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Washington State
Court of Appeals
Division Two

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. JOSE ANGEL LOPEZ-FLORES, aka JOSE ANGLE LOPEZ-FLORES, Appellant.	No. 53911-0-II UNPUBLISHED OPINION

MAXA, J. – Jose Angel Lopez-Flores appeals his conviction of second degree taking a motor vehicle without permission.[1] The owner of the vehicle at issue had left the keys with Lopez-Flores's girlfriend when the owner went out of town. The conviction arose from an incident in which Lopez-Flores had an altercation with his girlfriend and her former foster parents, took the vehicle, and drove to California with his young daughter.

Lopez-Flores argues that there is insufficient evidence to show that he knowingly took the vehicle without permission. We disagree. Accordingly, we affirm Lopez-Flores's conviction of second degree taking a motor vehicle without permission.

[1] Lopez-Flores does not appeal his other convictions.

FACTS

Background

Lopez-Flores, his girlfriend Rebecca Herrera, and their children lived with Herrera's former foster parents, Carol and Dayton Johnston. Lopez-Flores had a young daughter, NL. Karen Collett also lived on the Johnstons' property in a trailer. Lopez-Flores had known Collett for approximately two or three years. Collett owned a vehicle that she parked by the trailer.

On or around February 15, 2019, Herrera drove Collett to the airport in Collett's vehicle. Collett was flying to visit her parents in California for two weeks. Herrera was responsible for picking up Collett from the airport when she returned home. Collett left her only set of car keys with Herrera, and Herrera had permission to use the vehicle while Collett was away.

On February 21, Lopez-Flores and Herrera were getting NL ready for school when they began to argue. As the situation escalated, Lopez-Flores brushed Herrera aside, got into a physical fight with Dayton,[2] and pushed Carol down when she tried to stop the fight. Lopez-Flores then grabbed NL and left the house.

Lopez-Flores got into Collett's vehicle, which was parked by her trailer, and drove away with NL. Lopez-Flores never called Collett to ask if he could use her vehicle. Lopez-Flores drove to his mother's house in California, stayed overnight, and then drove back to Washington the next day to return the vehicle. When Lopez-Flores got back to Washington, he called Collett to let her know that he brought back her vehicle.

When Lopez-Flores returned to the Johnstons' property with Collett's vehicle, the police arrested him. The State charged Lopez-Flores with second degree taking a motor vehicle without permission and three counts of fourth degree assault against Herrera, Dayton, and Carol.

[2] We refer to the Johnstons by their first names. No disrespect is intended.

Jury Trial

At trial, Collett testified that on the day of the incident, she did not give Lopez-Flores permission to drive her vehicle. And Lopez-Flores did not call her to ask permission to take her vehicle. Regarding whether Lopez-Flores knew that he did not have permission, Collet testified as follows:

> Q. Now, on February 21, did the defendant know that he was not allowed to take your vehicle?
>
> A. I would think so, but I didn't specifically say, no, you can't take it. But he never did before, and Rebecca was the one I had take me and bring me back.

Report of Proceedings (RP) at 112.

In the time that Collett had known Lopez-Flores, she had given him permission only once to drive her vehicle when she needed to go to the hospital in January 2019. On that occasion, neither Herrera nor Carol were available to drive Collett to the hospital and Lopez-Flores volunteered to drive her.

Herrera testified that she kept Collett's keys after taking her to the airport. She stated that as far as she knew, Lopez-Flores did not have permission to take Collett's vehicle. She believed that Lopez-Flores must have taken the keys from the dresser in their room.

Lopez-Flores testified that before Collett left to visit her parents, "she had handed me the keys and she said, you can use my vehicle in case of emergencies, or to go to work." RP at 170. He later repeated that testimony. He also asserted a necessity defense, claiming that he had to leave the Johnstons' house immediately because he had observed Dayton molesting his daughter.

The jury convicted Lopez-Flores of taking a motor vehicle without permission in the second degree and two counts of fourth degree assault regarding Dayton and Carol. The jury did not reach a verdict on the fourth degree assault charge regarding Herrera.

Lopez-Flores appeals only his conviction for second degree taking a motor vehicle without permission.

ANALYSIS

A. STANDARD OF REVIEW

The test for determining sufficiency of the evidence is whether, after construing the evidence in the light most favorable to the State, any rational trier of fact could have found the elements of the charged crime beyond a reasonable doubt. *State v. Cardenas-Flores*, 189 Wn.2d 243, 265, 401 P.3d 19 (2017). When evaluating a sufficiency of the evidence challenge, the defendant admits the truth of the State's evidence and all reasonable inferences drawn from that evidence. *Id.* at 265-66. Circumstantial and direct evidence are equally reliable. *Id.* at 266. Credibility determinations are made by the trier of fact and are not subject to review. *Id.*

B. SUFFICIENCY OF THE EVIDENCE

Lopez-Flores argues that the evidence is insufficient to prove that he knowingly took a motor vehicle without permission in violation of RCW 9A.56.075(1). We disagree.

A person is guilty of second degree taking a motor vehicle without permission under RCW 9A.56.075(1) 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." There is an implicit knowledge requirement in the statutory phrase "without the permission of the owner or person entitled to possession thereof." *State v. Robinson*, 78 Wn.2d 479, 482, 475 P.2d 560 (1970); *State v. Toms*, 75 Wn. App. 55, 58, 876 P.2d 922 (1994).

RCW 9A.08.010(1)(b), which defines types of culpability for purposes of the criminal code, provides that a person knows or acts with knowledge when "[h]e or she is aware of a fact,

facts, or circumstances or result described by a statute defining an offense; or . . . [h]e or she has information which would lead a reasonable person in the same situation to believe that facts exist which facts are described by a statute defining an offense." To satisfy the knowledge element, the State must show that a defendant had actual, subjective knowledge. *See State v. Allen*, 182 Wn.2d 364, 374, 341 P.3d 268 (2015). But "[t]he jury is *permitted* to find actual subjective knowledge if there is sufficient information which would lead a reasonable person to believe that a fact exists." *State v. Johnson*, 119 Wn.2d 167, 174, 829 P.2d 1082 (1992). "[T]he jury must find actual knowledge but may make such a finding with circumstantial evidence." *Allen*, 182 Wn.2d at 374.

Here, there is no dispute that the vehicle Lopez-Flores took was the property of another – Collett. Collett testified that she did not give Lopez-Flores permission to drive her vehicle on the day of the incident. She also testified, "I would think so" when asked if Lopez-Flores knew that he was not allowed to take her vehicle on that day. RP at 112. Herrera likewise stated that Lopez-Flores did not have permission. This evidence is sufficient to support the jury's determination that Lopez-Flores knowingly took Collett's vehicle without permission in violation of RCW 9A.56.075(1).

Lopez-Flores testified that Collet gave him permission to use the vehicle for emergencies or to go to work. But the jury was not required to believe this testimony, and we do not review credibility determinations. *See State v. Varga*, 151 Wn.2d 179, 201, 86 P.3d 139 (2004).

Lopes-Flores also relies on the fact that Collett admitted that she never expressly prohibited him to use her vehicle. But a jury could find that a reasonable person would not believe that a lack of prohibition would constitute permission to use the vehicle. A jury may find

actual subjective knowledge if the evidence shows that a reasonable person in his position would believe that he did not have permission. *See Johnson*, 119 Wn.2d at 174.

Finally, Lopez-Flores claims that "permission" should be construed to include situations where a person honestly but mistakenly believes that he or she is driving with the owner's permission. However, the only issue here is sufficiency of the evidence. As discussed above, the evidence was sufficient for the jury to infer that Lopez-Flores knew that he did not have permission to take Collett's vehicle.

We hold that the evidence is sufficient for a rational trier of fact to conclude that Lopez-Flores knew that he did not have permission to use Collett's vehicle.

CONCLUSION

We affirm Lopez-Flores's conviction of second degree taking a motor vehicle without permission.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Maxa, J.

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We concur:

Sutton, A.C.J.

SUTTON, A.C.J.

Cruser, J.

CRUSER, J.