

No. 284417

IN THE COURT OF APPEALS OF THE
STATE OF WASHINGTON

DIVISION III

STATE OF WASHINGTON,

Respondent,

vs.

FRANCISCO JAVIER CONTRERAS,

Appellant.

APPEAL FROM THE SUPERIOR COURT
OF YAKIMA COUNTY, WASHINGTON

THE HONORABLE F. JAMES GAVIN, JUDGE

BRIEF OF RESPONDENT

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I. ASSIGNMENTS OF ERROR

A. ISSUES PRESENTED BY ASSIGNMENTS OF ERROR.

1. Whether Appellant Francisco Contreras' prosecution for possession of a stolen motor vehicle should have been barred by the statute of applications, where he obtained the vehicle in 2004, it remained in his possession until he attempted to license it in 2007, and he was subsequently charged in 2009?
2. Whether the court erred, as a matter of law, in finding that a motor vehicle was used in the offense of possession of a stolen motor vehicle, pursuant to RCW 46.20.285(4)?

B. ANSWERS TO ASSIGNMENTS OF ERROR.

1. The statute of limitations had not run by the time Contreras was charged in 2009, as he not only continued to possess the stolen vehicle within the three years prior to charging, but he affirmatively acted to appropriate the vehicle in 2007 by seeking to license it with the vehicle identification number from another vehicle.
2. The court did not err in finding that a motor vehicle was used in the commission of possession of a stolen motor vehicle, as Contreras drove it to the Washington State Patrol while attempting to license it.

II. STATEMENT OF THE CASE

The State is satisfied with the Appellant's Statement of the Case.

RAP 10.3(b)

III. ARGUMENT

- 1. The statute of limitations had not run, as the defendant continued, and affirmatively acted, to withhold or appropriate the vehicle to his own use within the three years prior to charging.**

Appellant Francisco Javier Contreras assigns error to the court's entry of a judgment and sentence in this matter, maintaining that the applicable statute of limitations had run from the date he received the vehicle in 2004, and had thus expired before his arraignment in January of 2009. He is incorrect.

It is true that the applicable statute of limitations is three years, pursuant to RCW 9A.04.080(h). The issue raised on appeal is whether that period began to run from 2004, or whether his possession of the stolen vehicle constituted a continuing offense, or criminal impulse, through October 1, 2007.

Contreras places great reliance upon the decision in State v. Ladely, 82 Wn.2d 172, 509 P.2d 658 (1973). In that case, the court held that the statute of limitations begins to run on the date stolen property first comes into the possession of the defendant, or upon one of several other

acts enumerated in the former larceny statute, RCW 9.54.010(5). Id., 174;
177.

Specifically, the statute provided that:

Larceny. Every person who, with intent to deprive or defraud the owner thereof –

...

(5) Every person who, knowing the same to have been so appropriated, shall bring into this state, or buy, sell, receive or aid in concealing or withholding any property wrongfully appropriated, whether within or outside of this state, in such manner as to constitute larceny under the provisions of this chapter –

Steals such property and shall be guilty of larceny.

RCW 9.54.010 (repealed)

It should be noted, however, that the modern definition of possessing stolen property is now found at RCW 9A.56.140(1), replacing the provision interpreted by Ladely. The current statute provides that:

“Possessing stolen property” means knowingly to receive, retain, possess, conceal, or dispose of stolen property knowing that it has been stolen and to withhold or appropriate the same to the use of any person other than the true owner or person entitled thereto.

The differences between the statutes are obvious. Under the larceny statute, one who buys, sells, receives or aids in concealing or withholding any property appropriated, with intent to deprive or defraud, is deemed to have stolen that property. The modern statute, providing the

definition for various offenses involving possession stolen property, has a broader scope, and unlike the repealed provision, uses the terms “retain”, and “possess”.

The term “possess” means “to own, have title to, occupy, physically hold or have under exclusive control . . .”. West’s Encyclopedia of American Law, Edition 2.

The emphasis in the larceny statute, then, is on a particular act; by contrast, one may possess stolen property by physically holding or exerting exclusive control over it.

Ladely must be interpreted, then, within the proper context. There, the defendant contended that the then-applicable statute of limitations began to run from the date of the original taking, which had been by means of a burglary which occurred more than three years previous to the filing of the larceny charge. Ladely, 82 Wn.2d at 176. However, the defendant had testified that he had obtained the stolen item, a revolver, less than two months before the filing of the information. Against that backdrop, the Supreme Court held that: “[i]t is clear, and we so hold, that the commission of the crime defined and prohibited in RCW 9.54.010(5) occurs at the time of coming into possession with guilty knowledge.” Id., at 177.

The decision in Ladely is entirely consistent with RCW 9.54.010(5), emphasizing the act of coming into possession, but it does not address the issue raised on appeal here: whether Contreras' continuing criminal impulse, in light of RCW 9A.56.140(1), tolled the statute of limitations.

The statute of limitations does not begin to run until the crime is completed. State v. Brisebois, 39 Wn. App. 156, 163, 692 P.2d 842 (1984). Further, when a crime is continuous, the crime is not completed until the continuing criminal impulse is terminated. Id., at 163, *quoting* State v. Carrier, 36 Wn.App. 755, 758, 677 P.2d 768 (1984). *See, also*, State v. Greathouse, 113 Wn. App. 889, 920, 56 P.3d 569 (2002); State v. Mermis, 105 Wn. App. 738, 745, 20 P.3d 1044 (2001).

The doctrine of continuing offenses is employed sparingly, “and only when the legislature expressly states the offense is a continuing offense, or when the nature of the offense leads to a reasonable conclusion that the legislature so intended.” State v. Green, 150 Wn.2d 740, 742, 82 P.3d 239 (2004). While the legislature has not expressly designated possession of stolen property as a continuing offense, the nature of the offense leads to a reasonable conclusion that the legislature intended that the offense be a continuing crime. For example, a defendant could retain or possess stolen property within three years of the commencement of

prosecution, and the prosecution would be timely. Unlike the failure to transfer title offense at issue in Green, it is unreasonable to conclude that the crime is *only* completed as soon as the defendant simply comes into possession of stolen property. The crime is continually committed as long as a defendant either retains or continues to possess the stolen property.

Indeed, not only is possessing a stolen vehicle inherently a continuing act, but in addition, Contreras overtly acted to withhold or appropriate the vehicle to his use, as against the true owner, by taking it to the State Patrol, attempting to have it relicensed with a false vehicle identification number, on October 1, 2007. Even under Ladely, that date is the *earliest* from which the statute of limitations could have run.

Here, Contreras contends that the statute of limitations should have run from the date he obtained the vehicle, and that the statute barred prosecution more than three years later. Again, Ladely does not dictate that result based on these facts, and further, Contreras is essentially suggesting that he should not face consequences for the possession of stolen property if he can wait out the three-year statute of limitations. That is a strained interpretation, and it is an established rule of statutory construction that absurd results should be avoided. Blondheim v. State, 84 Wn.2d 874, 879, 529 P.2d 1096 (1975).

In addition, although Mermis dealt with a theft of a motor vehicle, rather than possession of a stolen vehicle, it is persuasive as the facts and analysis are remarkably similar: the defendant in that case persisted in obtaining a bill of sale and title to the vehicle in question, well after he had physically taken it, and engaged in that course of action within the statute of limitations period. Mermis, 105 Wn. App. 745-746. Similarly, Contreras attempted to perfect title in the stolen vehicle using the vehicle identification number from a vehicle he did own.

2. For purposes of RCW 46.20.285(4), Contreras used the vehicle in the commission of the crime when he drove it to obtain a vehicle license.

As Contreras points out in his opening brief, RCW 46.20.285 enumerates specific offenses which require license revocation. Additionally, the legislature requires revocation following conviction for “any felony in the commission of which a motor vehicle is used.” RCW 46.20.285(4).

To be “used” in the commission of a felony “the vehicle must contribute in some way to the accomplishment of the crime. There must be some relationship between the vehicle and the commission or accomplishment of the crime.” State v. Batten, 95 Wn. App. 127, 131, 974 P.2d 879 (1999).

Here, there is no dispute that Contreras possessed the vehicle on October 1, 2007, and further, that he drove it to the State Patrol offices. (CP 90) He drove it there with the purpose of having it relicensed, and it is thus clear that, more than simply possessing or using the vehicle, the use of the vehicle on that day was to *further* Mr. Contreras' appropriation, retention and possession of the vehicle. It was more than the object of the crime at that moment; it was used to commit the crime. RCW 46.20.285 applies, and the court did not err in making that finding.

IV. CONCLUSION

Based upon the foregoing arguments, this Court should affirm the convictions.

Respectfully submitted this 16th day of December, 2010.



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