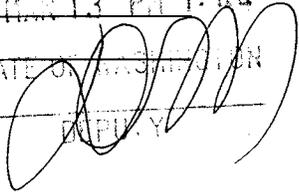


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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
BY 

**COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

JASON DILLON, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Rosanne Buckner

No. 07-1-05978-6

BRIEF OF RESPONDENT

GERALD A. HORNE
Prosecuting Attorney

By
MARK SANCHEZ
Deputy Prosecuting Attorney
WSB # 35503

930 Tacoma Avenue South
Room 946
Tacoma, WA 98402
PH: (253) 798-7400

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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Was there sufficient evidence for a trier of fact to find defendant guilty of unlawful possession of a stolen vehicle where there was sufficient evidence of both possession and knowledge?

B. STATEMENT OF THE CASE.

1. Procedure

On November 28, 2007, the State charged defendant Jason Matthew Dillon with unlawful possession of a stolen vehicle, unlawful possession of a controlled substance, and reckless driving under cause number 07-1-05978-6. CP 1-2. On April 17, 2008, an amended information was filed adding the charge of driving while in suspended or revoked status in the second degree. CP 4-6.

On May 5, 2008, this case was assigned for trial before the Honorable Rosanne Bucker. 1 RP 2.¹ Jury trial began on May 6, 2008. 2 RP 37. On May 8, 2008, Count IV, driving while license suspended in the second degree, was dismissed prior to being submitted to the jury. 4 RP 140.

¹ The verbatim report of proceedings are referred to as follows: "1 RP" = 5/05/08; "2 RP" = 5/6/08; "3 RP" = 5/7/08; "4 RP" = 5/8/08; "Verdict RP" = 5/8/08 Verdict; "5 RP" = 5/23/08

On May 8, 2008, the jury found defendant guilty of unlawful possession of a stolen vehicle and unlawful possession of a controlled substance.² Verdict RP 2-3. The jury found defendant not guilty of reckless driving. Verdict RP 3.

The court held sentencing on May 23, 2008. 5 RP 163. Defendant's offender score was calculated at a 9+ and his standard range on the unlawful possession of stolen vehicle was 43-57 months and 12+-24 months on the unlawful possession of a controlled substance. 5 RP163-165, CP 49. The court sentenced defendant to 57 months on the unlawful possession of a stolen vehicle and 24 months on the unlawful possession of a controlled substance; both counts to run concurrently. 5 RP 171, CP 52. Defendant filed this timely appeal. CP 67.

2. Facts

On November 26, 2007, Tacoma Police Officer Christopher Martin was assigned to patrol operations. 3 RP 68. Officer Martin was driving a fully marked police vehicle, a Ford Explorer. 3 CP 68. The Ford Explorer had side markings, a light bar on the roof, and was equipped with a siren. 3 RP 68-70.

While on patrol, at approximately 1:56 a.m., Officer Martin observed an older, four-door, blue vehicle traveling westbound on South

² Defendant is not appealing the conviction for unlawful possession of a controlled substance.

37th St. 3 RP 70. Officer Martin decided to follow the vehicle so he could conduct a regular registration or stolen check on the license plate. 3 RP 70. Officer Martin continued to follow the vehicle after it turned southbound on Cushman. 3 CP 70. At this time, Officer Martin was approximately a half-block behind the vehicle and was not able to view the license plate. 3 CP 70. Officer Martin had not activated his emergency lights or siren when the vehicle suddenly accelerated to a high rate of speed. 3 RP 70.

Officer Martin continued to follow the vehicle and observed the vehicle fail to obey a stop sign at the intersection of Cushman and S. 38th St. 3 RP 72. Officer Martin maintained visual watch of the vehicle, but did not activate his lights and siren. 3 RP 73. When Officer Martin first got behind the vehicle, he initially thought there may have been two occupants, but could not determine if he saw two people or if it was the headrests he was looking at. 3 RP 88. Officer Martin continued to watch the vehicle as it made a left turn onto S. 45th St. 3 RP 75. At this time, Officer Martin lost sight of the vehicle for approximately 15 seconds until he turned left onto S. 45th St. 3 RP 75. Officer Martin then observed the same vehicle, stopped in the eastbound lane of S. 45th St. 3 RP 75. The vehicle was completely blocking the eastbound lane and partially blocking the westbound lane of traffic. 3 RP 75. Officer Martin also observed that the passenger door was open and a subject, later identified as defendant, running south from the vehicle. 3 RP 75, 69, 77-78. Officer Martin did

not see anyone else in the area or in the vicinity of the vehicle. 3 RP 75, 88.

Officer Martin got out of his vehicle and chased the suspect he saw fleeing from the passenger side of the vehicle. 3 RP 77. Officer Martin apprehended the suspect, later identified as defendant, Jason Dillon, in the backyard of the residence at 1424 S. 45th St. 3 RP 77. Officer Martin confirmed that the individual he apprehended in the backyard matched the description of the subject he saw running from the vehicle. 3 RP 78.

Officer Martin returned to the abandoned vehicle and conducted a vehicle registration check. 3 RP 78. Officer Martin determined that the vehicle was stolen and noted that the vehicle was still running. 3 RP 78. Officer Martin inspected the stolen vehicle's ignition and observed a copper-colored key that could not be easily removed from the ignition. 3 RP 79. Officer Martin had to forcefully pull on the key to remove it from the ignition. 3 RP 79. Officer Martin observed that several other keys, from different makes of cars, were attached to the key chain. 3 RP 79. Officer Martin also searched the interior of the vehicle. 3 RP 82. Officer Martin located a cardboard box containing various items on the front passenger seat. 3 RP 82. Officer Martin estimated the size of the box at approximately one foot by two feet. 3 RP 82. Shoes and clothing were also found on the floorboard. 3 RP 82. Officer Martin noted that the stolen vehicle's Washington license plate number was 719 UJP. 3 RP 76.

On November 26, 2007 at approximately 11:39 p.m., Amos May called police to report that his car, a 1985 light blue Toyota Corolla, was missing from the place that he had last parked the vehicle. 2 RP 50-51. The license to the vehicle was Washington 719 UJP. 2 RP 51. Mr. May did not leave the keys in his vehicle. 2 RP 53. Mr. May did not give anyone, including Jason Dillon, permission to take his vehicle. 2 RP 54. Later that evening, Mr. May was contacted by law enforcement and informed that his stolen vehicle had been found. 2 RP 55. Another police officer picked up Mr. May and transported him to his vehicle. 2 RP 55. According to Mr. May, his vehicle had at least two headrests, located on top of the driver's and passenger's seat. 2 RP 59.

C. ARGUMENT.

1. THE EVIDENCE AGAINST DEFENDANT WAS SUFFICIENT FOR A JURY TO FIND HIM GUILTY OF UNLAWFUL POSSESSION OF A STOLEN VEHICLE.

When reviewing sufficiency of the evidence, the court must view the evidence in the light most favorable to the prosecution and determine if any rational trier of fact could find the essential elements of the crime beyond a reasonable doubt. *State v. Rangel-Reyes*, 119 Wn. App. 494, 499, 81 P.3d 157 (2003), *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980). Challenging the sufficiency of the evidence admits the truth of the State's evidence and all reasonable inferences from the evidence.

State v. Gerber, 28 Wn. App. 214, 217, 622 P.2d 888 (1981), *State v. Theroff*, 25 Wn. App. 590, 593, 608 P.2d 1254 (1980). All reasonable inferences from the evidence must favor the State and must be interpreted most strongly against the defendant. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Both circumstantial and direct evidence are equally reliable. *State v. Lubers*, 81 Wn. App. 614, 619, 915 P.2d 1157 (1996). In the case of conflicting evidence or evidence where reasonable minds might differ, the jury is the one to weigh the evidence, determine credibility of witnesses and decide disputed questions of fact. *Theroff*, 25 Wn. App. at 593. Credibility determinations are for the trier of fact and not subject to review. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).

Defendant raises a single challenge to the sufficiency of the evidence. Defendant contends the evidence was insufficient to find that he possessed the stolen vehicle. The evidence was sufficient for the jury to find the defendant guilty of the unlawful possession of a stolen vehicle.

Under RCW 9A.56.068, a person is guilty of possession of a stolen vehicle if he or she possesses a stolen motor vehicle. The jury was instructed that: “To convict the defendant of the crime of unlawful possession of a stolen vehicle, each the following elements of the crime must be proved beyond a reasonable doubt; (1) That on or about the 27th day of November, 2007, the defendant knowingly possessed a stolen vehicle; (2) that the defendant acted with knowledge that the vehicle had

been stolen; (3) that the defendant withheld or appropriated the vehicle to the use of someone other than the true owner or person entitled thereto; (4) that the stolen vehicle was a motor vehicle; (5) that the acts occurred in the State of Washington.” CP 25 (Jury Instruction Number 10). “Possession” was defined for the jury in the case as: ... 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. CP 21 (Jury Instruction Number 6). Defendant challenges the sufficiency of evidence regarding possession and knowledge.

Possession of property may be either actual or constructive. *State v. Callahan*, 77 Wn.2d 27, 29, 459 P.2d 400 (1969).³ Actual possession means that the goods are in the personal custody of the person charged with possession; whereas constructive possession means that the goods are not in actual, physical possession, but that the person charged with possession has dominion and control over the goods. *State v. Callahan*, 77 Wn.2d 27, 29, 459 P.2d 400 (1969). In order to establish constructive possession, a jury can look at the totality of the circumstances to determine if the defendant had dominion and control over the contraband. *State v. Partin*, 88 Wn.2d 899, 906, 567 P.2d 1136 (1977). A person

³ Actual and constructive possession were also defined for the jury. CP 28 (Jury Instruction Number 13).

knows or acts knowingly or with knowledge when he is aware of a fact or with knowledge when he is aware of a fact, circumstance or result, which is described by law as being a crime, whether or not the person is aware that the fact circumstance or result is a crime. CP 22 (Jury Instruction Number 7). If a person has information which would lead a reasonable person in the same situation to believe that facts exist which are described by law as being a crime, the jury is permitted but not required to find that he or she acted with knowledge. *Id.* Acting knowingly or with knowledge is also established if a person acts intentionally. *Id.*

In the instant case, the record shows more than just defendant's proximity to the stolen vehicle. Defendant was the only person near the stolen vehicle when Officer Martin turned onto S. 45th St. 3 RP 75. Officer Martin lost sight of the vehicle after it turned onto S. 45th St. for a mere 15 seconds. 3 RP 75. This evidence alone suggests, at a minimum, that defendant was inside of the stolen vehicle. In addition, Officer Martin did not observe any other individuals on the empty residential street at 2:00 a.m. 3 RP 103. Nor did Officer Martin observe any other vehicles driving on S. 45th St. during this incident. 3 RP 104. This evidence tends to show that defendant was the sole occupant, and therefore, the driver of the stolen vehicle. In addition, although the only open door on the stolen vehicle was the front passenger side door, the front passenger seat contained a cardboard box that filled approximately ¾ of the seat. 3 RP 75, 103. On the floorboard, Officer Martin also located shoes and

clothing. 3 RP 82. This evidence reasonably suggests that there was no front passenger in the stolen vehicle. Had there been a passenger inside of the stolen vehicle with the cardboard box on their lap, that individual presumably would have exited the vehicle with the cardboard box.

Despite defendant's contention, Officer Martin did not testify that he was certain he saw two individuals in the vehicle. Officer Martin testified that he was not certain if the vehicle was occupied by two individuals or if the shapes he saw were headrests. 3 RP 102. Therefore, the record is clear that Officer Martin was initially mistaken about the number of individuals inside the stolen vehicle. Viewing all reasonable inferences from the evidence in favor of the State, it is clear that that defendant was the sole occupant and driver of the vehicle. Therefore, defendant exercised exclusive dominion and control over the stolen vehicle.

The record also demonstrates that defendant acted with knowledge that the vehicle was stolen. Officer Martin began to follow the vehicle while traveling westbound on S. 37th St. 3 RP 71. Officer Martin was driving a fully marked Tacoma Police vehicle. 3 RP 69. After the vehicle turned south on Cushman, it rapidly accelerated away from his fully marked police car. 3 RP 72. In addition, the vehicle did not stop at a clearly marked stop sign at S. 38th St. 3 RP 72. The vehicle was also traveling at a high rate of speed. 3 RP 73. This evidence suggests that the

driver of the vehicle saw the police vehicle and attempted to get away by driving in the aforementioned manner.

When Officer Martin turned onto S. 45th St., he observed the abandoned stolen vehicle in the middle of the roadway. 3 RP 75. Officer Martin later discovered that the vehicle was still running. 3 RP 78. Inside the ignition, Officer Martin located a copper-colored key that was forced into the ignition. 3 RP 79. Attached to the copper-colored key were several other keys of different brands or makes (GM, Honda). 3 RP 79. When cars are stolen, car thieves will sometimes force a shaved key into the ignition to get the vehicle started. 3 RP 79. Car thieves will usually carry multiple keys of different makes of cars to allow them to steal various different types of vehicles. 3 RP 81. Amos May had the only authorized key to his vehicle. 2 RP 53.

Finally, defendant was the only person seen running from the vehicle. 3 RP75. “Evidence of the flight of a person, following the commission of a crime, is admissible and may be considered by the jury as a circumstance, along with other circumstances of the case, in determining guilt or innocence.” *State v. Bruton*, 66 Wn.2d 111, 112, 401 P.2d 340 (1965). “Flight is an instinctive or impulsive reaction to a consciousness of guilt or is a deliberate attempt to avoid arrest and prosecution.” *Id.* The law does not define what circumstances constitute flight and as such, what may be shown as evidence of flight is broad. *State v. Jefferson*, 11 Wn. App. 566, 571, 524 P.2d 248 (1974). This evidence suggests that the

driver, defendant, knew the vehicle was stolen. That is why defendant attempted to flee from the police vehicle that was behind him, abandoned the running vehicle in the middle of the roadway, and fled from stolen vehicle, leaving his collection of shaved keys inside of the stolen car.

Appellant's attempts to liken this case to *Plank*, *Cote*, and *McCaughey* fail. In *Plank*, the appellate court reversed a jury verdict of possession of stolen property where it could only be established that the defendant was a passenger in the vehicle. *State v. Plank*, 46 Wn. App. 728, 731 P.2d 1170 (1987). The facts from this case are substantially different than *Plank*. Unlike the defendants in *Plank* and *Cote*, the evidence in this case supports the conclusion that defendant was the driver of the stolen vehicle and that there was no one else in the vehicle. In *Cote*, the appellate court reversed a jury verdict of possession of pseudoephedrine or ephedrine with intent to manufacture methamphetamine where being a passenger in the truck did not establish dominion and control over the contraband in the truck. *State v. Cote*, 123 Wn. App. 546, 548, 96 P.3d 410 (2004).

In *McCaughey*, the appellate court reversed a jury verdict of grand larceny where the mere proximity to the stolen items did not rise to the level of constructive possession. *State v. McCaughey*, 14 Wn. App. 326, 329, 541 P.2d 998 (1975). Unlike the defendant in *McCaughey*, the record clearly demonstrates more than mere proximity to stolen vehicle as

the evidence suggests that defendant was the driver and was seen fleeing from the vehicle.

D. CONCLUSION.

For the reasons stated above, the State respectfully requests the Court affirm the conviction below.

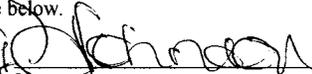
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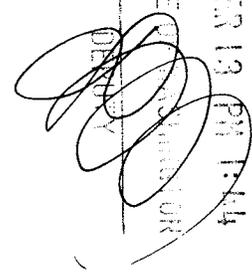
GERALD A. HORNE
Pierce County
Prosecuting Attorney


MARK SANCHEZ
Deputy Prosecuting Attorney
WSB # 35503

Certificate of Service:

The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

3/13/09 
Date Signature

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