

IN THE SUPREME COURT OF THE STATE OF NEVADA

RODERICK LOUIS BANZUELA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 46831

**FILED**

JUL 24 2008

TRACIE L. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
CHIEF DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART  
AND REMANDING

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of trafficking in a controlled substance, one count of failure to stop on the signal of a police officer, and one count of possession of a stolen vehicle. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge.

The parties are familiar with the facts, and we do not recount them except as pertinent to our disposition.

Appellant Roderick Louis Banzuela argues on appeal that the district court erred in denying his motion to suppress evidence of methamphetamine and other drug paraphernalia found in a backpack because he was not afforded an evidentiary hearing. Additionally, Banzuela argues that the State failed to produce sufficient evidence to support the conviction of possession of a stolen vehicle.

Shortly before trial, Banzuela moved to suppress the items found during the initial search of a backpack, which included methamphetamine and other drug paraphernalia. Banzuela argues on appeal that the district court erred in denying this motion. We agree and

conclude that the district court should have granted an evidentiary hearing before adjudicating the motion to suppress.

“This court [has repeatedly] advised district courts to issue express factual findings when ruling on suppression motions so that this court [does] not have to speculate as to what findings were made below.”<sup>1</sup> Without these express factual findings, “the record is insufficient to effectively review the district court’s decision [denying] the motion to suppress.”<sup>2</sup>

In this case, the district court merely listened to counsel’s arguments and Officer Cook’s testimony regarding the voluntariness of Banzuela’s consent to search and reviewed an edited version of the “Cops” videotape. This did not comport with the district court’s obligations to hold an evidentiary hearing or make written factual findings with respect to the issue of the voluntariness of Banzuela’s consent to search.

Because the district court failed to make express written factual findings with respect to the voluntariness of Banzuela’s consent to search, “the record is insufficient to effectively review the district court’s decision [denying] the motion to suppress.”<sup>3</sup> Accordingly, we reverse the judgment of conviction of trafficking in a controlled substance.

Banzuela next contends that the State failed to produce sufficient evidence to support the conviction of possession of a stolen

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<sup>1</sup>State v. Rincon, 122 Nev. 1170, 1177, 147 P.3d 233, 238 (2006).

<sup>2</sup>Id. at 1176, 147 P.3d at 237.

<sup>3</sup>Id.

vehicle. "Insufficiency of the evidence occurs where the prosecution has not produced a minimum threshold of evidence upon which a conviction may be based."<sup>4</sup> On appeal, this court must determine "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."<sup>5</sup>

The crime of possession of a stolen vehicle requires that the person have "in his possession a motor vehicle which he knows or has reason to believe has been stolen."<sup>6</sup> "If the prosecuting attorney proves that the value of the vehicle involved is \$2,500 or more, the person who violated the provisions of subsection 1 is guilty of a category B felony."<sup>7</sup>

The legal standard for determining the value of a stolen vehicle is derived from NRS 205.273(6), which states that "the value of a vehicle shall be deemed to be the highest value attributable to the vehicle by any reasonable standard." The "reasonable standard" was defined by this court in Cleveland v. State:

The true criterion for the value of property taken is the fair market value of the property at the time and place it was stolen if there be such a standard market. But where such market value cannot be reasonably determined other evidence of value

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<sup>4</sup>State v. Walker, 109 Nev. 683, 685, 857 P.2d 1, 2 (1993).

<sup>5</sup>Koza v. State, 100 Nev. 245, 250, 681 P.2d 44, 47 (1984) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979)).

<sup>6</sup>NRS 205.273(1)(b).

<sup>7</sup>NRS 205.273(4).

may be received such as replacement cost or purchase price.

....

Conceivably what constitutes sufficient proof in one case, where a ready market for certain merchandise is not available ... may not be enough when such a market is available, used automobiles for instance.<sup>8</sup>

Therefore, when a standard market is available, replacement cost or purchase price may not be enough to constitute sufficient proof of value.

In this case, the only evidence as to the SUV's value came from the SUV's owner, who testified that he paid \$45,000 for the vehicle. Evidence of the SUV's purchase price was insufficient proof of value because the State could have easily provided, for example, the Blue Book value of the SUV as evidence of its fair market value.

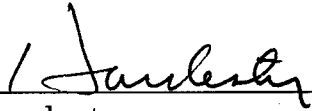
Therefore, because the State failed to provide the necessary proof of the fair market value of the vehicle, we conclude that there is insufficient evidence to support the conviction of possession of a stolen vehicle. Consequently, we reverse the conviction for possession of a stolen vehicle.<sup>9</sup> Accordingly, we

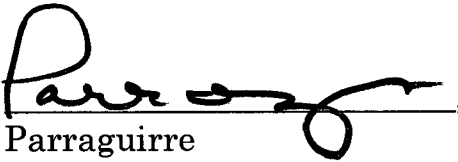
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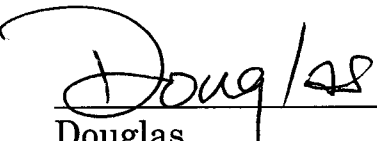
<sup>8</sup>85 Nev. 635, 637, 461 P.2d 408, 409 (1969) (citations omitted).

<sup>9</sup>We have considered Banzuela's remaining arguments as to sufficiency of the evidence, denial of a motion to continue, the *res gestae* doctrine, jury instructions, a for-cause challenge, and sufficiency of the indictment, and we conclude that they are without merit.

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Douglas

cc: Hon. Stewart L. Bell, District Judge  
Clark County Public Defender Philip J. Kohn  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk