

FILED  
Sep 07, 2012  
Court of Appeals  
Division III  
State of Washington

NO. 303381-III

COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON

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THE STATE OF WASHINGTON, Respondent

v.

JUAN ANGEL DIAZ, Appellant

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APPEAL FROM THE SUPERIOR COURT  
FOR BENTON COUNTY

NO. 11-1-00186-9

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BRIEF OF RESPONDENT

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## ISSUES PRESENTED ON APPEAL

1. Was a single fingerprint found on the victim's car sufficient evidence to establish the elements of possession of a stolen motor vehicle?
2. Must the court order requiring that portions of the defendant's earnings while in Department of Corrections be withheld and applied to his legal financial obligations be vacated?

## STATEMENT OF THE CASE

### 1. Nature of the Case

The defendant, Juan Diaz, brought this action to appeal the sufficiency of the evidence and the order requiring that portions of earnings while in the Department of Corrections custody be withheld and applied to legal financial obligations.

### 2. Statement of the Facts

On August 19, 2010, Kory Welsch awoke to find his 2000 Honda Civic had been stolen. (RP 9, 18). Mr. Welsch had installed a cut-off switch for the fuel pump as an extra precaution to prevent individuals from stealing his vehicle.

(RP 10). Welsch had last seen his car around 12:30 a.m. in his driveway. (RP 14). Welsch went outside while he was reporting the theft to the police and observed the hood of his vehicle sticking up over a fence three houses down from his home. (RP 10). Welsch walked over to his vehicle and checked the switch and found it had not been tripped, and concluded that the car must have been pushed down the street. (RP 11).

Police arrived and took pictures of the condition of the vehicle. (EX. 2-12; RP 19-21, 29-34). The driver's side window was off track and looked as if it had been flopped outwards. (RP 56). The window had not been in that condition the previous day. (RP 56). In addition, the trunk, hood, and a door were open. (RP 12). Several pieces were missing off of the engine and the timing belt had been torn. (RP 13). The stereo was gone and the bottom part of the wheel console was ripped out exposing two wires. (RP 13). A hundred CDs were stolen. (RP

13). The distributor, spark plugs, wires, valve cover, cam gears, and cam shafts were removed from the motor. (RP 13). Some of these parts were performance parts. (RP 14). Officers concluded that based on their training and experience that most likely the point of entry into the vehicle had been via the driver side window. (RP 41). Officers observed a fingerprint on the driver side window and lifted it. (EX. 8). This finger print was sent to the Washington State crime laboratory and tested. (RP 46). The fingerprint was identified as the right index finger belonging to the defendant. (RP 54).

The defendant was found guilty by jury of Possession of Stolen Motor Vehicle. (CP 33; RP 80-82). On October 19, 2012, the defendant was sentenced to 27 months confinement in the custody of the Department of Corrections. (CP 39; RP 89). The defendant had a prior Theft II that involved stealing a vehicle, which counted as "3" towards his offender score. (RP 85-86).

## ARGUMENT

### 1. A SINGLE FINGERPRINT WAS SUFFICIENT EVIDENCE TO SUPPORT A CONVICTION OF POSSESSION OF A STOLEN MOTOR VEHICLE.

Sufficient evidence supports a conviction if any rational trier of fact could find each element of the crime charged beyond a reasonable doubt. *State v. Salinas*, 119 Wn.2d 193, 201, 829 P.2d 1068 (1992) (citing *State v. Green*, 94 Wn.2d 216, 220-22, 616 P.2d 628 (1980)). All reasonable inferences from the evidence are seen in the light most favorable to the State. *State v. Rempel*, 114 Wn.2d 77, 82, 785 P.2d 1134 (1990). The court will not substitute their judgment for that of the jury on factual issues. *State v. Farmer*, 116 Wn.2d 414, 425, 805 P.2d 200 (1991).

To be convicted of possession of a stolen motor vehicle, an individual must "possess" a stolen vehicle. RCW 9A.56.068(1). Possession of property may be either actual or constructive. Actual possession means the goods are in the

personal control of the person charged with possession; whereas constructive possession means that the goods were not in actual, physical possession, but the person charged with possession has dominion and control over the goods. *State v. Callahan*, 77 Wn.2d 27, 29, 459 P.2d 400 (1969).

Circumstantial evidence is as probative and reliable as direct evidence. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). When fingerprints are the only evidence linking the defendant to the crime, the State must show that the object upon which the fingerprint was found was generally inaccessible to the defendant at a previous time. *State v. Bridge*, 91 Wn. App. 98, 100-01, 955 P.2d 418 (1998). In a "fingerprint-only" case in which the fingerprint is found on a movable object, the State must also show that the fingerprint could have been impressed only during the commission of the crime, and not earlier. *Id.* at 101. Courts distinguish between movable

objects generally accessible to the public and fixed objects generally inaccessible to the public. *Id.*

The defendant cites to *State v. Lucca*, 56 Wn. App. 597, 784 P.2d 572 (1990), *State v. Sewell*, 49 Wn.2d 244, 299 P.2d 570 (1956), and *State v. Bridge*, 91 Wn. App. 98, 955 P.2d 418 (1998) in support of his argument that his fingerprint alone is not sufficient for conviction because there was no evidence that his fingerprint was likely placed on the window during the commission of the crime. (App. Brief at 7-8). All three cases are distinguishable to the present matter.

In *Lucca*, the defendant's fingerprint was found on a broken piece of glass at the presumed place of entry at the time of a burglary. The location of the window was not accessible to the general public. The victim did not know Lucca nor did he give him permission to enter his home. Lucca offered no evidence presenting any other

reasonable explanation as to how his fingerprint came to be on the window. Thus, the jury was entitled to conclude that it was not reasonable that Lucca would have made a fingerprint other than at the time of the burglary. *State v. Lucca*, 56 Wn. App. at 601.

In *Sewell*, another burglary case, an American Legion Club had been entered through a window and two window panes in the basement door had been broken. A fingerprint found on a broken piece of glass from the basement door was found to be Sewell's. Sewell testified that he was a member of the Legion Club and was there almost every Friday night. He further presented an alibi defense that was corroborated by a witness. The jury held that entry of Sewell was not proved by direct evidence nor was it established by circumstantial evidence because there was no circumstance from which the jury could determine that Sewell entered the premises. *State v. Sewell*, 49 Wn.2d at 246.

In *Bridge*, a burglar broke into the victim's barn and a tool was found at the point of entry. A tag bearing the defendant's fingerprint was found on the tool, which had been recently purchased. The Court found the evidence insufficient to support the verdict and reversed. The Court held that evidence of a latent fingerprint absent proof by the State that the print could have only been impressed at the time the crime was committed was insufficient to support a conviction for burglary. *State v. Bridge*, 91 Wn. App at 101.

The present case is distinguishable from the burglary line of cases cited by the defendant. The defendant's fingerprint was not found on a library book or a soda can inside the vehicle. His fingerprint was found on the exact window that was damaged and used to gain entry in to the vehicle. (RP 41, 54, 71).

In the present matter, the State presented proof that the fingerprint was impressed during

the commission of the crime. First and foremost the fingerprint was found on the very window which the defendant gained entry to the car. (RP 71). The victim testified that his window had been on its track and damage free when he last saw it. (RP 56). A print like this was most likely made by the defendant's hand when he was breaking into the vehicle to move it down the street and steal items from within. Secondly, during the commission of the crime, numerous things were taken from the vehicle to include performance parts and stereo equipment. (RP 13-14). It was during this event where the window was taken off track that the items were taken. Clearly, this fingerprint was left during the commission of the crime. Lastly, the defendant did not take the stand to explain how his fingerprint ended up on the window that was used to gain entry into the victim's vehicle. Based on all this evidence, the jury was entitled to conclude that it was not reasonable that the

defendant would have impressed the fingerprint other than at the time he possessed the stolen vehicle.

**2. THE DEFENDANT WAIVED HIS RIGHT TO APPEAL THE IMPOSITION OF COSTS BY NOT OBJECTING WHEN HE WAS SENTENCED.**

The defendant did not object to the costs imposed by the trial court, and has not explained why this Court should consider an objection on appeal pursuant to RAP 2.5.

Furthermore, the issue is not ripe. The failure to raise the objection with the trial court is not just a form-over-substance issue. If the defendant had raised the issue, the trial court should have told the defendant that he could raise concerns about his financial status if the State tried to incarcerate him for failing to pay his legal financial obligations. If the defendant is released from custody, and if the State tries to collect the costs, the defendant could then claim indigence. However, as stated in *State v. Blank*, 131 Wn.2d 230, 253, 930 P.2d

1213 (1997), if a "future repayment will impose a manifest hardship on a defendant, or if he is unable, through no fault of his own, to repay, the statute allows for remission of the costs award." In the present matter, the court ordered up to \$50.00 per month to be withheld from Defendant's earnings while in the Department of Corrections. (CP 39). There is no reason at this time to deny the State's cost request based upon speculation about future circumstances. If the defendant earns money while incarcerated, then the State gets \$50.00 per month of those earnings; if he does not, then he will be ordered to pay once he is released. The \$50.00 per month withholding from his earnings has nothing to do with the defendant's present ability or likely future ability to pay; it is about money he may or may not earn at the Department of Corrections.

#### **CONCLUSION**

The evidence presented at trial was sufficient for the trier of fact to find the

defendant guilty of possession of a stolen motor vehicle. Furthermore, the order requiring that portions of the defendant's earnings while in the Department of Correction to be withheld was proper. An award of restitution was within the courts discretion. Based on the foregoing, the State respectfully requests that the decision of the trial court be affirmed.

RESPECTFULLY SUBMITTED this 6th day of  
September 2012.

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**CERTIFICATE OF SERVICE**

I certify under penalty of perjury under the laws of the State of Washington that on this day I served, in the manner indicated below, a true and correct copy of the foregoing document as follows:

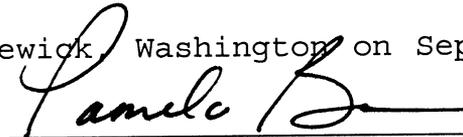
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6, 2012.



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