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COURT OF APPEALS DIV. #1
STATE OF WASHINGTON

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NO. 64246-4-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

ANNA ARNTSEN,

Appellant.

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

The Honorable Bruce Weiss, Judge

OPENING BRIEF OF APPELLANT

DAVID B. KOCH
Attorney for Appellant

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A. ASSIGNMENTS OF ERROR

1. The trial court erred when it denied a motion to suppress evidence obtained as a result of appellant's unlawful arrest.¹

2. The trial court erred when it entered conclusions of law 1 through 4 except that portion of conclusion 1 in which the court found no probable cause to arrest appellant for Possession of a Stolen Vehicle.

Issues Pertaining to Assignments of Error

1. Appellant's husband and another man had a dispute over ownership of a car. Police asked appellant's husband to bring the car to their location so they could settle the dispute. When appellant showed up with the car, police arrested her. In the absence of evidence appellant knew the car was stolen, did the court err when it concluded the arresting officer had probable cause to believe appellant was guilty of Taking a Motor Vehicle in the Second Degree?

2. Following appellant's arrest, a search revealed that she possessed cocaine. Should this evidence have been suppressed as

¹ The court's written findings and conclusions in support of its decision are attached to this brief as an appendix.

fruit of the unlawful arrest?

B. STATEMENT OF THE CASE

a. Procedural Facts

The Snohomish County Prosecutor's Office charged Anna Arntsen with possessing cocaine, in violation of RCW 69.50.4013. CP 41-42. Arntsen moved to suppress all evidence of the cocaine, arguing it was the product of an unlawful search and seizure – that she had been arrested without probable cause and the fruits of that arrest had to be suppressed. CP 25-38.

Following a CrR 3.6 hearing, the court denied the motion. 1RP² 85-90; Supp. CP ____ (sub no. 49, Findings of Fact and Conclusions of Law for CrR 3.6 Hearing). The State amended the charge to Soliciting Possession of a Controlled Substance. CP 21-22. Arntsen was found guilty at a stipulated bench trial, the court imposed a standard range 365-day suspended sentence, and Arntsen timely filed her Notice of Appeal. 2RP 2-12; CP 2-10, 14-20.

b. Evidence at the CrR 3.6 Hearing

The facts are not in dispute. Shortly after 5:00 a.m. on the

² This brief refers to the verbatim report of proceedings as follows: 1RP – July 9, 16, and 24, 2009; 2RP – August 26, 2009.

morning of October 18, 2007, Edmonds Police Officers responded to a reported assault and theft of a vehicle at Andy's Motel. 1RP 4, 10-11. James Harris and Melissa Britt, who were staying in room 39, reported that "Ricky," Harris' former roommate, had come to the room to speak with Harris and held both of them at gunpoint for several hours before forcing Harris to "sign over" ownership of his Cadillac. 1RP 11, 22, 42-43. Harris did not know Ricky's last name. 1RP 22.

Officers were familiar with the Cadillac. They routinely patrol the parking lot at Andy's Motel – the motel is known for its frequent problems with narcotics, prostitution, and assaults – and they had seen the car parked there for a week or more. 1RP 4-5, 26-27. Harris told police he saw a green car following the Cadillac out of the parking lot. He believed Ricky's wife, whom he knew as "Victoria," was driving the green car. He was not positive, however. 1RP 14, 43, 54.

Officers also spoke with a neighbor, Paula Perez, who told them that she heard a car alarm and saw Harris' Cadillac being driven from the motel parking lot while Harris stood in the lot and yelled something to the effect of, "He stole my car." 1RP 12, 43-44, 52; pretrial exhibit 3. Perez had been in room 39 just ten minutes

earlier, interacted with those inside the room, and did not notice anything unusual. 1RP 52-53; pretrial exhibit 3.

Officer Aaron Frausto was able to reach Ricky by telephone. Ricky was upset, argumentative, and evasive, but indicated he had purchased the car and denied stealing it. 1RP 44-48. Ricky said he had a bill of sale and the car had been signed over to him for an outstanding loan or debt. 1RP 47-48. Frausto said he "wanted to straighten things out" and asked Ricky to return the car to the motel. Ricky agreed. 1RP 48.

After about an hour had passed, and the car had not been returned, officers cleared the scene and were about to leave when the Cadillac pulled in to the motel parking lot. 1RP 5, 48. An officer activated the emergency lights on his car and the driver stopped immediately. 1RP 28-29. Because the reported theft involved a firearm, officers conducted a felony stop, removing the lone occupant at gunpoint. That individual was Anna Arntsen, who was cooperative throughout the encounter. 1RP 6-7, 14, 23, 54.

Arntsen was taken into custody, patted down for weapons, and placed in the back of a patrol car. 1RP 9, 13-15. After the Cadillac had been searched, Arntsen was formally arrested for possession of stolen property for driving the car. 1RP 55. Police

searched Arntsen incident to arrest and found a bill of sale for the Cadillac and a small plastic baggy containing cocaine. CP 31-32; 1RP 46.

The trial court concluded that based on the information available to the officers, including the fact a second car had followed the Cadillac out of the parking lot, it was reasonable for them to conclude that the person returning the Cadillac knew it was stolen. Therefore, officers had probable cause to arrest Arntsen for Taking a Motor Vehicle in the Second Degree and the product of that arrest – the cocaine – was admissible. Supp. CP ____ (sub no. 49, Findings of Fact and Conclusions of Law for CrR 3.6 Hearing, at 3).

C. ARGUMENT

THE TRIAL COURT ERRED WHEN IT DENIED THE MOTION TO SUPPRESS.

Under the Fourth Amendment to the United States Constitution and article 1, § 7 of the Washington Constitution,³ warrantless arrests must be supported by probable cause. State v.

³ The Fourth Amendment provides, “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated”

Article 1, § 7 provides, “No person shall be disturbed in his private affairs, or his home invaded, without authority of law.”

Bonds, 98 Wn.2d 1, 8-9, 653 P.2d 1024 (1982), cert. denied, 464 U.S. 831 (1983); RCW 10.31.100 (warrantless arrests justified if police have probable cause defendant has committed a felony in their presence).

Probable cause exists only "when facts and circumstances within the arresting officer's knowledge are sufficient to cause a person of reasonable caution to believe that a crime has been committed." State v. Huff, 64 Wn. App. 641, 646-47, 826 P.2d 698, review denied, 119 Wn.2d 1007 (1992). Whether the facts satisfy the probable cause requirement is a question of law this Court reviews de novo. Ornelas v. United States, 517 U.S. 690, 699, 116 S. Ct. 1657, 134 L. Ed. 2d 911 (1996); State v. Armenta, 134 Wn.2d 1, 9, 948 P.2d 1280 (1997). The State bears the burden of proof. State v. Grande, 164 Wn.2d 135, 141, 187 P.3d 249 (2008).

Here, the trial court concluded that officers had probable cause to believe Arntsen was guilty of Taking a Motor Vehicle Without Permission in the Second Degree:

A person is guilty of taking a motor vehicle without permission in the second degree if he or she, without the permission of the owner or person entitled to possession, intentionally takes or drives away any automobile or motor vehicle . . . that is the property of another, or he or she voluntarily rides in or upon the automobile or motor vehicle with knowledge of the fact

that the automobile or motor vehicle was unlawfully taken.

RCW 9A.56.075(1).

Police knew that Arntsen did not take the Cadillac. Therefore, if she was guilty of this offense, it was only because she subsequently rode in the car when she drove it back to the motel. And to commit the offense by riding in a stolen vehicle, one must know the car is stolen. State v. C.M.C., 110 Wn. App. 285, 287-88, 40 P.3d 690 (2002). Knowledge is established when a person is aware of the fact at issue or has information that would lead a reasonable person to believe that fact. RCW 9A.08.010(1)(b). Evidence Arntsen knew the car was stolen was lacking.

Even assuming Arntsen was the individual Harris called "Victoria," and that she followed the Cadillac out of the motel parking lot in a separate car, police knew that Arntsen had not been in room 39. Therefore, officers also knew she did not witness any of the events leading up to Harris' transfer of ownership to Ricky, including Ricky's use of a gun to compel that transfer. 1RP 51-52. Nor is there evidence Arntsen learned of those events after leaving the motel lot. The only available evidence was that Officer Frausto spoke on the phone with Ricky, who denied stealing the car and said

he had been given the car to settle an outstanding debt. 1RP 44-48.

In both its oral and written rulings, the court seems to have placed great weight on the fact Paula Perez told officers she heard Harris yell that his car had been stolen just as the Cadillac was leaving the motel with the second car following close behind. 1RP 86-87, 90; Supp. CP ____ (sub no. 49: undisputed fact 8 and conclusion as to admissibility of Evidence 2). But the notion Arntsen heard Harris' complaint from inside the car she was driving is speculation. Her actions later that morning – returning the Cadillac to the motel where police were waiting (with the bill of sale) – undermine the conclusion she ever knew the Cadillac was stolen.

Moreover, while officers could reasonably assume Arntsen was the driver of the car that followed Ricky out of the parking lot earlier that morning, and she obviously had contact with Ricky thereafter, merely associating with an individual suspected of a crime does not establish probable cause. See State v. Broadnax, 98 Wn.2d 289, 296, 654 P.2d 96 (1982), overruled on other grounds, Minnesota v. Dickerson, 508 U.S. 366 (1993). In State v. Dorsey, 40 Wn. App. 459, 698 P.2d 1109, review denied, 104 Wn.2d 1010 (1985), this Court said:

In order to find probable cause based on

association with persons engaging in criminal activity, some additional circumstances from which it is reasonable to infer participation in criminal enterprise must be shown. One important consideration in assessing the significance of the association is whether the known criminal activity was contemporaneous with the association. Another is whether the nature of the criminal activity is such that it could not normally be carried on without the knowledge of all persons present.

Id. at 467-468 (quoting United States v. Hillison, 733 F.2d 692, 697 (9th Cir. 1984)).

In Dorsey, both of these considerations clearly militated in favor of probable cause. Over the course of a few hours, Dorsey had been seen in a car with three other individuals, two of whom had engaged in a series of thefts from banks using counterfeit Visa cards while Dorsey remained in the vehicle. The rental car the group used also was obtained with a counterfeit Visa card. The four obtained over \$8,000.00 from six banks and then purchased airplane tickets for themselves to California. They were arrested, still together, when they arrived in Burbank. Dorsey, 40 Wn. App. at 460-462, 468.

Dorsey's association with the others was contemporaneous with prolonged criminal activity *and* the multiple thefts could not have been carried out without his knowledge. Probable cause was

therefore established. Dorsey, 40 Wn. App. at 468-69. In contrast, while Arntsen was in the parking lot as Ricky left in the Cadillac, this was after Ricky had obtained the bill of sale outside of Arntsen's presence. Moreover, unlike the thefts in Dorsey, this was not the type of crime that could only be planned and carried out with Arntsen's knowing participation.

Because police did not have probable cause to arrest Arntsen, all fruits of this illegal seizure must be suppressed. State v. Byers, 88 Wn.2d 1, 7-8, 559 P.2d 1334 (1977)(citing Wong Sun v. United States, 371 U.S. 471, 9 L. Ed. 2d 441, 83 S. Ct. 407 (1963)), overruled in part on other grounds, State v. Williams, 102 Wn.2d 733, 741 n.5, 689 P.2d 1065 (1984). The court erred when it refused to suppress the evidence in this case.

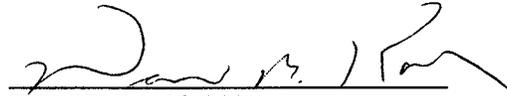
D. CONCLUSION

There was no probable cause to arrest Arntsen for Taking a Motor Vehicle Without Permission. The fruits of that arrest must be suppressed. Her conviction for Soliciting Possession of a Controlled Substance must be reversed and dismissed.

DATED this 7th day of April, 2010.

Respectfully submitted,

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Attorneys for Appellant

APPENDIX

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SONYA KRASKI
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CL13885582

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN
AND FOR THE COUNTY OF SNOHOMISH

The State of Washington,

Plaintiff,

vs.

ANNA ARNTSEN,

Defendant.

08-1-02402-9 AS

08-1-00074-0

Findings of Fact and Conclusions of Law for
CrR 3.6 Hearing

The undersigned Judge of the above court hereby certifies that a hearing has been held in the absence of the jury pursuant to Rule 3.6 of the Criminal Rules for Superior Court. The hearing included testimony from Officers Lavelly and Frausto, and Detective Honnem of the Edmonds Police Department. The Court now sets forth:

1. The Undisputed Facts

1. On 10/18/2007, Edmonds Police were dispatched to Andy's Motel in Edmonds, Snohomish County, for a reported theft of a vehicle at gun point.
2. The vehicle was a white Cadillac, which Officer Lavelly recognized from his prior patrols of at the Motel that week.
3. Police contacted Melissa Britt, Paula Perez, and James Harris.
4. Harris reported that "Ricky," his ex-roommate, came to the motel at 1AM and held him at gunpoint for 3 to 4 hours and would not let him leave. Harris also reported that Ricky forced him to sign over the title to the Cadillac.
5. Britt, who told police she was present, corroborated Harris' statement. There were some inconsistencies which are noted in the Disputed Facts Section, but Officer Frausto testified that

ORIGINAL

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1 based upon his training and experience, stress can cause some discrepancies and that under the
2 right lighting conditions a camouflaged finish can be mistaken with a blue finish.

3 6. Ricky drove away in Harris' Cadillac and an American car followed. Harris believed the
4 second car was driven by Ricky's wife "Victoria."

5 7. Perez heard a loud noise and went to Harris' motel room. She saw people, but did not notice
6 anyone upset or see anything out of place.

7 8. Later, Perez saw Harris' Cadillac drive away while Harris yelled "He stole my car."

8 9. Frausto spoke with Ricky on the telephone. Ricky was evasive regarding details of his
9 purchase of the vehicle, but he denied stealing it. He told Officer Frausto the car had been signed
10 over for a loan, but didn't explain what the loan was for.

11 10. Ricky was argumentative, disrespectful, and vague. Frausto did not think that Ricky was
12 being truthful based upon his verbal demeanor and answers.

13 11. Ricky did say he would bring the Cadillac back, but after one hour, police decided Ricky was
14 not coming back to the Motel with the vehicle.

15 12. At that time, Lavelly saw the Cadillac drive into Andy's parking lot. Lavelly turned on his
16 lights and the Cadillac stopped immediately 30' to 50' inside the parking lot. The vehicle had
17 tinted windows making it difficult to see inside.

18 13. Police approached the vehicle with drawn guns due to the report of a firearm, and ordered the
19 driver, who appeared to be the sole occupant, out of the vehicle. The female driver exited the
20 vehicle and was handcuffed and arrested for Possession of a Stolen Motor Vehicle.

21 14. The defendant was properly advised of her rights, understood, and agreed and did not invoke
22 her rights. No threats or promises were made.

23 15. The defendant made statements.

24 16. The defendant was then transported to the police department where she invoked her rights.

25 2. The Disputed Facts

26 1. Harris described the firearm as having a blue finish and Britt described it as having a
camouflage finish.

1 2. Frausto testified that stressful situations can cause some people to describe the same
2 situation slightly differently. He also testified that certain lighting conditions can cause a blue
3 finish on a firearm to appear camouflaged.

4 3. Court's Conclusions as to Disputed Facts

5 The Court finds it credible that a stressful situation could cause some discrepancies in the
6 description of the firearm, and that certain lighting conditions could have an effect on a firearm's
7 appearance.

8 4. Court's Conclusions as to the Admissibility of Evidence Recovered

9 1. The defendant was properly arrested. However, she was not properly arrested for Possession
10 of a Stolen Vehicle because there was no evidence of intent to withhold the vehicle from its owner.
11 However, there was probable cause for the arrest of the defendant for Taking a Motor Vehicle 2.

12 2. The facts, including the facts that another vehicle followed closely behind the reportedly
13 stolen Cadillac driven by Ricky, makes it reasonable to infer that the defendant knew the car was stolen.

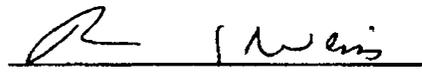
14 3. It was reasonable for the officers to assume this and act as they did based upon these facts.

15 4. There was PC to arrest the defendant for TMV 2.

16 5. COURT'S FINDING REGARDING THE MOTION

17 The motion to suppress the evidence is denied.

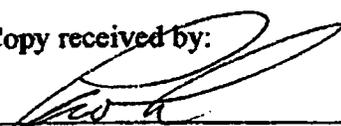
18 DONE IN OPEN COURT this 8th day of October 2009.

19
20 
Judge

21 Presented by:

22 
23 BOB HENDRIX, #28595
Deputy Prosecuting Attorney

24 Copy received by:

25 
26 Caroline Mann, #17790
Defense Attorney

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

STATE OF WASHINGTON)	
)	
Respondent,)	
)	
v.)	COA NO. 64246-4-1
)	
ANNA ARNTSEN,)	
)	
Appellant.)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 7TH DAY OF APRIL 2010, I CAUSED A TRUE AND CORRECT COPY OF THE **OPENING BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

- [X] SNOHOMISH COUNTY PROSECUTOR'S OFFICE
3000 ROCKEFELLER AVENUE
EVERETT, WA 98201

- [X] ANNA ARNTSEN
212 1ST STREET NE
AUBURN, WA 98002

SIGNED IN SEATTLE WASHINGTON, THIS 7TH DAY OF APRIL 2010.

x *Patrick Mayovsky*