

FILED
Mar 16, 2017
Court of Appeals
Division III
State of Washington

NO. 34497-5-III

In the Court of Appeals of the State of Washington
Division 3

STATE OF WASHINGTON, Respondent

v.

RODNEY L. HARLAN, Appellant

APPELLANT'S REPLY BRIEF

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A) ISSUES DISCUSSED IN REPLY

1. Conclusion that the vehicle associated with Mr. Harlan was Mr. Anderson's Pathfinder relies on impermissible, unreasonable inferences; therefore, Count II, possession of a stolen vehicle, should be reversed and dismissed for lack of sufficient evidence the vehicle was stolen.
2. Conclusion that the key associated with Mr. Harlan was Mr. Eakin's set of keys relies on impermissible, unreasonable inferences; therefore, Count III, third degree possession of a stolen property, should be reversed and dismissed for lack of sufficient evidence the key was stolen.

B) ARGUMENT

1. Conclusion that the vehicle associated with Mr. Harlan was Mr. Anderson's Pathfinder relies on impermissible, unreasonable inferences; therefore, Count II, possession of a stolen vehicle, should be reversed and dismissed for lack of sufficient evidence the vehicle was stolen.

“Evidence is sufficient to support a finding of guilt if, after viewing the evidence in the light most favorable to the State, a rational trier of fact could find the essential elements of the crime beyond a reasonable doubt.” *State v. Rose*, 175 Wn.2d 10, 14 (2012). “When the sufficiency of the evidence is challenged in a criminal case, all reasonable

inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant.” *Id.*

However, not all inferences are reasonable.

First, “[f]or the trier of fact to draw inferences from proven circumstances, the inferences must be rationally related to the proven facts.” *State v. Jackson*, 112 Wn.2d 867, 875 (1989) (internal citation omitted). “The jury is permitted to infer from one fact the existence of another essential to guilt, if reason and experience support the inference.” *Id.* An irrational or unreasoned inference is impermissible.

Second, an inference based upon non-evidence is unreasonable. For example, a jury is not permitted to infer a fact essential to guilt from the charging document. CP 94 (“The filing of a charge is not evidence that the charge is true. Your decision as jurors must be made solely upon the evidence presented during these proceedings”). Similarly, a jury is not permitted to infer a fact essential to guilt from the idea that it “may be a *provable* proposition.” *Rose*, 175 Wn.2d at 17 (emphasis added).

Furthermore, a jury is not permitted to infer a fact essential to guilt from an objection, or the absence of an objection. CP 95 (“You may have heard objection made by the lawyers during trial...These objections should not influence you. Do not make any assumptions or draw any conclusions based on a lawyer's objections”). Moreover, a jury is also not permitted to

infer a fact essential to guilt from a lawyer's remark, statement, or argument. *Id.* Finally, a jury is not permitted to infer a fact essential to guilt from a defendant's silence. CP 102; *see also State v. Mace*, 97 Wn.2d 840, 844 (1982).

Here, viewing the evidence in the light most favorable to the State, the jury could have reasonably concluded Kenneth Anderson's red Nissan Pathfinder was stolen from his driveway on or about December 19, 2015. RP 155-57, 159. And, viewing the evidence in the light most favorable to the State, the jury could have reasonably concluded that on December 29, 2015, Mr. Harlan possessed a “maroon SUV with a sunroof [and]...a big wheel on the back” that appeared to be an “Isuzu Rodeo.” RP 133, 136-141,144. But the jury could not have concluded based upon the evidence that Mr. Anderson's Pathfinder and the vehicle found near Mr. Harlan on December 29, 2015 were the same vehicle.

Specifically, the jury could have found from Mr. Anderson's testimony that he recovered his red Nissan Pathfinder “a couple of weeks” after “Detective Yates showed [him] a picture [of his Pathfinder]...from a security camera” from a “carport maybe behind a house” at an address “off of 47th Avenue” “a mile or two away from” his residence at “5502 Bristol Way, Yakima, Washington.” RP 153, 159-60. And the jury could have found from Officer Levy's testimony that the maroon Isuzu Rodeo

associated with Mr. Harlan was located in a “carport” on a “pretty long driveway” near the intersection of “47th Avenue” and “Walnut” on December 29, 2015. RP 137. But for the jury to have inferred Mr. Anderson's Pathfinder and the vehicle associated with Mr. Harlan were one-and-the-same on such scant, vague, and conflicting evidence was unreasonable.

2. Conclusion that the key associated with Mr. Harlan was Mr. Eakin's set of keys relies on impermissible, unreasonable inferences; therefore, Count III, third degree possession of a stolen property, should be reversed and dismissed for lack of sufficient evidence the key was stolen.

Here, viewing the evidence in the light most favorable to the State, the jury could have reasonably concluded Andrew Eakin's keys to his 2014 Toyota Tacoma—which were attached to a “multicolored laminated plastic” “Toyota Care...tag” that bore a Vehicle Identification Number, as well as a “red” “bottle opener” “from Tide Insider Works”—were stolen from his residence located at 5408 Webster Avenue, Yakima, Washington on or about December 23, 2015. RP 193-95, 197, 200, 205. And, viewing the evidence in the light most favorable to the State, the jury could have reasonably concluded that on December 29, 2015, Mr. Harlan possessed a “red key chain” attached to “a Toyota key.” RP 142. But the jury could not

have concluded based upon the evidence that Mr. Eakin's keys and the key found in Mr. Harlan's pocket on December 29, 2015 were the same keys.

Specifically, the jury could have found from Mr. Eakin's testimony that he recovered his keys from Detective Yates at the Yakima Police Department approximately "a week, week and a half" after the keys were stolen. RP 197-99. And the jury could have found from Officer Levy's testimony that she provided the "Toyota key" she found in Mr. Harlan's pocket to "Detective Yates." RP 143. But for the jury to have inferred Mr. Eakin's keys and the key found in Mr. Harlan's pocket were one-and-the-same on such scant, vague, and conflicting evidence was unreasonable.

C) CONCLUSION

No rational trier of fact could have found beyond a reasonable doubt from the evidence admitted at trial, divorced from unreasonable inferences, that the vehicle Mr. Harlan was found crouched beside when he was arrested on December 29, 2015 was stolen. Therefore, this Court should reverse the conviction for Count II, possession of stolen vehicle, and dismiss that charge.

No rational trier of fact could have found beyond a reasonable doubt from the evidence admitted at trial, divorced from unreasonable inferences, that the key found in Mr. Harlan's pocket at the time of his arrest on December 29, 2015 was stolen. Therefore, this Court should

reverse the conviction for Count III, third degree possession of stolen property, and dismiss that charge.

DATED this 16th day of March, 2017.

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing APPELLANT'S REPLY BRIEF was emailed on this 16th day of March, 2017 to counsel for Respondent, Tamara Hanlon at tamara.hanlon@co.yakima.wa.us; and was mailed, postage prepaid, on this 16th day of March, 2017 to Appellant as follows:

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CR TAYLOR LAW, P.S.
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