SUPREME COURT NO. 101742-1

NO. 56575-7-II

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

BRADLEY CURTIS,

Petitioner.

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

The Honorable Frank O'Rourke, Judge

PETITION FOR REVIEW

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TABLE OF AUTHORITIES (CONT'D)

A. IDENTITY OF PETITIONER

Petitioner Bradley James Curtis, appellant below, asks this Court to review the decision of the Court of Appeals referenced below.

B. COURT OF APPEALS DECISION

Curtis seeks review of the Court of Appeals decision in State v. Bradley, No. 56575-7-II (Slip Op. filed January 31, 2023). A copy of the slip opinion is attached as Appendix A.

C. REASON WHY REVIEW SHOULD BE GRANTED

Review is warranted under RAP 13.4(b)(1) because the decision conflicts with this Court's decisions in State v. Davis, 182 Wn.2d 222, 340 P.3d 820 (2014), State v. Banks, 149 Wn.2d 38, 65 P.3d 1198 (2003), and State v. Cardenas-Flores, 189 Wn.2d 243, 401 P.3d 19 (2017).

D. ISSUE PRESENTED

This case present an opportunity for this Court to provide guidance on how to properly conduct a harmless error analysis in the context of inadequate findings and conclusions following

a bench trial. Specifically, it provides the opportunity to consider the interplay between the duty of an appellate court in the context of an insufficient evidence claim to view the facts in the light most favorable to the State, and the coexisting duty in the context of a CrR 6.1(d)[1] violation to determine if there is a reasonable probability the outcome of the trial would have been different absent the violation.

E. STATEMENT OF THE CASE

In June 2021, the Lewis County Prosecutor charged Curtis with two counts of second degree unlawful possession of a firearm. CP 1-3; RCW 9.41.040(2)(a)(i). It was alleged that on June 19, 2021, after being served with a protection order obtained

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[1] This rule provides:

> (d) Trial Without Jury. In a case tried without a jury, the court shall enter findings of fact and conclusions of law. In giving the decision, the facts found and the conclusions of law shall be separately stated. The court shall enter such findings of fact and conclusions of law only upon 5 days' notice of presentation to the parties.

by his estranged wife forcing him to vacate their home and surrender all firearms in his possession, Curtis knowingly owned, possessed, or had under his control two firearms, a shotgun (Count 1) and a rifle (Count 2), which were later discovered in the home after execution of a search warrant . CP 4-5.

A stipulated facts trial was held November 9, 2021, before the Honorable Judge Joely A. O'Rourke. RP 38-45. At the beginning of the hearing Judge O'Rourke made clear to Curtis that his guilt or innocence would be determined "solely" on the "stipulated facts as well as the exhibit that was presented today."[2] RP 41-42. Judge O'Rourke then found Curtis guilty as charged as set forth in a document titled, "STIPULATED FACTS & FINDINGS OF GUILTY." CP 75-77. A copy is attached as Appendix B.

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[2] Prior to the court's colloquy with Curtis the prosecutor had admitted, without defense objection, a certified copy of Curtis' prior felony judgment and sentence from Thurston County as "Exhibit 1." RP 39-40.

Curtis was sentenced on December 22, 2021 to concurrent six-month terms. CP 51-56; RP 50. The court stayed the sentence pending appeal. CP 57-58; RP 47-51.

On appeal, Curtis argued the evidence was insufficient to convict him of either charged offense because the stipulated facts failed to support finding Curtis knew the rifles were present in the home he shared with his estranged wife, noting Judge O'Rourke never found he 'knowingly' possessed the firearms. Brief of Appellant (BOA) at 7-16.

The court of appeals affirmed Curtis's convictions. Appendix A. It acknowledged Judge O'Rourke failed to make a finding of knowing possession as required by CrR 6.1(d). Appendix A at 5. But the court found the error harmless as follows:

> Here, the trial court's findings and conclusions necessitate an inference of knowledge. The stipulated facts established that two firearms were found in Curtis's home, and that the rifle was found in a case in Curtis's bedroom. That Curtis knowingly possessed the shotgun and rifle is further bolstered by the assortment of ammunition, gun

> tools, and shipping invoice for rifle parts also found in Curtis' home and shed. Taking these facts in the light most favorable to the State, which we must, we hold that the stipulated facts were sufficient to prove that Curtis knowingly possessed both firearms. Accordingly, we hold that the trial court's error in not entering findings specifically addressing knowledge was harmless beyond a reasonable doubt.

Appendix A at 6.

F. ARGUMENT

THIS COURT SHOULD GRANT REVIEW BECAUSE THE COURT OF APPEALS DECISION CONFLICTS WITH THIS COURT'S DECISIONS IN DAVIS, BANKS, AND CARDENAS-FLORES.

The stipulated facts fail to prove Curtis was in *knowing* possession of the rifle or the shotgun, nor did the trial court make such a finding. Because *knowing* possession is an essential element of the crime of second degree unlawful possession of a firearm, reversal, and dismissal of the charges with prejudice is appropriate. The court of appeals contrary decision is based on a flawed harmless error analysis that conflicts with this Court's decision in Davis, Banks, and Cardenas-Flores.

Due process requires that to convict the prosecution must prove all necessary elements of the crime charged beyond a reasonable doubt. In re Winship, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970); State v. Hundley, 126 Wn.2d 418, 421, 895 P.2d 403 (1995); U.S. Const. amend. XIV; Wash. Const. art. I, § 3. Evidence is sufficient to support a conviction only if, after viewing the evidence and all reasonable inferences in the light most favorable to the prosecution, a rational trier of fact could find each element of the crime proven beyond a reasonable doubt. State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980).

The sufficiency of the evidence is a question of law reviewed de novo. State v. Rich, 184 Wn.2d 897, 903, 365 P.3d 746 (2016). "Specifically, following a bench trial, appellate review is limited to determining whether substantial evidence supports the findings of fact and, if so, whether the findings support the conclusions of law." State v. Homan, 181 Wn.2d

102, 105-06, 330 P.3d 182 (2014).[3] When an appellate court determines a defendant's conviction is not supported by sufficient evidence, the proper remedy is to dismiss the conviction with prejudice. State v. Batson, 194 Wn. App. 326, 339, 377 P.3d 238 (2016).

To convict Curtis of the second degree unlawful possession of a firearm charges the prosecution had to prove he "knowingly had a firearm in his possession or control." WPIC 133.02.03(1); see also RCW 9.41.040(2)(a) (defining crime); State v. Hartzell, 156 Wn. App. 918, 944, 237 P.3d 928 (2010) (possession must be knowing).

Possession can be actual or constructive. State v. Callahan, 77 Wn.2d 27, 29, 459 P.2d 400 (1969). Actual possession requires personal, physical custody. State v. George,

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[3] This holding from Holman has been criticized as conflicting with Green, supra, and Jackson v. Virginia, 443 U.S. 307, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979). State v. Stewart, 12 Wn. App. 2d 236, 245-48, 457 P.3d 1213 (2020)(concurrence). In the context of a bench trial on *stipulated* facts, as occurred here, this criticism is unwarranted.

146 Wn. App. 906, 919-20, 193 P.3d 693 (2008). There is no evidence of "actual" possession of the firearms by Curtis, as the firearms were found not in his actual possession but instead secreted away in a closet and locked case. Appendix B at Stipulated Facts 1.3 & 1.4. Therefore the prosecution had to prove constructive possession in order to convict Curtis.

Constructive possession means the defendant has dominion and control over the firearm. State v. Chouinard, 169 Wn. App. 895, 899, 282 P.3d 117 (2012), review denied, 176 Wn.2d 1003, 297 P.3d 67 (2013). Although the defendant's ability to immediately take actual possession of an item can show dominion and control, mere proximity to the item by itself is insufficient. State v. Davis, 182 Wn.2d 222, 234, 340 P.3d 820 (2014). A person can have possession without exclusive control; more than one person can be in possession of the same item. George, 146 Wn. App. at 920.

Whether sufficient evidence establishes that a defendant had dominion and control over an item depends on the totality of

the circumstances. State v. Listoe, 15 Wn. App. 2d 308, 326, 475 P.3d 534 (2020)(citing State v. Lakotiy, 151 Wn. App. 699, 714, 214 P.3d 181 (2009)). Factors considered when assessing the existence of dominion and control include whether the defendant could immediately convert the item to his or her actual possession, State v. Jones, 146 Wn.2d 328, 333, 45 P.3d 1062 (2002); the defendant's physical proximity to the item, State v. Chouinard, 169 Wn. App. 895, 899, 282 P.3d 117 (2012); and whether the defendant had dominion and control over the premises where the item was located. Reichert, 158 Wn. App. at 390.

When a defendant has dominion and control of the premises, a rebuttable presumption arises that he or she also has dominion and control over items within the premises. Reichert, 158 Wn. App. at 390. Courts have found sufficient evidence that a defendant had dominion and control of an item in a vehicle when the defendant was driving a vehicle that he or she owns.

State v. Bowen, 157 Wn. App. 821, 828, 239 P.3d 1114 (2010); State v. Turner, 103 Wn. App. 515, 524, 13 P.3d 234 (2000).

In Bowen, the defendant was the owner, driver, and sole occupant of a truck in which a firearm was located. 157 Wn. App. at 828. The court of appeals stated, "An individual's sole occupancy and possession of a vehicle's keys sufficiently supports a finding that the defendant had dominion and control over the vehicle's contents." Id. In Turner, the defendant was driving his truck with one passenger and a rifle was in the back seat. 103 Wn. App. at 521. The court noted the defendant was "in close proximity to the rifle, knew of its presence, was able to reduce it to his possession, and had been driving the truck in which the rifle was found." Id. He also "knew that he was transporting the firearm and did nothing to remove it from his presence." Id. at 524. The court stated, "[W]here there is control of a vehicle and knowledge of a firearm inside it, there is a reasonable basis for knowing constructive possession, and there is sufficient evidence to go to the jury." Id.

Here, however, even when viewed in the light most favorable to the prosecution, the stipulated facts upon which Curtis was tried fail to establish Curtis *knowingly* possessed the firearms in question, nor did the trial court make such a finding. See Appendix B (trial court finds only that Curtis is "guilty" of the charges). To the contrary, aside from residing in the home in which the firearms were found, none of the stipulated facts support finding Curtis was aware of the shotgun found "inside the closet by the laundry room" or the rifle found in "a locked black case" in "Curtis's bedroom." Appendix B at Stipulated Facts 1.3 & 1.4.

Unlike in Bowen, there is no evidence Curtis was the sole owner or occupant of the home where the firearms were found. To the contrary, the "Stipulated Facts" provide no evidence about who else may have owned or occupied the home at the time the firearms were found. See Appendix B. Without such information it is impossible to eliminate the reasonable possibility the firearms were the property of another occupants

(such as his estranged wife) or that Curtis lacked knowledge they were in the home. Unlike in Turner, Curtis never acknowledged he knew about the firearms in the home.

Also lacking is evidence Curtis had the ability to immediately take actual possession of either firearm such that he could establish dominion and control. There is no evidence Curtis ever accessed the closet by the laundry room where the shotgun was found, or that the shotgun was readily visible if and when he did access the closet. And although the rifle was found in a locked case in Curtis' bedroom, there is no evidence he could unlock the case in order to obtain actual possession, or that he knew what was in the case. And mere proximity to the firearms by itself is insufficient to prove possession. Davis, 182 Wn.2d at 234. Nor was there fingerprint evidence suggesting Curtis had ever handled the shotgun or the rifle.

The "Stipulated Facts" do note that "gun parts" and "ammunition" were found in the home along with a "shipping invoice" for "gun parts," but there is no stipulation they belonged

to Curtis. Appendix B at Stipulated Facts 1.4-1.7. But Curtis was not charged with possessing those items unlawfully, nor does possession of those items prove Curtis was aware of the firearms he was charged with having unlawfully possessed.

It is possible the firearms Curtis was charged with possessing belonged to him. But it is just as possible given the limited stipulated facts that they were not and that he was unaware of their presence until they were found by law enforcement. It is also possible Curtis' estranged wife planted the firearms in the hope he would be charged with illegally possessing them. In any case, the stipulated facts fail to provide a reasonable basis to conclude he *knowingly* possessed them, nor did the trial court make such a finding. Because the evidence is insufficient to convict Curtis of possessing either firearm, his judgment and sentence should be reversed, and the charges dismissed with prejudice. Batson, 194 Wn. App. at 339.

The court of appeals rejected this argument, finding the trial court's violation of CrR 6.1(d) was harmless beyond a

reasonable doubt because the "trial court's findings and conclusions necessitate an inference of knowledge." Appendix A at 6. This was error.

The court of appeals correctly set forth the harmless error analysis set forth in Banks:

> Under the harmless error analysis, we determine "'whether it appears beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained.'" Banks, 149 Wn.2d at 44 (quoting State v. Brown, 147 Wn.2d 330, 341, 58 P.3d 889 (2002)). "'An error is not harmless beyond a reasonable doubt where there is a reasonable probability that the outcome of the trial would have been different had the error not occurred. . . . A reasonable probability exists when confidence in the outcome of the trial is undermined.'" Id. (quoting State v. Powell, 126 Wn.2d 244, 267, 893 P.2d 615 (1995)).

Appendix B at 6.

Unfortunately, the court of appeal erred in applying the analysis to the facts of Curtis's case. As discussed above, the trial court's findings and conclusions do not necessitate an inference Curtis was aware of the firearms found in his shared house. There is no basis, beyond mere proximity, to find Curtis

knew the firearms were there, and mere proximity is not enough to establish knowing possession. Davis, 182 Wn.2d at 234. Yet the court of appeals places great significance on the fact that one of the firearms was found in a locked case in his bedroom, despite no basis to conclude Curtis knew what was in the case or if he even knew it was there. Appendix B at 6. This finding conflicts with Davis.

In an apparent attempt to avoid conflicting with Davis, the court of appeals also placed great reliance on the fact there was an "assortment of ammunition, gun tools, and shipping invoice for rifle parts also found in Curtis' home and shed" to conclude Curtis must have known about the firearms. Appendix A at 6. But as noted, Curtis was not charged with unlawfully possessing gun parts and ammunition, nor did he ever admit they belonged to him.

It is true that by making a claim of insufficient evidence, Curtis concedes the truth of the State's evidence and that all "reasonable inferences" that can been drawn from the evidence

are construed in the State's favor. State v. Cardenas-Flores, 189 Wn.2d 243, 265-66, 401 P.3d 19 (2017)(emphasis added). The issue then is whether it was 'reasonable' for the court of appeals to infer that the presence of ammunition, gun parts and shipping invoices for gun parts meant Curtis must have known about the two specific guns he was charged with possessing. Curtis asserts the trial court's reliance on the presence of such peripheral firearm items to infer he knew about the firearms he was charged with possession was not 'reasonable' and therefore the court of appeals decision conflicts with Cardenas-Flores.

Simply put, mere presence of such peripheral gun materials is too attenuated from the charged offenses to allow for a reasonable inference that Curtis knew about the two firearms found. At best the court of appeals used speculation and conjecture to conclude the evidence was sufficient despite the lack of a specific finding of knowing possession by the trial court, which is improper. State v. Colquitt, 133 Wn. App. 789, 796, 137 P.3d 892 (2006); State v. Hutton, 7 Wn. App. 726, 728,

502 P.2d 1037 (1972); State v. Zamora, 6 Wn. App. 130, 133, 491 P.2d 1342 (1971).

As set forth in Banks, an error is only harmless if it "appears beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained." 149 Wn.2d at 44 (emphasis added). The record here fails to support a conclusion the trial court ever considered the required element that the possession be knowing. The trial court's written findings and conclusions make no reference to Curtis having knowledge about the guns, or the peripheral gun parts. Although it is possible he knew about both, a mere possibility does not support a conclusion the trial court's failure to address the element of knowing possession did not contribute to the guilty verdicts "beyond a reasonable doubt." Curtis asserts the court of appeals' contrary finding conflicts with this Court decision in Banks.

G. CONCLUSION

For the reasons stated herein, and as argued in Curtis's opening and reply briefs filed in the court of appeals, this Court

should grant review of the court of appeals decision under RAP 13.4(b)(1) because it conflicts with Davis, Banks, and Cardenas-Flores, reverse that decision, reverse Curtis' convictions, and dismiss the charges with prejudice.

I certify that this document was prepared using word processing software and contains 3038 words excluding those portions exempt under RAP 18.17.

DATED this 23rd day of February, 2023.

Respectfully submitted,

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Appendix A

Filed
Washington State
Court of Appeals
Division Two

January 31, 2023

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. BRADLEY JAMES CURTIS, Appellant.	No. 56575-7-II UNPUBLISHED OPINION

CHE, J. — Curtis appeals his convictions and sentence for two counts of second degree unlawful possession of a firearm. He argues that the State produced insufficient evidence to support both convictions, the trial court erred by imposing a DNA collection fee as part of his judgment and sentence, and the trial court erred by failing to specify in his judgment and sentence that no legal financial obligations (LFOs) may be satisfied out of Social Security benefits.

We hold that the trial court erred by failing to expressly find that Curtis knowingly possessed the firearms but that that error was harmless. Additionally, we accept the State's concession that the trial court erred by imposing a DNA collection fee and remand for correction of the judgment and sentence. Although not required, the trial court may address on remand a request that the judgment and sentence specify no LFOs may be collected from social security

benefits, if warranted. Accordingly, we affirm Curtis's convictions and remand for correction of the judgment and sentence.

FACTS

In 2011, Curtis was convicted of indecent liberties, a class B felony. As part of his sentence, he was prohibited from possessing firearms.

In 2021, the superior court issued a temporary order for protection restraining Curtis from his wife. The protection order required Curtis to surrender any firearms or other dangerous weapons. Curtis's wife informed the officers serving the protection order that Curtis had a shotgun, but Curtis denied having any firearms.

Law enforcement obtained a search warrant for Curtis's home, which he shared with his wife. During the search, law enforcement found a shotgun and a rifle as well as numerous gun parts and boxes of ammunition. Officers also found a shipping invoice for gun parts and machining tools used to assemble gun parts into working rifles.

The State charged Curtis with two counts of second degree unlawful possession of a firearm. Curtis filed a motion to suppress the firearms evidence arguing that the search warrant was deficient. The trial court denied his motion.

Curtis waived his right to a jury trial and entered stipulated facts with the trial court. The parties entered into a stipulation, which was signed by Curtis, entitled "stipulated facts and findings of guilty," and the trial court signed the document as well. It stated:

I. STIPULATED FACTS

1.1. The defendant is Bradley James Curtis, DOB: 01-11-1974. The defendant was convicted of Indecent Liberties, a class B felony that was not classified as a serious offense, on -2-07-2011, in Thurston County Superior Court, Thurston County Superior Court Number 03-1-02154-1.

1.2. At the time of sentencing for the felony mentioned above, a written warning about the prohibition against possessing firearms was included in the judgment and sentence. The defendant reviewed that warning before signing the judgment and sentence.

1.3. On 06-19-2021, Deputy Tyler Nichols served a search warrant on the defendant's home located at 626 North Military Road, Winlock WA, 98596. Inside the closet by the laundry room, the officer found a .410 caliber Rossi shotgun. This is the firearm referred to in Count 1.

1.4. The deputy also found in Curtis's bedroom a locked black case that contained a rifle with no serial number, that had a SBR upper receiver, with the letters "BMP8B" stamped on the receiver. This is the firearm referred to in Count 2.

1.5. The deputy also found in Curtis's home gun parts, including receivers, and boxes of ammunition of various calibers.

1.6. The deputy found in Curtis's home a shipping invoice from Delta Team Tactical, in Orem UT, for rifle parts.

1.7. In the defendant's shed, the deputy found gun parts and machining tools used for manufacturing gun parts to be assembled in to working rifles.

II. FINDINGS OF GUILTY

2.1. Based on the facts contained in this stipulation, the court finds the defendant guilty of unlawful possession of a firearm in the second degree as charged in count 1.

2.2. Based on facts contained in this stipulation, the court finds the defendant guilty of unlawful possession of a firearm in the second degree as charged in count 2.

2.3. The court will enter a judgment and sentence consistent with these findings.

Clerk's Papers at 48-50.

The trial court found Curtis guilty of both counts. The trial court sentenced Curtis to six months confinement with the option to serve the sentence under electronic monitoring. The court imposed LFOs including a $500 victim assessment and $100 DNA collection fee.

Curtis appeals.

ANALYSIS

I. INSUFFICIENT EVIDENCE

Curtis argues that the stipulated facts failed to prove that he knowingly possessed either firearm and therefore insufficient evidence supported his convictions. We disagree.

Evidence is sufficient to support a conviction if, after viewing the evidence in the light most favorable to the State, any rational trier of fact could find that all of the elements of the crime charged were proven beyond a reasonable doubt. *State v. Cardenas-Flores*, 189 Wn.2d 243, 265, 401 P.3d 19 (2017). When a defendant challenges the sufficiency of the evidence, he admits the truth of the State's evidence, and all reasonable inferences drawn from that evidence are to be construed in favor of the State. *Id.* at 265-66. In a sufficiency of the evidence determination, both circumstantial and direct evidence are equally reliable. *Id.* at 266. We review sufficiency of the evidence de novo. *State v. Rich*, 184 Wn.2d 897, 903, 365 P.3d 746 (2016).

"A stipulated facts trial is still a trial of the defendant's guilt or innocence." *State v. Mierz*, 127 Wn.2d 460, 469, 901 P.2d 286 (1995). The burden of proof remains on the State. *State v. Johnson*, 104 Wn.2d 338, 342, 705 P.2d 773 (1985). The defendant is not precluded from offering evidence or cross-examining witnesses, but stipulates to the evidence presented by the State. *Id.* at 342-43. The stipulation serves as an agreement by the defendant "that if the State's witnesses were called, they would testify in accordance with the summary presented by

the prosecutor." *State v. Wiley*, 26 Wn. App. 422, 425, 613 P.2d 549 (1980). A stipulation to facts is an express waiver conceding for the purpose of the trial that the facts are true and there is no need to prove the facts. *State v. Wolf*, 134 Wn. App. 196, 199, 139 P.3d 414 (2006) (quoting *Key Design, Inc. v. Moser*, 138 Wn.2d 875, 893-94, 983 P.2d 653 (1999)).

"The criminal rules for superior court judges require that, following a bench trial, the judge enter findings of fact and conclusions of law." *State v. Banks*, 149 Wn.2d 38, 43, 65 P.3d 1198 (2003). CrR 6.1(d) states:

> In a case tried without a jury, the court shall enter findings of fact and conclusions of law. In giving the decision, the facts found and the conclusions of law shall be separately stated. The court shall enter such findings of fact and conclusions of law only upon 5 days' notice of presentation to the parties.

"Each element must be addressed separately, setting out the factual basis for each conclusion of law," and the findings must specifically state that each element has been met. *Banks*, 149 Wn.2d at 43. Where the trial court fails to meet these requirements, appellate review is subject to a harmless error analysis. *Id.*

To convict Curtis of second degree unlawful possession of a firearm, the State had to prove beyond a reasonable doubt that Curtis knowingly possessed a firearm and that he had previously been convicted of a felony in Washington.[1] RCW 9.41.040(2)(a)(i); *State v. Anderson*, 141 Wn.2d 357, 359, 5 P.3d 1247 (2000).

The findings of fact do not address the element of "knowledge." This was error. We must next determine whether that error was harmless. *Banks*, 149 Wn.2d at 43.

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[1] Curtis argues that if we interpret the trial court's order entering stipulated findings and conclusions to amount to Curtis stipulating to his guilt he received ineffective assistance of counsel. Because it is clear from the record that Curtis stipulated to facts, not his guilt, we do not reach this alternative argument.

Under the harmless error analysis, we determine "'whether it appears beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained.'" *Banks*, 149 Wn.2d at 44 (quoting *State v. Brown*, 147 Wn.2d 330, 341, 58 P.3d 889 (2002)). "'An error is not harmless beyond a reasonable doubt where there is a reasonable probability that the outcome of the trial would have been different had the error not occurred. . . . A reasonable probability exists when confidence in the outcome of the trial is undermined.'" *Id.* (quoting *State v. Powell*, 126 Wn.2d 244, 267, 893 P.2d 615 (1995)).

Here, the trial court's findings and conclusions necessitate an inference of knowledge. The stipulated facts established that two firearms were found in Curtis's home, and that the rifle was found in a case in Curtis's bedroom. That Curtis knowingly possessed the shotgun and rifle is further bolstered by the assortment of ammunition, gun tools, and shipping invoice for rifle parts also found in Curtis' home and shed. Taking these facts in the light most favorable to the State, which we must, we hold that the stipulated facts were sufficient to prove that Curtis knowingly possessed both firearms. Accordingly, we hold that the trial court's error in not entering findings specifically addressing knowledge was harmless beyond a reasonable doubt.

II. DNA COLLECTION FEE

Curtis also argues, and the State agrees, that the trial court erred by imposing a DNA collection fee given that he has a prior felony conviction from Thurston County in 2011. We agree and remand for correction of the judgment and sentence.

Under RCW 43.43.7541, the DNA collection fee is not mandatory if the defendant's DNA has already been collected due to a prior conviction. At trial, the State informed the court that Curtis's DNA had not been previously collected despite his prior felony conviction.

However, on appeal, the State now concedes this issue and agrees with Curtis that Curtis's DNA has previously been collected and therefore the collection fee was improperly imposed. We accept the State's concession and remand to the trial court to strike the DNA collection fee.

III. SOCIAL SECURITY BENEFITS

Curtis also argues that we must remand for the trial court to correct his judgment and sentence to clarify that no LFOs may be satisfied by social security benefits. We disagree.

Pursuant to 42 U.S.C. § 407(a), LFOs may not be satisfied through application of Social Security benefits. *State v. Dillon*, 12 Wn. App. 2d 133, 153, 456 P.3d 1199 (citing *State v. Catling*, 193 Wn.2d 252, 264, 438 P.3d 1174 (2019)), *review denied*, 195 Wn.2d 1022 (2020). However, Curtis is not entitled to appellate relief on his claim of error.

First, Curtis did not raise this issue below and, therefore, it is not preserved for appeal. "The general rule is that appellate courts will not consider issues raised for the first time on appeal." *State v. Kirkman*, 159 Wn.2d 918, 926, 155 P.3d 125 (2007) (citing RAP 2.5(a)). Although a claim of error may be raised for the first time on appeal if it is a manifest error affecting a constitutional right, Curtis's claim does not meet that standard. The prohibition against LFOs being satisfied through Social Security benefits is derived from a federal statute. See 42 U.S.C. § 407(a). Furthermore, the claimed error is not manifest because there is no indication in the record that Curtis receives Social Security benefits. *See State v. McFarland*, 127 Wn.2d 322, 333, 899 P.2d 1251 (1995). As such, Curtis fails to show that he was actually prejudiced by the absence of language in the judgment and sentence providing that the LFOs imposed by the superior court could not be satisfied through Social Security benefits. *See Kirkman*, 159 Wn.2d at 926-27.

Second, because nothing in the record suggests that Curtis receives Social Security benefits, this case is distinguishable from *Dillon* and *Catling*. In *Dillon*, we remanded the case to the trial court "to amend the judgment and sentence to indicate that the $500 victim assessment fee may not be satisfied out of any funds subject to 42 U.S.C. § 407(a)." 12 Wn. App. 2d at 153. We did so because the record in that case indicated that "Dillon's sole source of income [was] his Social Security disability funds." *Id.* Likewise, in *Catling*, our Supreme Court remanded the case "to the trial court to revise the judgment and sentence and repayment order . . . to indicate that [an] LFO may not be satisfied out of any funds subject to . . . 42 U.S.C. § 407(a)." 193 Wn.2d at 266. During the sentencing hearing in that case, "Catling's attorney argued that . . . Catling's sole source of income was Social Security disability benefits." Id. at 255.

Here, the record does not contain any evidence that Curtis receives Social Security benefits. If evidence that Curtis receives Social Security benefits exists outside the record, Curtis may consider bringing a personal restraint petition. *See McFarland*, 127 Wn.2d at 338 n.5. If at a future date, Curtis receives income from Social Security benefits and the State attempts to collect in violation of the antiattachment statute, nothing prevents Curtis from asking the trial court for relief from any improper attempts at collection at that time.

However, because we are remanding Curtis's judgment and sentence to the trial court to strike the DNA collection fee, the trial court may also specify that no LFOs may be satisfied out of Social Security benefits, if warranted.

We affirm Curtis's convictions and remand to the trial court to correct his judgment and sentence.

No. 56575-7-II

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.

Che, J.

We concur:

Glasgow, CJ

Glasgow, C

Birk, J.

Birk, J.*

* Sitting in Division II pursuant to RCW 2.06.040 by order of the Associate Chief Justice.

Appendix B

FILED
Lewis County Superior Court
Clerk's Office
NOV 09 2021
Scott Tinney, Clerk
By _____, Deputy

21-1-00384-21
FN 31
Findings
11348237

IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR LEWIS COUNTY

STATE OF WASHINGTON, Plaintiff, vs. **BRADLEY JAMES CURTIS,** Defendant.	No. **21-1-00384-21** STIPULATED FACTS & FINDINGS OF GUILTY

This matter came on for a stipulated facts bench trial on October 20, 2021. The State was represented by J. Bradley Meagher, Senior DPA. The Defendant was present and represented by Jason Arcuri. The defendant waived his right to a trial by jury.

The State and defendant hereby stipulate to the following facts for the purpose of the Court rendering a verdict of guilty beyond a reasonable doubt:

I. STIPULATED FACTS

1.1. The defendant is Bradley James Curtis, DOB: 01-11-1974. The defendant was convicted of Indecent Liberties, a class B felony that was not classified as a serious offense, on 02-07-2011, in Thurston County Superior Court, Thurston County Superior Court Number 03-1-02154-1.

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1.2. At the time of sentencing for the felony mentioned above, a written warning about the prohibition against possessing firearms was included in the judgement and sentence. The defendant reviewed that warning before signing the judgment and sentence.

1.3. On 06-19-2021, Deputy Tyler Nichols served a search warrant on the defendant's home located at 626 North Military Road, Winlock WA, 98596. Inside the closet by the laundry room, the officer found a .410 caliber Rossi shotgun. This is the firearm referred to in Count 1.

1.4. The deputy also found in Curtis's bedroom a locked black case that contained a rifle with no serial number, that had a SBR upper receiver, with the letters "BMP8B" stamped on the receiver. This is the firearm referred to in Count 2.

1.5. The deputy also found in Curtis's home gun parts, including receivers, and boxes of ammunition of various calibers.

1.6. The deputy found in Curtis's home a shipping invoice from Delta Team Tactical, in Orem UT, for rifle parts.

1.7. In the defendant's shed, the deputy found gun parts and machining tools used for manufacturing gun parts to be assembled in to working rifles.

II. FINDINGS OF GUILTY

2.1. Based on the facts contained in this stipulation, the court finds the defendant guilty of unlawful possession of a firearm in the second degree as charged in count 1,

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2.2. Based on facts contained in this stipulation, the court finds the defendant guilty of unlawful possession of a firearm in the second degree as charged in count 2.

2.3. The court will enter a judgment and sentence consistent with these findings.

AGREED AND STIPULATED TO:

JONATHAN L. MEYER
Lewis County Prosecuting Attorney

J. Bradley Meagher
WSBA# 18685
Senior Deputy Prosecuting Attorney
Date: 11/9/21

AGREED AND STIPULATED TO:

Defendant
Date: 11/9/21

WSBA# 51611
Attorney for Defendant
Date: 11/9/21

Dated this 9th day of November 2021.

Judge Jocly O'Rourke
Lewis County Superior Court

LEWIS COUNTY
PROSECUTING ATTORNEY
345 W. Main Street, 2nd Floor
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NIELSEN KOCH & GRANNIS P.L.L.C.

February 23, 2023 - 12:13 PM

Transmittal Information

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Appellate Court Case Title:	State of Washington, Respondent v. Bradley James Curtis, Appellant
Superior Court Case Number:	21-1-00384-3

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