

FILED
FEBRUARY 25, 2015
Court of Appeals
Division III
State of Washington

32435-4-III

COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

RAYMOND E. CHANEY, III, APPELLANT

APPEAL FROM THE SUPERIOR COURT
OF SPOKANE COUNTY

BRIEF OF RESPONDENT

LAWRENCE H. HASKELL
Prosecuting Attorney

Larry Steinmetz
Deputy Prosecuting Attorney
Attorneys for Respondent

County-City Public Safety Building
West 1100 Mallon
Spokane, Washington 99260
(509) 477-3662

INDEX

I. APPELLANT’S ASSIGNMENTS OF ERROR 1

II. ISSUES PRESENTED 1

III. STATEMENT OF THE CASE 1

IV. ARGUMENT 4

 STANDARD OF REVIEW FOR SUFFICIENCY OF EVIDENCE. 4

V. CONCLUSION..... 9

TABLE OF AUTHORITIES

FEDERAL CASES

Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781, 2787,
61 L.Ed.2d 560 (1979) 4

WASHINGTON CASES

State v. Brown, 162 Wn.2d 422, 173 P.3d 245 (2007) 4

State v. Callahan, 77 Wn.2d 27, 459 P.2d 400 (1969) 5

State v. Collins, 76 Wn. App. 496, 886 P.2d 243 (1995)..... 5

State v. Couet, 71 Wn.2d 773, 430 P.2d 974 (1967)..... 6, 7

State v. Echeverria, 85 Wn. App. 777, 934 P.2d 1214 (1997) 5

State v. Green, 94 Wn.2d 216, 616 P.2d 628 (1980) 4

State v. Hatch, 4 Wn. App. 691, 483 P.2d 864 (1971) 5

State v. L.A., 82 Wn. App. 275, 918 P.2d 173 (1996)..... 6

State v. Ladely, 82 Wn.2d 172, 509 P.2d 658 (1973) 6, 7

State v. McBride, 74 Wn. App. 460, 873 P.2d 589 (1994) 4

State v. Spruell, 57 Wn. App. 383, 788 P.2d 21 (1990)..... 5

State v. Thomas, 150 Wn.2d 821, 83 P.3d 970 (2004) 4

State v. Turner, 103 Wn. App. 515, 13 P.3d 234 (2000) 6

State v. Womble, 93 Wn. App. 599, 969 P.2d 1097 (1999) 6, 7, 8

STATUTES

RCW 9A.08.010..... 6

RCW 9A.56.068..... 5

I. APPELLANT’S ASSIGNMENTS OF ERROR

The State failed to establish beyond a reasonable doubt, that Raymond Edward Chaney III had knowledge that the vehicle in his possession was stolen.

II. ISSUE PRESENTED

Was there sufficient evidence to prove the appellant possessed the stolen vehicle and that he knew it was stolen?

III. STATEMENT OF THE CASE

The appellant, Raymond Chaney III, was charged in the Spokane County Superior Court by amended information with one count of taking a motor vehicle without permission in the first degree and one count possession of a stolen motor vehicle. CP 27; RP 13-15.

Jesse Chaney is a mechanic at Chaney’s Automotive. RP 20. The business is located 6643 North Perry in Spokane. RP 20. Although he rarely sees the appellant, he had contact with Appellant on November 23, 2013, around 9:30 a.m.¹ RP 21. The appellant arrived at the shop before Mr. Chaney. RP 21. The appellant advised his vehicle broke down and he brought it to the shop. RP 21. It was an older Suburban or Yukon. RP 22. Upon inspection of the vehicle, the battery was “fried.”

¹ Jesse Chaney and the appellant, Raymond Chaney, are cousins. RP 21. Mechanic Jesse Chaney will be referred to as Mr. Chaney; the defendant, Raymond Chaney, will be referred to as the appellant.

The appellant claimed he bought the vehicle for \$500 dollars. RP 22. The vehicle had expensive rims and a stereo. RP 23-25. The appellant asserted, as a part of the purchase agreement, he had to return the rims and stereo to the owner/seller of the vehicle. RP 25; 34. Mr. Chaney believed the vehicle might be stolen because the license plates had been removed from the vehicle. RP 29.

The appellant was at the shop until 3:30 p.m. when he left with Mr. Chaney. RP 26-27. He left the shop because the vehicle would not run. RP 27.

Mr. Chaney called law enforcement and said the vehicle might be stolen. RP 30. An officer responded to his shop and confirmed the vehicle had been stolen. RP 30.

Witness Mark Beatty arrived at the shop between 8:00 a.m. and 9:00 a.m. on November 23, 2013. He observed the appellant and several other people having a discussion. RP 39. The hood was up on the red and white Suburban parked at the shop. RP 39. He noticed the tires on the vehicle. RP 39. The appellant told Mr. Beatty he had purchased the vehicle for \$500 at an auction. RP 40.

Ervin Schadler was the owner of the red and white 1991 Suburban. RP 44. The original rims and the stereo had been replaced after he purchased the vehicle. RP 45. The replacement rims and stereo system

were worth about \$6,000. The interior of the vehicle was in good condition before it was stolen. RP 45. The vehicle also had attached license plates. RP 46. The vehicle's engine ran perfect. RP 49. At the time, he lived near the Spokane Airport. RP 46.

According to Mr. Schadler, the last time he observed the Suburban was in the driveway of his residence. RP 46-47. He started the vehicle to warm it up. RP 47. He was going to give a friend a ride home between 1:00 a.m. and 2:00 a.m. on November 23, 2013. RP 46. The friend had entered the residence after Mr. Schadler. RP 48. The friend said there was an unknown person outside looking for a person named "Dan." RP 48. The vehicle was left running and unattended while Mr. Schadler and his friend were inside the residence. RP 47. Mr. Schadler heard the engine "rev up" on the vehicle. RP 48. Shortly thereafter, he observed someone driving it away from the residence. RP 48.

After the vehicle was returned to him by the police, the interior of the vehicle was destroyed. RP 49. The stereo and alarm were yanked loose without the aid of any tools. RP 49-50. He did not give the appellant or anyone else permission to drive the vehicle. RP 50.

Officer Dustin Howe confirmed the vehicle was stolen and arrested the appellant. RP 57.

The jury convicted the appellant of possession of a stolen motor vehicle. RP 101; CP 33. This appeal followed.

IV. ARGUMENT

STANDARD OF REVIEW FOR SUFFICIENCY OF EVIDENCE.

The appellant claims the State did not establish he had actual or constructive knowledge that the Suburban was stolen. *See*, App.Br. at p. 3.

In reviewing claims of insufficiency of the evidence, the standard of review is whether any rational trier of fact, viewing the evidence in a light most favorable to the State, could have found the elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 316, 99 S.Ct. 2781, 2787, 61 L.Ed.2d 560 (1979); *State v. Green*, 94 Wn.2d 216, 616 P.2d 628 (1980); *State v. McBride*, 74 Wn. App. 460, 463, 873 P.2d 589 (1994).

This court draws all reasonable inferences from the evidence in favor of the State and interprets it most strongly against the defendant. *State v. Brown*, 162 Wn.2d 422, 173 P.3d 245 (2007). An insufficiency claim admits the truth of the State's evidence and all reasonable inferences from it. *Brown*, 162 Wn.2d at 428. "Credibility determinations are for the trier of fact and are not subject to review." *State v. Thomas*, 150 Wn.2d 821, 874, 83 P.3d 970 (2004).

A person is guilty of possession of a stolen vehicle if he “... possesses ... a stolen motor vehicle.” RCW 9A.56.068(1). Knowledge that the property was wrongfully appropriated is an essential element of the crime of possession of stolen property. *State v. Hatch*, 4 Wn. App. 691, 693, 483 P.2d 864 (1971).

“Possession may be actual or constructive, and constructive possession can be established by showing the defendant had dominion and control over [the property] or over the premises where [the property] was found.” *State v. Echeverria*, 85 Wn. App. 777, 783, 934 P.2d 1214 (1997). “Actual possession means that the goods are in the personal custody of the person charged with possession.” *State v. Callahan*, 77 Wn.2d 27, 29, 459 P.2d 400 (1969).

Close proximity alone is not enough to establish constructive possession; other facts must enable the trier of fact to infer dominion and control. *State v. Spruell*, 57 Wn. App. 383, 389, 788 P.2d 21 (1990). No single factor is dispositive in determining dominion and control. *State v. Collins*, 76 Wn. App. 496, 501, 886 P.2d 243 (1995). Rather, the totality of the circumstances must be considered. *Id.* A rational trier of fact could infer that a defendant had constructive possession of stolen property if the

defendant had control over the premises where the property was found. *State v. Turner*, 103 Wn. App. 515, 521, 13 P.3d 234 (2000). A vehicle is a “premises” for purpose of this inquiry. *Id.*

Mere possession of recently stolen property is insufficient to establish that the possessor knew the property was stolen, but possession of recently stolen property, coupled with slight corroborative evidence, is sufficient to prove guilty knowledge. *State v. Couet*, 71 Wn.2d 773, 775, 430 P.2d 974 (1967); *State v. Womble*, 93 Wn. App. 599, 604, 969 P.2d 1097 (1999). Although knowledge may not be presumed because a reasonable person would have knowledge under similar circumstances, it may be inferred. *Id.*

Corroborative evidence can include damage consistent with theft, such as a broken ignition; fleeing when stopped; and driving the vehicle coupled with the absence of a plausible explanation for legitimate possession. *State v. L.A.*, 82 Wn. App. 275, 276, 918 P.2d 173 (1996); *Womble*, 93 Wn. App. at 604.

In *State v. Ladely*, 82 Wn.2d 172, 174-175, 509 P.2d 658 (1973), the defendant was charged, in part, with Washington’s former grand theft by possession of stolen property. The only element in contention at trial was whether the defendant acted knowingly. RCW 9A.08.010(b). The defendant had given police three different versions about his ownership of

the stolen property and how he acquired it. In affirming the conviction, the supreme court held:

There is sufficient evidence in a charge of grand larceny by possession where the state has shown that the defendant was in possession of the item combined with slight corroborative evidence of other inculpatory circumstances tending to show guilt. Thus, the giving of a false explanation or one that is improbable or is difficult to verify in addition to the possession is sufficient.

State v. Ladely, 82 Wn.2d at 175.

Similarly, in *Couet*, 71 Wn.2d at 775, the defendant was found in possession of a stolen vehicle within several weeks after the day it was taken from a new car lot. The court noted that “the defendant was in possession of the new car in a relatively short time after it was stolen.” *Id.* at 776. The supreme court also observed the defendant's explanation was “an improbable story that a fellow worker, identified only as ‘Bill’ let defendant have this practically new car while he, the fellow worker, was on vacation. The story is offered without any substantiation.” *Id.* at 776.

In *Womble*, 93 Wn. App. at 603, the court found sufficient evidence to support the defendant's conviction of taking a motor vehicle without permission. The defendant was arrested on the same night that the vehicle was “taken,” the defendant had an “implausible” explanation, the defendant fled when confronted by the vehicle's owner, and the defendant

was identified by the vehicle's owner as one of the individuals who got out of her vehicle after it had been moved. *Id.* at 601.

Viewed in the light most favorable to the State, a rational trier of fact could find that Appellant possessed the Suburban and that he had knowledge it was stolen because Appellant's explanation that he purchased the vehicle at an auction was factually improbable. The vehicle was stolen outside the owner's home between 1:00 a.m. and 2:00 a.m. on November 23, 2013. The vehicle had no mechanical problems, very expensive rims, stereo system, and an alarm. The vehicle's battery was in working order before it was stolen.

The appellant arrived at his cousin's mechanic shop with the vehicle between 8:00 a.m. and 9:00 a.m. on November 23, 2013. The vehicle had been stolen six to seven hours earlier. The interior of the vehicle was "trashed" and the battery was "fried." The appellant had removed the stereo system from the vehicle without the aid of any tools. The license plates had been removed from the vehicle after it was stolen. This established actual possession. Appellant told Mr. Chaney he was going to remove the rims. This all accrued within a six or seven hour period; a time in which the vehicle had been reported stolen to law enforcement.

Moreover, it is totally implausible that Appellant “bought” the vehicle from an “auction” during that time period. A jury could have inferred his story was not credible.

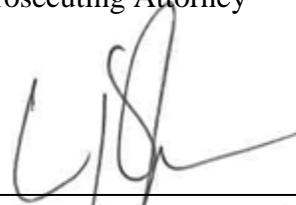
Finally, he provided two different stories of how he acquired the vehicle. He claimed that he bought the vehicle from a person for \$500 with an agreement that he would return the stereo and rims to the owner. He then changed his story alleging he bought the vehicle at an auction. Certainly, a jury could have inferred that his two stories were problematic.

V. CONCLUSION

The respondent respectfully requests the court affirm the appellant’s conviction and sentence for the reasons stated above.

Dated this 25th day of February, 2015

LAWRENCE H. HASKELL
Prosecuting Attorney



Larry D. Steinmetz #20635
Deputy Prosecuting Attorney
Attorney for Respondent

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,

Respondent,

v.

RAYMOND E. CHANEY,

Appellant,

NO. 32435-4-III

CERTIFICATE OF MAILING

I certify under penalty of perjury under the laws of the State of Washington, that on February 25, 2015, I e-mailed copy of the Brief of Respondent in this matter, pursuant to the parties' agreement, to:

Dennis W. Morgan
nodblspk@rcabletv.com

and mailed a copy to:

Raymond E. Chaney III, DOC #798908
Washington State Penitentiary
1313 N. 13th Ave, Unit 6-F9-4
Walla Walla, WA 99362

2/25/2015

(Date)

Spokane, WA

(Place)

Crystal McNeas

(Signature)