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No. 64948-5-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

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STATE OF WASHINGTON,

Respondent,

v.

AARON JOSEPH RODDEN,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF
THE STATE OF WASHINGTON FOR SNOHOMISH COUNTY

The Honorable Ronald L. Castleberry

BRIEF OF APPELLANT

THOMAS M. KUMMEROW
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STATUTES

RCW 9A.56.0685

RULES

CrR 7.81

A. ASSIGNMENTS OF ERROR

1. There was insufficient evidence presented to support the jury's verdict that Mr. Rodden possessed a stolen car.

2. The trial court erred in denying Mr. Rodden's CrR 7.8 motion to set aside the verdict based upon insufficient evidence.

B. ISSUE PERTAINING TO ASSIGNMENTS OF ERROR

Due process requires the State prove each element of the charged offense beyond a reasonable doubt. Where the State charges the defendant with possessing a stolen vehicle, the State must prove the car which the defendant possesses is in fact stolen. Here the State failed to prove the car which Mr. Rodden was discovered driving was in fact the car stolen from the victim. Is Mr. Rodden entitled to reversal of his conviction with instructions to dismiss?

C. STATEMENT OF THE CASE

On December 9, 2008, Ken Perrigoue was driving his 1995 Mercury Mystic to work. RP 14-15. Mr. Perrigoue stopped at an AM-PM mini-mart in Everett on the way to pick up a newspaper. RP 16. Mr. Perrigoue left the car running and the keys in the ignition as he went into the store. RP 16. When he came back, the

car was gone. RP 16. Mr. Perrigoue testified the license plate number of the car was "415VTG." RP 16.

On December 11, 2008, Snohomish County Deputy Jay Schwartzmiller was randomly running license plates in the police car computer when the system alerted him that a white passenger car, license plate number "450VTG," was stolen. RP 30. The deputy followed the car for about two miles until it turned into a private driveway. RP 33. Deputy Schwartzmiller arrested the driver of the car and identified him as appellant, Aaron Rodden. RP 38, 41.

Wallace Forsloff and Jess Sanders, members of the Snohomish County auto theft task force responded to the scene of Mr. Rodden's arrest. RP 62, 64, 90. Forsloff testified he saw a white car with the license plate number "450VTG." RP 65. Sanders did not testify to the license plate number. RP 90.

Later on December 11, 2008, Mr. Perrigoue was contacted by the Everett Police Department and told his car had been recovered. RP 17. Mr. Perrigoue stated that the car was undriveable, the driver's side was caved in, the ignition "had been messed with," and the windows were all rolled down. RP 18-19.

Mr. Rodden was charged with, and convicted of, possession of a stolen vehicle. CP 40, 58. Prior to sentencing, Mr. Rodden moved to set aside the jury's verdict based upon the fact the State failed to prove the car stolen from Mr. Perrigoue was the car in which Mr. Rodden was driving. CP 16-39; RP 234. The court denied the motion, ruling:

Mr. Perrigoue obviously said that his 1995 Mercury Mystic white car had been stolen from Everett. As Mr. Sowa has indicated, the license number that he gave was slightly off from the 1995 Mercury Mystic that was found -- that the defendant was driving that was found at his residence. But Officer Schwartzmiller testified that when he ran the license number, the registration came back before he stopped the car. The registration came back as Mr. Perrigoue being the registered owner. It was after that that it had been a reported stolen vehicle that he stopped him. That's the whole reason he went after it.

Thereafter, obviously the defendant testified that in fact he heard that it had been stolen from Everett, he heard that the tools had been in the car at the time that it was stolen. All of that can be taken into consideration in terms of whether or not this is the same car.

In addition, the bill of sale that the defendant put in was a 1995 Mercury 450 BTG [sic], and he had the date of sale as being the day after Mr. Perrigoue indicated his had been stolen.

Perrigoue went to the tow yard. Obviously the inferences are that the car that had been taken to the tow yard he recognized as being his. As a matter of fact, he put in a claim to the insurance company for

his car and he was paid some I think \$1,800 for his car. The direct inference from all of that is that the car that was towed to the tow yard that was driven by the defendant was identified by Mr. Perrigoue as being his car.

Again, it could have been tighter in terms of the testimony, but there is no question in this court's mind that there was sufficient evidence that a reasonable trier of fact could, based upon all of the testimony that was presented, be convinced beyond a reasonable doubt that the car in question was in fact that belonging to Mr. Perrigoue, and, therefore, the court will deny the motion.

RP 236-37.

D. ARGUMENT

THERE WAS INSUFFICIENT EVIDENCE BEFORE THE JURY TO FIND MR. RODDEN POSSESSED A STOLEN VEHICLE

1. The State bears the burden of proving each of the essential elements of the charged offense beyond a reasonable doubt. In a criminal prosecution, the State is required to prove each element of the crime charged beyond a reasonable doubt. U.S. Const. amend XIV; *Apprendi v. New Jersey*, 530 U.S. 466, 471, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000); *In re Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970); *State v. Green*, 94 Wn.2d 216, 220-21, 616 P.2d 628 (1980). The standard the reviewing court uses in analyzing a claim of insufficiency of the

evidence is “[w]hether, 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.” *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); *Green*, 94 Wn.2d at 221. A challenge to the sufficiency of evidence admits the truth of the State's evidence and all reasonable inferences that can be drawn therefrom. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

As charged in this case, the State bore the burden of proving beyond a reasonable doubt that Mr. Rodden not only possessed the stolen vehicle but that he possessed it knowingly or with knowledge that it was stolen. RCW 9A.56.068(1).

2. The State failed to prove the car Mr. Rodden was driving was the same car stolen from the victim. “A person is guilty of possession of a stolen vehicle if he or she possess [possesses] a stolen motor vehicle.” RCW 9A.56.068(1) (alteration in original); *State v. Lakotiy*, 151 Wn.App. 699, 714, 214 P.3d 181 (2009).

In proving unlawful dominion and control over stolen property, the State must prove beyond a reasonable doubt that the defendant knew that the property was stolen. *State v. Plank*, 46 Wn.App. 728, 731, 731 P.2d 1170 (1987). Knowledge may be

inferred if “a reasonable person would have knowledge under similar circumstances.” *State v. Womble*, 93 Wn.App. 599, 604, 696 P.2d 1097 (1999).

Here, the victim testified his white Mercury Mystic’s license number was “415VTG.” But, the police witnesses testified the license plate number of the Mercury Mystic in which Mr. Rodden was stopped was “450VTG.” No further descriptive information was provided by the police witnesses about the car, such as the VIN of the car they recovered.

None of the witnesses who testified indicated what happened to the car after Mr. Rodden was arrested. Very telling was the fact the Everett Police Department contacted Mr. Perrigou to tell him his car had been located yet none of the witnesses were affiliated with the Everett Police Department. RP 18-19. None of the testifying police witnesses were present when Mr. Perrigou retrieved his car, thus corroborating that the two cars were the same car.

Mr. Perrigou testified that when he retrieved his car, the windows were not broken but all rolled down. RP 18-19. He testified the ignition was “messed with” but did not whether the keys were in the car or not. RP 18-19. Mr. Perrigou further testified the

windows were all rolled down, not broken as described by the officers about the car Mr. Rodden was driving. RP 18-19.

Based upon this complete lack of evidence tying the two cars together, especially the difference in the license plate numbers, the State failed to prove the offense charged beyond a reasonable doubt.

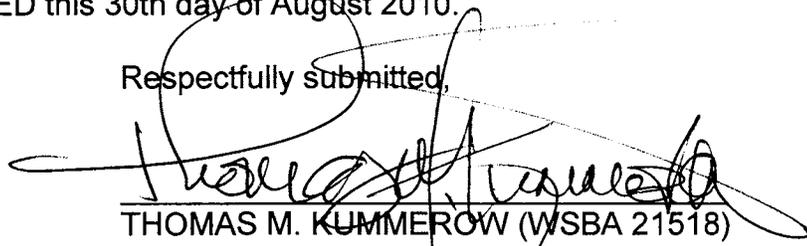
3. This Court must reverse and remand with instructions to dismiss the conviction. Since the State failed to prove Mr. Rodden possessed a stolen vehicle, there was insufficient evidence to support the conviction. This Court must reverse the conviction with instructions to dismiss. To do otherwise would violate double jeopardy. *State v. Crediford*, 130 Wn.2d 747, 760-61, 927 P.2d 1129 (1996) (the Double Jeopardy Clause of the United States Constitution “forbids a second trial for the purpose of affording the prosecution another opportunity to supply evidence which it failed to muster in the first proceeding.”), *quoting Burks v. United States*, 437 U.S. 1, 9, 98 S. Ct. 2141, 57 L. Ed.2d 1 (1978).

E. CONCLUSION

For the reasons stated, Mr. Rodden submits this Court must reverse the conviction for possession of a stolen vehicle with instructions to dismiss.

DATED this 30th day of August 2010.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Thomas M. Kummerow', is written over a horizontal line. The signature is stylized and somewhat cursive.

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DIVISION ONE**

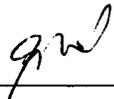
STATE OF WASHINGTON,)	
)	
Respondent,)	NO. 64948-5-I
)	
)	
AARON RODDEN,)	
)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 30TH DAY OF AUGUST, 2010, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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SIGNED IN SEATTLE, WASHINGTON, THIS 30TH DAY OF AUGUST, 2010.

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