

64246-4

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NO. 64246-4-1

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

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STATE OF WASHINGTON,

Respondent,

v.

ANNA ARNTSEN,

Appellant.

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BRIEF OF RESPONDENT

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2010 JUL 29 AM 10:26

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STATE OF WASHINGTON

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## **I. ISSUES**

Police received a report that a suspect had stolen a car. Witnesses reported that as the suspect drove away from the scene of the theft, the defendant followed him in another car. As they left, the victim yelled, "He stole my car." Police subsequently spoke to the suspect on the phone. He promised to return the car. Instead, the defendant drove the car back to the scene of the theft. Did these facts establish probable cause to arrest the defendant for taking a motor vehicle, based on her riding in a car that she knew was stolen?

## **II. STATEMENT OF THE CASE**

On October 18, 2007, Edmonds Police responded to a report of a vehicle theft at Andy's Motel. James Harris told him that his ex-roommate "Ricky" had forced him at gunpoint to sign over the title to his Cadillac. ("Ricky" was later identified as Ricky Arntsen.) This report was corroborated by Melissa Britt, who was present during the confrontation. 3.6 hg. RP 42-43; 2 CP 43, findings 1-5.

Mr. Harris also reported that as Ricky left in the Cadillac, he was followed by another car driven by Ricky's wife "Victoria." Another witness reported that as the Cadillac left the parking lot of

the hotel, Mr. Harris yelled, "He stole my car." 3.6 hg. RP 43-44; 2 CP 44, findings 6-8.

Officer Aaron Frausto subsequently talked to Mr. Arntsen on the phone. Mr. Arntsen claimed that Mr. Harris had signed the car over to him as payment for a debt. Mr. Arntsen was, however, very argumentative and evasive. He agreed to return the car. 3.6 hg. RP 44-48; 2 CP 44, findings 9-11.

Around an hour later, the Cadillac was driven into the motel parking lot. It was driven by the defendant, Anna Arntsen. Police stopped the car and placed her under arrest. 3.6 hg. RP 5-7, 44; 2 CP 44, findings 12-13. Police subsequently found cocaine in her coat pocket. 1 CP 20.

The defendant was charged with possession of a controlled substance.<sup>1</sup> 1 CP 41. She agreed to a stipulated trial on a reduced charge of soliciting possession of a controlled substance. 1 CP 21, 14-20. She was sentenced to 365 days in jail, all suspended on condition of 24 months' probation. 1 CP 7-10.

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<sup>1</sup> Ricky Arntsen was not convicted of any crimes arising out of the alleged robbery. He was, however, convicted of crimes arising out of an ensuing police chase. The convictions were affirmed by this court in an unpublished opinion. State v. Arntsen, no. 62241-2-I (decided 5/17/10).

### **III. ARGUMENT**

#### **THE ARREST OF THE DEFENDANT WAS SUPPORTED BY PROBABLE CAUSE.**

The defendant claims that her arrest was not supported by probable cause. She has not assigned error to any of the trial court's factual findings. Consequently, all of these findings will be accepted as verities on appeal. State v. Hill, 123 Wn.2d 641, 644, 870 P.3d 313 (1994). The issue is whether these facts establish probable cause for arrest. This is a legal issue, subject to de novo review. State v. Wagner-Bennett, 148 Wn. App. 538, 541 ¶ 10, 200 P.3d 739 (2009).

Probable cause exists when the facts and circumstances within the arresting officer's knowledge and of which he has reasonable trustworthy information are sufficient to warrant a man of reasonable caution in a belief that an offense has been or is being committed.

State v. Graham, 130 Wn.2d 711, 724, 927 P.2d 227 (1996). As the name implies, the concept of probable cause deals with probabilities. Draper v. United States, 358 U.S. 307, 313, 79 S. Ct. 329, 3 L. Ed. 2d 327 (1959). It depends on "factual and practical considerations of everyday life on which prudent men, not legal technicians, act." State v. Bellows, 72 Wn.2d 264, 266-67, 432 P.2d 654 (1967).

Probable cause may be based on a person driving a vehicle that has been reported stolen, if the information underlying that report is reliable. State v. Mance, 82 Wn. App. 539, 543, 918 P.2d 527 (1996). Further evidence of the person's knowledge is not required.

When a person operates an automobile, he is effectively in possession of the vehicle and can reasonably be presumed aware of its ownership. It is unlikely that a thief would casually lend a stolen vehicle to others; it is probable that the driver of a stolen car is either the thief himself or is aware that the car has been stolen. If an officer has reliable information ... indicating that the vehicle has been stolen, he thus has probable cause to believe that the driver has committed the crime of either driving the vehicle or knowingly operating a stolen vehicle.

Rhode v. City of Roseburg, 137 F.3d 1142, 1144 (9<sup>th</sup> Cir.), cert. denied, 525 U.S. 817 (1998).

The recent, exclusive and unexplained possession of a stolen article is sufficient to raise an inference, on trial, that the possessor was guilty. In light of this ancient rule of evidence, we cannot say that, where arresting officers have knowledge of the theft and the possession, arrest of the possessor lacks probable cause.

United States ex rel. Lupo v. Fay, 332 F.2d 1022 (2<sup>nd</sup> Cir. 1964), cert. denied, 379 U.S. 983 (1965) (citation omitted). In the present case, the defendant was seen by police driving a vehicle that had

been recently reported stolen. 2 CP 44, findings 12-13. This fact, by itself, established probable cause to arrest her.

That fact, however, did not stand by itself. Rather, the inference of knowledge was supported by further evidence. First, as the thief drove away in the stolen car, the defendant followed him in her car. 2 CP 44, finding 6. This suggests concerted action between the defendant and the thief.

Second, as the two were driving away, the victim yelled, "He stole my car." 2 CP 44, finding 8. Police could reasonably infer that the defendant heard this, thereby acquiring direct knowledge that the car was stolen.

Third, in a telephone conversation with police, the thief promised to return the car. The defendant then drove the car back to the scene of the theft. 2 CP 44, finding 11, 13. This again indicates concerted action between the defendant and the theft. It can be inferred that they discussed the status of the car and the need to return it. These three facts, taken together, support the inference arising from the defendant's possession of the stolen car.

The defendant points out that probable cause cannot be based on mere association with a person suspected of a crime. Rather, there must be "additional circumstances from which it is

reasonable to infer participation in criminal enterprise.” State v. Dorsey, 40 Wn. App. 459, 467, 698 P.2d 1109, review denied, 104 Wn.2d 1010 (1985). This principle could be applicable if, for example, the defendant had merely been a passenger in a stolen car. See Rhode, 137 F.3d at 1144 (finding probable cause to arrest driver but not passenger). Here, however, the defendant’s arrest was not based on her “mere association” with the thief – it was based on her personal action in driving the stolen car. Furthermore, if “additional circumstances” are necessary, they arise from the facts outlined above.

The trial court correctly found that there was probable cause to arrest the defendant for riding in a stolen motor vehicle. Since the arrest was lawful, the resulting evidence was properly admitted into evidence.

**IV. CONCLUSION**

The judgment and sentence should be affirmed.

Respectfully submitted on July 28, 2010.

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