



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. TRACIE RENEE GEESLIN
CR-09-0205-PR**

PARTIES AND COUNSEL:

Petitioner: Tracie Renee Geeslin, represented by Deputy Maricopa County Public Defender Tennie B. Martin.

Respondent: The State of Arizona, represented by Assistant Attorney General Michael T. O'Toole.

FACTS:

On November 8, 2003, S.R.'s purple Dodge Stratus was stolen. On November 20, Geeslin and two associates were attempting to steal several valuable items from Big Lots in Phoenix. Geeslin's associates were placing the stolen items into a purple Dodge Stratus. A Big Lots employee noticed this activity, determined that none of the items had been purchased, and called police with a description of the vehicle. The vehicle had the same license plate number as S.R.'s Dodge Stratus.

As police arrived Geeslin got into the Dodge, backed up and hit a light pole, pulled forward and hit a tree, and then drove off through the parking lot. Geeslin nearly hit an officer and the Big Lots employee as she drove off, and eventually crashed into a curb and broke the axle of the car. Geeslin and her associates were arrested. Geeslin was in possession of several keys that an officer considered "jiggle keys." These are manipulation keys filed down to start cars. It was determined that the car Geeslin was driving was the car stolen from S.R.

On December 1, 2003, a five count indictment charged Geeslin with theft of means of transportation, unlawful flight from a law enforcement vehicle, endangerment, and shoplifting. The State filed an allegation of aggravating circumstances other than prior convictions. Specifically, the State alleged that the offenses were committed with an accomplice, that the offenses were committed for pecuniary gain, that the offenses caused harm to the victims, and that Geeslin had multiple felony convictions. The State also alleged that Geeslin had seven prior felony convictions and that three of the counts were dangerous felonies. On August 2, 2005, the matter proceeded to a jury trial before 12 jurors.

Before the jury was instructed, Geeslin asked for a lesser included offense instruction with regard to theft of means of transportation. Geeslin e-mailed the prosecution and trial court asking that an instruction on unlawful use of means of transportation be given. The State objected to the instruction on the basis that Geeslin was charged with theft of a car by knowing or

having reason to know that the car was stolen and thus unlawful use or joyriding was not a lesser included offense. The court agreed with the State and denied the requested instruction, stating: “I don’t believe it’s a lesser included knowing or having reason to know the vehicle is stolen.” After deliberations, the jury found Geeslin guilty on all counts as charged.

At the sentencing hearing Geeslin did not formally admit to any prior felony convictions. The hearing was limited to testimony regarding the aggravating and mitigating factors to Geeslin’s convictions. The State did not prove Geeslin’s prior felony convictions at a hearing and the trial court failed to conduct a colloquy pursuant to Ariz. R. Crim. P. 17.6. Nevertheless, the trial court found that the felony offenses were repetitive and sentenced Geeslin to the presumptive sentences as a repeat offender with two historical prior felony convictions.

Geeslin timely appealed, alleging that the trial court had abused its discretion in failing to instruct the jury on the lesser included offense of unlawful use of means of transportation, and that the trial court imposed an illegal sentence when it found her to be a repeat offender without properly finding that she had prior felony convictions.

In an opinion filed May 21, 2009, the court of appeals declined to consider Geeslin’s substantive instruction argument, affirmed Geeslin’s convictions, and remanded to the trial court for a hearing to allow Geeslin to show that she was prejudiced by the trial court’s sentencing error.

On August 7, 2009, Geeslin filed her petition for review in this Court alleging only that the trial court abused its discretion in failing to instruct the jury on the lesser included offense of unlawful use of means of transportation. The State filed its response on September 17, 2009.

ISSUE PRESENTED FOR REVIEW:

“Did the trial court abuse its discretion when it refused to give a lesser included instruction relating to the theft of a motor vehicle count [alleging a violation of A.R.S. § 13-1814(A)(5) (“theft by control”)]?”

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