

**FILED**

JUN 21 2012

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

30400-1-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

JAMISON W. LANG, APPELLANT

---

APPEAL FROM THE SUPERIOR COURT

OF SPOKANE COUNTY

---

BRIEF OF RESPONDENT

---

STEVEN J. TUCKER  
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I.

APPELLANT'S ASSIGNMENT OF ERROR

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

II.

ISSUE PRESENTED

- A. DID THE STATE PRESENT SUFFICIENT EVIDENCE FROM WHICH THE JURY COULD HAVE INFERRED THAT THE DEFENDANT KNEW HE WAS IN A STOLEN VEHICLE?

III.

STATEMENT OF THE CASE

For the purposes of this appeal the State accepts the defendant's statement of the case.

IV.

ARGUMENT

- A. THE STATE SUPPLIED SUFFICIENT EVIDENCE TO SUPPORT THE JURY'S DECISION.

The defendant focuses on the single issue of whether the State proved that the defendant knew the vehicle he was sleeping in was stolen. The defendant agrees that there is no question that he possessed the stolen vehicle. Brf. of App. 8.

“There is sufficient proof of an element of a crime to support a jury’s verdict when, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found that element beyond a reasonable doubt.” *State v. Bright*, 129 Wn.2d 257, 266 n.30, 916 P.2d 922 (1996). “A claim of insufficiency admits the truth of the State’s evidence and all inferences that reasonably can be drawn therefrom.” *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). The relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *State v. Green*, 94 Wn.2d 216, 616 P.2d 628 (1980); *State v. Smith*, 106 Wn.2d 772, 725 P.2d 951 (1988); *State v. Myles*, 127 Wn.2d 807, 816, 903 P.2d 979 (1995).

Circumstantial evidence and direct evidence are equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

The defendant would have this court abandon logic and commonsense. The defendant argues from the positive side of the facts without mentioning the negative side. Sometimes, it is what is missing that is relevant, not what is present. There is no contest that the vehicle was, in fact, stolen. The defendant was found inside the car, with the engine running. Anyone familiar with vehicles would know that they do not start themselves and, unless nuclear powered, a vehicle will only continue to run while fuel remains in the tank. This places a

time frame on the time the car could have been in the discovered location, engine running.

The defendant was found in the car, not someone else. Officer Zachary Dahle testified that he responded to the stolen vehicle as a result of a request to check the occupant's welfare. RP 98. As Ofc. Dahle arrived, he saw the defendant getting out of the driver's seat of the vehicle. RP 98. When asked if the vehicle belonged to the defendant, his response was, "This is harassment." RP 99. The officer asked the defendant if he had a knife and the defendant responded, "no." This negative response was in spite of the original call reporting a male in the car with a knife across his lap. RP 98.

The defendant's version of how he ended up in the car was that he had been walking through the parking lot and got in the car to sleep. RP 101. The defendant then related a different story in which he stated that an unknown friend had told him to sleep in the vehicle. RP 101. The defendant would not tell the officer who the friend was. RP 101.

The officer asked the defendant about a cut on the defendant's finger. RP 101. The defendant stated that he had cut his finger on the knife in the car. RP 101. The officer collected from the car a pack of cigarettes, a set of needle-nose pliers, Zigzag rolling papers and a black-handled folding knife. RP 102.

On the key ring Ofc. Dahle recovered, he found a "shaved" key commonly used for auto theft. RP 102-103. The officer testified that receipts bearing the

defendant's name were recovered from the car and turned over to the police later the same day. RP 104-05.

There was no defense presented at trial.

“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).

While knowledge cannot be presumed, it can be inferred. *State v. Shipp*, 93 Wn.2d 510, 516, 610 P.2d 1322 (1980).

The State submits that it would take little on the part of the jury to infer that a reasonable person would find himself in a stolen car, with the engine running and claim to have no knowledge of how he happened to be asleep in a stolen car. Even worse, from a defense perspective, the defendant told two different stories, neither of which make much sense. “Absence of a plausible explanation is a corroborating circumstance.” *State v. Ford*, 33 Wn. App. 788, 790, 658 P.2d 36 (1983). Once 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. *State v. Couet*, 71 Wn.2d 773, 776, 430 P.2d 974 (1967).

It is true that the jury was instructed to presume the defendant was not guilty, but there was no instruction telling the jury to ignore the facts.

V.

CONCLUSION

For the reasons stated, the conviction should be affirmed.

Dated this 21<sup>st</sup> day of June, 2012.

STEVEN J. TUCKER  
Prosecuting Attorney

A handwritten signature in black ink, appearing to read "Andrew J. Metts", written over a horizontal line.

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