

04266-9

04266-9

NO. 64266-9-1

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

ABDIRASHID M. ALI aka ABDULLAHI M. ALI,

Appellant.

2010 JUN 22 PM 3:04
CLERK OF COURT
COURT OF APPEALS
STATE OF WASHINGTON

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE MARY ROBERTS

BRIEF OF RESPONDENT

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King County Prosecuting Attorney

DOUGLAS K. YOUNG
Senior Deputy Prosecuting Attorney
Attorneys for Respondent

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401 Fourth Avenue North
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A. ISSUE PRESENTED

When the State presents sufficient evidence so that each element of the charged crime is proven beyond a reasonable doubt, should the conviction be affirmed?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

Based on an incident which occurred on July 12, 2008, Abdirashid Mohammed Ali (aka Abdullahi Mohammed Ali) was charged by Information on December 17, 2008, with the crimes of Possession of Stolen Vehicle (RCW 9A.56.068 and 9A.56.140) and Driving While Under the Influence (RCW 46.61.502 and 46.61.504). CP 1-2. A jury trial was conducted before Judge Mary Roberts on August 24-26, 2009. RP 1-254. On August 27, 2009, the jury returned guilty verdicts on both counts. RP 255-63, CP 49-50. The defendant appealed his convictions. CP 39-42.

2. SUBSTANTIVE FACTS

For the purposes of this appeal, the State adopts the Statement of the Case as written by defendant's counsel in the Brief of Appellant.

Additional facts from the trial are included in the argument sections to which they pertain.

C. **ARGUMENT**

AMPLE EVIDENCE SUPPORTS THE JURY'S VERDICT.

The defendant argues that the evidence presented by the State at trial did not adequately support his conviction for Possession of Stolen Vehicle as found in Count I (no challenge has been raised against the conviction for Driving While Under the Influence as found in Count II). Specifically and exclusively, he maintains that the State did not adequately and competently prove that victim Rahil Vora was the person without whose consent the defendant could not exert control over the stolen vehicle. But the record below is clear: the victim had rented a vehicle because his own vehicle had been damaged, had possessed this rental vehicle for several days, had driven the vehicle to a bar, had left the vehicle's keys in his jacket at that bar, had discovered his keys and vehicle missing when he left the bar, and did not know the defendant and had not given the defendant permission to possess his keys or his vehicle. RP 77-81. Moreover, the keys recovered

by Washington State Patrol Sergeant Darren Mihelich appeared to belong to a rental vehicle. RP 165. Together, these facts show that victim Vora was a person entitled to exercise dominion and control over the rented vehicle. The jury apparently also made the reasonable inference that the rental car keys recovered at the arrest scene were likely those taken from the victim in the bar. Ali's arguments to the contrary have no merit.

When sufficiency of the evidence is challenged, the reviewing court will decide whether, viewing the evidence in a light most favorable to the State, any rational fact finder could have found the essential elements of the offense beyond a reasonable doubt. State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980). A claim of insufficiency admits the truth of the State's evidence and all reasonable inferences that can be drawn from that evidence. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068, (1992).

The defendant challenges only that the State did not prove victim Vora was a person entitled to possess the stolen vehicle against a claim of right made by another, in this case, the defendant. Notably, the defendant did not make any such claim in the trial court below, instead asserting that he was not the man arrested at the scene. RP 81-82, 239-48. Viewing all the evidence,

and inferences from that evidence, in a light most favorable to the State, the defendant's challenge to the sufficiency of the evidence falls short. It was unrefuted at trial that victim Vora possessed the vehicle on the night it was stolen, did not know the defendant, and had not given the defendant permission to possess it. RP 77-81. The jury is permitted to rely on this unrefuted evidence, as its verdicts show that it did.

Incorrectly relying on State v. Blewitt, 37 Wn. App. 397, 680 P.2d 457 (1984), the defendant asserts that the State needed to provide some evidence that victim Vora had unique control over the stolen vehicle against all others and that the State failed to meet this burden because no one testified from Budget Rent-A-Car. But the Blewitt court was discussing whether an employee with only constructive possession over items taken could be the victim of a robbery. The court held that whether a person had dominion and control would be determined by the totality of the circumstances. Id. at 399. The facts in the instant case leave no doubt that victim Vora satisfies the totality test of Blewitt and therefore can be a named victim in the information.

The defendant also points to State v. Greathouse, 113 Wn.App. 889, 56 P.3d 569 (2002), and State v. Lee, 128 Wn.2d

151, 904 P.2d 1143 (1995), to suggest that the State needed to show more than current possessory rights by victim Vora. But the quote provided by the defendant on page 8 of his Brief of Appellant is incomplete: the two sentences preceding that quote are most instructive when they say "in cases of theft and larceny proof of ownership of the stolen property in the specific person alleged is not essential. The State is required to prove only that it belonged to someone other than the accused." Greathouse at 901 (*quoting Lee*). The unrefuted testimony at trial was that victim Vora had the right to possess the vehicle and the defendant did not. This seems completely to satisfy the requirements of Greathouse and Lee.

Taking all the evidence in a light most favorable to the State and recognizing that victim Vora's unrefuted testimony shows that he properly possessed the vehicle against any claim of the defendant, the court must conclude that the defendant's conviction in Count I is fully supported by the evidence. Moreover, inasmuch as there has been no challenge to the defendant's conviction in Count II, this conviction should also be upheld.

D. CONCLUSION

Mr. Ali was convicted by reliable, credible, and sufficient evidence. The jury correctly understood that the defendant did not have permission to possess the stolen vehicle. The jury also recognized that the defendant was under the influence at the time he was driving.

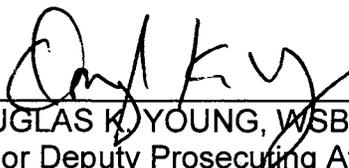
The defendant's convictions should be affirmed.

DATED this 21st day of June, 2010.

RESPECTFULLY submitted,

DANIEL T. SATTERBERG
Prosecuting Attorney

By:


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Senior Deputy Prosecuting Attorney
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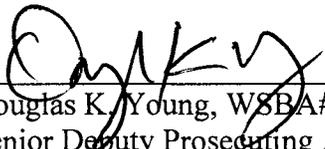
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DIVISION I

STATE OF WASHINGTON,)
)
 Respondent,) No. 64266-9-I
)
 vs.) CERTIFICATE OF SERVICE
)
 ABDIRASHID MOHAMED ALI)
 aka ABDULLAHI MOHAMED ALI,)
)
 Appellant,)
 _____)

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COURT OF APPEALS
STATE OF WASHINGTON

Today, I caused the original Brief of Respondent to be filed in the Court of Appeals Division One and a true and correct copy of the same to be served on Susan Wilk, Washington Appellate Project, Attorneys for Appellant, 1511 Third Avenue, Suite 701, Seattle, Washington 98101.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Signed by me in Kent, Washington, on June 22, 2010.



Douglas K. Young, WSPA# 23586
Senior Deputy Prosecuting Attorney
Attorney for Respondent