

NO. 47759-9-II

**COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

MATTHEW GOINS, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Vikki Hogan, Judge

No. 14-1-04705-5

BRIEF OF RESPONDENT

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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. When the evidence presented firmly supports the conclusion that the defendant knew the motorcycle in his possession was stolen, should the court reject defendant's claim that there was insufficient evidence supporting conviction for Unlawful Possession of a Stolen Vehicle?
2. When the evidence presented firmly supports the conclusion that the defendant intended to commit a crime with a stolen credit card, should the court reject defendant's claim that there was insufficient evidence supporting conviction for Identity Theft in the Second Degree?
3. When the evidence presented firmly supports the conclusion that the defendant knew the credit card was stolen, should the court reject defendant's claim that there was insufficient evidence supporting conviction for Possession of Stolen Property in the Second Degree?

B. STATEMENT OF THE CASE.

1. Procedure

On November 25th, 2014, the Pierce County Prosecutor's Office filed an information charging Matthew Goins ("defendant") with Count I (Unlawful Possession of a Stolen Vehicle) and Count II (Unlawful Possession of a Controlled Substance-methamphetamine). CP 1-2. The

information was amended on January 6, 2015 to include Count III (Identity Theft in the Second Degree) and Count IV (Possessing Stolen Property in the Second Degree). CP 7-9.

The Honorable Vicki L. Hogan presided over the trial. 1RP 1. After careful consideration of the evidence, the jury returned guilty verdicts as charged. CP 100-101, 131-133; 4RP 303. Defendant was given an exceptional upward sentence of 75 months confinement on Count I based on his prior criminal history. 5RP 11-14; CP 107. Additionally, defendant was sentenced to 24 months on Count II, 48 months on Count III, and 29 months on Count IV, all to be served concurrently to Count I. 5RP 12,13; CP 107. Defendant was also sentenced to 12 months of community custody upon his release, and ordered not to contact the victims. 5RP 11-14; CP 107-8. The court imposed mandatory legal financial obligations (LFOs) of \$800, all non-mandatory LFOs were waived. 5RP 13; CP 105. Defendant filed timely appeal. CP 122.

2. Facts

Tacoma Police Officer Jeffrey Robillard responded to a call about a home prowler around 5:45 am on November 24, 2014, in a Tacoma residential neighborhood. 3RR 166. While investigating the potential prowler, Officer Robillard observed defendant and another man working on a silver Honda motorcycle and a disabled car on the side of the street.

3RP 167-8. Officer Robillard approached the men to ask if they required assistance. 3RP 168

Defendant informed Officer Robillard that the motorcycle belonged to him and he was going to use it to tow the car. 3RP 171. Officer Robillard became suspicious when defendant attempted to physically shield the motorcycle's license plate from his view during their conversation. 3RP 172. Despite defendant's attempts to shield the plate from view, Officer Robillard managed to obtain the license plate number from the motorcycle and discovered it was stolen by running the license number. 3RP 175. Defendant was subsequently arrested and informed of his Miranda Rights. 3RP 177-9. Police found several knives, a bag of methamphetamine, and a stolen credit card on defendant's person. 3RP 178; Ex. 5, 8.

Initially, defendant stated to Officer Robillard that he was working on the motorcycle in hopes of purchasing it. 3RP 180. He subsequently altered his story claiming that he had already purchased the motorcycle from "Jeremy Rainwater." 3RP 180, 203-204. Defendant admitted that he did not have a key for the motorcycle and had to start the bike by pressing two wires in the ignition assembly together. 3RP 180-1. Police contacted Jeffery Elmore who reported the motorcycle as stolen. 2RP 89-91,103-4. Mr. Elmore arrived and presented documents establishing him as the motorcycle's legitimate owner. 2RP 105.

Defendant was the only witness called by defense at trial. 3RP 221-237. Defendant testified that a day before his arrest he had paid Mr. “Rainwater or Gainwater” \$500 for the motorcycle, half the requested sale price. 3RP 224-5. Defendant stated that he had intended to pay the remaining \$500, thereby completing the transaction the day he was arrested. *Id.* Defendant testified he found the stolen American Express card on the street in front of a gas station and planned to return it to the owner. 3RP 228-230. He conceded that he had no contact information for the rightful owner or any other way to return the card. 3RP 229-230.

C. ARGUMENT.

1. THE JURY’S CONCLUSION THAT THE DEFENDANT COMMITTED THE CRIMES DESCRIBED IN COUNTS I, III, AND IV IS SUPPORTED BY THE EVIDENCE.

For a court to find there was sufficient evidence for a conviction on review, it must determine, after viewing the evidence in the light most favorable to the State, any rational jury could have found the defendant guilty beyond a reasonable doubt. *State v. Green*, 94 Wn.2d 216, 220-22, 616 P.2d 628 (1980); *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). An insufficiency claim admits the truth of the State's evidence and all reasonable inferences which can be drawn from it. *State v. Thereoff*, 25 Wn. App. 590, 593, 608 P.2d 1254, *aff'd*, 95 Wn.2d 385, 622 P.2d 1240 (1980); *Salinas*, 119 Wn.2d at 201. Credibility

determinations are for the trier of fact and cannot be reviewed on appeal.

State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).

Circumstantial and direct evidence are considered equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

Defendant challenges his convictions alleging insufficiency of the evidence on Counts I, III, and IV. Brief of Appellant at 1. Defendant's claims are without merit because a rational jury could have found the defendant guilty on each count based on the evidence presented.

a. The Evidence Shows that Defendant Unlawfully Possessed a Stolen Motor Vehicle.

Defendant was convicted of Unlawful Possession a Stolen Motor Vehicle. CP 100-101; 4RP 304-305; RCW 9A.56.068; RCW 9A.56.140. The jury was presented with the elements of the crime as follows, consistent with the Washington Pattern Jury Instructions (WPIC):

- (1) That on or about 24th day of November, 2014, the defendant knowingly possessed a stolen motor vehicle;
- (2) That the defendant acted with knowledge that the motor vehicle had been stolen;
- (3) That the defendant withheld or appropriated the motor vehicle to the use of someone other than the true owner or person entitled thereto;
- (4) That any of these acts occurred in the State of Washington.

CP 68; WPIC 77.21

Defendant's claim is limited to the knowledge element of the crime, element 2 above, alleging the State did not present sufficient

evidence for a reasonable jury to conclude he knew the motorcycle was stolen. A jury may infer knowledge if “a reasonable person would have knowledge under similar circumstances.” *State v. Womble*, 93 Wn. App. 599, 604, 969 P.2d (1999). Possession of recently stolen property, coupled with other direct or circumstantial evidence showing defendant’s guilt, is sufficient for a jury to reach a guilty verdict. *State v. Couet*, 71 Wn.2d 773, 775, 430 P.2d 974, 976 (1967).

A reasonable jury could have found defendant knew the motorcycle was stolen because its condition was consistent with stolen vehicles. The motorcycle’s ignition housing was severely damaged, leaving just an aluminum tube with wires protruding where the key and lock switch should have been. 2RP 107; 3RP 176. To start the motorcycle, defendant had to reach into the damaged ignition column and touch loose wires together, a technique often used by automotive thieves and commonly known as “hotwiring.” 3RP 162, 180. Such a feature is highly uncommon for lawfully transferred vehicles and could have served as a basis for a reasonable jury to conclude the defendant knew the motorcycle was stolen.

Defendant did not have a key to the motorcycle. 2RP 91 3RP 180, 225. While a key would not have aided him in starting a motorcycle lacking a proper ignition housing, it would have allowed him to unlock a large tool compartment on the bike and would have been consistent with a lawful vehicle transfer. 2RP 107-8. Defendant did not possess a bill of

sale, a title, or registration to the motorcycle which further indicates that he knew it was stolen. 3RP 243. A lawfully transferred vehicle normally comes with a key to start the ignition and unlock any compartments or storage areas on the vehicle. Defendant's efforts to prevent Officer Robillard's from visually inspecting the motorcycle's license plate also would have revealed to the jury that defendant knew the bike was stolen and wished to avoid detection. 3RP 171, 175. A reasonable fact finder could have concluded based on these facts that defendant knew that the motorcycle was stolen.

Providing a false or improbable account of the method a defendant came into possession of stolen property or an explanation "of a kind that could not be checked or rebutted" is sufficient to sustain a conviction when coupled with possession. *Couet*, 71 Wn.2d at 776 (citing *State v. Portee*, 25 Wn.2d 246, 170 P.2d 326 (1946)). Defendant provided police with two contradictory statements concerning his possessory interest in the motorcycle and refuted both statements in his court testimony. 3RP 180, 221-5. Defendant claimed in his first statement to police that he had owned the motorcycle for a number of weeks. 3RP 180. Shortly after giving that statement, he changed his story and said he was fixing it up in hopes of buying it from a Jeremy Rainwater. 3RP 180. In court, the defendant testified that he purchased the motorcycle the day before his arrest from "Jeremy Rainwater or Gainwater." 3RP 204-205, 224, 227. A

reasonable jury could have concluded defendant's efforts to misled police reflected his knowledge that motorcycle was stolen property.

The overwhelming evidence presented establish defendant as knowingly in possession of a stolen motorcycle. The damaged ignition switch requiring a hotwired start; defendant's lack of a key or documentation of his ownership; and defendant's attempts to mislead and impede police investigation all combine to allow a reasonable jury to infer that the defendant knew the motorcycle was stolen. Therefore, the conviction should be affirmed.

b. Defendant Was Convicted of Identity Theft in the Second Degree Based on Sufficient Information.

A jury convicted defendant of Identity Theft in the Second Degree. CP 100-101; 4RP 304-305; RCW 9.35.020(3). The jury was presented with the following elements of the crime:

- (1) That on or about 24th day of November, 2014 the defendant knowingly obtained, possessed, or transferred a means of identification or financial information of another person, living or dead;
- (2) That the defendant acted with the intent to commit any crime;
- (3) That any of these acts occurred in the State of Washington.

CP 76; WPIC 131.06.

Defendant concedes sufficient evidence exists on each element except for the intent to commit a crime, element 3. Brief of Appellant at 9.

Intent to commit a crime can be inferred by the defendant's conduct and attendant circumstances. *State v. Woods*, 63 Wn. App. 588, 591, 821 P.2d (1991). Possession together with "slight corroborating evidence" can be sufficient to infer intent. *State v. Esquivel*, 71 Wn. App. 868, 870, 863 P.2d (1993).

It was reasonable for the jury to infer that defendant intended to commit a crime with Mr. Dalton's credit card. Defendant made no effort to return the card to the gas station where he claims to have found it. 3RP 228-230. He did not call the lost card number listed on the card or make any other effort to return or properly dispose of the card. *Id.*

Defendant kept the card inside his wallet. 3RP 230. A wallet conveniently stores cash, financial cards, identification cards, and other items that are frequently used by an average person. A strong inference can be made that defendant intended to use Mr. Dalton's credit card in a matter similar to other items in his wallet. The card could have been easily pulled from the wallet and illegally used to complete a merchant transaction. RCW 9A.60.020.

In addition to being a credit card, the American Express also served as proof of Costco membership and contained a small picture of Mr. Dalton to facilitate Costco employees in properly identifying the rightful cardholder. 3RP 150-155. Defendant could have used the card to criminally impersonate a Costco member partly because his appearance is similar to the small picture of Mr. Dalton on the card. 4RP 269; RCW 9A.60.040. The

record shows a reasonable jury could have concluded the corroborating evidence of intent to commit a crime was sufficient to find defendant guilty. Therefore, his conviction on Count III should be affirmed.

c. Defendant Was Properly Convicted of Possessing Stolen Property in the Second Degree.

Defendant was convicted of Possessing Stolen Property in the Second Degree after the jury returned a guilty verdict based on the following elements:

- (1) That on or about 24th day of November, 2014, the defendant knowingly possessed stolen property;
- (2) That the defendant acted with knowledge that the property had been stolen;
- (3) That the defendant withheld or appropriated the property to the use of someone other than the true owner or person entitled thereto;
- (4) That the stolen property was an access device; and
- (5) That any of these acts occurred in the State of Washington.

CP 82; WPIC 77.06.

Defendant alleges that insufficient evidence exists to prove he knowingly possessed the property as described in element 2. Brief of Appellant at 21.

Possession of recently stolen property paired with slight evidence corroborating guilt is sufficient to establish a defendant had knowledge that property was stolen. *State v. Douglas*, 71 Wn.2d 295, 298, 428 P.2d 535 (1967). Defendant was arrested in possession of a stolen credit card bearing the name and picture of another person. Defendant did not have

permission from the authorized cardholder to possess the card. 3RP 152-3, 228-9. The jury could have reasonably concluded that defendant knew the American Express card did not belong to him. Therefore, the defendant's conviction on Count IV should be affirmed.

D. CONCLUSION.

The State respectfully requests that the jury's verdict be affirmed because sufficient evidence exists to support a conviction on each count.

DATED: February 26, 2016.

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Certificate of Service:

The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below

2/26/16 
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PIERCE COUNTY PROSECUTOR

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