

**FILED**  
Feb 22, 2013  
Court of Appeals  
Division III  
State of Washington

No. 30439-6-III

IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,  
Plaintiff/Respondent,

v.

ANGEL ANTEMIO FREGOSO-GUERRERO,  
Defendant/Appellant.

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RESPONSE TO APPELLANT'S SUPPLEMENTAL BRIEF

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Douglas J. Shae WSBA #17942  
Chelan County Prosecuting Attorney

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## I. FACTS

On or about November 10, 2011, the Prosecuting Attorney for Chelan County, Gary Riesen, and Brandon Redal, the defense attorney for Mr. Fregoso-Guerrero, entered into an agreement whereby Findings of Facts and Conclusions of Law were entered in reference to hearings that had occurred in this matter. Those findings of fact were actually also signed by the defendant. (RP November 10, 2011, p. 2, ln. 10-11; ln. 16-20.) Those were agreed findings of facts and conclusions. (RP p. 2, ln. 22-23.)

The second portion of the hearing that was held on November 10, 2011, was to do a stipulated facts trial (RP p. 3, ln. 10-15) which occurred after the State agreed to dismiss Count I which was the burglary charge, and the defendant was going to trial via stipulation on Count II, which was the theft in the second degree charge. The police reports entered with the court by the State were admitted without objection. (RP p. 3, ln. 23-25; p. 4, ln. 1-2.) The defense offered nothing to the court. (RP p. 4, ln. 10-18.) Based upon the information and evidence entered, the court made a finding beyond a reasonable doubt that in the State of Washington, County of Chelan, on or about August 14, 2011, the

defendant did unlawfully, feloniously, and wrongfully obtain or exert unauthorized control over the property of another which exceeded \$750 in value but not over \$5,000 in value, that being a 9.9 horsepower Nissan outboard boat motor that belonged to Kenneth Elsea with intent to deprive Mr. Elsea of that motor. (RP p. 4, ln. 21-25; p. 5, ln. 1-4.)

## II. ISSUE

WHETHER BY A STIPULATED FACTS TRIAL THE DEFENDANT WAIVED HIS RIGHT TO A TRIAL BY JURY?

## III. ARGUMENT

With respect to stipulation, the function of the trial court is to ascertain that parties and counsel understand it and to implement it. Baird v. Baird, 6 Wn. App. 587, 494 P.2d 1387 (1972); *see also*, RCW 2.44.010 and CR 2A.

Commonly, stipulated facts trials occur when there is an issue the defendant wants to take to a higher court. As in this case, the stipulation occurred by counsel to the court. The court

made a finding that the defendant had a right to appeal. (RP p. 7, ln. 17-20.) The court further made the finding that the evidence was beyond a reasonable doubt and the defendant was guilty of theft in the second degree. (RP p. 3, ln. 21-25, p. 5, ln. 1-4.) "When a stipulation to a crucial fact is entered into the record in open court in the presence of the defendant and is agreed to by the defendant's counsel, trial court may reasonably assume that the defendant is aware of the content of the stipulation and agrees to it through his or her attorney; unless the defendant indicates objection at the time the stipulation is made, he or she is ordinarily bound by that stipulation." U.S. v. Ferreboeuf, 632 F.2d 832, *cert. denied*, 101 S. Ct. 1398, 450 U.S. 934, 67 L.Ed.2d 368 (1980).

A stipulated facts trial is just what it purports to be—that there is a stipulation to the entire trial and facts to be presented and it is anticipated an appeal will rise from that as a result of the in the case.

Appellant makes references to cases that were bench trials in which the defendant involved did not outwardly waive his right to a jury. However, a stipulated facts trial is a different vehicle for a specific purpose.

**IV. CONCLUSION**

Based upon the foregoing, the court should not reverse Mr. Fregoso-Guerrero's conviction for theft in the second degree.

DATED this 22nd day of February, 2013.

Respectfully submitted,



Douglas J. Shae WSBA #17942  
Chelan County Prosecuting Attorney

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ANGEL ANTEMIO FREGOSO- )  
GUERRERO, )  
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Defendant/Appellant. )  
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No. 30439-6-III  
Superior Court No. 11-1-00328-1

DECLARATION OF SERVICE

I, Cindy Dietz, under penalty of perjury under the laws of the State of Washington, declare that on the 22nd day of February, 2013, I electronically transmitted to:

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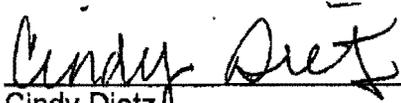
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said electronic transmission and envelopes containing true and correct copies of Response to Appellant's Supplemental Brief.

Signed at Wenatchee, Washington, this 22nd day of February, 2013.



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Cindy Dietz  
Legal Administrative Supervisor  
Chelan County Prosecuting Attorney's Office