

NO. 45796-2-II

**COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

CLIFFORD PORTER, JR., APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Frank E. Cuthbertson

No. 13-1-00010-7

RESPONDENT'S RESPONSE TO SUPPLEMENTAL BRIEF

MARK LINDQUIST
Prosecuting Attorney

By
THOMAS C. ROBERTS
Deputy Prosecuting Attorney
WSB # 17442

930 Tacoma Avenue South
Room 946
Tacoma, WA 98402
PH: (253) 798-7400

Table of Contents

A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR..... 1

 1. Where the charging language of the Information is similar to that struck down in *Satterthwaite* because it does not contain the definition (to “withhold or appropriate”) of possessing stolen property, is the Information in this case constitutionally insufficient? 1

B. STATEMENT OF THE CASE. 1

 1. Procedure 1

C. ARGUMENT.....

 1. THE STATE RECOGNIZES UNDER *SATTERTHWAITE*, THE INFORMATION IN THIS CASE IS CONSTITUTIONALLY INSUFFICIENT. HOWEVER, THE STATE RESPECTFULLY DISAGREES WITH THE REASONING IN *SATTERTHWAITE*..... 2

D. CONCLUSION. 4

Table of Authorities

State Cases

<i>State v. Johnson</i> , 180 Wn.2d 295, 302, 325 P.3d 135 (2014)	3
<i>State v. Satterthwaite</i> , __ Wn. App. __, 344 P.3d 738 (2014).....	2, 3, 4
<i>State v. Vangerpen</i> , 125 Wn.2d 782, 787, 888 P.2d 1177 (1995)	2
<i>State v. Zillyette</i> , 178 Wn.2d 153, 158, 307 P.3d 712 (2013)	2

Statutes

RCW 9A.56.068	2
RCW 9A.56.140(1).....	3

A. ISSUE PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Where the charging language of the Information is similar to that struck down in *Satterthwaite* because it does not contain the definition (to “withhold or appropriate”) of possessing stolen property, is the Information in this case constitutionally insufficient?

B. STATEMENT OF THE CASE.

1. Procedure

On January 2, 2013, the State charged Clifford Melvin Porter, Jr. (hereinafter “defendant”) by Information with unlawful possession of a stolen vehicle. CP 1. The Information stated:

That CLIFFORD MELVIN PORTER, JR., in the State of Washington, on or about the 27th day of August, 2011, did unlawfully and feloniously knowingly possess a stolen motor vehicle, knowing that it had been stolen, contrary to RCW 9A.56.068 and 9A.56.140, and against the peace and dignity of the State of Washington.

CP 1.

C. ARGUMENT.

1. THE STATE RECOGNIZES UNDER ***SATTERTHWAITE***, THE INFORMATION IN THIS CASE IS CONSTITUTIONALLY INSUFFICIENT. HOWEVER, THE STATE RESPECTFULLY DISAGREES WITH THE REASONING IN ***SATTERTHWAITE***.

The State acknowledges that this court recently held as a matter of first impression that “withhold or appropriate” is an essential element of possession of a stolen motor vehicle. *State v. Satterthwaite*, ___ Wn. App. ___, 344 P.3d 738 (2014) (citing RCW 9A.56.068). Given the similarity in the language of the Information in *Satterthwaite* and the present case, the Information in this case is deficient because it did not include to “withhold or appropriate.”

However, the State respectfully disagrees with the reasoning in *Satterthwaite*. An Information is constitutionally sufficient if it includes all essential elements of a crime. *State v. Vangerpen*, 125 Wn.2d 782, 787, 888 P.2d 1177 (1995). An “essential element” is an element whose specification is necessary to establish the very illegality of the act charged. *State v. Zillyette*, 178 Wn.2d 153, 158, 307 P.3d 712 (2013). Requiring all statutory and non-statutory elements in the charging document provides the accused of fair notice of the charges against him to afford him the opportunity to prepare a defense. *Vangerpen*, 125 Wn.2d at 787.

Although essential elements are required to make an Information constitutionally sufficient, the State need not include definitions of the elements. *State v. Johnson*, 180 Wn.2d 295, 302, 325 P.3d 135 (2014). In *Johnson*, the Information alleged the defendant “did knowingly restrain [J.J.], a human being.” *Id.* at 301 (alteration in original). The defendant challenged the Information because it did not define “restrain,” as “to restrict a person’s movements without consent and without legal authority in a manner which interferes substantially with his liberty,” which he argued was an essential element. The Court rejected this argument, reaffirming that definitions of elements do not need to be included in the Information to make it constitutionally sufficient. *Id.* at 302.


The present case presents an issue similar to that addressed in *Johnson*. The Information alleged that defendant “did unlawfully and feloniously knowingly possess a stolen motor vehicle, knowing it had been stolen.” CP 1. *Satterthwaite* requires that the Information define “possess” as requiring that a defendant “withhold or appropriate [possessed stolen property] to the use of any person other than the true owner or person entitled thereto.” *Satterthwaite*, 344 P.3d 738 (quoting RCW 9A.56.140(1)) (alteration in original). Requiring the definition of an essential element is contrary to the Supreme Court’s holding in *Johnson* that no such definition is required.

D. CONCLUSION.

The State recognizes that under *Satterthwaite* the Information in this case would be deficient for failure to include the definition of “possessing stolen property,” thus requiring the reversal of defendant’s conviction and remand for further proceedings. However, the State respectfully disagrees with the reasoning in *Satterthwaite* and would ask this court to not require the addition of definitions of essential elements to make an Information constitutional sufficient.

DATED: APRIL 21, 2015

MARK LINDQUIST
Pierce County
Prosecuting Attorney



THOMAS C. ROBERTS
Deputy Prosecuting Attorney
WSB # 17442

Jordan McCrite
Rule 9

Certificate of Service:

The undersigned certifies that on this day she delivered by *efile* ~~U.S. mail or ABC-LMI delivery~~ to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

4/25/15
Date
[Signature]
Signature

PIERCE COUNTY PROSECUTOR

April 21, 2015 - 2:26 PM

Transmittal Letter

Document Uploaded: 4-457962-Supplemental Response Brief.pdf

Case Name: State v. Clifford Porter, Jr.

Court of Appeals Case Number: 45796-2

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: _____

Answer/Reply to Motion: _____

Brief: Supplemental Response

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: _____

Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

Comments:

No Comments were entered.

Sender Name: Heather M Johnson - Email: hjohns2@co.pierce.wa.us

A copy of this document has been emailed to the following addresses:

Sloanej@nwattorney.net