

**FILED**

MAY 07, 2012

Court of Appeals  
Division III  
State of Washington

No. 304001

COURT OF APPEALS  
DIVISION III  
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON, Respondent

v.

JAMISON LANG, Appellant

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APPEAL FROM THE SUPERIOR COURT  
OF SPOKANE COUNTY  
THE HONORABLE TARI EITZEN

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BRIEF OF APPELLANT

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Marie J. Trombley, WSBA 41410  
PO Box 829  
Graham, WA 98338  
509.939.3038  
marietrombley@comcast.net

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I. ASSIGNMENTS OF ERROR

- A. The evidence was insufficient to sustain a conviction for possession of a stolen vehicle.

Issues Pertaining to Assignments of Error

1. Did the State fail to present sufficient evidence at trial for a jury to convict Mr. Lang of the crime of possession of a stolen vehicle?

II. STATEMENT OF FACTS

Jamison Lang was charged by information on September 9, 2010, with one count of residential burglary and one count of theft of a motor vehicle. CP 5. On July 21, 2011, the information was amended to one count of residential burglary and one count of possession of a stolen vehicle. CP 86-87.

At 11 a.m. on the morning of September 5, 2010, two residents of the Kingsview apartment building noticed a man sleeping in a parked car, with the engine running. 2 RP 53, 57.<sup>1</sup> One witness also reported noticing a black knife laying across his lap, and that Mr. Lang smelled of alcohol. 2RP 59. None of the

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<sup>1</sup> For purposes of review, transcripts from pretrial dates June 30, 2011 and July 21, 2011 will be designated as RP; transcripts trial date August 16, 2011 will be designated as 1RP; transcripts trial date August 17, 2011 will be designated as 2RP; and transcripts of trial date and sentencing will be designated as 3RP; pretrial transcript date April 7, 2011 will be designated as 4RP.

residents reported seeing anyone drive the car into the parking spot, or when it arrived or, or how many people were in it before Mr. Lang. 1RP 55, 60.

Around 1 p.m., Officer Dahle of the Spokane police department responded to the call for a welfare check. He saw the car and observed a man getting out of the driver's seat. 2RP 98. The keys were in the ignition and the engine was running. 2RP 104. Officer Dahle asked Mr. Lang if the vehicle was his. Mr. Lang responded, "This is harassment." He also asked if Mr. Lang had a knife, to which he replied, "No." The officer frisked and handcuffed him. 2RP 99. A knife was later found on the backseat floorboard of the car. 2RP 68,101-103.

The officer ran a license plate check and learned the car was registered to someone else, but not reported as stolen. 2RP 100. After further investigation, it was discovered that the home of the car's registered owner, Catherine Brady, had been burglarized while she was away. Further, she had not given anyone permission to use her vehicle. 1RP 15.

Advised of his Miranda rights, and in response to questioning, Mr. Lang said he was in the car because he had been wandering through the parking lot and got into the car to sleep.

2RP 101. The officer testified he again asked him what he was doing in the car, and Mr. Lang responded that his friend, whose name he did not want to give, gave him permission to sleep in the car. 1RP 17-18, 2RP 101.

Officers collected several items from the car: the keys that were still in the ignition, which included a “shaved key”, cigarettes, a pair of needle-nose pliers, zigzag rolling papers, and the black knife. 2RP 68,102. Also recovered were two receipts, with Mr. Lang’s name and a date stamp of September 2, 2010. 2RP 91. Officers attempted to get fingerprints from the burglarized home, but did not obtain any identifiable prints. 1RP 32. Although it is commonly done, the officer reported he did not attempt to recover any fingerprints from the vehicle. 1RP 41-42.

Ms. Brady and her partner later testified that among the 75 items stolen from inside their home, the only items recovered were the knife, pliers, and keys. 2RP 80-86, 94,96. After the State rested its case in chief, the court denied a defense motion to dismiss. 2RP 132,140.

The court provided the following pertinent jury instructions:

Instruction No. 14:

A person commits the crime of possession of a stolen motor vehicle when he or she possesses a stolen vehicle.

Possessing a stolen motor vehicle means knowingly to receive, retain, possess, conceal, or dispose of a stolen vehicle knowing that it has been stolen and to withhold or appropriate the same to the use of any person other than the true owner or person entitled thereto. 3RP 167.

and

Instruction No. 17:

A person knows or acts knowingly or with knowledge with respect to a fact, circumstance, or result when he or she is aware of that fact, circumstance, or result. It is not necessary that the person know that the fact, circumstance, or result is defined by law as being unlawful or an element of a crime. If a person has information that would lead a reasonable person in the same situation to believe that a fact exists, the jury is permitted but not required to find that he or she acted with knowledge of that fact. 3RP 168.

After a jury trial, Mr. Lang was acquitted of the residential burglary charge and found guilty of possession of a stolen motor vehicle. 3RP 191. Mr. Lang appeals. CP 172-173.

### III. ARGUMENT

#### A. The Evidence Was Insufficient To Sustain A Conviction For Possession Of A Stolen Vehicle.

The due process rights of a criminal defendant, guaranteed under both the United States Constitution and the Washington Constitution require the state to prove every element of a crime charged, beyond a reasonable doubt. U.S. Const. Amend. XIV; Wash. Const. Art. 1, §§ 3,22; *In re Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970); *State v. Baeza*, 100 Wn.2d 487,488, 670 P.2d 646 (1983).

In a challenge to the sufficiency of the evidence, the test is whether, after viewing the evidence in a light most favorable to the State, any rational trier of fact could find the essential elements of the crime beyond a reasonable doubt. *State v. Green*, 94 Wn.2d 216, 220-221, 616 P.2d 628 (1980). In such a challenge, the defendant admits the truth of the State's evidence and all reasonable inferences that can be reasonably drawn from it. *State v. Colquitt*, 133 Wn. App. 789, 137 P.3d 892 (2006). However, the existence of a fact cannot rest on guess, speculation, or conjecture. *State v. Hutton*, 7 Wn. App. 726, 728, 502 P.2d 1037 (1972).

A conviction must be supported by substantial evidence, that is, evidence sufficient to persuade “an unprejudiced thinking mind of the truth of the fact to which the evidence is directed.” *State v. Collins*, 2 Wn.App. 757, 759, 470 P.2d 227 (1970).

1. The State was required to prove beyond a reasonable doubt that Mr. Lang knew the vehicle was stolen.

In Instruction No. 14, the court instructed the jury, in pertinent part: “A person commits the crime of possession of a stolen motor vehicle when he or she possesses a stolen vehicle. Possessing a stolen motor vehicle means knowingly to receive, retain, possess, conceal, or dispose of a stolen vehicle knowing that it has been stolen. 3RP 167. Instruction No. 17 stated: “A person knows or acts knowingly or with knowledge with respect to a fact, circumstance, or result when he or she is aware of that fact, circumstance, or result. It is not necessary that the person know that the fact, circumstance, or result is defined by law as being unlawful or an element of a crime. If a person has information that would lead a reasonable person in the same situation to believe that a fact exists, the jury is permitted but not required to find that he or she acted with knowledge of that fact.” 3RP 168.

Thus, to convict Mr. Lang of possession of a stolen vehicle, the State was required to prove that Mr. Lang (1) knowingly possessed the stolen vehicle and (2) had knowledge it was stolen. It is the second knowledge factor that is at issue here. Mere possession of recently stolen property alone is insufficient to justify a conviction. *State v. Humason*, 5 Wash. 499, 32 P.111 (1893); *State v. Portee*, 25 Wn.2d 246, 170 P.2d 326 (1946); *State v. Douglas*, 71 Wn.2d 303, 428 P.2d 535 (1967). Rather, there must be some other corroborative evidence to establish, beyond a reasonable doubt, that a defendant had knowledge the property was stolen. *State v. Couet*, 71 Wn.2d 773, 775, 430 P.2d 974 (1967).

To determine whether there is sufficient corroborating evidence of a defendant's knowledge the property was stolen, Washington courts may look to a variety of other circumstances as evidence of guilt. In *State v. Womble*, Mr. Womble was charged with taking a motor vehicle without the owner's permission. *Womble*, 93 Wn. App. 599, 604, 969 P.2d 2097 (1999). Mr. Womble argued the evidence was insufficient to establish that he rode in the vehicle knowing that it had been taken without the owner's permission. *Id* The court held that "[O]nce it is established

that a person rode in a vehicle that was taken without the owner's permission, "slight corroborative evidence" is all that is necessary to establish guilty knowledge." Adding that the lack of a plausible explanation for being in the car and his flight from the scene were sufficient corroborating evidence, the court affirmed the conviction.

*Id.*

In contrast, in *State v. L.A.*, the evidence established only that the defendant was caught driving a car that had been taken without the owner's permission, and that the car had a broken rear window. The reviewing court concluded that , "[i]n the absence of corroborative evidence such as a damaged ignition, an improbable explanation or fleeing when stopped," the evidence was insufficient to establish knowledge. *State v. L.A.*, 82 Wn. App. 275, 276, 918 P.2d 173 (1996).

Here, there was no question that Mr. Lang possessed the vehicle and the State's evidence established the vehicle had been stolen. However, it is mere conjecture and speculation that allowed a jury to conclude that Mr. Lang had knowledge the vehicle was stolen.

The State amended the information, having determined it could not make a case that Mr. Lang stole the vehicle. The jury

determined he was not guilty of the residential burglary. The only logical conclusion is that someone other than Mr. Lang broke into the home, took the keys to the car, and stole it. Mr. Lang just happened to be found in the vehicle.

The State presented two pieces of evidence that Mr. Lang knew the car was stolen. First, officer testimony that Mr. Lang gave two explanations of why he was in the car.

Mr. Lang's initial response to the officer was that he was wandering through the parking lot and got into the car to sleep. That was the only information the officer put into his affidavit of facts. 2RP 111,115; CP 3,7. The second explanation, that he was given permission to sleep in the car by a friend that he did not want to name, was only later added to the police report and testified to at trial by the officer.

Ms. Brady's testimony that her son "limped the car home" and told her, "Mom, don't drive this car...it's in bad shape" along with the payout on the vehicle as totaled by her insurance company, creates a picture of a car that was literally irreparably damaged. 2RP 89-90. It is quite likely that whoever drove the car to the apartment complex abandoned it there. Because there was no evidence that Mr. Lang ever drove the vehicle, his explanation

that he saw the car and got in it to sleep is quite plausible. It is especially plausible when coupled with the fact that he was sleeping in a car for at least an hour, in the middle of the day, with the motor running and the windows down, he smelled of alcohol, and barely opened his eyes in response to questions. 2RP 59.

An improbable explanation or an explanation that cannot be checked or rebutted that is given by a defendant in possession of stolen property may be suspect by a reasonable man's standards. *Douglas*, 71 Wn. 2d 303. (1967. In light of the facts and circumstances, Mr. Lang's explanation was not improbable.

The second piece of evidence presented by the State was the presence of a "shaved key" on the car key ring. The implication was that a "shaved key" on the vehicle's key ring either belonged to Mr. Lang, or should have made him aware the car was stolen. However, in the absence of evidence that Mr. Lang was aware it was on the key ring, knew what a "shaved key" was, or that it belonged to him, no inference of knowledge can be reasonably drawn that he knew the car was stolen.

Although a reviewing court need not be convinced beyond a reasonable doubt of the defendant's guilt, substantial evidence must still support the State's case to find that it met the necessary

quantum of proof. *State v. McKeown*, 23 Wn. App. 582, 588, 596 P.2d 1100 (1979). Here, the State did not provide that necessary quantum of proof. Where the evidence is insufficient, the remedy is dismissal of the charge with prejudice. *State v. DeVries*, 149 Wn.2d 842, 853, 72 P.3d 748 (2003).

#### IV. CONCLUSION

Based on the foregoing facts and authorities, Mr. Lang respectfully requests this Court to reverse and dismiss his conviction with prejudice.

Respectfully submitted this 7<sup>th</sup> day of May 2012.

s/Marie Trombley

WSBA 41410  
PO Box 829  
Graham, WA 98338  
509-939-3038  
Fax:None

Email: [marietrombley@comcast.net](mailto:marietrombley@comcast.net)

CERTIFICATE OF SERVICE

I, Marie Trombley, attorney for appellant Jamison Lang, do hereby certify under penalty of perjury under the laws of the United States and the State of Washington, that a true and correct copy of the Brief of Appellant was sent by first-class mail, postage prepaid on May 7, 2011, to Jamison Lang, DOC # 776025, Airway Heights Corrections Center, PO Box 2049, Airway Heights, WA 99001; and by email per agreement between the parties to Mark E. Lindsey, Spokane County Prosecutor at [kowens@spokanecounty.org](mailto:kowens@spokanecounty.org).

s/ Marie Trombley  
WSBA 41410  
PO Box 829  
Graham, WA 98338  
509-939-3038  
Fax:None  
Email: [marietrombley@comcast.net](mailto:marietrombley@comcast.net)