

**No. 33185-7-III**

FILED  
October 29, 2015  
Court of Appeals  
Division III  
State of Washington

COURT OF APPEALS DIVISION III  
IN THE STATE OF WASHINGTON

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STATE OF WASHINGTON, Respondent

v.

JESSE WILLIAMS, Appellant

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APPEAL FROM THE SUPERIOR COURT  
OF STEVENS COUNTY  
THE HONORABLE JUDGE ALLEN C. NIELSON

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BRIEF OF APPELLANT

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I. Assignment of Errors

- A. The evidence was insufficient to sustain a conviction for possession of a stolen vehicle.

Issues Relating To Assignments of Error

- A. Was the evidence insufficient to sustain a conviction for possession of a stolen vehicle?

II. Statement of Facts

Jesse E. Williams lived in Stevens County with his girlfriend Tiffany Maravella, at the home of Jamie Harris. (Vol. 1RP 42; Vol. 2RP 133). The Stevens County prosecutor charged him by information with possession of a stolen vehicle on September 24, 2014. (CP 1-2).

On August 31, 2014, Mary Petty reported stolen her 1999 gold Jeep Cherokee from the garage at her workplace in Spokane. (Vol. 1RP 72-73). On September 8, 2014, Deputy Gilmore, of the Stevens County Sheriff's Office, became involved in an unrelated investigation that involved a license plate number registered to a black Jeep Cherokee owned by Tiffany Maravella. (Vol. 2RP 133-34).

The description of the car bearing the plates was a gold Jeep Cherokee. (Vol. 2RP 134). He learned the black Jeep had

been involved in a collision about a month earlier, abandoned, and eventually towed and impounded. (Vol. 2RP 134-35). The vehicle was later retrieved from impound by the registered owner. (Vol. 2RP 135).

On September 13, 2014, around 10 p.m., Deputies Michael Swim and Jennifer Stearns of the Stevens County Sheriff's Office received a call regarding a vehicle pursuit initiated by Colville police. (Vol. 1RP 23-25). Deputy Swim saw the vehicle, a gold Jeep, but lost sight of it on the dirt road. (Vol. 1RP 25). Deputy Blackman received the same dispatch and because he believed he had seen the car at 450 Haller Creek Road earlier in the week, he drove toward that residence. (Vol. 1RP 63). He saw the car drive by, activated his lights and followed it onto the residence. (Vol. 1RP 63).

When Swim arrived, the gold Jeep was parked on the west side of one of the outbuildings on the property. (Vol. 1RP 26). The car was empty. (Vol. 1RP 31). Blackman saw a male identified as Richard Hawley, emerge from the east side of the garage, ordered him to get on the ground, and handcuffed him. (Vol. 1RP 64-65). Although Mr. Hawley was the only person near the area where the vehicle was parked, Deputy Blackman testified, there were other

people standing outside near the gate. He did not speak with any of those individuals as part of the investigation. (Vol. 1RP 70).

Deputy Swim spoke with Staci Vollendorf who lived in the residence on the property as a caretaker. (Vol. 1RP 26). She later testified three deputies questioned her, they talked over one another, and it felt like they were “putting words” in her mouth. (Vol. 1RP 46).

Swim testified Ms. Vollendorf gave him permission to search the area for the driver. Officers searched the area for about 30 minutes, which included using a K-9 as part of the search team, but did not find anyone. (Vol. 1RP 65;68). At trial, Ms. Vollendorf testified she told Deputy Swim that it was not hers to grant permission; she only served as caretaker of the residence, and Jamie Harris had control over the property and outbuildings. (Vol. 1RP 36;39). She reported also that her sister in law, Jenny had a “lawsuit on the property” and had been on the property and selling things.

Ms. Vollendorf was acquainted with Mr. Williams, but had only spoken with him four or five times. She saw Mr. Williams on the property about a week prior to his arrest, working in the shop (one of the outbuildings). (Vol. 1RP 34). She believed he had

been working on cars, but never actually witnessed him doing so or which cars. (Vol. 1RP 34-35).

She did not know who brought the gold Jeep to the property and never saw Mr. Williams work on or drive it. (Vol. 1RP 35;37). She told police that she had seen the gold Jeep once before, and although she had never been in the shop, she assumed Shawn Holm and others were working on vehicles in there. (Vol. 1RP 37).

When asked, “Would you agree or disagree that you told the officers when they asked whose vehicle that was, that you said it was *Jesse’s vehicle?*” she responded,

“I don’t—I –know why I would say that. I don’t know whose- I didn’t know whose vehicle it was...I could see myself saying I assumed it – maybe- it- assumed it was his. But I never saw- him driving it at all. I never saw him driving a vehicle, period.”

(Vol. 1RP 45) (emphasis added).

She testified that the only vehicle she saw him in was as a passenger in a white Ford Explorer. (Vol. 1RP 35). She further stated: “I never saw him working specifically on that vehicle (gold Jeep)—it was in the shop. There was another Jeep in there. And – There were people in and out. A lot.” (Vol. 1RP 48).

After Ms. Vollendorf testified, the State sought to recall Deputy Swim to impeach her testimony; based on statements she allegedly made to Swim. (Vol. 1RP 51-52). Over defense objection, the court allowed the state to recall Deputy Swim to impeach Ms. Vollendorf's testimony regarding whether she said it was "Jesse's vehicle" . (Vol. 1RP 56-58). Deputy Swim testified:

"I asked her who – who had been working on the Jeep in the – 'cause there were two Jeeps, one torn apart inside of a garage, and then the one of course that we chased. And she said Jesse Williams had been working on them for about a week."

(Vol. 1RP 58). In his testimony, Deputy Swim did not testify that Ms. Vollendorf referred to the car as "Jesse's car." (Vol. 1RP 58). He could not remember if he asked her if other people worked on the vehicles as well. (Vol. 1RP 58).

Officers impounded and then obtained a search warrant for the gold Jeep. (Vol. 1RP 68; Vol. 2RP 139). As part of the search, the VIN numbers of the vehicle were examined. The numbers from the gold and black Jeeps had been switched. (Vol. 2RP 161-62).

During the search, deputies found a red cooler bag in the back storage area of the car. It contained various papers and documents: district court paperwork in the name of Joshua

Williams, Mr. Williams' brother; a right of redemption and opportunity for hearing notice on the black jeep; two paystubs in Mr. Williams' name; three documents in Tiffany Maravella's name; and a letter. (Vol. 2RP 143-44;100-106). Also found in the car was a backpack containing a registration form in the name of Jamie Forsyth, a wallet with ID for Shawn Hall, and an access card in the name of Jennifer Lawrence, along with artwork signed by "Macy". (Vol. 2RP 149; 153). There were other documents, elsewhere in the car that had the names of yet more individuals. (Vol. 1RP 106;116-17). Neither the documents nor the cooler were sent for fingerprint analysis. The deputy never requested fingerprint analysis for the gold Jeep. (Vol. 1RP 107;110).

Deputies located 4 cell phones in the center console. (Vol. 2RP 143-44;146). Of the four that were found, deputies accessed only one. The deputy reported the others either had dead batteries or a PIN code. (Vol. 2RP 144). None of the cell phones were sent for fingerprint analysis or any type of forensic cell phone analysis as part of the investigation and none were recharged. (Vol. 1RP 107-08).

The one cell phone the deputy accessed was introduced as an exhibit. (Vol. 1RP 88). Deputy Webb described it as: "It's a cell

phone that was collected from the Jeep. It's listed – on the label of the evidence “Jesse’s cell phone.” (Vol. 1RP 89). Defense counsel objected, as the deputy had no personal knowledge of who owned the phone. The court sustained the objection. (Vol. 1RP 90). Deputy Gilmore testified there were some text messages in the phone addressed to “Jesse” but could not remember if there were any text messages addressed to anyone else. (Vol. 2RP 145).

After the State rested, the court denied a defense motion to dismiss. (Vol. 2RP 172;175).

The court gave jury instruction No. 7:

A person commits the crime of possessing a stolen motor vehicle when he or she possesses a stolen motor vehicle. Possessing a stolen motor vehicle means knowingly to receive, retain, possess, conceal, or dispose of a stolen motor vehicle 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.

(CP 43).

And Jury Instruction No. 8:

To convict the defendant of the crime of possessing a stolen motor vehicle, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about September 13, 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.

The jury found Mr. Williams guilty. (CP 56). He makes this timely appeal. (CP 76-91).

### III. Argument

The Evidence Is Insufficient To Sustain A Conviction For Possession of A Stolen Vehicle.

#### 1. Standard of Review

The State must prove beyond a reasonable doubt every element of a charged crime. *State v. Green*, 94 Wn.2d 216, 220, 616 P.2d 628 (1980). The standard on review is whether after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *State v. Kintz*, 169 Wn.2d 537, 551, 238 P.3d 470 (2010).

At issue here is whether the State proved beyond a reasonable doubt that Mr. Williams knowingly possessed a stolen motor vehicle. RCW 9A.56.068(1). Even viewed in a light most favorable to the State, the evidence here fell short of proving beyond a reasonable doubt that Mr. Williams knowingly possessed the stolen vehicle.

2. The State Failed To Prove Mr. Williams Possessed the Gold Jeep Cherokee.

Possession of stolen property can be either actual or constructive. *State v. Callahan*, 77 Wn.2d 27, 29, 459 P.2d 400 (1969). Actual possession means the property is in the personal custody of the person charged. *Id.* Here, there was no evidence that Mr. Williams had personal custody of the Jeep when officers arrested him; thus, the State was required to prove he maintained constructive possession of the vehicle.

Constructive possession can be established by showing the defendant had dominion and control over the property itself, or the premises where it is located. *State v. Summers*, 45 Wn.App. 761, 763, 728 P.2d 613 (1986); *State v. Lakotiy*, 151 Wn.App. 699, 714, 214 P.3d 181 (2009). A reviewing Court is to examine the “totality of the situation to determine if there is substantial evidence tending

to establish circumstances from which a trier of fact could reasonably infer” that Mr. Williams had dominion and control over the stolen vehicle. *State v. Partin*, 88 Wn.2d 899, 906 P.2d 1136 (1977).

3. Mr. Williams did not have dominion and control over the premises.

Testimony established that Mr. Williams did not have dominion and control over the premises. Stacy Vollendorf was the residence caretaker and Jamie Harris authorized who and what came onto the property. Like many others, Mr. Williams was occasionally a guest on the property. (Vol. 1RP 40). Mere presence is insufficient to establish dominion and control over the premises where stolen property is found. *Callahan*, 77 Wn.2d at 29.

4. The State failed to prove beyond a reasonable doubt that Mr. Williams had dominion and control over the gold Jeep.

Mere proximity to stolen property is insufficient to establish dominion or control over it. *Summers*, 45 Wn.App. at 764-65. The sum and substance of the State’s evidence to prove that Mr. Williams had dominion and control over the gold Jeep were the few text messages addressed to him in one of 4 cell phones located in

the car. It appears the only reason that phone was accessed was because it did not have a PIN code and the battery was still good. Although a deputy had labeled the cell phone "Jessie's phone" there was no evidence that the phone was registered in his name or that he used it. Deputies did not check for fingerprints on the cell phone to establish that he had ever handled it. Deputies did not check to see if any of the cell phones had identifying information as to the owner(s).

There were no fingerprints taken from the vehicle to establish whether Mr. Williams had touched or driven the gold Jeep. There was no evidence that Mr. Williams had ever been seen driving the vehicle. There was no evidence that anyone had ever seen Mr. Williams working on the vehicle. There was no evidence that Mr. Williams switched the VIN numbers from one vehicle to another.

There were numerous documents found in the gold Jeep which presumably belonged to various individuals: Joshua Williams, Tiffany Maravella, Macy, Shawn Holm, Jamie Forsyth, Jennifer Lawrence and Mr. Williams, as well as in the names of some individuals which were not brought into evidence. The documents did not establish dominion and control. At most, it

shows that someone put numerous people's documents into a bag that was eventually found in the Jeep.

In an analogous case, in *Summers*, the defendant was accused of stealing a chain saw. *Summers*, 45 Wn. App. at 761. James Johnson hired Summers to cut the grass at his home. Johnson had left a chainsaw he had borrowed just inside his open garage door. Johnson left for about 90 minutes, returned, paid Summers for his work, and locked the garage door without looking inside. The following day, he noticed the chainsaw was gone. A witness, Mr. Secord, testified he had seen the chainsaw on the porch of another neighbor, Ms. Bass, where Summers was doing yardwork. Summers had asked to borrow some oil, but did not tell Ms. Bass why he needed it. He also asked Secord for oil for a chainsaw, but did not disclose what it was for.

In reviewing the evidence and conviction, the Court noted that the chain saw was not seen at Summers' home, and other than the fact that he had been in Ms. Bass' yard, there was no evidence of dominion and control over the premises where it was found. *Summers* 45 Wn. App. at 765. Furthermore, the Court reasoned that although a jury could draw the inference that the need for oil

was for the allegedly stolen chainsaw, that was insufficient proof of constructive possession. *Id.*

Similarly, the sum of the state's evidence here is speculation and conjecture: which are not a valid basis for upholding a jury's guilty verdict. *State v. Prestegard*, 108 Wn.App. 14, 42-43, 38 P.3d 817 (2001). In cases involving only circumstantial evidence and a series of inferences, the essential proof of guilt cannot be supplied by a pyramiding of the inferences. *State v. Weaver*, 60 Wn.2d 87, 89, 371 P.2d 1006 (1962).

Like Summers, the evidence here is insufficient to support the conclusion that Mr. Williams had actual or constructive possession of the stolen motor vehicle. His conviction should be reversed for insufficiency of the evidence and dismissed. *State v. Matuszewski*, 30 Wn.App. 714, 717-18, 637 P.2d 994 (1981).

#### IV. CONCLUSION

Based on the foregoing facts and authorities, Mr. Williams respectfully asked this Court to reverse his conviction for insufficiency of the evidence and remand to the trial court with instructions to enter an order of dismissal.

Respectfully submitted this 29<sup>th</sup> day of October 2015.

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CERTIFICATE OF SERVICE

I, Marie J. Trombley, attorney for Jesse Williams, do hereby  
certify under penalty of perjury under the laws of the United States  
and the State of Washington, that a true and correct copy of the  
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