

65438-1

65438-1

NO. 65438-1-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

Francisco Figueroa-Mendiola,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE JULIA GARRATT, COMMISSIONER

BRIEF OF RESPONDENT

DANIEL T. SATTERBERG
King County Prosecuting Attorney

HUGO TORRES
Deputy Prosecuting Attorney
Attorneys for Respondent

King County Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000

000000

2010 Nov 29 11:59 AM
COURT OF APPEALS
DIVISION I

TABLE OF CONTENTS

	Page
A. <u>ISSUE PRESENTED</u>	1
B. <u>STATEMENT OF FACTS</u>	2
1. PROCEDURAL FACTS.....	2
2. SUBSTANTIVE FACTS.....	2
C. <u>ARGUMENT</u>	4
1. THERE IS SUBSTANTIAL EVIDENCE IN THE RECORD TO SUPPORT FIGUEROA-MENDIOLA'S CONVICTION FOR POSSESSION OF A STOLEN VEHICLE	4
D. <u>CONCLUSION</u>	8

TABLE OF AUTHORITIES

Page

Table of Cases

Washington State:

State v. Alvarez, 128 Wn.2d 1,
904 P.2d 754 (1995)..... 5

State v. Fiser, 99 Wn. App. 714,
995 P.2d 107 (2000)..... 5, 6

State v. Salinas, 119 Wn.2d 192,
829 P.2d 1068 (1992)..... 5

State v. Couet, 71 Wn.2d 773,
430 P.2d 974 (1967)..... 6

State v. Womble, 93 Wn.App. 599,
969 P.2d 1097
review denied, 138 Wn.2d 1009 (1999) 6

State v. Beck, 4 Wn.App. 306
480 P.2d 803 (1971)6,7

Statutes

Washington State:

RCW 9A.56.068 6

RCW 9A.56.140 6

A. ISSUE PRESENTED

Evidence is sufficient to support a conviction if, viewed in a light most favorable to the State, it permits any rational finder of fact to find the essential elements of the crime beyond a reasonable doubt. To possess stolen property, one must knowingly "receive, retain, possess, conceal, or dispose of stolen property 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 thereto." Here, the owner of a stolen vehicle did not give anyone permission to take or drive the vehicle, did not know the defendant, a witness saw the defendant driving the car, the car was found abandoned in the middle of the street and out of gas, the defendant fled from police, and the defendant was seen in another stolen car. Is there substantial evidence in the record to support the conviction?

B. STATEMENT OF FACTS

1. PROCEDURAL FACTS.

Defendant was charged with two counts of Possession of a Stolen Vehicle and was convicted on one count of possessing a stolen vehicle, a Toyota Camry, on October 7, 2009. CP 1-2; 7; 10-15. Defendant was also acquitted of the second charge, of possessing a stolen Nissan Sentra. Id. Defendant then appealed the conviction. CP 16.

2. SUBSTANTIVE FACTS.

On October 7, 2009, Eliazar Angulo Cervantes observed that his brother's vehicle, a maroon 1994 Nissan Sentra, license number WA/545-SUV, had been stolen from his residence on 4th SW Seattle, WA. CP 17-21. He called the police to report it stolen as he had been authorized by his brother Alan Angulo Montoua to have custody of the vehicle while Alan was out of the country and knew that he and Alan had not given anyone permission to take it. Id.

On October 7, 2009, Kevin Linford noticed that his 1987 Toyota Camry, license number WA/238-XPA was missing. Id. He

reported it stolen to the police, as he had not given anyone permission to take it from his residence in Kent, WA. Id.

On the morning of October 7, 2009, Patricia Huerta-Solis observed her son Jairo entering a vehicle that was being driven by the defendant, Francisco Figueroa-Mendiola. Id. Huerta-Solis was concerned about her son associating with the defendant, and called police to report that her son had left the house in a vehicle with a license plate of WA/238-XPA. Id.

Police located the car driven by defendant later that day and confirmed that this was the vehicle reported stolen by Linford. Id. It was found in the center turn lane of 1100 W Meeker St., Kent, WA and was out of gas when located. Id. Linford recovered the vehicle and noted that it was missing stereo equipment. Id. Linford also noted there were shoes and a soccer ball in his car that did not belong to him. Id. Additionally the steering column was not damaged. Id.

On October 8, 2009, Kent police officers went to Mill Creek Middle School where the defendant had been seen by school security. Id. The defendant fled from police but was eventually apprehended after a chase by officers. Id. He was booked and released to his parents. Id.

On October 8, 2009, Huerta-Solis called the police again to report that she had seen the defendant the previous day sitting inside an automobile outside her residence on W Morton St in Kent, WA. Id. The defendant was observed sitting in the driver's seat in a Nissan with a license plate of WA/545-SUV and listening to music. Id. The defendant was not observed driving or moving the Nissan. Id.

While the defendant was in the car in front of her house, Huerta-Solis came out and confronted the defendant and told him to leave as he was a bad influence on her son. Id. The defendant left on foot. Id.

When police arrived on October 8, 2009, they confirmed that this was the vehicle reported stolen by Eliazar Angulo Cervantes. Id. They also located some stereo equipment components that Cervantes stated did not belong to him. Id.

C. ARGUMENT

- 1. THERE IS SUBSTANTIAL EVIDENCE IN THE RECORD TO SUPPORT FIGUEROA-MENDIOLA'S CONVICTION FOR POSSESSION OF A STOLEN VEHICLE.**

Defendant asserts that the State did not prove that he possessed a stolen vehicle because the evidence at trial allegedly boiled down to "mere possession." This argument should be rejected because there was clearly sufficient evidence from which a rational finder of fact could find that the defendant knowingly possessed a stolen vehicle when he was seen driving a stolen vehicle, sitting in another stolen vehicle, running from police at school, and the vehicle he was seen driving in was found abandoned and out of gas in the middle of a road.

The State must prove each element of the charged crime beyond a reasonable doubt. State v. Alvarez, 128 Wn.2d 1, 13, 904 P.2d 754 (1995). 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." Id. at 201. Circumstantial and direct evidence are equally reliable. State v. Fiser, 99 Wn. App. 714, 718, 995 P.2d 107 (2000). 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 719. The reviewing court need not be convinced of the defendant's guilt beyond a reasonable doubt, but only that there is substantial evidence in the record to support the conviction. Id. at 718.

A person "is guilty of possession of a stolen vehicle if he or she possess [possesses] a stolen motor vehicle." RCW 9A.56.068. Possession of stolen property is more fully defined in RCW 9A.56.140(1) as "knowingly to receive, retain, possess, conceal, or dispose of stolen property 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 thereto."

Possession alone is insufficient to infer that a person knows that property is stolen. State v. Couet, 71 Wn.2d 773, 775, 430 P.2d 974 (1967). But possession of recently stolen property coupled with 'slight corroborative evidence' sufficiently proves culpable knowledge. State v. Womble, 93 Wn.App. 599, 604, 969 P.2d 1097, review denied, 138 Wn.2d 1009 (1999) (citation omitted).

Defendant cites to State v. Beck, 4 Wn.App. 306, 310, 480 P.2d 803 (1971) to support the argument that the State's evidence

was insufficient to show he had knowing possession of stolen property. Defendant cites Beck for the proposition that:

When the fact of possession of recently stolen property is supplemented by the giving of a false or improbable explanation of it, or a failure to explain when larceny is charged, or the possession of a forged bill of sale, or the giving of a fictitious name, a case is made for the jury.

Beck, 4 Wn.App. at 310 (quotation omitted).

Defendant then argues that because he did not take the stand, the standard set forth in Beck is not met. But Beck is merely an individualized application of the rule set forth in Womble, namely that slight corroborative evidence is sufficient to prove culpable knowledge. In Beck, the corroborative evidence was the improbable story given by the defendant. Here, the evidence showed that (1) defendant was seen driving a stolen vehicle by a witness; (2) the owner of the vehicle did not know the defendant nor give permission to the defendant; (3) the defendant was later seen sitting in another stolen vehicle; (4) when approached by police at school, the defendant ran; (5) the stolen vehicle defendant was seen driving was found abandoned and out of gas in the middle of a road. The totality of the circumstances therefore clearly demonstrate actions that go well beyond a temporary, casual association with the stolen vehicle. The proven evidence allowed

the fact finder to pyramid the reasonable inferences to arrive at the conclusion that the defendant knew the car was stolen. Viewing the evidence in the light most favorable to the State, it is clear that there is sufficient evidence to prove the defendant knew the car was stolen.

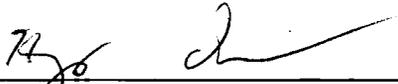
D. CONCLUSION

For the above reasons, the State respectfully requests that this Court affirm defendant's conviction.

DATED this 29 day of November, 2010.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: 

HUGO TORRES, WSBA #37619
Deputy Prosecuting Attorney
Attorneys for Respondent
Office WSBA #91002