

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

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| <b>STATE OF WASHINGTON</b>  | ) | <b>No. 29239-8-III</b>     |
|                             | ) |                            |
| <b>Respondent,</b>          | ) |                            |
|                             | ) |                            |
| <b>v.</b>                   | ) | <b>Division Three</b>      |
|                             | ) |                            |
| <b>ANTONIO AYALA PONCE,</b> | ) |                            |
|                             | ) |                            |
| <b>Appellant.</b>           | ) | <b>UNPUBLISHED OPINION</b> |

Korsmo, J. — Antonio Ponce challenges his conviction for second degree possession of stolen property on the basis that the prosecutor failed to prove his identity. Properly viewed, we believe the evidence was sufficient.

**FACTS**

Mr. Ponce was charged after he used his neighbor’s credit card to purchase items from Spokane that were delivered to his trailer in Pasco. The neighbor, the responding police officer, and a detective all testified at trial. They variously testified to their interaction with “Mr. Ponce,” “Antonio Ponce,” or “Antonio.”

At the close of the testimony, defense counsel moved to dismiss the charge on the

basis that the State had never identified the person sitting next to her as the Mr. Ponce who had allegedly committed the crime. The trial court denied the motion. Defense counsel repeated the argument as part of her closing remarks, telling the jurors that the State had failed to identify her client as the guilty party.

The jury nonetheless convicted Mr. Ponce. He then timely appealed to this court.

#### ANALYSIS

The identity issue is the sole challenge presented in this appeal. Although the failure to present in-court identification testimony made this a closer issue than necessary, we believe the evidence supported the jury's verdict.

Well-settled rules govern review of a challenge to the sufficiency of the evidence. The question presented is whether there is sufficient evidence to support the determination that each element of the crime was proven beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319, 61 L. Ed. 2d 560, 99 S. Ct. 2781 (1979); *State v. Green*, 94 Wn.2d 216, 221-222, 616 P.2d 628 (1980). The reviewing court will consider the evidence in a light most favorable to the prosecution. *Id.*

Both parties rely on the leading Washington case, *State v. Hill*, 83 Wn.2d 558, 520 P.2d 618 (1974). There the court stated:

It is axiomatic in criminal trials the prosecution bears the burden of establishing beyond a reasonable doubt the identity of the accused as the person who committed the offense. . . . Identity involves a question of fact

for the jury and any relevant fact, either direct or circumstantial, which would convince or tend to convince a person of ordinary judgment, in carrying on his everyday affairs, of the identity of a person should be received and evaluated.

*Id.* at 560. The court concluded that testimony that “Jimmy Hill” and “the defendant” was the responsible party was sufficient to prove identity even in the absence of in-court identification. *Id.*

Mr. Ponce also relies on the decision in *State v. Huber*, 129 Wn. App. 499, 119 P.3d 388 (2005). There the prosecution failed to establish that the Mr. Huber who was alleged to have jumped bail was the same Mr. Huber who had failed to appear in court in the earlier case. *Id.* at 500. Noting that many people have the same name, the court concluded that the evidentiary flaw in the case was the failure to connect the paperwork from the first case with the defendant in the current bail jumping case. *Id.* at 503.

Expanding on *Huber*, Mr. Ponce argues that the State was required to prove that the person sitting in the courtroom was the “Antonio Ponce” who was charged with second degree possession of stolen property. That overstates *Huber* and ignores *Hill*. In *Huber*, the fatal flaw was the failure to connect documentary evidence from one case with the second. This case does not present that problem. Rather, *Hill* is controlling. As noted there, the State’s burden is to establish the “identity of the accused as the person who committed the offense.” *Hill*, 83 Wn.2d at 560.

The accused, according to the information, was Antonio Ponce. There was ample testimony that Antonio Ponce had borrowed his neighbor's credit card and used it to purchase merchandise. There was no need to establish that Antonio Ponce was also sitting in the courtroom next to defense counsel. In essence, Mr. Ponce's argument here confuses the State's burden with a *method* of establishing that burden.

The evidence here is similar to that in *Hill* where no one expressly identified the person sitting at counsel table as the Jimmy Hill who was charged with the offense. Nonetheless, the Washington Supreme Court concluded that the repeated references to the identity of the actor were sufficient to allow the jury to conclude that Mr. Hill had committed the crime. We have the same circumstance here. The repeated testimonial references to "Mr. Ponce" and "Antonio Ponce" allowed the jury to conclude that the accused was the one who committed the crime.

The evidence was sufficient to support the verdict.

Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

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Korsmo, J.

WE CONCUR:

No. 29239-8-III  
*State v. Ponce*

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Kulik, C.J.

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Siddoway, J.