IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. DAVID S. COLLINS, Appellant.	No. 42464-9-II UNPUBLISHED OPINION

Hunt, J. — David S. Collins appeals his jury conviction for motor vehicle theft. He argues that the evidence is insufficient to support his conviction. In his statement of additional grounds (SAG), he contends that the prosecutor made statements about his character that were prejudicial to him and the trial court erred in denying his request for an appeal bond. We affirm.

FACTS

In August 2010, Michael and Tely Eash's Belfair house burned. Four cars were parked at the residence, one of which was a Toyota Camry that belonged to Tanya Bernstein-Horky. The fire damaged the two cars parked closest to the house, but it did not damage the Camry.

On September 8, 2010, David Collins and Cazzee Bunnell went to the property in Collins' flatbed truck. Another man, unidentified, arrived in a white pickup truck. Collins told the man that he was there to pick up cars and would load the Camry first; the man responded, "[O]kay." Report of Proceedings (RP) at 127. Collins loaded the Camry onto his truck while Bunnell

rummaged through the household goods in the burned house. Robert Stott, who had been a resident of the house at the time of the fire, drove by and witnessed Collins loading the Camry onto the flatbed truck. By the time Stott was able to turn around and return to the house, Collins and the Camry were already gone.

Stott went to Highway 3 Auto Wrecking to look for the Camry. He saw it still loaded on the truck and called the sheriff's department. Stott recognized that the Camry belonged to Horky, and contacted Horky, who brought the title. Stott and Horky waited across the street from the wrecking yard for the sheriff's arrival. When Deputy James Ward arrived, Stott and Horky directed him to Collins' truck. Horky explained that the Camry had been left at the burned house before the fire for repair work, she had been waiting to have it removed from the property after the fire, but she had not yet given anybody permission to remove it. Ward contacted the wrecking yard owner, Tony Barnes, who identified Collins as the owner of the truck.

Ward questioned Collins about his involvement with the Camry. Collins responded that (1) "a guy in a white pickup was [at the burned house] and . . . represented himself as the property owner [and said that Collins] could take anything he wanted"[1]; (2) he did not know the man and did not ask him for identification; (3) the man did not provide any kind of documentation that the car was his; but (4) Collins nevertheless assumed the man was the Camry's owner. Ward detained Collins in his patrol vehicle. Ward then questioned Bunnell, who explained that Collins hauls scrap for a living and that she had discouraged the unidentified man in the white truck from taking a bike from the house because "it wasn't the right thing to do." Clerk's Papers (CP) at 47. Ward asked Bunnell if she wanted to make a statement but she declined. Ward returned to

[1] RP at 151.

Collins, arrested him for theft of a motor vehicle,[2] and advised him of his *Miranda*[3] rights.

Ward asked Stott and Horky to meet him at the wrecking yard, where they both identified the Camry as Horky's vehicle and agreed to complete written statements. While they were doing so, Bunnell "continually approached them to apologize and to convince [Horky] to drop the charges and [that] they [would] return the car to where they found it." CP at 47. Horky said she would not drop the charges.

The State charged Collins with theft of a motor vehicle. At trial, Ward, Stott, and Horky testified as above. The owners of the house, Michael and Tely Eash, both testified that at no point after the fire had they given anyone permission to remove any of the cars that were parked at the house. Collins admitted having taken the Camry. He said that (1) he had done so at Barnes' direction; (2) he had hauled the car as a favor to Bunnell and Barnes; (3) shortly after arriving at the property, a man in a white pickup truck had pulled into the driveway; (4) he (Collins) had told the man that he was going to take the car, and the man had given him permission to take it; (5) he (Collins) had assumed that the man was the owner of the house; and (6) he had not asked for any documentation from Barnes or the man in the white pickup. Bunnell testified that she also saw the man in the pickup at the property but did not hear his conversation with Collins.

Ward testified that (1) neither Collins nor Bunnell had mentioned Barnes or that Barnes had sent Collins to the burned house to pick up the Camry; and (2) if Collins or Bunnell had

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[2] Theft of a motor vehicle is a Class B Felony. RCW 9A.56.065.

[3] *Miranda v. Arizona*, 384 U.S. 436, 86. S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

mentioned Barnes when he was questioning them at the wrecking yard, he (Ward) would have questioned Barnes as a normal part of his investigation. The jury found Collins guilty as charged. He appeals.

ANALYSIS

I. Substantial Evidence

Collins argues that the evidence is insufficient to support his conviction for motor vehicle theft. We disagree.

Evidence is sufficient to support a conviction if, when viewed in the light most favorable to the prosecution, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. *State v. Montgomery*, 163 Wn.2d 577, 586, 183 P.3d 267 (2008); *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 inferences that reasonably can be drawn there from." *Salinas,* 119 Wn.2d at 201 (citing *State v. Theroff*, 25 Wn. App 509, 593, 608 P.2d 1254, *aff'd*, 95 Wn.2d 385, 622 P.2d 1240 (1980)). We draw all reasonable inferences in favor of the verdict and interpret them strongly against the defendant. *Salinas*, 119 Wn.2d at 201. We defer to the trier of fact's resolution of conflicting testimony, evaluation of witness credibility, and decisions regarding the persuasiveness of evidence. *State v. Walton*, 64 Wn. App. 410, 415-16, 824 P.2d 533 (1992).

To prove that Collins committed theft of a motor vehicle, the State had to prove that he "wrongfully obtain[ed] or exert[ed] unauthorized control over the [motor vehicle] of another or the value thereof, with the intent to deprive him or her of such property." RCW 9A.56.020(1)(a); RCW 9A.56.065. Collins does not dispute that he towed Horky's Camry to Highway 3 Auto

Wrecking. Instead, he contends that the State failed to prove either that he had wrongfully obtained the Camry or that he had done so with the intent to deprive Horky of it. Collins states that he had been told to pick up the Camry, a person who he had *assumed* was the owner had given him permission to take it, he had done so in broad daylight, and the State did not rebut this evidence.

On the contrary, the State produced sufficient testimony for the jury to infer Collins' intent to obtain Horky's Camry wrongfully. Horky testified that she had not given Collins permission to take her Camry. The jury was entitled to reject Collins' claim that the man in the white pickup truck had given him permission to take the Camry. And, given that Collins did not mention Barnes' involvement to Ward during the investigation, the jury was entitled to reject that claim as well. We hold that the testimonies of Ward, Stott, and Horky were sufficient for the jury to draw an inference that Collins wrongfully obtained the Camry with the intent to deprive Horky of it.

II. SAG Issues

Collins first claims that Horky had attempted to drop the theft charge and that, when she did so, the prosecutor had refused, remarking "Mr. Collins is not the good guy he is pretending himself to be." SAG at 1. The record, however, does not show that the prosecutor made such a statement to Horky; thus, because this claim involves matters outside the record, which we cannot review on direct appeal, this claim fails on direct appeal.[4] *State v. McFarland*, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995) (citing *State v. Crane*, 116 Wn.2d 315, 335, 804, P.2d 10, *cert. denied* 501 U.S. 1237 (1991); RAP 16.11(b)). But even if we were to assume Collins' claim to

[4] A personal restraint petition is the proper method for raising issues that depend on matters outside the record. RAP 16.11(b).

be true, it would still fail. Once the State charged Collins with a felony, Horky had no right to have the charge dropped. *Compare* RCW 10.22.010 (allowing compromise of misdemeanors) *with* RCW 10.22.030 (forbidding compromise in all other cases).

Collins next claims that the trial erred in denying his request for an appeal bond. That the trial court had allowed his release pretrial is not a reason for reversing the trial court's post-conviction revocation of his earlier bond or its refusal to grant bond pending appeal. On the contrary, CrR 3.2(h) expressly allows the trial court to revoke a defendant's bond after a finding or plea of guilty. And RAP 7.2(f) leaves authority with the trial court to release or not to release a criminal defendant, even after the case is pending appellate review; in short, the relief that Collins seek is not something that we can grant.

We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Hunt, J.

We concur:

Armstrong, P.J.

Quinn-Brintnall, J.