank (as such terms are defined in paragraphs (1) and (3) of section 1(b) of the International Banking Act of 1978), and any institution the deposits of which are insured by the Federal Deposit Insurance Corporation.

**(g)** As used in this section the term “credit union” means any Federal credit union and any State-chartered credit union the accounts of which are insured by the National Credit Union Administration Board, and any “Federal Credit Union” as defined in section 2 of the Federal Credit Union Act. The term “State-chartered credit union” includes a credit union chartered under the laws of a State of the United States, the District of Columbia, or any commonwealth, territory, or possession of the United States.

**(h)** As used in this section, the term “savings and loan association” means--

**(1)** a Federal savings association or State savings association (as defined in section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b))) having accounts insured by the Federal Deposit Insurance Corporation; and

**(2)** a corporation described in section 3(b)(1)(C) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(1)(C)) that is operating under the laws of the United States.

**CERTIFICATE OF SERVICE**

I certify under penalty of perjury under the laws of the State of Washington that on this day I served, in the manner indicated below, a true and correct copy of the foregoing document as follows:

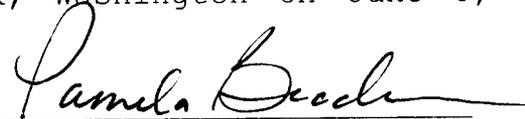
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Signed at Kennewick, Washington on June 8,  
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Pamela Bradshaw  
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