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NO. 35585-3-III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON,
DIVISION III

STATE OF WASHINGTON, RESPONDENT

v.

DESTINY PEARL DURAN, APPELLANT

APPEAL FROM THE SUPERIOR COURT
OF YAKIMA COUNTY

RESPONDENT'S BRIEF

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I. ISSUE PRESENTED FOR REVIEW

1. Appellate courts have repeatedly held that a reasonable person would know a vehicle was stolen when the vehicle has a visibly tampered-with ignition. Duran was contacted while driving a stolen Honda Accord with an aftermarket key jammed in the ignition, a missing stereo, and documents addressed to the true owner strewn throughout the car. Drawing all reasonable inferences in favor of the State, could a rational trier of fact have found that Duran knew the vehicle was stolen beyond a reasonable doubt?

II. STATEMENT OF THE CASE

On July 19, 2017, Duran was charged with one count of possession of a stolen motor vehicle under RCWs 9A.56.068 and 9A.56.140(1) as well as making a false or misleading statement to a public servant under RCW 9A.76.175. Clerk's Papers (hereinafter "CP") at 1.

On August 25, 2017, Duran's case proceeded to a juvenile adjudication. VRP 8/25/17 at 3. Teresa Arroyo-Valdez testified that her black Honda Accord had been stolen from a parking lot on July 15, 2017. *Id.* at 7. The next day, Arroyo-Valdez was notified by law enforcement that her vehicle had been recovered. *Id.* at 8.

On July 16, 2017, Yakima Police Department Officer Thomas Tovar was on patrol in Yakima, Washington. VRP 8/28/17 at 60. Officer Tovar was driving southbound on North 20th Avenue in Yakima at around 5:16 in the morning. *Id.* at 60–61. Officer Tovar requested information concerning a license plate on a black Honda vehicle driving in the on-coming lane of travel. *Id.* at 61. The vehicle returned as stolen. *Id.* Officer Tovar turned around and pursued the black Honda. *Id.* After the vehicle turned eastbound on Willow Street, Officer Tovar lost sight of the Honda. *Id.* at 62. After briefly stopping his patrol vehicle, Officer Tovar observed the Honda, still running, parked behind him to the right on the side of the road. *Id.* The Honda was located on North 19th Avenue between Willow Street and Swan Street. *Id.* at 64. Officer Tovar requested that additional officers respond to the scene as the Honda was a stolen vehicle. *Id.* at 63.

Duran was the sole occupant of the vehicle and was seated behind the steering wheel. *Id.* at 63–64. After Duran had exited the Honda and been detained, Officer Lucas Hinton read Duran her *Miranda* rights. VRP 8/25/17 at 23. While being escorted to a patrol vehicle, Duran stated that a friend had instructed her to leave the vehicle at that intersection. *Id.* at 31. Duran identified herself as Crystal Cerda with a birth date of September 16, 1994. *Id.* at 23–24.

Duran stated that Thomas Harding's cousin "Chris," last name unknown, had loaned her the Honda. VRP 8/28/17 at 66. While Duran knew that Harding lived on the southeast side of Yakima, she was unable to provide an address. SE-2 at 09:21–09:32. Duran stated that "Chris" told her that he had a friend who lived around the 19th Avenue and Swan Street intersection and that she could leave the car there. *Id.* at 09:40–09:50; *see also* VRP 8/28/17 at 66. Duran claimed that she did not know the Honda was stolen. VRP 8/28/17 at 77–78.

When Arroyo-Valdez arrived on the scene, it was readily apparent that her Honda Accord was in a markedly different condition than she had left it the day before. VRP 8/25/17 at 8–9. The stereo was missing. *Id.* at 8. The hood, which had previously been straight and properly attached, was now slanted and resting at an angle due to the removal of various parts. *Id.* at 8–9. The car was leaking gasoline from a cut fuel line. *Id.* at 12. Papers addressed to Arroyo-Valdez, which had been stored in the glove box, were strewn throughout the car. *Id.* at 8, 12. Money and clothes were also missing. *Id.* at 10–11.

Before Arroyo-Valdez' boyfriend drove the vehicle from the scene, law enforcement tried to remove the key from the ignition but were unable to do so. *Id.* at 13; VRP 8/28/17 at 66. Arroyo-Valdez was unfamiliar with the key that was stuck in the ignition. VRP 8/25/17 at 13.

Officer Tovar identified it as an aftermarket key. VRP 8/28/17 at 67.

Arroyo-Valdez had the proper Honda key on her person. VRP 8/25/17 at 13. Duran claimed that “Chris” had both told and shown her that the key was jammed in the ignition prior to Duran leaving with the Honda. VRP 8/28/17 at 68; SE-2 at 12:13. Arroyo-Valdez’ boyfriend was later able to remove the key using pliers. VRP 8/25/17 at 13.

Arroyo-Valdez could not identify Duran and testified that she had never seen Duran before. *Id.* at 11. Law enforcement eventually discovered that Duran had provided a false name when identifying herself as Crystal Cerda. *See* SE-2 at 16:15–16:30. Araceli Loera, Duran’s mother, confirmed that Duran was not Crystal Cerda. VRP 8/25/17 at 43.

The parties stipulated to the admission of Defense Exhibit 1, a certified copy of a Benton County bench warrant involving Duran that had been active on July 16, 2017. *Id.* at 50; *see also* CP at 2.

After hearing argument from counsel, the trial court found Duran guilty of both charges. The court found the circumstantial evidence supported an inference that Duran constructively knew the Honda was stolen. VRP 8/28/17 at 118. After reviewing the evidence concerning Duran’s version of events as well as the Honda’s condition, the court concluded that “a reasonable person would have concerns about why a key is jammed in the ignition that can’t be removed.” *Id.* The court determined

that, given the evidence, “a reasonable person [would] have knowledge that the vehicle . . . was in fact a stolen motor vehicle.” *Id.*

Findings of fact and conclusions of law were presented on September 28, 2017. CP at 17–23. The court found that Duran “possessed a stolen motor vehicle with knowledge that it was stolen when she drove Ms. Valdez’s car with a key stuck in the ignition, a missing stereo, papers addressed to the true owner tossed about in it, in a manner suggesting she was attempting to avoid Officer Tovar’s detection.” *Id.* at 22.

As a disposition, Duran was ordered to serve thirty days for possessing a stolen motor vehicle and fourteen days for making a false or misleading statement to a public servant. *Id.* at 12. Duran was also placed on community supervision for six months and ordered to complete ninety hours of community service. *Id.*

III. ARGUMENT

Duran argues that insufficient evidence supports the trial court’s conclusion that Duran had knowledge that the Honda Accord was stolen. Br. of Appellant at 10.

Under RCW 9A.56.068(1), “[a] person is guilty of possession of a stolen vehicle if he or she [possesses] a stolen motor vehicle.” RCW 9A.56.068(1). Possessing stolen property “means knowingly to receive, retain, possess, conceal, or dispose of stolen property 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.”

RCW 9A.56.140(1). “A person knows or acts knowingly or with knowledge when . . . he or she has information which would lead a reasonable person in the same situation to believe that facts exist.”

RCW 9A.08.010(1)(b)(ii).

Under WPIC 77.21, “[t]o convict the defendant of the crime of possessing a stolen motor vehicle, each of the following elements of the crime must be proved beyond a reasonable doubt:” (1) “That on or about [July 16, 2017], the defendant knowingly [received, retained, possessed, concealed, or disposed of] a stolen motor vehicle”; (2) “That the defendant acted with knowledge that the motor vehicle had been stolen”; (3) “That the defendant withheld or appropriate the motor vehicle to the use of someone other than the true owner or person entitled thereto”; and (4) “That any of these acts occurred in the State of Washington.” *See* WPIC 77.21.

“The test for determining the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found guilt beyond a reasonable doubt.” *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

“[A]ll reasonable inferences from the evidence must be drawn in favor of

the State and interpreted most strongly against the defendant.” *Id.* “A claim of insufficiency admits the truth of the State’s evidence and all inferences that reasonably can be drawn therefrom.” *Id.* “Circumstantial evidence and direct evidence are equally reliable.” *State v. Thomas*, 150 Wn.2d 821, 874, 83 P.3d 970 (2004).

“Credibility determinations are for the trier of fact and cannot be reviewed on appeal.” *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). “That there may be other reasonable interpretations of the evidence does not justify appellate court reversal of a trial court’s credibility determinations.” *In re Gentry*, 137 Wn.2d 378, 411, 972 P.2d 1250 (1999). The reviewing court must “defer to the trial court, as finder of fact, for purposes of resolving conflicting testimony and evaluating the persuasiveness of the evidence.” *State v. C.B.*, 195 Wn. App. 528, 535–36, 380 P.3d 626 (2016).

A. As the Honda Accord’s condition and other visual cues would have alerted a reasonable person to the fact that the vehicle was stolen, sufficient evidence supported the trial court’s finding that Duran knowingly possessed a stolen motor vehicle

Courts have consistently held that a tampered-with ignition can provide compelling circumstantial evidence that would lead a reasonable person to believe that a vehicle was stolen. In *State v. Lakotiy*, 151 Wn. App 699, 214 P.3d 181 (2009), the court noted that the vehicle’s ignition

had been removed and that “when Lakotiy saw the officers, he reached back and placed a set of jigglers keys and an ignition on the rear of the vehicle.” *Id.* at 714–15. A law enforcement officer had previously testified that “jiggler keys” are commonly used to steal cars. *Id.* at 705. The court inferred that Lakotiy had constructive knowledge that the vehicle was stolen based on both his behavior and the vehicle’s condition. *Id.* at 715. The court specifically rejected Lakotiy’s proposed alternative “noncriminal inferences” as, in a sufficiency of the evidence challenge, the court must “draw all inferences from the evidence in favor of the State and against the defendant.” *Id.* (quoting *State v. Smith*, 155 Wn.2d 496, 501, 120 P.3d 559 (2005)).

A variety of vehicle defects have been found to support an inference that a defendant has knowledge that a vehicle is stolen. *See State v. Peck*, No. 34496-7-III, 2018 Wash. App. LEXIS 1101, at *14 (May 8, 2018) (noting that the “visible hallmarks of a stolen vehicle,” including a broken rear window, missing stereo, and punched ignition with an inserted screwdriver, “provided enough information to lead [the defendant] to conclude that the truck was stolen”) (unpublished opinion); *State v. Wages*, No. 48953-8-II, 2017 Wash. App. LEXIS 599, at *4–5 (March 14, 2017) (finding that “sufficient evidence exists to establish that [the defendant] knew that the vehicle was stolen” as “[t]he lock on the

passenger's side of the truck was damaged such that it could not have a key put into it or be locked" and "the ignition was removed, meaning that the only way to start the vehicle was with a method other than using the keys") (unpublished opinion); *State v. Nagornyuk*, No. 74637-5-I, 2017 Wash. App. LEXIS 543, at *6–8 (March 6, 2017) (finding that "the jury could reasonably infer that [the defendant] knew the Honda had been stolen" as "the key found in the ignition had been filed down" and "the vehicle's stereo was missing") (unpublished opinion); *State v. Goins*, No. 75235-9-I, 2016 Wash. App. LEXIS 2336, at *6 (October 3, 2016) (finding that, along with facts, the damaged ignition provided evidence to allow "a jury to conclude beyond a reasonable doubt that [the defendant] knew the motorcycle was stolen") (unpublished opinion).

A number of factors support the trial court's conclusion that a reasonable person in Duran's position would have known that the Honda Accord was stolen. Duran acknowledged that "Chris" had told her the key was stuck in the vehicle's ignition before she took possession. VRP 8/28/17 at 68. The key was an aftermarket key without any Honda symbols or markings. *Id.* at 67. The key was jammed so thoroughly into the ignition that Arroyo-Valdez' boyfriend was only able to remove it with pliers. VRP 8/25/17 at 13. As noted by the trial court, a reasonable person,

when confronted with a key jammed in an ignition to such an extent that it cannot be extracted by hand, would be on notice that the vehicle is stolen.

In addition to the tampered-with ignition, other visual cues alerted Duran to the fact that the vehicle was stolen. The vehicle had suffered obvious damage to the hood and the stereo was missing. *Id.* at 8–9.

Further, paperwork in Arroyo-Valdez’ name was strewn throughout the car. *Id.* at 8, 12. Bills and other documents were visible inside the vehicle addressed to someone other than “Chris.” Along with the ransacked condition of the vehicle, these documents identifying someone unknown to Duran would have lead a reasonable person to suspect the vehicle was stolen.

B. Duran’s behavior prior to being contacted by law enforcement as well as Duran’s story explaining how she obtained the Honda Accord also indicated both consciousness of guilt and knowledge that the vehicle was stolen

Furthermore, Duran drove in an evasive manner to avoid detection. Officer Tovar testified that Duran’s vehicle turned abruptly onto a cross-street and stopped suddenly. *See* VRP 8/28/17 at 62. Duran’s evasive driving began shortly after Officer Tovar activated his emergency lights. *See id.* Although not hidden, Duran parked immediately upon turning the corner and almost caused Officer Tovar to drive past her. *Id.* Overall, the evidence supports a reasonable inference that Duran was driving in a

manner designed to evade Officer Tovar because she knew the vehicle was stolen. *See Salinas*, 119 Wn.2d at 201 (“[A]ll reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant.”).

Further, as noted by the trial court, Duran’s story explaining how she came into possession of the vehicle would have given a rational person reason to believe the car was stolen. VRP 8/28/17 at 118. Duran stated that “Chris,” a man she had only met on a few occasions and did not know any more identifying information about, simply gave her a vehicle to drive to a location on the other side of Yakima. *Id.* at 66. Although Duran claimed that she was instructed to leave the vehicle at the cross-street where she by happenstance was stopped by Officer Tovar, Duran would not have been able to remove the key jammed in the ignition. It is implausible that “Chris” would have allowed Duran take the Honda only to abandon it, running, where any passerby could have driven the car away. Overall, Duran’s vague and unlikely version of events bolstered the court’s conclusion that a reasonable person would have known the vehicle was stolen.

Accordingly, Duran has failed to demonstrate that no rational trier of fact could have concluded that a reasonable person, aware of the same information as Duran, would have known the vehicle was stolen. In

addition to the vehicle's condition and the aftermarket key jammed in the ignition, Duran's improbable tale regarding receiving the Honda and evasive driving provide support for a rational trier of fact to conclude that Duran had knowledge the vehicle was stolen.

C. Along with knowledge that the Honda Accord was stolen, sufficient evidence supports the remaining elements of possession of a stolen motor vehicle

When stopped by Officer Tovar in Yakima, Washington on July 16, 2017, Duran was seated behind the steering wheel and driving the vehicle. Duran withheld the car from its true owner, Arroyo-Valdez, as demonstrated through Arroyo-Valdez' testimony describing both the theft as well as having the Honda returned to her by law enforcement the next day.

As described above, the vehicle's condition as well as Duran's driving and version of events provide overwhelming evidence supporting the trial court's conclusion that Duran knew the Honda Accord was stolen. Given that appellate courts have repeatedly found that a vehicle's condition alone can provide sufficient evidence to infer that a defendant knew a vehicle was stolen, the ample evidence against Duran would allow a rational trier of fact to find guilt beyond a reasonable doubt.

IV. CONCLUSION

The State presented sufficient evidence to allow a rational trier of fact to conclude that Duran possessed Arroyo-Valdez' Honda Accord with knowledge that the vehicle was stolen. As such, this Court should affirm Duran's conviction for possession of a stolen motor vehicle.

Dated this 26th day of June, 2018.

STATE OF WASHINGTON

/s/Michael J. Ellis
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DECLARATION OF SERVICE

I, Michael J. Ellis, state that on June 26, 2018, by agreement of the parties, I emailed and efiled a copy of BRIEF OF RESPONDENT to Ms. Lisa Tabbut at ltabbutlaw@gmail.com.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 26th day of June, 2018, at Yakima, Washington.

/s/Michael J. Ellis

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