

FILED
OCTOBER 10, 2014
Court of Appeals
Division III
State of Washington

NO. 32195-9-III

**COURT OF APPEALS, DIVISION III
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

LUCIO CONTRERAS RODRIGUEZ, APPELLANT

Appeal from the Superior Court of Grant County
The Honorable John D. Knodell, Judge

No. 13-8-00120-7

BRIEF OF RESPONDENT

D. Angus Lee
Prosecuting Attorney

By
STEVEN P. JOHNSON, JR.
Deputy Prosecuting Attorney
WSBA # 43313

GRANT COUNTY PROSECUTOR'S OFFICE
P.O. BOX 37
Ephrata, WA 98823-0037
(509) 754-2011

TABLE OF CONTENTS

A. ISSUES.....1

B. PROCEDURAL HISTORY.....1

C. FACTS.....2

D. ARGUMENT.....4

 1. The State presented sufficient evidence to convict Contreras Rodriguez at trial of possession of a stolen vehicle because the evidence showed Contreras Rodriguez was driving a recently stolen car and he provided an implausible explanation for how he arrived at the scene once the car wrecked.....4

 2. Any issues regarding conditions of supervision are moot because the order of disposition has expired.....11

 3. The scrivener’s error in the Order on Adjudication and Disposition should be corrected.12

E. CONCLUSION.....12

TABLE OF AUTHORITIES

State Cases

<i>State v. McCullum</i> , 98 Wn.2d 484, 488, 656 P.2d 1064 (1983).....	4
<i>Seattle v. Gellein</i> , 112 Wn.2d 58, 61, 768 P.2d 470 (1989).....	4
<i>State v. Mabry</i> , 51 Wn. App. 24, 25, 751 P.2d 882 (1988).....	4
<i>State v. Joy</i> , 121 Wn.2d 333, 338, 851 P.2d 654 (1993).....	5
<i>State v. Green</i> , 94 Wn.2d 216, 221-22, 616 P.2d 628 (1980).....	5
<i>State v. Barrington</i> , 52 Wn. App. 478, 484, 761 P.2d 632 (1987).....	5
<i>State v. Anderson</i> , 72 Wn. App. 453, 458, 864 P.2d 1001, <i>review denied</i> , 124 Wn.2d 1013 (1994).....	5, 10
<i>State v. Holman</i> , 181 Wn.2d 102, 106, 330 P.3d 182 (2014).....	5
<i>State v. Delmarter</i> , 94 Wn.3d 634, 638, 618 P.2d 99 (1980).....	5
<i>State v. Camarillo</i> , 115 Wn.2d 60, 71, 794 P.2d 850 (1990).....	5
<i>State v. Cord</i> , 103 Wn.2d 361, 367, 693 P.2d 81 (1985).....	6
<i>State v. Douglas</i> , 71 Wn.2d 303, 305, 428 P.2d 535 (1967).....	7
<i>State v. Portee</i> , 25 Wn.2d 246, 253-54, 170 P.2d 326 (1946).....	7-8
<i>State v. Green</i> , 2 Wn. App. 57, 68, 466 P.2d 193 (1970).....	7
<i>State v. Couet</i> , 71 Wn.2d 773, 430 P.2d 974 (1967).....	8, 10
<i>State v. Clark</i> , 91 Wn. App. 581, 584, 958 P.2d 1028 (1998).....	11

Other Authorities

RCW 9A.56.068.....6

See 11A Wash. Prac., Pattern Jury Instr. Crim. WPIC 77.21 (3d Ed).....7

11A Wash. Prac., Pattern Jury Instr. Crim. WPIC 10.02 (3d Ed).....7

A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Was there sufficient evidence to support Contreras Rodriguez's conviction for possession of a stolen vehicle?
2. Is the issue Contreras Rodriguez raises regarding conditions of supervision moot because his term of supervision has expired?
3. Should a scrivener's error in the Order on Adjudication and Disposition be corrected?

B. PROCEDURAL HISTORY.

On May 13, 2013, the Grant County Prosecutor's Office filed an information in Cause No. 13-8-00120-7, charging LUCIO CONTRERAS RODRIGUEZ with one count of vehicular assault, one count of theft of a motor vehicle, one count of DUI, and one count of minor exhibiting the effects of liquor in a public place. CP 1-3. The Grant County Prosecutor's Office filed an amended information on July 29, 2014, amending Count 2 to possession of a stolen vehicle and dismissing Counts 1, 3, and 4. CP 14-16, RP 5-8. The matter proceeded to trial before the Honorable John Knodell on October 9, 2013. RP 9. After hearing all of the evidence, Judge Knodell found Contreras Rodriguez guilty of possession of a stolen vehicle. RP 13-115. The trial court sentenced Contreras Rodriguez on January 13, 2014 to six months of community

supervision, 20 hours of community service, and five days of confinement. CP 48-54, RP 124. Contreras Rodriguez filed a timely notice of appeal. The trial court entered its findings of fact and conclusions of law on March 20, 2014. CP 57-59.

C. FACTS

At 5:00 am on Sunday, April 7th, Jesus Camacho's wife went outside and saw that her husband's 1993 Honda Civic was missing. RP 21. Camacho had last seen his car the night before where he normally parked it, which was by the side of his house. RP 20-21. Camacho called the police to report it stolen. RP 20.

Earlier that morning, Officer Erik Bakke of the Quincy Police Department was on patrol when a man came running up to his car. RP 29. The man said something in Spanish to Officer Bakke about a car and made a gesture with his fist hitting his open hand. RP 29-30. Officer Bakke went where the man was pointing and saw Camacho's car wrecked and on fire. RP 24-27, 30-31, 34-35. The engine compartment had been pushed into the cabin and the occupants were both on the ground outside the car. RP 30, 46-47, 61. Contreras Rodriguez was about 10 to 15 feet outside of the car on the driver's side, while his passenger was on the opposite side of the car. RP 31-32. Contreras Rodriguez told Officer Bakke that he

could not feel his right foot and Officer Bakke saw that Contreras Rodriguez's lower right leg was covered in blood. RP 32. Later, Officer Bakke would also observe that Contreras Rodriguez had a significant laceration on his right hand. RP 45-46. Contreras Rodriguez's passenger was outside on the other side of the car, suffering from a compound fracture to his left femur. RP 32, 34, 62. Officer Bakke and a bystander carried Contreras Rodriguez away from the car. RP 36-37. As Officer Bakke set down Contreras Rodriguez near the officer's patrol car, the Civic's cabin, according to Officer Bakke, "combusted into flames." RP 37.

Officer Bakke asked Contreras Rodriguez what had happened. While Officer Bakke was unable to make out the entire sentence, Contreras Rodriguez replied, "...lost control." RP 44. At the hospital, Officer Bakke asked Contreras Rodriguez who was driving and Contreras Rodriguez replied that he did not know. RP 50-52.

In its Findings of Fact, the trial court determined that Contreras Rodriguez was driving Camacho's car. CP 58. The trial court also determined that Contreras Rodriguez was driving the car two-and-one-half hours before Camacho realized that someone had stolen his car. *Id.* These Findings of Fact are not challenged on appeal. The only Findings of Fact that Contreras Rodriguez does challenge on appeal are 2.15 and 2.16,

specifically that Contreras Rodriguez told Officer Bakke that he was not driving the car.

D. ARGUMENT

- 1. The State presented sufficient evidence to convict Contreras Rodriguez at trial of possession of a stolen vehicle because the evidence showed Contreras Rodriguez was driving a recently stolen car and he provided an implausible explanation for how he arrived at the scene once the car wrecked.***

The State has provided sufficient evidence to convict Contreras Rodriguez of Possession of a Stolen Vehicle because it has provided to this Court evidence that Contreras Rodriguez was driving a stolen car, he was doing so recently after the car was stolen, and he demonstrated knowledge of the car being stolen by both lying to police about driving the car and providing an unsubstantiated story for who was actually driving the car.

Due process requires that the State bear the burden of proving each and every element of the crime charged beyond a reasonable doubt. *State v. McCullum*, 98 Wn.2d 484, 488, 656 P.2d 1064 (1983); see also *Seattle v. Gellein*, 112 Wn.2d 58, 61, 768 P.2d 470 (1989); *State v. Mabry*, 51 Wn. App. 24, 25, 751 P.2d 882 (1988). The applicable standard of review is, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime

charged beyond a reasonable doubt. *State v. Joy*, 121 Wn.2d 333, 338, 851 P.2d 654 (1993); *State v. Green*, 94 Wn.2d 216, 221-22, 616 P.2d 628 (1980). Also, a challenge to the sufficiency of the evidence admits the truth of the State's evidence and any reasonable inferences from it. *State v. Barrington*, 52 Wn. App. 478, 484, 761 P.2d 632 (1987), review denied, 111 Wn.2d 1033 (1988) (citing *State v. Holbrook*, 66 Wn.2d 278, 401 P.2d 971 (1965)). All reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant. *State v. Anderson*, 72 Wn. App. 453, 458, 864 P.2d 1001, review denied, 124 Wn.2d 1013 (1994). "[U]nchallenged findings of facts and findings of fact supported by substantial evidence [are treated] as verities on appeal." *State v. Holman*, 181 Wn.2d 102, 106, 330 P.3d 182 (2014) (citing *Schmidt v. Cornerstone Invs., Inc.*, 115 Wn.2d 148, 169, 795 P.2d 1143 (1990)).

Circumstantial and direct evidence are considered equally reliable. *State v. Delmarter*, 94 Wn.3d 634, 638, 618 P.2d 99 (1980). In considering this evidence, "[c]redibility determinations are for the trier of fact and cannot be reviewed upon appeal." *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990) (citing *State v. Casbeer*, 48 Wn. App. 539, 542, 740 P.2d 335, review denied, 109 Wn.2d 1008 (1987)). This is because the written record of a proceeding is an inadequate basis on which

to decide issues based on witness credibility. The differences in the testimony of witnesses create the need for such credibility determinations. The trier of fact, who is best able to observe the witnesses and evaluate their testimony, should make these determinations. On this issue, the Supreme Court of Washington said:

great deference . . . is to be given the trial courts factual findings. *In re Seago*, 82 Wn.2d 736, 513 P.2d 831 (1973); *Nissen v. Obde*, 55 Wn.2d 527, 348 P.2d 421 (1960). It, alone, has had the opportunity to view the witness' demeanor and to judge his veracity.

State v. Cord, 103 Wn.2d 361, 367, 693 P.2d 81 (1985).

Therefore, when the State has produced evidence of all elements of a crime, the decision of the trier of fact should be upheld.

The crime of Possession of a Stolen Vehicle is described in RCW 9A.56.068 as follows: "A person is guilty of the crime of possession of a stolen vehicle if he or she possess[es] a stolen vehicle." In order to find a defendant guilty of Possession of a Stolen Vehicle, the State must prove

- (1) That on or about April 7, 2013, the defendant knowingly received, retained, possessed, concealed, or disposed of a stolen motor vehicle;
- (2) That the defendant acted with knowledge that the motor vehicle had been stolen;
- (3) That the defendant withheld or appropriated the motor vehicle to the use of someone other than the true owner or person entitled thereto;
- (4) That any of these acts occurred in the State of Washington.

See 11A Wash. Prac., Pattern Jury Instr. Crim. WPIC 77.21 (3d Ed).

WPIC 10.02 defines knowledge as follows: “A person knows or acts knowingly or with knowledge with respect to a fact when he or she is aware of that fact... If a person has information that would lead a reasonable person in the same situation to believe that a fact exists, the jury is permitted but not required to find that he or she acted with knowledge of that fact.” 11A Wash. Prac., Pattern Jury Instr. Crim. WPIC 10.02 (3d Ed).

“Bare possession of recently stolen property alone is not sufficient to justify a conviction.” *State v. Douglas*, 71 Wn.2d 303, 305, 428 P.2d 535 (1967). If there is other evidence tending to show guilt in addition to possession, that evidence is sufficient to warrant a conviction. *Douglas*, 71 Wn.2d at 306 (citing *State v. Portee*, 25 Wn.2d 246, 253-54, 170 P.2d 326 (1946), overruled on other grounds by *State v. Matuszewski*, 30 Wn. App. 714, 717-18, 637 P.2d 994 (1981)). “When a person is found in possession of recently stolen property, slight corroborative evidence of other inculpatory circumstances tending to show his guilt will support a conviction.” *Portee*, 25 Wn.2d at 253-54. “The other corroborative evidence can consist of a failure to explain, a false or improbable explanation, or an explanation that cannot be checked or rebutted.” *State v. Green*, 2 Wn. App. 57, 68, 466 P.2d 193 (1970). “When the fact of

possession of recently stolen property is supplemented by the giving of a false or improbable explanation of it... a case is made for the jury.” *Portee*, 25 Wn.2d at 254.

In *State v. Couet*, 71 Wn.2d 773, 430 P.2d 974 (1967), Couet was seen driving a car that was stolen within the last several weeks. *Couet*, 71 Wn.2d at 774. This was near enough to the car being stolen that the Court found it qualified as “recently stolen.” *Id.* at 776. Couet denied driving the car, but had told roommates he had received the car from a colleague named “Bill,” who was on vacation. *Id.* at 775. The Court held that there was enough evidence to convict Couet of the equivalent of Taking a Motor Vehicle Without Permission in the Second Degree. In doing so, the Court relied on three pieces of evidence: Couet was in seen in the car recently after the car was stolen, he lied to police about not being in the car, and he provided an implausible reason without substantiation for how he had the car. *Id.* at 776.

In the present case, Contreras Rodriguez possessed a recently stolen vehicle, lied to police about driving, and also provided an implausible explanation without substantiation. Jesus Camacho testified that he reported the car stolen hours after the collision. Camacho also testified that he seen his car within a day or so of discovering it was stolen. Officers Bakke, Clark, and Bushy all testified that they saw Contreras

Rodriguez outside of the driver's side of the car when they arrived at the scene and that Contreras Rodriguez was unable to walk and had significant injuries to his right leg, hand and wrist. The officers also testified that there was another young male, Alex Hernandez, who was outside the car on the passenger's side with a compound fracture in his left leg. The officers testified that the car had suffered significant front end damage and the engine compartment had come through the middle of the front panel and into the passenger cabin. Someone driving the car would therefore have likely suffered injuries to his right side, while someone in the front passenger's seat would have likely suffered injuries to his left side. Combined with the severity of the injuries and where Contreras Rodriguez and Hernandez were found, the evidence clearly shows that Contreras Rodriguez was the driver.

That Contreras Rodriguez was the driver makes his explanation of the situation implausible, thus providing a sufficient basis for this court to find him guilty of Possession of a Stolen Vehicle. Officer Bakke testified that Contreras Rodriguez told him someone else was driving the car, even though the evidence shows Contreras Rodriguez was driving the car. Combined with the recency of Camacho's car being stolen, Contreras Rodriguez's implausible explanation supports the State's argument that he knew he was driving a stolen car. Furthermore, if Contreras Rodriguez

believed he had permission to drive the car, or believed he owned it, there is no logical reason to keep that detail from Officer Bakke because that “fact” would not conflict with someone else driving the car. Contreras Rodriguez never made that assertion, however, providing only a statement disproven by the evidence; as in *Couet*, his version of events is “without any substantiation.” *Couet*, 71 Wn.2d at 776. Therefore, the State has provided the corroborative evidence necessary to prove that Contreras Rodriguez knew the car he was driving was stolen.

Contreras Rodriguez contends on appeal that his statement to police that he did not know who was driving the car, while implausible, can be explained in other ways. The trial court made a reasonable inference that Contreras Rodriguez knew that he was driving a stolen car because the car had recently been stolen, Contreras Rodriguez implicitly denied driving, and he provided an implausible response to who was in fact driving the car, a statement is not supported by the evidence or the uncontroverted findings of the trial court. Contreras Rodriguez does not seem to contend that the trial court made an unreasonable inference from the evidence that he was attempting to cover up his possession of a stolen car, just that there were other reasonable conclusions that the trial court could have considered. Brief of Appellant at 11. All reasonable inferences from the evidence must be drawn in favor of the State and

interpreted most strongly against the defendant. *State v. Anderson*, 72 Wn. App. 453, 458, 864 P.2d 1001, *review denied*, 124 Wn.2d 1013 (1994). This evidence is sufficient, to convict Contreras Rodriguez of possession of a stolen vehicle.

2. Any issues regarding conditions of supervision are moot because the order of disposition has expired.

An appellate court is unable to grant effective relief if a disposition order has expired. *State v. Clark*, 91 Wn. App. 581, 584, 958 P.2d 1028 (1998) (*citing Lee v. Hamilton*, 56 Wn. App. 880, 882, 785 P.2d 1156 (1990)). Contreras Rodriguez argues on appeal that the trial court imposed conditions of supervision outside the scope of its authority. Brief of Appellant at 1-2 (Assignment of Error 6). At disposition, the trial court ordered Contreras Rodriguez to serve six months of community supervision, from January 13, 2014 to July 13, 2014. CP 50, RP 124. The trial court issued a bench warrant for Contreras Rodriguez and supervision was tolled for a period of 51 days, from May 7, 2014 until a subsequent probation violation hearing on June 27, 2014. CP (Bench Warrant, Order on Modification of Disposition). Therefore, supervision expired August 23, 2014. Any issue regarding conditions of supervision is moot as a result of supervision concluding.

3. *The scrivener's error in the Order on Adjudication and Disposition should be corrected.*

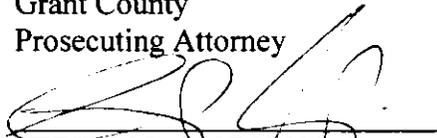
The State concedes that the Order on Adjudication and Disposition erroneously refers to Count 1 in paragraphs 4.2 and 4.19 when the trial court found Contreras Rodriguez guilty on Count 2, possession of a stolen vehicle. This matter should be remanded back to the trial court to correct the scrivener's error.

E. CONCLUSION

For the foregoing reasons, the State asks this court to affirm the judgment and sentence below, remanding this matter only to correct the scrivener's error.

DATED: October 10, 2014

D. ANGUS LEE
Grant County
Prosecuting Attorney



STEVEN P. JOHNSON, JR.
Deputy Prosecuting Attorney
WSBA # 43313

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,)	
)	
Respondent,)	No. 32195-9-III
)	
vs.)	
)	
LUCIO CONTRERAS RODRIGUEZ,)	DECLARATION OF SERVICE
)	
Appellant.)	
<hr/>		

Under penalty of perjury of the laws of the State of Washington, the undersigned declares:

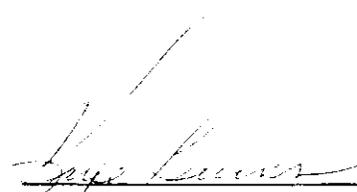
That on this day I served a copy of the Brief of Respondent in this matter by e-mail on the following party, receipt confirmed, pursuant to the parties' agreement:

Susan Marie Gasch
gaschlaw@msn.com

That on this day I deposited in the mails of the United States of America a properly stamped and addressed envelope directed to Appellant containing a copy of the Brief of Respondent in the above-entitled matter.

Lucio Contreras Rodriguez
213 K Street SW
Quincy WA 98848

Dated: October 10, 2014.



Kaye Burns