

FILED  
Court of Appeals  
Division III  
State of Washington  
3/15/2018 1:07 PM

NO. 354385

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

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STATE OF WASHINGTON

Respondent

vs.

CHANDRISS MILES, AKA DESHAZO,

Appellant.

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FROM SPOKANE COUNTY  
The Honorable Timothy Fennessy

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**APPELLANT'S OPENING BRIEF**

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I. ASSIGNMENTS OF ERROR

1. The state failed to prove every element of unlawful possession of a stolen motor vehicle beyond a reasonable doubt.

2. The state did not present sufficient evidence to establish the defendant knowingly possessed a stolen motor vehicle.

II. ISSUE PRESENTED

Was the state's evidence sufficient for the jury to infer a reasonable person would have known under similar circumstances the motor vehicle was stolen? (Assignments of Error 1 & 2).

III. STATEMENT OF THE CASE

Chandriss Miles aka Deshazo (Ms. Deshazo) took the bus to 1528 West Jackson Ave in Spokane to purchase a silver 2007 Pontiac G6. 4/25/17 304; 4/26/17 RP 349. A woman named Faith was selling the car for \$1,000 on Craigslist. 4/26/17 RP 415.

Unbeknownst to Ms. Deshazo, when she showed up at 1528 West Jackson Ave to test drive the car, police were actively surveilling the property. Earlier that day, a neighbor called the neighborhood resource police officer to report a man, in the backyard of the property, recklessly spray painting a silver newer- looking car. The resource officer had noticed the car when she drove past the property on her way to work that morning. 4/25/17 RP 330. Given it was 25-degrees outside and not ideal painting weather, coupled with the history residents at 1528 West Jackson Ave had with stolen cars, the resource officer asked a detective to surveil the house. 4/25/17 RP 333; 4/26/17 RP 372.

The owners of 1528 West Jackson Ave lived in Nevada. But their son, Jimmy Jackson, lived on the property, along with a woman named Faith, and a host of car thieves and other known criminals. 4/25/17 RP 368; 385. Jimmy Jackson's associates generated such a constant flow of in-coming and out-going traffic, neighbors complained. 4/25/17 RP 319. The neighbors' complaints gained traction with law enforcement when in November 2016, an officer stopped a car that had been parked at 1528 West Jackson Ave and arrested the driver on an outstanding warrant. 4/25/17 RP 319-20.

After that, neighbors started to report odd things happening with cars at the property, like transposed numbers on license plates, and fake trip permits. 4/25/17 RP 320. Just days before Ms. Deshazo showed up at 1528 West Jackson Ave, police stopped Jimmy Jackson driving an unlicensed pickup truck with two fake trip permits. 4/25/17 RP 327; 4/25/17 RP 135.

Shortly before that, another unsuspecting prospective buyer showed up at 1528 West Jackson Ave to purchase a white Jeep Cherokee that was listed for sale in a local newspaper. The person got a bad feeling about the Jeep after asking about the title and left without purchasing it. Later, the person saw an alert in the Auto Trader magazine where an auto dealer in Airway Heights reported the Jeep stolen. The person called the auto dealer and the dealer sent police over to 1528 West Jackson Ave to check for the Jeep. 4/25/17 RP 325; 4/25/16 RP 277; 4/25/17 RP 138. Police learned people associated with 1528 West Jackson Ave were involved with stealing the Jeep, but eventually recovered it at a different property. 4/25/17 RP 326.

So, when the detective showed up to surveil what was happening with the spray paint, law enforcement's suspicions were already aroused that something criminal was afoot. 4/26/17 RP 372. The detective parked somewhat away from the property to avoid detection. A neighbor, who could see the property face on relayed to the detective, over the phone, what was going on. 4/26/17 RP 408-09. The neighbor conveyed to the detective the license number that was on the car's magnetized dealer plates. The detective checked the number, and the car, a silver 2007 Pontiac G6, came back as reported stolen from a local car dealership. 4/26/17 RP 406. A woman named Faith had gone in to the car dealership, took the car for a test drive, and never returned. 4/25/17 RP 305-06.

Shortly after the neighbor told the detective a male and a female had placed a temporary sticker on the car, the detective saw Ms. Deshazo drive away in it. 4/26/17 RP 408-09; 4/16/17 RP 439. He notified other officers in the area, who followed Ms. Deshazo to a gas station. Officers waited as Ms. Deshazo went inside the station and bought a pack of cigarettes. As she attempted to pull out of the station, the officers activated their emergency lights and ordered her to stop. 4/25/17 RP 169; 4/26/17 RP 442-445.

When confronted by police, Ms. Deshazo immediately identified herself and was very forthcoming about her circumstances. She told officers there was an outstanding warrant for her arrest and she was undergoing treatment for a heroin addiction. 4/24/17 RP 89; 4/25/17 RP 148-49. An officer placed Ms. Deshazo under arrest for the outstanding warrant. Ms. Deshazo waived

Miranda and explained how she found the car listed for sale on Craigslist and was looking to buy it for \$1,000 from a woman named Faith. She was test driving it but was on her way to return the car because it was making a knocking sound. 4/26/17 RP 445. She told the officer she was unemployed, but her mother agreed to loan her the \$1,000 so she could purchase the car. 4/26/17 RP 413.

The officer attempted to access the Craigslist ad on his cellphone. But when he could not find it, Ms. Deshazo said the ad was no longer active. 4/26/17 RP 414. She allowed the officer to scroll through her cellphone to find Faith's contact information. 4/24/17 RP 96. She even relinquished her journal to the officer, so he could look for Faith's contact information there. The officer thumbed through the journal and found contact information listed for various people, including Jimmy Jackson and others known to law enforcement. 4/26/17 RP 352. The officer took a picture of the journal but did not collect it as evidence. 4/26/17 RP 446; 4/24/17 RP 120.

To confirm Ms. Deshazo's story, police returned to 1528 West Jackson Ave to look for Faith. Faith was not there, but her father was at the house, along with Jimmy Jackson. Police caught Faith's father trying to cover car tracks with snow. When asked why, he told police he just did not want his daughter to get in trouble. 4/26/17 RP 419-20; 4/26/17 RP 385; 4/26/17 RP 365.

The state charged Ms. Deshazo with possession of a stolen motor vehicle. CP 13-14. At trial, the jury never heard about Ms. Deshazo's outstanding warrant or about her heroin addiction. The trial court ruled during

pretrial motions her statements about such were inadmissible because they were more prejudicial than probative. 4/25/17 RP 182-83; CP 146-149. The jury also never got the opportunity to see the journal officers claimed contained contact information for known criminals. Police determined it was not necessary to secure it as evidence. 4/26/17 RP 446. Still, with the state's limited evidence, the jury found Ms. Deshazo guilty of unlawful possession of a stolen motor vehicle. 4/26/17 RP 489; CP 114.

The trial court sentenced Ms. Deshazo to serve 50 months under Department of Corrections supervision. The court granted her the opportunity to serve 25 months of the 50 month sentence in a prison-based drug offender sentencing alternative program and the remaining 25 months under community custody. 6/19/17 RP 504; CP 132-145. Ms. Deshazo appeals the conviction. CP 154.

#### IV. ARGUMENT

A JURY COULD NOT HAVE INFERRED FROM THE STATE'S EVIDENCE MS. DESHAZO KNEW THE CAR SHE WAS TEST DRIVING WAS STOLEN.

##### Standard of review

When reviewing a challenge to sufficiency of the evidence, this court will view the evidence in the light most favorable to the State to determine whether any rational trier of fact could have found the essential elements beyond a reasonable doubt. State v. Joy, 121 Wash.2d 333, 338, 851 P.2d 654 (1993). Circumstantial evidence and direct evidence are equally reliable. State v. Delmarter, 94 Wash.2d 634, 638, 618 P.2d 99 (1980). This court will defer to the

trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. State v. Walton, 64 Wash.App. 410, 415–16, 824 P.2d 533 (1992). “A claim of insufficiency admits the truth of the state's evidence and all inferences that reasonably can be drawn therefrom.” State v. Salinas, 119 Wash.2d 192, 201, 829 P.2d 1068 (1992); State v. Theroff, 25 Wash. App. 590, 593, 608 P.2d 1254, aff'd, 95 Wash.2d 385, 622 P.2d 1240 (1980). This court does not need “to be convinced of the defendant’s guilt beyond a reasonable doubt but only that substantial evidence supports the state's case.” State v. Valencia, 148 Wash.App. 302, 313–314, 198 P.3d 1065, 1070–1071, review granted sub nom. State v. Turner, No. 82731–1 (Wash. July 7, 2009).

#### Analysis

A person is guilty of possession of a stolen vehicle if he or she possess [possesses] a stolen motor vehicle.” RCW 9A.56.068(1) (alteration in original). It is a fundamental precept of criminal law that the state must prove every element of a crime charged beyond a reasonable doubt. State v. Brown, 147 Wash. 2d 330, 339, 58 P.3d 889, 894 (2002).

To convict Ms. Deshazo of unlawful possession of a stolen vehicle, the state had to prove beyond a reasonable doubt Ms. Deshazo knowingly possessed a stolen vehicle and that she acted with knowledge the vehicle was stolen. 11A Washington Practice: Washington Pattern Jury Instructions: Criminal 77.21, at 177 (3d ed. 2008) (WPIC). In other words, the state must have proved beyond a reasonable doubt Ms. Deshazo not only possessed the stolen vehicle but she possessed it knowingly or with knowledge that it was stolen.

“Guilty knowledge is an element ... which can rarely be proven by direct and positive testimony. Ordinarily it must be found by inference from all the facts and circumstances.” State v. Salzman, 186 Wash. 44, 47, 56 P.2d 1005 (1936). The fact finder may infer knowledge if “a reasonable person would have knowledge under similar circumstances.” State v. Womble, 93 Wash. App. 599, 604, 969 P.2d 1097 (1999) (citing State v. Shipp, 93 Wash.2d 510, 516, 610 P.2d 1322 (1980)), review denied, 138 Wash.2d 1009 (1999).

Mere possession of recently stolen property is insufficient to establish that the possessor had knowledge the property was stolen. State v. Couet, 71 Wash.2d 773, 775, 430 P.2d 974 (1967); State v. Womble, 93 Wash.App. at 604. But possession of recently stolen property coupled with ‘slight corroborative evidence’ sufficiently proves culpable knowledge. Id. (citing Couet, 71 Wash.2d at 776). Examples of slight corroborative evidence include false or improbable explanations and explanations the police cannot rebut or check. State v. Portee, 25 Wash.2d 246, 253, 254, 170 P.2d 326 (1946), overruled on other grounds, State v. Matuszewski, 30 Wash. App. 714, 637 P.2d 994 (1981).

In State v. Couet, 71 Wash.2d 773, 773-74, 430 P.2d 974 (1967), our Supreme Court reinforced how questionable explanations constitute sufficient corroborative evidence to support a jury's finding a defendant knew a vehicle was stolen. In that case, someone stole a new car from a car dealership lot. Police found Couet with the car some several weeks after it was stolen from the car lot. When asked about it, Couet told police that his friend, a fellow worker identified only as “Bill” let him have the practically new car while he, the fellow worker, was

on vacation. Police had no way to substantiate Couet's story. Couet, 71 Wash.2d at 774-76. Because Couet possessed a recently stolen car and gave an improbable story the police could not check or rebut, our Supreme Court found that was sufficient to establish Couet knew the car was stolen. Couet, 71 Wash.2d at 776.

In State v. Ford, 33 Wash. App. 788, 789, 658 P.2d 36 (1983), Ford was convicted of taking and riding and malicious mischief. He was stopped while driving a car later determined to have been stolen. Although he admitted he did not know who owned the car, he offered no explanation for why he had it. From such facts, Division One of this court concluded the trial court could have inferred Ford had knowledge that the car had been unlawfully taken. State v. Ford, 33 Wash. App. at 790.

Similarly, in State v. Hudson, 56 Wash. App. 490, 492, 784 P.2d 533, 533 (1990), Division One of this court determined evasive behavior, along with an improbable story, were sufficient to establish knowledge. In that case, three police officers stopped Hudson and two other juveniles after the officers discovered the car Hudson was driving, a brand new 1987 Nissan Maxima, had a license plate belonging to a Toyota Celica, and an unrecorded vehicle information number. The officers approached the vehicle, identified themselves as Seattle police officers, and ordered Hudson out of the car. Hudson got out of the car and ran. State v. Hudson, 56 Wash. App. 534. Division One found the absence of any explanation for why Hudson had the car and the fact he fled

provided ample evidence for the court to infer guilty knowledge. State v. Hudson, 56 Wash. App. 490, 492, 784 P.2d 533, 533–34 (1990).

Without corroborative evidence like that presented in Couet, Ford, and Hudson, a jury cannot infer knowledge. For example, in State v. L.A., 82 Wash. App. 275, 276, 918 P.2d 173, 173 (1996), the state offered limited evidence to prove L.A. a 14-year old, knew the car she was driving was stolen. At trial, the car's owner testified it had been taken without his permission. Police officers saw L.A. driving the car the next day, followed her for a few blocks, and then activated their emergency lights. L.A. pulled over and did not flee. The officers observed a broken rear wing window and did not present but did not testify as to any other defects or damage to the car. Police also took L.A.'s statement, but the state did not offer that statement at trial.

On appeal, Division One concluded the state's evidence was insufficient to establish knowledge. The evidence established only that the defendant was 14 years old, that she was driving a car that had been taken without the owner's permission, and that the car had a broken rear window. L.A., 82 Wash. App. at 276, 918 P.2d 173.

Like the state in L.A., the state here offered limited evidence to prove Ms. Deshazo knew the car she was test driving was stolen. When L.A. saw police lights activated, she pulled over, and she did not flee the scene. Ms. Deshazo did the same. 4/25/17 RP 169; 4/26/17 RP 442-445. In fact, Ms. Deshazo immediately identified herself and responded to officers' questions. She even offered that she was in a treatment program for a heroin addiction and that there

was likely an outstanding warrant for her arrest. 4/24/17 RP 89; 4/25/17 RP 148-49.

Like the broken rear wing window officers noticed in L.A., officers here noticed the fresh black spray paint on the car's bumper and gas cap, but could not testify as to any other defects or damage to it. 4/26/17 RP 424-27; 430-31; 4/24/17 RP 108. To add to that, police here neglected to secure Ms. Deshazo's journal as evidence, just like the police who took L.A.'s statement but did not offer it at trial. 4/26/17 RP 446.

Unlike Couet, Ford, and Hudson, Ms. Deshazo had an explanation for how she came about to have the car and her explanation was probable and easy for police to corroborate. Just like the unsuspecting prospective buyer before her who responded to an ad for the Jeep Cherokee, Ms. Deshazo saw an advertisement for the car on Craigslist. She took the bus to 1528 West Jackson Ave, an address known well-known to police for its criminal enterprises, to buy the car for \$1,000 from a woman named Faith. And although she told officers she was unemployed, she explained that her mother was going to help her finance the transaction. 4/26/17 RP 413. And unlike the bogus "Bill" who allowed Couet to drive his brand-new car around while he was on vacation, Ms. Deshazo's Faith was real. She allowed the officer to scroll through her cellphone to find Faith's contact information. 4/24/17 RP 96. She even relinquished her journal to the officer, so he could look for Faith's contact information there. Even though Faith was not there when officers went to 1528

West Jackson Ave to check out Ms. Deshazo's story, they knew a Faith lived there. 4/25/17 RP 368; 385.

The state's evidence here only established Ms. Deshazo was test driving a car that Faith stole from a car dealer and someone at 1528 West Jackson Ave spray painted the car's bumper and gas cap black. This was not enough for a jury to infer Ms. Deshazo knew the car was stolen and not enough to support the conviction.

#### V. CONCLUSION

In the absence of sufficient evidence to prove beyond a reasonable doubt Ms. Deshazo knowingly possessed the stolen car, we ask this court to find the state did not meet its burden and to reverse the conviction.

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