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No. 41539-9-II

STATE OF WASHINGTON

BY

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

ALLEN K. DUPUIS,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR GRAYS HARBOR COUNTY

APPELLANT'S REPLY BRIEF

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P.M. 8/24/2011

TABLE OF CONTENTS

A. ARGUMENT IN REPLY 1

STATE V. CONTRERAS IS DISTINGUISHABLE BECAUSE MR. DUPUIS DID NOT "USE" THE CAR IN THE COMMISSION OF A FELONY, WHERE HE USED THE CAR MERELY TO DRIVE AWAY FROM THE SCENE..... 1

B. CONCLUSION 3

TABLE OF AUTHORITIES

Washington Court of Appeals

State v. Contreras, __ Wn. App. __, 254 P.3d 214 (2011) 1, 2

Statutes

RCW 46.20.285(4) 1, 3

RCW 9A.56.140(1) 2

A. ARGUMENT IN REPLY

STATE V. CONTRERAS IS DISTINGUISHABLE
BECAUSE MR. DUPUIS DID NOT "USE" THE CAR
IN THE COMMISSION OF A FELONY, WHERE HE
USED THE CAR MERELY TO DRIVE AWAY FROM
THE SCENE

In a statement of additional authority, the State cites a recent case from Division Three, State v. Contreras, __ Wn. App. __, 254 P.3d 214 (2011). But Contreras is distinguishable. Unlike the defendant in Contreras, Mr. Dupuis did not "use" the car except as a means of transporting himself away from the scene.

In Contreras, in June 2004, the owner of a 1990 Acura reported it stolen. 254 P.3d at 215. In October 2007, Mr. Contreras took the stolen Acura, which had been painted from red to black, to the state patrol office for a vehicle licensing inspection. Id. The officers who inspected it concluded it was stolen. Id. Mr. Contreras was charged with one count of possession of a stolen motor vehicle. Id. On appeal, he argued he did not "use" the car in the commission of the offense for purposes of RCW 46.20.285(4), and therefore the trial court erred in ordering his driver's license revoked. Id. at 217.

Division Three disagreed. The court concluded, "Mr. Contreras used this car. He tried to relicense it. He possessed it.

It was not something he did to the car. It was his use and possession and assertion of ownership that satisfied the elements of the statute." Id. (citing RCW 9A.56.140(1)).¹ Mr. Contreras "drove the car to the state patrol office and attempted to relicense it with the false VIN tags from his previous car. The car was not simply the object upon which he visited his crime." Id.

Unlike Mr. Contreras, Mr. Dupuis did not "use" the car to do anything but drive himself away from the scene. During the hearing on March 19, 2009, the court ordered Mr. Dupuis to transfer possession of the car to Ms. Marilea Armfield's guardian. CP 4. The car was parked outside the courtroom. Id. Instead of transferring possession, Mr. Dupuis exited the courtroom, walked to the car, entered it and drove away. Id. These actions by Mr. Dupuis were the basis for the charge of second degree taking a motor vehicle without permission. See CP 14 (guilty plea form providing that court may consider allegations in prosecutor's statement of probable cause in determining factual basis for plea).

Thus, Mr. Dupuis "used" the car only as a means of transporting himself away from the scene. But as explained in the

¹ RCW 9A.56.140(1), the possession of stolen property statute, provides: "Possessing stolen property' means knowingly to receive, retain, possess, conceal, or dispose of stolen property knowing that it has been stolen and to

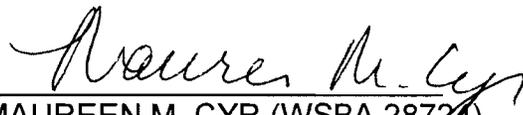
opening brief, Washington and California courts agree a car is merely incidental to a crime and not "used" to commit the crime, if it is used simply as a means of transporting the defendant away from the scene. AOB at 5-8 (and cases cited).

Thus, because the car was merely the object of the crime and used only as a means of transporting Mr. Dupuis away from the scene, the trial court erred in finding he "used" the car for purposes of RCW 46.20.285(4).

B. CONCLUSION

For the reasons above and in the opening brief, the trial court erred in finding Mr. Dupuis "used" a motor vehicle in the commission of a felony. The court's order that DOL be notified must be reversed and vacated.

Respectfully submitted this 24th day of August 2011.



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withhold or appropriate the same to the use of any person other than the true owner or person entitled thereto."

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

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RESPONDENT,)
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v.)
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ALLEN DUPUIS,)
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APPELLANT.)

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BY
DELE

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I, MARIA ARRANZA RILEY, STATE THAT ON THE 24TH DAY OF AUGUST, 2011, I CAUSED THE ORIGINAL **REPLY BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION TWO** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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SIGNED IN SEATTLE, WASHINGTON THIS 24TH DAY OF AUGUST, 2011.

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