**NO. 47401-8-II**

---

---

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

STATE OF WASHINGTON, RESPONDENT

v.

CHRISTOPHER J. REINHOLD, APPELLANT

---

Appeal from the Superior Court of Pierce County
The Honorable Garold E. Johnson

No. 14-1-01026-7

---

# RESPONDENT'S BRIEF

---

MARK LINDQUIST
Prosecuting Attorney

By
JAMES SCHACHT
Deputy Prosecuting Attorney
WSB # 17298

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

## Table of Contents

## Table of Authorities

State Cases

Constitutional Provisions



Statutes



Rules and Regulations

Other Authorities

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

1. When the evidence presented firmly supports the conclusion that defendant knew the car in his possession was stolen, should the court reject defendant's claim that there was insufficient evidence supporting his conviction for Unlawful Possession of a Stolen Vehicle?

2. When a charging document, challenged for the first time on appeal, contains the essential elements of defendant's charged crime and no prejudice resulted from any inartful language therein, should the court reject defendant's claim that the charging document was insufficient?

B. STATEMENT OF THE CASE.

1. Procedure

On March 17th, 2014, Pierce County Prosecutors filed an Information, cause number 14-1-01026-7, charging Christopher Reinhold ("defendant") with Unlawful Possession of a Firearm in the First Degree (Count I) and Unlawful Possession of a Stolen Vehicle (Count II). CP 1-2.

The court denied a *Knapstad* motion brought by defendant that alleged the State was unable to establish a prima facie case showing defendant was in knowing possession of the stolen car. CP 113-114; 1RP

21. [1] Following a 3.5 hearing, the court ruled that statements made by defendant to Officer Fleming and Detective Gow were admissible. CP115-120; 2RP 127-9. The case proceeded to a jury trial before the Honorable Garold E. Johnson. 1RP 1.

After the State concluded its case, defendant made a motion to dismiss again based on the knowingly in possession element of Count II which the court denied. The jury returned a verdict of guilty on both counts. CP 65-6; RP(1/22/15) 542. Defendant was sentenced to 78 months confinement on Count I, and 57 months on Count II, to be served concurrently. CP 136-7; RP(3/27/15) 577. Defendant filed a timely appeal. CP 144-5.

2. Facts

On March 14th, 2014, Fife City Police Officer Randel Fleming discovered a stolen vehicle parked at the Roadway Inn on a routine patrol check. 3RP 264-6. Officer Fleming viewed defendant entering and exiting the vehicle from across the parking lot. 3RP 268. When he approached the car defendant was entering the driver's seat. 3RP 268-9. Officer Fleming began to question defendant concerning the stolen car. 3RP 275.

[1] The verbatim report of proceedings are numbered consecutively across all nine volumes. For ease of use, the number preceding RP will indicate the file volume (e.g. 1RP= Vol. 1) or, if no volume number is present, the date of the transcript will be used.

Defendant claimed he had purchased the car from someone named "Ashley." He was unable to provide a bill of sale, registration, title, receipt, or any other proof of payment. 3RP 276. Defendant provided no details or other contact information for "Ashley." 3RP 281. Defendant also claimed that someone named "Jennifer" may have reported the car stolen as an act of revenge for a lover's quarrel. 3RP 282. No details about "Jennifer" were provided by defendant either. *Id.*

After questioning the defendant, police found a loaded handgun under the driver's seat of the stolen car. 3RP 285; Ex. 5. Defendant told police that he placed the gun under the seat when he observed police arriving on the scene. 3RP 285; Ex. 1, 2. Defendant stipulated he was on community custody at the time of the arrest, a fact that prohibited him from possessing a firearm. CP 1-2, 128-30.

## C. ARGUMENT.

### 1. SUFFICIENT EVIDENCE SUPPORTS DEFENDANT'S CONVICTION FOR POSSESSION OF A STOLEN VEHICLE WHERE THERE WAS NO EVIDENCE OF A LEGAL OWNERSHIP TRANSFER AND WHERE DEFENDANT PROVIDED AN UNSUPPORTABLE EXPLANATION OF THE VEHICLE'S ORIGINS.

Evidence is sufficient if, when viewed in a light most favorable to the State, any rational jury could have found the defendant guilty beyond a reasonable doubt. ***State v. Green***, 94 Wn.2d 216, 220-22, 616 P.2d 628

(1980); ***State v. Salinas***, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). An insufficiency claim admits as true the State's evidence and all reasonable inferences which can be drawn from it. ***State v. Thereoff***, 25 Wn. App. 590, 593, 608 P.2d 1254, aff'd, 95 Wn.2d 385, 622 P.2d 1240 (1980); ***State v. Salinas***, 119 Wn.2d at 201. Deference must be given to the trier of fact who is responsible for determining witness credibility, resolving conflicting testimony, and evaluating the persuasiveness of evidence presented at trial. Const. art. I, §21; ***State v. Furth***, 5 Wash.2d 1, 104 P.2d 925 (1940)("Courts cannot trench on province of jury upon questions of fact under [Const. art. I, §21]."); ***State v. Camarillo***, 115 Wn.2d 60, 71, 794 P.2d 850 (1990); ***State v. Carver***, 113 Wn.2d 591, 604, 781 P.2d 1308 (1989). Circumstantial and direct evidence are considered equally reliable. ***State v. Delmarter***, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

Defendant was convicted on Count II, the elements of which were presented to the jury as follows:

> (1) That on or about the 14th day of March 2014, the defendant knowingly received, retained, or possessed a stolen motor vehicle;
> (2) That the defendant acted with knowledge the motor vehicle had been stolen;
> (3) That the defendant withheld or appropriated the motor vehicle to the use of someone other than the true owner or person entitled thereto;
> (4) That any of these acts occurred in the State of Washington.

CP 59; RCW 9A.56.068; WPIC 77.20

Defendant's claim is limited to the second element; namely that evidence presented at trial was insufficient to prove he acted with knowledge that the vehicle was stolen. Brief of Appellant at 1, 9. A jury may infer knowledge if "a reasonable person would have knowledge under similar circumstances." ***State v. Womble***, 93 Wn. App. 599, 604, 969 P.2d (1999). Possession of recently stolen property, coupled with other direct or circumstantial evidence showing defendant's guilt, is sufficient for a jury to reach a guilty verdict. ***State v. Couet***, 71 Wn.2d 773, 775, 430 P.2d 974, 976 (1967). When defendant is found in possession of recently stolen property "slight corroborative evidence," including false, improbable, or unverifiable explanations, can be used to sustain a jury conviction. *See*, *Id.* at 776.

Defendant argues that the evidence supports a reasonable inference that he did not know the vehicle was stolen. Brief of Appellant at 10. For the sake of argument even if this may be true, what defendant fails to acknowledge is that the evidence also supports reasonable inferences that he did in fact have knowledge that the vehicle was stolen. The applicable standard of review requires that all evidence be viewed in the light most favorable to the State, not the defendant, and accords great deference to

jury determinations inferred from the evidence. ***State v. Green***, 94 Wn.2d at 220-22; ***State v. Camarillo***, 115 Wn.2d at 71; ***State v. Carver***, 113 Wn.2d at 604.

To prevail under this standard, defendant must show that the inferences supporting guilty knowledge are all unreasonable. Conversely, any reasonable inference supported by the evidence is sufficient to sustain the conviction. Defendant's sufficiency claim is defeated because several reasonable inferences establish defendant knew the vehicle was stolen.

Defendant did not possess or present a bill of sale, receipt, or any other documentation consistent with a lawful automobile transfer, nor was he the registered owner of the car. Washington requires the transfer of a motor vehicle to be accompanied by a report of sale filed with the Department of Licensing, the delivery of a certificate of title to the new owner, and registration with the Department of Licensing. RCW 46.16A.040(1); RCW 46.12.650(1)-(3). Lack of any evidence of a lawful transfer or registration supports a reasonable inference that defendant knew the vehicle was stolen.

Defendant's unsupported and inconsistent explanations of how he came to possess the recently stolen car further attest to guilty knowledge. ***State v. Couet***, 71 Wn.2d at 775. In ***Couet***, a defendant in possession of a stolen vehicle made a statement to police that a co-worker named "Bill" had

lent him the car and offered no further substantiation. *Id.* at 776. The court held that an improbable explanation, including providing a fictional name, to explain possession of a stolen vehicle is sufficient evidence to sustain a conviction. *Id.* at 776 (quoting ***State v. Portee***, 25 Wn.2d 246, 170 P.2d 326 (1946)).

Defendant's vague claim that "Ashley" sold him the car or, his false statement that "Jennifer" reported the car as stolen, are improbable, unverifiable, and unsupported. Defendant was unable to offer contact information, written agreements, or basic background to support the credibility of either story after being asked by the arresting officer. 2RP 95; 3RP 256, 276, 308, 320, 330-1, 334-5, 352. A reasonable person who had been party to a lawful vehicle transfer would possess minimum information to verify the identity of someone who recently sold him a vehicle. Minimal information such as a phone number, email address, or location where the sale transaction occurred would be necessary in order to complete the title and registration requirements. Further, the jury could have determined that a consistent narrative normally accompanies a lawful vehicle purchase.

Defendant provided two common first names connected to two stories, and no substantiation. Defendant's unsubstantiated explanations and the absence of documentation when viewed together allowed a reasonable jury to find defendant knowingly possessed a stolen motor

vehicle.

2. STATE CHARGED DEFENDANT USING A CONSTITUTIONALLY VALID INFORMATION THAT INCLUDED ALL ELEMENTS OF COUNT II IN A CLEAR MANNER.

A defendant has the right to be informed of the charges filed against him. ***State v. Bergeron***, 105 Wn.2d 1, 18, 711 P.2d 1000 (1985); U.S. Const. amend. 6; Const. art I, § 22 (amend. 10). Defendant's rights are satisfied if the charging document appraises defendant of the essential elements of the charged crime. ***State v. Kjorsvik***, 117 Wn.2d 93, 97, 812 P.2d 86 (1991); ***State v. Vangerpen***, 125 Wn.2d 782, 787, 888 P.2d (1995); CrR 2.1(a)(1). Challenges to the sufficiency of an information are reviewed de novo. ***State v. Johnson***, 180 Wn.2d 295, 325 P.3d 135 (2014). When challenged for the first time on appeal, a charging document is liberally construed in favor of validity using the ***Kjorsvik*** test. ***State v. Kjorsvik***, 117 Wn.2d 93 at 105.

The ***Kjorsvik*** test contains two prongs: 1) do the necessary elements appear in any form, or by fair construction can they be found in the information, and if not, 2) can defendant show he or she was actually prejudiced by the inartful language? ***State v. Kjorsvik***, 117 Wn.2d at 105-6. A charging document that fails the first prong is insufficient regardless of prejudice. *Id.* Defendant's claim should be rejected because the charging information contains the offense's essential elements and no prejudice resulted.

a. The Information Contained the Essential Elements of Defendant's Charged Crimes.

The first prong of ***Kjorsvik*** is satisfied if the charging document contains the essential elements in *any form* or if they can be implied by fair construction of the indictment read as a whole, including citations to a statute that enumerates a particular element. ***State v. Kjorsvik***, 117 Wn.2d at 105. Missing elements can be fairly implied or inferred if the document's own language supports the inference. ***State v. Goodman***, 150 Wn.2d 774, 788, 83 P.3d 410 (2004); ***State v. Campbell***, 125 Wn.2d 797, 801, 888 P.2d 1185 (1995).

Defendant challenges the validly of the Information for the first time on appeal. He erroneously claims the Information charging him with possession of a stolen motor vehicle was insufficient because it did not contain the element that defendant "withheld or appropriated the motor vehicle to the use of someone other than the true owner or person entitled thereto." Brief of Appellant at 13; WPIC 77.21(3). Defendant does not claim any additional deficiencies in the Information.

For a charge to be constitutionally sufficient "it has never been necessary to use the exact words of a statute in a charging document; it is sufficient if words conveying the same meaning and import are used." ***State v. Kjorsvik***, 117 Wn.2d at 108, citing ***State v. Leach***, 113 Wn.2d 679, 689, 782 P.2d 552 (1989); ***State v. Jeske***, 87 Wn.2d 760, 765, 558 P.2d 162 (1976); ***State v. Moser***, 41 Wn.2d 29, 31, 246 P.2d 1101 (1952). In fact,

according to RCW 10.37.160, the words "used in a statute to define a crime need not be strictly pursued in the indictment or Information, but other words conveying the same meaning may be used."

The Information in this case read as follows:

> That CHRISTOPHER JOHN REINHOLD, in the State of Washington, on or about the 14th day of March, 2014, 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...

CP 112.

The Information sufficiently provided the defendant the essential elements of the charge against him. The Information cites to RCW 9A.56.140 which includes that possessing stolen property means "to withhold or appropriate the same to the use of any person other than the true owner or person entitled thereto." CP 112; RCW 9A.56.140(1).

Felony Informations relying on a statutory citation to notify a defendant of a charge's essential element have been suggested to be sufficient under the ***Kjorsvik*** test. In ***Satterthwaite***, a defendant charged with possession of a stolen motor vehicle argued for the first time on appeal that his charging document was deficient because it did not contain the same "withhold or appropriate" element challenged here. ***State v. Satterthwaite***, 186 Wn. App 359, at 362, 344 P.3d 738 (2015). Similar to the present case, the charging document in ***Satterthwaite*** did not directly articulate the

"withhold or appropriate" element.

However, unlike the instant case, the charging document in ***Satterthwaite*** did not cite RCW 9A.56.140.[2] *Id.* The Information in the instant case cited and directly quoted from RCW 9A.56.140 alleging defendant possessed the property "knowing it had been stolen." CP 111-2. To know something has been stolen, requires that one also knows that property is being withheld from the rightful owner. It was strongly implied that if the ***Satterthwaite*** Information had cited the proper statute, it would have survived the first prong of the ***Kjorsvik*** test.[3] *Id.* at 365-6. The Information in this case presents an even more compelling case because it quotes the very statute that includes the elements at issue.

---

[2] The information in ***Satterthwaite*** read: "In the County of Mason, State of Washington, on or about the 8th day of April, 2013, the above-named defendant, JAMIE C. SATTERTHWAITE, did commit POSSESSION OF A STOLEN MOTOR VEHICLE, a Class B Felony, in that said defendant did knowingly possess a stolen vehicle, to wit: 1988 Chevrolet S–10, WA License Number 624–XMK, belonging to Fred Anderson, contrary to RCW 9A.56.068 and against the peace and dignity of the State of Washington.
***State v. Satterthwaite***, 186 Wn. App at 361.

[3] The opinion held "The charging document did not mention withholding or appropriating the stolen vehicle to the use of a person other than the owner, and did not cite RCW 9A.56.140. Thus, the. necessary facts of "withhold or appropriate" do not appear in any form, nor by fair construction can they be found, in the charging document."
***Satterthwaite***, 186 Wn. App at 365-6

Additionally, the "withhold or appropriate" element can be fairly read within the Information's language of "unlawfully and feloniously," possessing a stolen vehicle. ***State v. Kjorsvik***, 117 Wn.2d at 94-5. In ***Kjorsvik***, the court inferred an essential element of robbery, namely "intent to steal," from the word "unlawfully." *Id.* at 95. The court reasoned that defendant was informed of "intent to steal" when the charging information alleged he "unlawfully, with force, and against the baker's will, took the money" because it rationally follows that unlawfully taking money implies the intent to steal. *Id.* Reading the document as a whole and using a "common sense" interpretation, the court concluded that defendant was informed of all the elements of robbery. *Id.*

The instant Information likewise sufficiently notified defendant that he was charged with possessing a stolen car with the intent to withhold or appropriate it to the use of someone other than the true owner. He was charged with "unlawfully and feloniously knowingly possses[ing] a stolen motor vehicle, knowing that it has been stolen." This language alone is sufficient to inform defendant of all elements of the crime. Similar to ***Kjorsvik***, unlawful and felonious possession of a stolen car inherently includes an inference of withholding the car from its rightful owner. The complete language of the charging document, read as a whole, informed defendant of all the elements of Count II, and is therefore sufficient.

The strict construction standard of review for charging documents enumerated in ***Vangerpen*** is specific to challenges first raised at trial. ***State v. Vangerpen*** 125 Wn.2d 782, 888 P.2d 1177 (1995). ***Vangerpen*** draws a sharp distinction between the strict review applied to challenges arising from the trial court and the "liberalized standard of review announced in [***Kjorsvik***]" applied to challenges raised for the first time on appeal. ***State v. Vangerpen***, 125 Wn.2d at 788. Under the strict ***Vangerpen*** standard, a citation to a statute as the sole reference to an essential element may be insufficient. However, the liberal ***Kjorsvik*** test, not the ***Vangerpen*** test, applies to the instant case. Therefore, when read liberally and taken as a whole document, the essential elements are present, as noted above.

The Information in this case includes both the correct statutory citations and quotations of some of the statutory language and is thus distinguishable from ***City of Auburn v. Brooke***, 119 Wn.2d 623, 836 P.2d 212 (1992). ***Brooke*** consolidated two cases involving citations functioning as a charging documents and reiterated application of the essential elements rule to citations used as charging documents. *Id.* at 635, 637; *See also*, ***State v. Leach***, 113 Wn.2d 679, 694-5, 782 P.2d 552 (1989). The charging documents simply stated: "RCW 9.40.010(A)(2) Disorderly Conduct"; "11.56.420 Hit/Run; Attended" and "11.56.020(B) DWI," respectively. *Id.* at 635-6. In ***Brooke***, the missing elements of the charged crimes could not

be inferred from the sparse language contained in the citations and "some language" was required to give notice of a missing element in a charging document. *Id.* at 635. In contrast, the present charging document is much more robust and notifies defendant of the "withhold or appropriate" element of his crime. Particularly when evaluated using the ***Kjorsvik*** standard, the language of the challenged information informs the defendant of the nature of the charge against him when viewed in context of the entire document.

b. No Prejudice Resulted From Inartful Language in the Information

Defendant has not argued prejudice. Prejudice under the second ***Kjorsvik*** prong looks beyond the face of the charging document to determine if defendant was able to adequately defend himself against the crimes charged. ***State v. Kjorsvik***, 117 Wn.2d at 105; *See* ***State v. Hopper***, 118 Wn.2d 151, 156, 822 P.2d 775 (1992).

The record shows that any inartful language concerning the "withhold or appropriate" element in the charging document did not impair defendant's ability to defend himself. Defendant did not challenge the "withhold or appropriate" element in Count II, instead focusing his entire argument on the knowing element. 5RP 492-6,512. Additionally, the jury was instructed using all of the language found in RCW 9A.56.140, including the "withhold or appropriate" language. CP 58. Defendant does not assert prejudice, nor can any be found. Therefore, defendant's challenge

to the sufficiency of the information should be rejected.

D. CONCLUSION.

For the foregoing reasons the defendant's conviction for possession of a stolen vehicle should be affirmed.

DATED: May 10, 2016.

MARK LINDQUIST
Pierce County
Prosecuting Attorney

JAMES SCHACHT
Deputy Prosecuting Attorney
WSB # 17298

Neil S. Brown
Legal Intern

Certificate of Service:
The undersigned certifies that on this day she delivered by ~~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.

5.11.16 Theresa
Date Signature

# PIERCE COUNTY PROSECUTOR

## May 11, 2016 - 9:58 AM

**Transmittal Letter**

Document Uploaded: 2-474018-Respondent's Brief.pdf

Case Name: State v. Reinhold

Court of Appeals Case Number: 47401-8

**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: __Respondent's__

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: Therese M Kahn - Email: tnichol@co.pierce.wa.us

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

KARSdroit@aol.com