

NO. 63359-7-I

THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

MARVIN RAY MALOY,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

APPELLANT'S REPLY BRIEF

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FILED
COURT OF APPEALS
STATE OF WASHINGTON
FEB 16 2016
PM 4: 58

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A. ARGUMENT.

WHERE THE STATE PRESENTED INSUFFICIENT EVIDENCE OF FIRST DEGREE MALICIOUS MISCHIEF, REVERSAL AND DISMISSAL MUST BE GRANTED.

a. The State failed to prove that Mr. Maloy acted with malice. Although the State argues in its brief that Mr. Maloy's actions showed "a disdain for the rights of the truck owner in this case," it is clear from Mr. Maloy's actions that this does not reflect the entire sequence of events. Resp. Brief at 14. The State also argues that Mr. Maloy's malicious intent can be inferred from his "disregard for the rights of the workers, who were simply doing their job." Resp. Brief at 15. It should be noted, however, that the State fails in its brief to cite to the trial record at any point of its sufficiency argument.

On the contrary, the record is clear that Mr. Maloy showed considerable respect for the employees of the repossession firm that night, despite his evident exasperation with the situation at hand. Here, the State presented no evidence that Mr. Maloy bore any ill will toward the "repo men" themselves, nor to the bank who allegedly held title to his vehicle. This distinguishes the instant case from other noted mischief cases, where defendants have caused unnecessary damage, evincing an intent to vex and annoy. Unlike in State v. Vanvalkenburgh, for example, there was no evidence that

Mr. Maloy unnecessarily broke any part of the tow-truck superfluously – he broke no windows, mirrors, or other parts of the tow truck – nor did he threaten, swear at, or even speak to the two truck operators. But see, Vanvalkenburgh, 70 Wn. App. 812, 814, 856 P.2d 407 (1993), 3/24/09 RP 58-61. The evidence at trial indicates that Mr. Maloy was totally silent. 3/24/09 RP 61.

The tow-truck itself, following the incident, was still not only operational, but it was the same vehicle used to tow the Navigator from the scene. 3/24/09 RP 61. In fact, following the incident, the tow truck was simply used to continue to tow the Navigator to auction, where it was presumably auctioned off, as planned. 3/24/09 RP 64.

Rather than ramming the truck 30-40 times, which the actual damage does not reflect, the record simply indicates that in an attempt to retrieve the car that he believed to be rightfully his, Mr. Maloy desperately tried to rock his car off the lift, and in his efforts, accidentally caused property damage, to both his own vehicle, and to the tow truck. 3/24/09 RP at 25-29.

b. Reversal and dismissal is the appropriate remedy.

In the absence of evidence from which a rational trier of fact could find beyond a reasonable doubt that Mr. Maloy acted with malice, the

judgment may not stand. State v. Spruell, 57 Wn. App. 383, 389, 788 P.2d 21 (1990) (reversing possession conviction where State produced evidence of fleeting, but not actual, possession). The conviction should therefore be reversed and the charge dismissed.

B. CONCLUSION.

For the foregoing reasons, Mr. Maloy respectfully requests this Court reverse his conviction and remand the case for further proceedings.

DATED this 16th day of February, 2010.

Respectfully submitted,



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Attorney for Appellant

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Appellant.)	

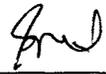
DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 16TH DAY OF FEBRUARY, 2010, I CAUSED THE ORIGINAL **REPLY BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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<input checked="" type="checkbox"/> MARVIN MALOY PO BOX 1408 WESTPORT, WA 98595	(X) () ()	U.S. MAIL HAND DELIVERY _____

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SIGNED IN SEATTLE, WASHINGTON THIS 16TH DAY OF FEBRUARY, 2010.

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