

64948-5

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NO. 64948-5-I

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

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STATE OF WASHINGTON,

Respondent,

v.

AARON J. RODDEN,

Appellant.

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BRIEF OF RESPONDENT

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MARK K. ROE  
Prosecuting Attorney

JOHN J. JUHL  
Deputy Prosecuting Attorney  
Attorney for Respondent

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Snohomish County Prosecutor's Office  
3000 Rockefeller Avenue, M/S #504  
Everett, Washington 98201  
Telephone: (425) 388-3333

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## **I. ISSUES**

Whether the consistent testimony regarding the color, year, make, model, dates stolen and returned, and damage to the vehicle including a punched ignition was sufficient direct evidence to enable the jury to reasonably find beyond a reasonable doubt that the car in question was in fact the vehicle the victim reported stolen?

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

Aaron Joseph Rodden was charged with possession of a stolen vehicle. CP 58-59. The matter proceeded to jury trial.

In December 2008, Ken Perrigoue was living in Rockport, Skagit County, and working in Mukilteo, Snohomish County. Due to the length of his commute Perrigoue was driving his white 1995 Mercury Mystic, a four-cylinder, 35-miles-to-the-galon commuter car. Perrigoue also transported his work tools in the car. Perrigoue had stored the 1995 Mercury Mystic in a garage in eastern Washington for the last five years and had just recently brought it over to use for his commute. The vehicle was in good shape. RP 13-16, 23-24.

On December 9, 2008, Ken Perrigoue was driving the white 1995 Mercury Mystic to work he stopped at the AM-PM mini-mart

on 41<sup>st</sup> in Everett, between 6:00 a.m. and 7:00 a.m. and went in to the store to get the morning paper. It was a cold morning, so Perrigoue left the keys in the ignition with the engine running. Perrigoue was in the store less than five minutes. When he came out of the store, Perrigoue's Mystic was gone. Perrigoue did not give anyone permission to take or possess the vehicle. RP 14-17.

Perrigoue called the police and an officer responded to the AM-PM and took a stolen vehicle report. Perrigoue did not remember the license number of the Mystic, so the police had to run the registration to get the license number. Perrigoue recognized the number when the officer said it because he had seen the number, but he did not have the license number memorized. At trial Perrigoue testified that the license number was 415VTG. RP 16, 17, 20-21, 25.

The next time Perrigoue saw his Mystic was a couple days later, December 11, 2008. The Police called and told Perrigoue the vehicle was in a towing yard north of Marysville, WA. Perrigoue's Mystic was no longer in good shape; all the windows were down, the driver's side was caved in, and the ignition had been messed with. Perrigoue's electrician tools were also missing from the vehicle. Perrigoue reported the damage to his insurance company

and when they looked at the vehicle they totaled it and gave him \$1,800. Perrigoue's tools were not covered by insurance. RP 18, 19, 20.

On December 11, 2008, Deputy Schwartzmiller was on patrol in north Snohomish County around 2:00 p.m. when he ran the license plate of a white Mercury. The license number, 450VTG, returned that the vehicle was registered to Perrigoue and had been reported stolen. Deputy Schwartzmiller turned and followed the white Mercury. There was a vehicle between Deputy Schwartzmiller and the white Mercury, and he followed the vehicles for approximately two miles until the white Mercury turned off Sill Road onto a private driveway approximately 1000 feet long. As the vehicle turned onto the private driveway Deputy Schwartzmiller activated the emergency lights on his fully marked patrol vehicle. The only occupant in the white Mercury was the male driver. The white Mercury accelerated away from Deputy Schwartzmiller to the end of the driveway. At the end of the driveway the driver jumped out of the white Mercury and ran eastbound. Deputy Schwartzmiller pursued and placed the driver under arrest. The driver stated that he wasn't running because the vehicle was stolen, he was running because his license was suspended. Prior to that

statement Deputy Schwartzmiller had not questioned the driver and had not said anything about the vehicle being stolen. The driver identified himself as Aaron Rodden. Deputy Schwartzmiller checked the white Mercury and observed that the driver's side window was broken out and the ignition was punched. RP 28-35, 38-41, 42, 58.

Detectives Forslof and Sanders responded to the Sill Road location on December 11, 2008, and contacted Deputy Schwartzmiller and Aaron Rodden. At that location Detectives Forslof and Sanders observed a white Mercury Mystic, license number 450VTG. One of the windows of the Mercury was broken, there was glass inside the vehicle, and the ignition was punched. Rodden told Detective Forslof that the Mercury came from the "compound," that Dave stole the vehicle in Everett and that Dave and Ace emptied the tools out of the vehicle at the compound. Prior to Rodden's statement about the tools the police did not know that Perrigoue's tools had been in the vehicle when it was stolen. Rodden told Detective Forslof that he did not steal the vehicle, but he could show Detective Forslof exactly where the vehicle was stolen. The police had the vehicle towed while Rodden was talking to Detective Forslof. RP 22, 63, 65-66, 73-76, 78, 89-90, 167.

Rodden claimed that he purchased the white 1995 Mercury he was driving on December 11, 2008, from Bruce Mills on December 10, 2008, for \$300, and that the window broke when he slammed the door on the day he was arrested. Rodden offered a bill of sales for the 1995 Mercury, license number 450 VTG. RP 135, 144, 156, Exhibit 1—Bill of Sale.

The jury returned a verdict of guilty on the charge of possession of a stolen vehicle. At sentencing Rodden moved to set aside the jury's verdict arguing that the State failed to prove the car Rodden was driving was Ken Perrigoue's stolen vehicle. The court denied the motion. CP 16-39, 58; RP 227-228, 234-237.

### **III. ARGUMENT**

#### **A. SUFFICENCE OF THE EVIDENCE.**

##### **1. Legal Standards.**

When reviewing a challenge to the sufficiency of the evidence, the court determines 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. State v. Brockob, 159 Wn.2d 311, 336, 150 P.3d 59 (2006); State v. Hughes, 154 Wn.2d 118, 152, 110 P.3d 192 (2005). All reasonable inferences are drawn in the

prosecution's favor and interpreted most strongly against the defendant. State v. Hosier, 157 Wn.2d 1, 8, 133 P.3d 936 (2006). "A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom." State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Circumstantial evidence and direct evidence are equally reliable. State v. Goodman, 150 Wn.2d 774, 781, 83 P.3d 410 (2004). The court need not be convinced of the defendant's guilt beyond a reasonable doubt; it is sufficient that substantial evidence supports the State's case. State v. Galisa, 63 Wn. App. 833, 838, 822 P.2d 303 (1992) *citing* State v. McKeown, 23 Wn. App. 582, 588, 596 P.2d 1100 (1979). The court must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. State v. Walton, 64 Wn. App. 410, 415-16, 824 P.2d 533 (1992).

## **2. There Is Ample Evidence In The Record To Support Rodden's Conviction.**

Rodden argues that because Ken Perrigoue testified that the license number was 415 VTG and the police witnesses testified that

the license number was 450VTG<sup>1</sup>, there was insufficient evidence to show that the vehicle Rodden was driving was Ken Perrigoue's stolen vehicle. Rodden's argument ignores the other evidence presented at trial.

Ken Perrigoue reported to the police that his white 1995 Mercury Mystic was stolen on December 9, 2008, in Everett, WA. RP 14-17. The next time Ken Perrigoue saw his vehicle, a couple of days later at the towing yard in Marysville, WA, the driver's side was caved in and the ignition had been messed with. He reported the damage to his insurance company and received \$1,800 for the loss. RP 18-19. On December 11, 2008, Deputy Schwartzmiller ran the license of a white 1995 Mercury Mystic, the vehicle returned stolen and registered to Ken Perrigoue. RP 29-31. Deputy Schwartzmiller arrested the driver, Aaron Rodden, and observed that the driver's side window was broken out and the ignition was punched. RP 38, 42, 58. Detectives Forslof and Sanders also observed that a window was broken and the ignition was punched on the white Mercury. RP 65, 78, 90. The police had the Mystic driven by Rodden towed. RP 167.

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<sup>1</sup> As noted by the prosecutor at the motion to set aside the verdict, it was possible that they misheard what Perrigoue said since four-fifteen sounds like four-fifty. RP 235.

The color, year, model, date stolen and returned, and punched ignition was sufficient direct evidence to enable the jury to reasonably find that the car in question was in fact Ken Perrigoue's stolen vehicle. State v. Stowers, 2 Wn. App. 868, 872, 471 P.2d 115 (1970) (the state is not required to introduce evidence of VIN or license number). There was sufficient evidence to support the jury's verdict.

The State did not have to prove who owned the vehicle. The State met its burden to show that Rodden possessed a stolen vehicle with knowledge that the vehicle was stolen. RCW 9A.56.068(1); State v. Plank, 46 Wn. App. 728, 731, 731 P.2d 1170 (1987). Knowledge can be actual or constructive. State v. Jennings, 35 Wn. App. 216, 219, 666 P.2d 381 (1983). Deputy Schwartzmiller testified that when he ran the license on the vehicle driven by Rodden he learned that the vehicle was reported stolen. RP 30. Rodden stated that Dave stole the Mercury in Everett and that he could show the police the exact spot where it was stolen. RP 73-76. The jury was entitled to disbelieve Rodden's denial that he made those statements and his claim that he bought the vehicle. Credibility determinations are for the jury to resolve. State v. Myers, 133 Wn.2d 26, 38, 941 P.2d 1102 (1997). Viewed in the

light most favorable to the State, a rational trier of fact could conclude Rodden knew the car he possessed was stolen. Evidence that Perrigoue was the owner of the stolen Mystic, as shown above, augments that conclusion.

At sentencing Rodden moved to set aside the jury's verdict challenging the sufficiency of the evidence. A challenge to the sufficiency of the evidence requires that the evidence be interpreted most strongly against the moving party and in the light most favorable to the opposing party. State v. McKeown, 23 Wn. App. at 588. A jury verdict can be overturned on review only when there is no substantial evidence to support it. Id.

When the trial court denied Rodden's motion to set aside the jury verdict it found: Ken Perrigoue said that his white 1995 Mercury Mystic was stolen from Everett; Deputy Schwartzmiller said that when he ran the license number the registered owner came back as Ken Perrigoue; Rodden said that he heard the vehicle had been stolen from Everett and that tools were in the car when it was stolen; the bill of sale offered by Rodden listed the vehicle as a 1995 Mercury 450 B<sup>2</sup>TG [sic]; Ken Perrigoue went to

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<sup>2</sup> It should be noted that bee sounds like vee.

the tow yard and viewed the recovered vehicle driven by Rodden and put in a claim to his insurance company for his vehicle and was paid \$1,800. “The direct inference from all that is that the car that was towed to the tow yard that was driven by the defendant was identified by Mr. Perrigoue as being his car.” RP 236-237. The trial court concluded:

... there is no question in this court's mind that there was sufficient evidence that a reasonable trier of fact could, based upon all of the testimony that was presented, be convinced beyond a reasonable doubt that the car in question was in fact that belonging to Mr. Perrigoue, and, therefore, the court will deny the motion.

RP 238. The court reviews the trial court's findings of fact for substantial evidence and its conclusions of law de novo. State v. Santacruz, 132 Wn. App. 615, 618, 133 P.3d 484 (2006); State v. Mendez, 137 Wn.2d 208, 214, 970 P.2d 722 (1999). Substantial evidence is evidence sufficient to persuade a fair-minded, rational person of the truth of the finding. State v. Hill, 123 Wn.2d 641, 644, 870 P.2d 313 (1994).

There was substantial evidence to support the court's finding that the vehicle possessed by Rodden was the same vehicle that Ken Perrigoue reported stolen. The court's conclusion is supported by case law. State v. Stowers, 2 Wn. App. at 872.

**IV. CONCLUSION**

For the reasons stated above, the appeal should be denied;  
Rodden's conviction should be affirmed.

Respectfully submitted on October 26, 2010.

MARK K. ROE  
Snohomish County Prosecuting Attorney

By:   
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JOHN J. JUHL, WSBA #18951  
Deputy Prosecuting Attorney  
Attorney for Respondent