

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 8, 2003

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 02-2953-CR

Cir. Ct. No. 02-CF-158

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-APPELLANT,

V.

CHERYL L. THOMAS,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Walworth County:
MICHAEL S. GIBBS, Judge. *Reversed.*

Before Vergeront, P.J., Roggensack and Lundsten, JJ.

¶1 PER CURIAM. The State appeals an order dismissing a felony prosecution against Cheryl Thomas. She was charged as a party to theft of rental property, in this case a car. The trial court dismissed the charge, upon concluding that the State's preliminary examination testimony failed to present competent evidence that the car's value exceeded the \$2,500 minimum necessary to charge a

felony. We conclude that the State did present sufficient competent evidence to charge the theft as a felony, and therefore reverse.

¶2 The car Thomas allegedly helped steal was a rented 2001 Mercury Sable four-door sedan. At the preliminary examination, the prosecutor asked the arresting officer, Melinda Jackl, “From your experiences as somebody who has driven a car before, and seen lots of cars, was this car worth more than \$2500?” Jackl responded “Yes.” On cross-examination, Jackl conceded that she had no personal or professional experience in valuing cars. She further testified that she had not obtained any price or value information from the rental car company. She had been a police officer for approximately four months at the time of the arrest. There was no other evidence presented on valuation.

¶3 The trial court found sufficient probable cause that Thomas committed a felony, and ordered her bound over for trial. However, on Thomas’s subsequent motion to dismiss the information, the trial court, with a different judge presiding, reversed itself. This time the court concluded that Jackl was not competent to testify to the stolen car’s value.¹

¶4 Probable cause for a bindover exists when the State presents a believable or plausible account that the defendant committed a felony. *State v. Koch*, 175 Wis. 2d 684, 704, 499 N.W.2d 152 (1993). The role of the magistrate at a preliminary hearing is to determine whether the facts and reasonable inferences available from them support the conclusion that the defendant probably committed a felony. *Id.* A magistrate does not choose between conflicting facts

¹ Judge James Carlson presided over the preliminary hearing. Judge Michael S. Gibbs granted the motion to reverse Judge Carlson’s bindover decision.

or inferences, or weigh the evidence. *Id.* On review, this court will search the record for any substantial ground based on competent evidence to support the bindover. *Id.* Our review of the bindover decision is de novo. *State v. DeRango*, 229 Wis. 2d 1, 9, 599 N.W.2d 27 (Ct. App. 1999).

¶5 Jackl was competent to testify about the car's minimum value, and her testimony was sufficiently probative to allow the bindover. Jackl plainly did not qualify as an expert witness on car valuation. However, a nonexpert witness may still testify to opinions rationally based on perception. WIS. STAT. § 907.01. A lay opinion may suffice when the matter to be proven lies within the scope of common knowledge and lay comprehension. *Vultaggio v. General Motors Corp.*, 145 Wis. 2d 874, 882, 429 N.W.2d 93 (Ct. App. 1988). Here, it is commonly known and understood that, absent an unusual state of disrepair, a late model American passenger car has a value well over \$2,500. Jackl had not only seen the car but searched its interior, and a magistrate could reasonably infer that she would have noticed anything unusual about its condition. Consequently, the State's evidence of value, though cursory, provided a believable and plausible basis to bind Thomas over on a felony theft charge.

By the Court.—Order reversed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

