

NO. 66515-4-I

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

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STATE OF WASHINGTON,

Respondent,

v.

JOSE N.-G.  
(A minor child)

Appellant.

2011/08/19 09:08:00  
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ON APPEAL FROM THE SUPERIOR COURT OF THE STATE  
OF WASHINGTON FOR KING COUNTY, JUVENILE DIVISION

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BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. In the absence of proof beyond a reasonable doubt of each element of the offense the juvenile court erred in convicting Jose N.-G. of taking a motor vehicle.

2. In the absence of substantial evidence to support it, the juvenile court erred in entering Finding of Fact 11.

3. To the extent it is a finding of fact and in the absence of substantial evidence to support it, the juvenile court erred in entering Conclusion of Law II.1

B. ISSUE PERTAINING TO ASSIGNMENTS OF ERROR

The Due Process Clause of the Fourteenth Amendment requires the State prove each element of an offense beyond a reasonable doubt. To convict Jose of taking a motor vehicle the State was required to prove he voluntarily rode in a vehicle knowing it was stolen. Where the State's evidence did not establish Jose's knowledge that the car was stolen does his conviction deprive him of due process?

C. STATEMENT OF THE CASE

Marcelina Gonzalez reported to police that her Honda Civic had been stolen. RP 39-40. Later that same day, Renton Police Officer Cassidy Steed stopped the car. RP 11. Officers arrested

the driver, who told them he had purchased the car. RP 12, 14. The officers also arrested Jose, who was seated in the passenger seat. RP 12. After the arrest was complete officers observed the car's ignition was damaged, and was hanging below the steering column. RP 13. Officer testified, however, it is possible someone could purchase a car with a damaged ignition. RP 18.

The State charged Jose with a single count of taking a motor vehicle. CP 1. The juvenile court found him guilty of that offense. CP 17.

D. ARGUMENT

THE STATE DID NOT PROVE EACH ELEMENT OF  
JOSE'S OFFENSE BEYOND A REASONABLE  
DOUBT

1. The State was required to prove the elements of the offenses beyond a reasonable doubt. In a criminal prosecution, the Fourteenth Amendment Due Process Clause requires the State prove each essential element of the crime charged beyond a reasonable doubt. Apprendi v. New Jersey, 530 U.S. 466, 490, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000); In re Winship, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970). Evidence is sufficient only if, in the light most favorable to the prosecution, a rational trier of fact could have found the essential elements of the crime beyond

a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979).

2. In its best light the State's evidence did not prove Jose had knowledge that the car was stolen. RCW 9A.56.075(1)

provides:

A person is guilty of taking a motor vehicle without permission in the second degree if he or she, without the permission of the owner or person entitled to possession, intentionally takes or drives away any automobile or motor vehicle, whether propelled by steam, electricity, or internal combustion engine, that is the property of another, or he or she voluntarily rides in or upon the automobile or motor vehicle with knowledge of the fact that the automobile or motor vehicle was unlawfully taken

While the Information alleged both alternatives of the offense, the State presented no evidence that Jose took or drove away the vehicle. CP 7; RP 46-47. Instead, at the adjudicatory hearing the State only alleged had voluntarily rode in the car knowing it was stolen. RP 46-47. The State's only evidence supporting this claim was the fact that the ignition was noticeably damaged. RP 13-14.

But, knowledge that the ignition was damaged does not necessarily establish knowledge that the car is stolen. In fact the State's own evidence established that a person could purchase a

car with a damaged ignition and not know it was stolen. RP 18. Thus, the State's own evidence establishes that a damaged ignition does not necessarily establish a car is stolen. Accepting that fact as true, as this Court must in reviewing a challenge to the sufficiency of the State's evidence, knowledge of a damage ignition cannot then necessarily establish a passenger's knowledge that a car is stolen.

Moreover, the State's own evidence was that the driver of the vehicle said he had purchased the car from another person. RP 14. Further, the State did not prove the driver told Jose anything else. Thus, while the court could infer Jose had knowledge of the damaged ignition that inference does not permit the court to find beyond reasonable doubt that Jose had knowledge that the car was stolen in the face of the State's evidence that the driver said he had purchased the car.

RCW 9A.08.010(2)(b) provides that a person has knowledge when:

- (i) he or she is aware of a fact, facts, or circumstances or result described by a statute defining an offense, or
- (ii) he or she has information which would lead a reasonable person in the same situation to believe that facts exist which facts are described by a statute defining an offense

The juvenile court pointed to this definition in both its oral and written findings. CP 9; RP 58

The definition of knowledge permits finder of fact to find the State has proved the knowledge element of an offense only if the State proves the person is aware of a fact that is defined as a crime. But, no statute defines a crime of driving a car with a damaged ignition. Because of that, Jose's knowledge of the ignition damage does establish knowledge of the fact that he knew the car was stolen. Nothing in RCW 9.08.010(2)(b) permits a finder of fact to use proof of knowledge of one fact to infer knowledge of a second fact. This seems especially true where the State presented additional evidence that such damage does not necessarily establish the car was stolen and additional evidence that the driver the driver said he purchased the car. Yet that is the basis of the court's finding of guilt. CP 9 (Finding of Fact 11).

The court found “. . . the condition of the steering column would leave anyone, regardless of age or experience, believing the car was stolen regardless of what they were told by the driver.” In light of the State's evidence that finding is not supported by substantial evidence.

When a trial court has weighed the evidence in a bench trial, appellate review is limited to determining whether substantial evidence supports its findings and, if so, whether the findings support the trial court's conclusions of law.

Hegwine v. Longview Fibre CO., 132 Wn.App. 546, 555, 132 P.3d 789 (2006), affirmed, 162 Wn.2d 340 (2007). Because Finding of Fact 11 is not supported by substantial evidence it must be stricken.

Because the State's evidence in its best light established only that Jose had knowledge of the damaged ignition, but that such damage does not necessarily establish the car is stolen, the State did not establish that Jose knew the car was stolen.

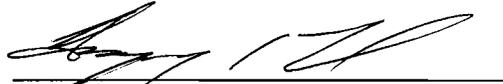
3. The Court must dismiss Jose's conviction. The absence of proof beyond a reasonable doubt of an element requires dismissal of the conviction and charge. Jackson, 443 U.S. at 319; State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980). The Fifth Amendment's Double Jeopardy Clause bars retrial of a case, such as this, where the State fails to prove an added element. North Carolina v. Pearce, 395 U.S. 711, 717, 89 S.Ct. 2072, 23 L.Ed. 2d 656 (1969), reversed on other grounds, Alabama v. Smith, 490 U.S. 794, 109 S.Ct. 2201, 104 L.Ed.2d 865 (1989)

Because the State did not prove each element of the offense of taking a motor vehicle, this Court must reverse and dismiss Jose's conviction.

E. CONCLUSION

This Court must reverse the Jose's adjudication.

Respectfully submitted this 18<sup>th</sup> day of March, 2011.



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**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE**

STATE OF WASHINGTON,	)	
	)	
RESPONDENT,	)	
	)	
v.	)	NO. 66515-4-I
	)	
JOSE N-G.,	)	
	)	
JUVENILE APPELLANT.	)	

**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, DECLARE THAT ON THE 18<sup>TH</sup> DAY OF MARCH, 2011, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

<input checked="" type="checkbox"/> KING COUNTY PROSECUTING ATTORNEY APPELLATE UNIT KING COUNTY COURTHOUSE 516 THIRD AVENUE, W-554 SEATTLE, WA 98104	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____
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<input checked="" type="checkbox"/> JOSE N-G. ECHO GLENN 33010 SE 99 <sup>TH</sup> ST SNOQUALMIE, WA 98065	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____
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**SIGNED** IN SEATTLE, WASHINGTON THIS 18<sup>TH</sup> DAY OF MARCH, 2011.

X \_\_\_\_\_  
*grt*

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COURT OF APPEALS  
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