

66515-4

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NO. 66515-4-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

JOSE NAVARRO-GARCIA,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE HELEN HALPERT

BRIEF OF RESPONDENT

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A. ISSUE PRESENTED

A person can be found to act with knowledge when he knows or acts knowingly or with respect to a fact, circumstance or result when he is aware of that fact, circumstance or result. Appellant Navarro-Garcia was riding in the passenger seat of a car in full view of a broken steering column with its housing removed and the ignition dangling below it. Viewed in the light most favorable to the State, was this evidence sufficient to allow any rational trier of fact to find that the respondent knew the car he was riding in was a stolen car?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

The State charged Jose Navarro-Garcia by Information with Taking Motor Vehicle Without Permission in the Second Degree under the prong that he did "voluntarily ride in or upon said automobile." CP 1; RP 46-48. Following a factfinding, the jury found Navarro-Garcia guilty. CP 6. The court imposed a manifest injustice sentence of 15-15 weeks at JRA. CP 15-23. This appeal follows.

2. SUBSTANTIVE FACTS

On May 30, 2010, at 6:50pm, Officer Cassidy Steed of the Renton Police Department ran the license plate of a Honda Civic and discovered the car was stolen. RP 9. Ms. Marcelina Gonzalez, the owner of the Civic, had reported it stolen earlier that day. RP 42. Appellant was in the front passenger seat of the Civic when Officer Steed stopped the car. RP 30, 57. The steering column was significantly damaged and the ignition was hanging down below the steering column. RP 12-13; Supp CP ____ (ex. 3-6). The damage and dangling ignition were visible from either side of the car. RP 14; Supp CP ____ (ex. 3-6). Officer Kevin Lane and Officer Randy Jensen arrived to assist Officer Steed. Both officers also observed the visible damage to the steering column and the broken ignition. RP 22-24, 33. Officer Jensen noted that "the ignition was completely ripped apart and dangling from the steering column." RP 33. Officer Lane, who photographed the damage, stated that it "drew his attention immediately." RP 24. These photographs were admitted into evidence and reviewed by the court. RP 23, 57. There was no key found in the car, including in the broken ignition. RP 13, RP 22.

Officer Steed had been with the police department for nine years. RP 9. In her experience, the damaged ignition was common in vehicles that had been stolen, as it allowed the thief to use anything to start the car with the plastic pieces attached to the ignition wires. RP 13. Officer Lane had been with the police department for four and a half years. RP 21. In his experience, the broken ignition also indicated a stolen vehicle and in almost every stolen vehicle he'd come across, the plastic housing of the ignition had been removed in the same way so that something besides the owner's key could start it. RP 22-23. He had never before encountered a car with such damage that was not stolen. RP 27.

The appellant told Officer Jensen that the driver of the vehicle was his friend and had picked him up in it sometime between noon and 1pm that day. RP 32-33. The appellant stated that this was the first time he had seen his friend with the car and claimed that his friend often borrowed different vehicles from different friends and he had seen him drive many different cars. RP 33. The appellant claimed he had seen the driver start the car with a key from underneath the broken steering column. Id.

The court, after reviewing evidence, noted that "looking particularly at Exhibit 5, it is clear that this car has been tampered

with in a substantial manner . . . [and] would lead to any reasonable person whether age 16 or 45 to believe that this vehicle had been stolen." RP 57-58; CP 9. The court specifically referenced WPIC 10.02, which discusses the inference of knowledge. RP 58.

C. ARGUMENT

1. SUFFICIENT EVIDENCE IN THE RECORD SUPPORTS NAVARRO-GARCIA'S CONVICTION FOR TAKING A MOTOR VEHICLE WITHOUT PERMISSION IN THE SECOND DEGREE

Navarro-Garcia argues that there is not sufficient evidence in the record to sustain his conviction for Taking Motor Vehicle Without Permission in the Second Degree. Navarro-Garcia bases his claim on the argument that his observation of the exposed steering column and dangling ignition could not allow a rational trier of fact to find that he knew the car he was riding in was stolen.

Evidence is sufficient to support a conviction if, viewed in a light most favorable to the State, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). "A claim of insufficiency admits the truth of the State's evidence and all reasonable inferences that reasonably can be

drawn therefrom.” State v. Thomas, 150 Wn.2d 821, 874, 83 P.3d 970 (2004). Circumstantial and direct evidence are equally reliable. Id. A reviewing court must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. Id. at 874-75. A defendant’s specific criminal intent may be inferred from the conduct where it is plainly indicated as a matter of logical probability. State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99, 101 (1980). Furthermore, in determining whether sufficient evidence was presented, reviewing courts need not be convinced of the appellant’s guilt beyond a reasonable doubt, but only that a reasonable trier of fact could so find. State v. Gallagher, 112 Wn. App. 601, 613, 51 P.3d 100 (2002).

A person knows of a fact by being aware of it or having information that would lead a reasonable person to conclude that the fact exists. RCW 9A.08.010(1)(b). Although knowledge may not be presumed because a reasonable person would have knowledge under similar circumstances, it may be inferred by circumstantial evidence. State v. Shipp, 93 Wn.2d 510, 516-19, 610 P.2d 1322 (1980), accord, State v. Womble, 93 Wn. App. 599, 604, 969 P.2d 1097, 1100 (1999). A factfinder may negate this

inference if they find that a person is less attentive or intelligent than the ordinary person. Shipp, 93 Wn.2d at 516.

After showing that a person rode in a recently stolen vehicle that had been taken without the owner's permission, "slight corroborative evidence" is all that is required to establish guilty knowledge and support a conviction for Taking a Motor Vehicle Without Permission. State v. Couet, 71 Wn.2d 773, 776, 430 P.2d 974 (1967), accord, State v. Womble, 93 Wn. App. 599, 604, 969 P.2d 1097, 1100 (1999).¹ Absence of a plausible explanation is a corroborating circumstance. State v. Womble, 93 Wn. App. at 604. A damaged ignition is also an example of such corroborating evidence. State v. L.A., 82 Wn. App. 275, 276, 918 P.2d 173 (1996).

In Womble, the passenger of a car claimed that he did not know that the car he was riding in was stolen, stating that he had been at the house of someone named "Justin" and his friend had claimed that she had parked her car half a mile from the party. 93 Wn. App. at 604-05. After they both got in the car, his friend drove a short distance and then suddenly jumped out of the driver's

¹ Property stolen as long as three weeks prior can be defined as "recently stolen." State v. Couet, 71 Wn.2d 773, 775, 430 P.2d 974 (1967).

seat and ran, after the car's true owner came out of the house yelling at them. Id. at 601. The court found that the factfinder had a chance to weigh the defendant's testimony and could have found his explanation implausible, thereby supplying sufficient corroborating evidence to uphold his conviction. Id. at 605. In State v. L.A., the appellant was pulled over in a car with a broken rear wing window but no other damages were present nor were any statements made by the appellant, any implausible or otherwise, offered as evidence. 92 Wn. App. at 276. The State found that "in the absence of corroborative evidence *such as a damaged ignition*, an improbable explanation or fleeing when stopped," there was insufficient evidence to support the conviction. Id. (italics added).

Here, the appellant was stopped in the front passenger seat of a car that had been stolen earlier that same day, in full view of the completely exposed steering column and the ignition dangling underneath. By his own admission, he had been riding in the car for almost seven hours. He admitted seeing his friend start the car by reaching underneath the stripped steering column, as opposed to putting it in a proper ignition. He claimed his friend used a key, which was nowhere to be found. He also claimed that his friend frequently drove many different cars because he borrowed them

from many different people. The fact that he was in full view of the severely damaged ignition, constitutes sufficient circumstantial evidence that would permit a rational factfinder to conclude that he knew the car was stolen. It is reasonable to infer given the circumstantial evidence of the steering column's damaged state that the appellant knew of the car's stolen status. No evidence was presented showing that he was less attentive or intelligent than the ordinary person. Nor is there a requirement that the factfinder must eliminate every other possible, non-criminal explanation for the damaged ignition in order for the conviction to be upheld. The court was able to see the photographs of the actual ignition as well as hear testimony from the officers regarding the probability that such a car is stolen as well as the appellant's own implausible explanation to Officer Jensen. Therefore, sufficient evidence exists such that a rational trier of fact, viewing the evidence and all reasonable inferences therefrom in a light most favorable to the State, could find that each element of Taking a Motor Vehicle Without Permission was met.

D. **CONCLUSION**

For all the foregoing reasons, Navarro-Garcia's conviction should be affirmed.

DATED this 11 day of May, 2011.

Respectfully submitted,

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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Gregory Link, the attorney for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the Brief of Respondent, in STATE V. JOSE NAVARRO-GARCIA, Cause No. 66515-4-I, in the Court of Appeals, Division I, for the State of Washington.

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

Betty A. Huddleston
Name

Done in Seattle, Washington

5/11/11
Date

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