No. 94250-1

COA # 47401-8-II

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

CHRISTOPHER JOHN REINHOLD,

Petitioner.

ON REVIEW FROM THE COURT OF APPEALS OF THE STATE OF WASHINGTON, DIVISION TWO AND THE SUPERIOR COURT OF THE STATE OF WASHINGTON, PIERCE COUNTY

PETITION FOR REVIEW

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RULES, STATUTES AND CONSTITUTIONAL PROVISIONS

A. IDENTITY OF PARTY

Christopher John Reinhold, appellant below, asks this Court to grant review of the decision of the court of appeals designated in section B.

B. COURT OF APPEALS DECISION

Mr. Reinhold seeks review of the unpublished decision of the court of appeals, Division Two, affirming his convictions for first-degree unlawful possession of a firearm and unlawful possession of a stolen motor vehicle, issued on February 7, 2017, in State v. Reinhold, __ Wn. App. ___ (2017 WL 499446) (attached as Appendix A).

C. ISSUES PRESENTED FOR REVIEW

1. Is there insufficient evidence to prove the essential element that the defendant knew that the car he possessed was stolen when nothing about the car indicated it had been broken into, the defendant was found with the car and key 10 days after the theft and the defendant gave an explanation about having bought the car from someone but some jurors could have deemed that story improbable?

2. While mere possession of stolen property is not enough to prove that the defendant had knowledge that property was stolen, this Court has held that an inference may be drawn from possession of property close in time to a theft if there are sufficient "slight corroborating circumstances" to support a finding of guilty knowledge.

   Does that inference apply when the defendant is found with the property 10 days after the theft and where there are no outward indications that the car was stolen such as a punched ignition or damage?

   Did the court of appeals decision violate due process by effectively creating a presumption that possessing a car which no objective observer would know was stolen 10 days after it was stolen and not being able to sufficiently explain that possession amounts to proof beyond a reasonable doubt of knowledge that the car was stolen?

D. OTHER REASONS SUPPORTING REVIEW

3. Should review also be granted on the issues Mr. Reinhold raised pro se?

E. STATEMENT OF THE CASE

1. Procedural facts

Petitioner Christopher Reinhold was charged with and convicted after jury trial of first-degree unlawful possession of a firearm and unlawful possession of a stolen vehicle, both with an allegation that Reinhold was on community custody at the time. CP 1-2, 65-66, 111-12; RCW 9A.56.068; RCW 9.41.040(1)(a); RCW 9.94A.525(19). The Pierce County Superior Court judge, the Honorable Garold Johnson, ordered a standard-range sentence and Reinhold appealed. CP 131-45. On February 7, 2017, the court of appeals, Division Two, affirmed the convictions in an unpublished opinion. This Petition follows.

2. Facts relevant to issues on appeal

An officer drove through a hotel parking lot checking out the cars and determined that one of them had been stolen about 10 days before. RP 265-69. He and other officers kept watch on the car and arrested Christopher Reinhold after he and others approached the car and Reinhold got in on the driver's side using a key. RP 265-69, 386. When the officer told Reinhold he was being arrested because the car was stolen, Reinhold seemed surprised and disagreed, saying he had bought the car from a girl named Ashley three days earlier. RP 275-76, 303, 308, 320. He did not know her last name or have her contact information. RP 275-76.

According to one officer, Reinhold admitted that he did not have a

bill of sale, title or vehicle registration relating to the car or the sale. RP 276. That officer also opined that this was "odd." RP 276. A different officer, a detective, did not recall Reinhold being asked about such items. RP 331-32. That detective's report on the arrest also had nothing in it about any questioning regarding any such documents. RP 332-33. At some point after being told the car was stolen, Reinhold mentioned a woman he said might have called in the car as stolen to try to get Reinhold in trouble. RP 288-308.

There was nothing about the appearance of the car which would indicate to anyone seeing it that the car was stolen. RP 293-94. The car was not damaged in any way, as the officer would fully admit. RP 294-95. The license plates on the car did not appear to be altered and were, in fact, the registered plates for the car. RP 295. No windows on the car were broken out. RP 295. The steering column was not "punched." RP 295. There were also no markings or anything on the car which appeared altered. RP 295.

Reinhold had the keys to the car in his pocket and used them to open the door. RP 307.

Inside the car were found five total bags, including at least one backpack, none of which belonged to Reinhold. RP 333, 389, 392. Also in the car, under the driver's seat, was a gun, which Reinhold to the officers about, saying he had just found it in the car when police were arriving. RP 289-90, 323, 326.

An officer testified that, inside the car, he found no documents of ownership such as a registration, a bill of sale or anything similar. RP

305. One officer thought he would have searched for such evidence. RP 334-35. Another, however, admitted that he did not actually look at everything in the car, including many of the documents. RP 312-12.

The man who said he owned the car was Lee Jackson, although the registration had a different name. RP 347-48, 389. Jackson testified that he had bought the car on March 4 from a used car dealership. RP 444-45. He could not say the name of the dealership or the name of the person from whom he had bought the car. RP 444-45. Neither Jackson nor his wife were on the registration at the time the car was stolen - or apparently at the time of trial - but Jackson said the dealership told him the documents were "coming in the mail." RP 445.

F. ARGUMENT WHY REVIEW SHOULD BE GRANTED

1. PROOF THAT POSSESSION OF A STOLEN CAR WAS "KNOWING" REQUIRES MORE THAN MERE POSSESSION OF THE CAR AFTER THE FACT AND THERE WAS INSUFFICIENT CORROBORATING EVIDENCE OF KNOWLEDGE TO SATISFY DUE PROCESS

Both the state and federal constitutions guarantee that no person accused of a crime shall be convicted unless the prosecution meets the burden of proving every element of the crime, beyond a reasonable doubt. In re Winship, 397 U.S. 358, 364, 25 L. Ed. 2d 368, 90 S. Ct. 1068 (1970); State v. Farnsworth, 185 Wn.2d 768, 374 P.2d 1152 (2016); Fourteenth Amend.; Const. Art. 1, § 3. If the state fails in that burden, reversal and dismissal is required. See Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979); State v. Green, 94 Wn.2d 216, 221, 616 P.3d 628 (1980), overruled in part and on other grounds by, Washington v.

Recuenco, 548 U.S. 212, 126 S. Ct. 2546, 165 L. Ed. 2d 466 (2006). Evidence is only sufficient to support a criminal conviction if, when taken in the light most favorable to the state and drawing all reasonable inferences therefrom, a rational trier of fact could find all of the essential element were proved beyond a reasonable doubt. See Jackson, 443 U.S. at 319.

To prove unlawful possession of a stolen motor vehicle, RCW 9A.56.068(1) requires proof that the defendant knows the motor vehicle was stolen. See State v. Womble, 93 Wn. App. 599, 604, 969 P.2d 1097, review denied, 138 Wn.2d 1009 (1999). It is not enough that he is found later in possession of stolen property. State v. Couet, 71 Wn.2d 773, 775, 430 P.2d 974 (1967).

In Couet, this Court held that possession of recently stolen property is not sufficient to prove the essential element that knowledge that the property was stolen. Couet, 71 Wn.2d at 775. Possession of stolen property is only sufficient if there is slight corroborative evidence of "other inculpatory circumstances tending to show his guilt." Couet, 71 Wn.2d at 776.

Following that rule, in State v. L.A., 82 Wn. App. 275, 918 P.2d 173 (1996), there was insufficient corroborative evidence to prove the essential element of knowledge that the car was stolen even though L.A. was seen driving it the day after it was taken without the owner's permission. 82 Wn. App. at 275-76. Not only was it illegal for the 14-year-old L.A. to be driving, but the car also had a broken rear wing window. Id. Even so, however, the evidence was insufficient to prove the

essential "knowledge" by the defendant that the car she was possessing was stolen. 82 Wn. App. at 277.

Here, there was even *less* evidence that the car was stolen. In L.A., the car was stolen the day before - here it was 10 days later that Reinhold was found in possession of the car. In L.A., the defendant was not licensed to drive a car and thus was driving illegally -here, there was no evidence of that. Most important, in L.A. the evidence included physical evidence which might have led a reasonable person to believe there was something wrong, because a back window had been broken out - but here, the officers admitted, *nothing* about the car would so indicate. The ignition was not punched. The steering column was not stripped. No windows were broken in. The car was started by a key, not a screwdriver. There were no scratches or marks indicating a break in or anything similar.

In affirming in this case, Division Two properly noted that there must be evidence beyond bare possession under Couet. App. A at 5. But Division Two's did not mention or discuss L.A., despite it being on point and raised in counsel's briefing. See App. A; see Brief of Appellant at 10-11. This Court should grant review under RAP 13.4(b)(2), because the decision of the court of appeals is in conflict with L.A..

In addition, review should be granted under RAP 13.4(b)(3), because Division Two's decision presents a significant constitutional question by relying on an effective presumption and caselaw which needs to be addressed. Division Two found "sufficient corroborative evidence" based on Reinhold's inability to *disprove* that he had stolen the car by providing sufficient details to explain his possession of it. App. A at 5-6.

The court held that, because Reinhold did not provide such details, "a jury could regard Reinhold's explanation as improbable," and it could similarly doubt Reinhold's "vague claim" that someone may have reported the car stolen to get him in trouble. App. A at 6. The court relied on State v. Portee, 25 Wn.2d 246, 170 P.3d 326 (1946), as holding that possession of stolen property coupled with an explanation jurors could find "improbable" was sufficient to prove that the defendant knew the property was stolen. App. A at 6.

The court of appeals stretched Portee too far and even if it had not, the interpretation of that case raises serious constitutional concerns because it allows an improper presumption and shifting of the burden of proof. First, contrary to what the court of appeals opinions appears to hold, Portee does *not* hold that there is sufficient evidence to prove the defendant knowingly possessed stolen property simply because he possessed it 10 days after its theft and cannot sufficiently explain the possession away. See Portee, 25 Wn.2d at 252. In Portee, the timing was far different. A suitcase was stolen on September 21 sometime after being claimed by the owner and left on the loading dock with other items to be delivered and being absent from the delivery at the residence at 2:30 in the afternoon. 25 Wn.2d at 249-50. The defendant was found with a pawn ticket for September 21, and the missing suitcase was recovered. 25 Wn.2d at 251.

Portee first gave police a false name and fake address. 25 Wn.2d at 251-53. When confronted by police about those lies, Portee then gave a statement that a "colored man" came to him at a tavern, offered him a

suitcase for $4.00, said he needed to get his wife out of jail, then took the money and went with Portee to the pawn shop where Portee pawned the suitcase it for $10. 25 Wn.2d at 251. Portee said they went to city jail after the pawnshop but the man was not allowed to see his wife. 15 Wn.2d at 251. They both went back to the tavern, Portee told officers, and the man left. Id.

The Portee Court thus was faced with far more than just evidence of later possession of stolen property and an explanation some jurors might not believe. Portee involved evidence the defendant had possession of the stolen property within hours or possibly minutes of it being stolen, note more than a week later. Portee involved a defendant who gave a fake name and address and only gave his improbable explanation after being caught in those lies. Portee, 25 Wn.2d at 253.

The court of appeals decision here stretches Portee outside its bounds. But more significant, in doing so, Division Two has effectively applied a presumption which violates due process mandates. The state must shoulder the burden of proving all essential elements of the crime, beyond a reasonable doubt. This Court has held that proof of possession of stolen property alone "does not raise a presumption of law which a defendant is required to introduce evidence to rebut" regarding knowledge. See State v. Walters, 7 Wash. 246, 34 P. 938 (1893). But Portee relied on the belief that there was no impropriety in telling a jury

> that the possession by a party of stolen goods is a fact from which complicity in the larceny may be inferred. But the possession must be personal, recent, and unexplained. . .If the explanation involves a falsely disputed identity or other fabricated evidence, the inference increases in strength.

25 Wn.2d at 253 (quoting, 1 Wharton's Criminal Evidence, 11th Ed., 198, §191).

Giving such an instruction today would violate due process. Although generally disfavored in criminal law, the state may rely on evidentiary devices such as presumptions and inferences to help satisfy the state's burden of proof. See State v. Cantu, 156 Wn.2d 819, 826, 132 P.3d 725 (2006); see State v. Deal, 128 Wn.2d 693, 699-700, 911 P.2d 996 (1996). But using such devices is tricky because of due process concerns. Deal, 128 Wn.2d at 701. Because the state must bear the burden of proving every essential element of a crime, the prosecution may not use a mandatory presumption to prove an element of a crime. Id. Further, the state may not even use a *permissive* presumption if that presumption requires the defendant to introduce evidence sufficient to rebut the inference on an essential element of the charge. Deal, 128 Wn.2d at 701; State v. Hanna, 123 Wn.2d 704, 710, 871 P.2d 135, cert. denied, 513 U.S. 919 (1994).

Indeed, this Court has recently examined the scope of due process in shifting the burden to the defendant in the context of proving an "affirmative defense," noting the fundamental rule that the State cannot require the defendant "to disprove any fact that constitutes the crime charged." In re W.R., Jr., 181 Wn.2d 757, 762, 336 P.3d 1134 (2014).

Under Deal, the comment the Portee thought would be proper to make to jurors would now be highly improper. Telling jurors they may infer knowledge if the person possesses recently stolen property and fails to explain that possession sufficiently is a clear shift of the burden of

proof. See, 128 Wn.2d at 700. Indeed, this Court has already backtracked from broadly interpreting Portee because of similar concerns. See State v. Mace, 97 Wn.2d 840, 650 P.2d 217 (1982). In that case, the defendant's failure to explain his possession of stolen property after arrest was used against him and the right to be free from self-incrimination was involved. 97 Wn.2d at 843.

But Mace also gave examples of the type of evidence required to be sufficient under the "slight corroboration" standard, including "the defendant actually denied knowledge of possession although the property was found on his premises, he was placed near the scene of the crime, he was not surprised when the police found the goods and his trousers had a grease spot comparable to the" counter of the store from which the goods were stolen, or the "defendant could not explain his presence in the hall above the tavern where the goods had been stolen," had tried to hide in a closet, had dust and glass on his clothes that was consistent with the burglary's entry and gave inconsistent explanations of possessing the stolen goods." Mace, 87 Wn.2d at 840.

Notably, Mace also supports granting review in this case because Mace contains inartful language which might be seen to support the improper result here. In Mace, this Court broadly cited a case as holding the same as the court of appeals held below in this case - that there was sufficient evidence to prove the defendant knew the property she was possessing if she gave an improbable explanation for that possession. Mace, 97 Wn.2d at 844, citing, State v. Douglas, 71 Wn.2d 303, 428 P.2d 535 (1967). This language is inartful because Douglas did not involve

proper consideration of the due process implications of its holding, as Douglas was not a sufficiency case. Instead, Douglas involved two questions: whether the trial court erred in 1) declining to give an instruction on circumstantial evidence, and 2) denying a motion to suppress. See Douglas, 71 Wn.2d at 305.[1]

This Court should grant review. Division Two's decision is in conflict with L.A. and the requirement of sufficient corroborating evidence to prove the essential "knowledge" element of the crime. Further, the decision of the court of appeals stretches the inference that later possession of stolen property is presumptive evidence that the defendant knew the property was stolen if the defendant cannot convincingly explain it away. And Division Two's reliance on Portee stretches the idea of "failing to explain" too far, shifting the burden to the defendant to produce a

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[1]Indeed, Douglas actually supports Petitioner's arguments in this case. In Douglas, the crime occurred when a weekend home was looted some time between January 2 and 9, 1966. 71 Wn.2d at 304-305. A detective assigned to the case later recalled seeing the items in the defendant's apartment on January 13. 71 Wn.2d at 304-305. After the articles were identified as belonging to the victims, the defendant claimed that he had been offered them at 2 in the morning in exchange for gas when he was in charge of a service station in North Bend, by "an Indian, accompanied by his wife and two or three children." Id. He had needed some items to furnish his apartment, he said, so had bought them from the other man for $40 and a tank of gas. Id.

At trial, the defendant (and state) had requested in instruction which would have told the jury that, in order to convict based on circumstantial evidence, the facts and circumstances relied on had to be "consistent with eachother" and with the defendant's guilt, and "inconsistent with any reasonable theory of evidence;" "of such character as to exclude every reasonable hypothesis other than that of guilt." 71 Wn.2d at 305. This Court first noted that the evidence against the defendant was "entirely circumstantial," because bare possession of recently stolen evidence is not sufficient to support a conviction. Id. The Court held that, without more than the discovery of the items from the home in the apartment, there could be no conviction for burglary or larceny but, noted that a jury could deem his explanation improbable or probable. As a result, this Court found that the proposed instruction should have been given to the jury - further, that such an instruction "should be given where circumstantial evidence is relied on to sustain the conviction and there are multiple hypotheses from the circumstantial evidence, one of which would establish or tend to establish the innocence of the defendant." Douglas, 71 Wn.2d at 309.

convincing explanation or be deemed to have the required "guilty knowledge," running afoul of the due process mandates and turning the requirement of sufficient corroborating evidence of guilt into a presumption of guilty knowledge unless such knowledge is disproved. The question of whether due process is violated by allowing such an effective presumption for the state's burden of proving the essential elements of the crime is a significant issue of constitutional merit. The prosecution bears the burden of proving that knowledge but Division Two's decision and interpretation of Portee runs afoul of that fundamental requirement. This Court should grant review.

G. OTHER REASONS SUPPORTING REVIEW

2. REVIEW SHOULD ALSO BE GRANTED ON ALL OF THE ISSUES PETITIONER RAISED PRO SE

Mr. Reinhold filed a pro se RAP 10.10 Statement of Additional Grounds for Review ("SAG"), but the court of appeals rejected all of his claims presented therein. See App. A. Counsel was not appointed to assist or research the issues contained in that SAG. See RAP 10.10(f).

In State v. Brett, 126 Wn.2d 136, 206, 892 P.2d 29 (1995), cert. denied, 516 U.S. 1121 (1996), this Court held that it would not address arguments incorporated by reference from other *cases*, but did not state anything about incorporation by reference of arguments or issues raised in the current case. To comply with RAP 13.7(b) and raise all the issues in the Petition without making any representations about their relative merit, incorporated herein by reference are Reinhold's pro se arguments, contained in his RAP 10.10 SAG. This Court should grant review on

those issues.

H. CONCLUSION

Mr. Reinhold was convicted of possessing a stolen motor vehicle without sufficient proof he knew it was stolen. The court of appeals decision upholding the conviction conflicts with L.A. and further runs afoul of due process by effectively presuming that later possession of stolen property with an inadequate explanation will equate to guilty knowledge. This Court should grant review to address these issues, as well as those presented in Mr. Reinhold's RAP 10.10 SAG.

DATED this 9th day of March, 2017.

Respectfully submitted,

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CERTIFICATE OF SERVICE BY MAIL/EFILING

Under penalty of perjury under the laws of the State of Washington, I hereby declare that I sent a true and correct copy of the attached Petition for Review to opposing counsel at Pierce County Prosecutor's Office via the Court's email at pcpatcecf@co.pierce.wa.us, and to Mr. Reinhold, DOC 770024, MCC, P.O. Box 777, Monroe, WA. 98272.

DATED this 9th day of March, 2017.

Respectfully submitted,
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Filed
Washington State
Court of Appeals
Division Two

February 7, 2017

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. CHRISTOPHER JOHN REINHOLD, Appellant.	No. 47401-8-II UNPUBLISHED OPINION

Lee, J. — Christopher Reinhold appeals his convictions for first degree unlawful possession of a firearm and first degree unlawful possession of a stolen vehicle, with both crimes aggravated by the circumstance that he was under community custody at the time he committed the crimes. Reinhold argues that (1) there was insufficient evidence to prove that he knowingly possessed the stolen vehicle, and (2) the charging information was constitutionally deficient. Reinhold also argues in a statement of additional grounds for review (SAG) that (3) the State failed to establish the true owner of the vehicle, (4) his trial counsel provided ineffective assistance, and (5) the trial court erred by denying his request for a continuance. We affirm.

FACTS

On March 14, 2014, Officer Randall Fleming conducted a routine patrol of the Rodeway Inn parking lot and discovered a car that was reported stolen. As Officer Fleming approached the car, Reinhold was entering the driver's side.

Officer Fleming informed Reinhold that the car was reported stolen and began to question him. Reinhold seemed surprised by this information. Reinhold said that he bought the car from a

person named Ashley three days earlier, but he was unable to provide Ashley's contact information, a bill of sale, title, vehicle registration, or any other information about Ashley or the transaction. Reinhold also said that a person named Jennifer may have reported the car as stolen to get him in trouble, but he was unable to provide Jennifer's contact information. Officer Fleming arrested Reinhold.

Officer Fleming did not observe any physical indications that the car was stolen upon initial inspection, and Reinhold had keys to the car. But Officer Fleming did notice a handgun under the driver's seat through an open car door. Reinhold had told Officer Fleming about the handgun and that he was handling the gun just before Officer Fleming approached. Reinhold also told Officer Fleming that none of the property found in the car was his.

Reinhold was charged by information with first degree unlawful possession of a firearm and first degree unlawful possession of a stolen vehicle. Both crimes were charged with an allegation that the crimes were aggravated by the circumstance that Reinhold was under community custody when he committed the crimes.

Pretrial, Reinhold filed a *Knapstad*[1] motion that alleged the State was unable to establish a prima facie case showing he knowingly possessed the stolen vehicle. The trial court denied the motion.

At trial, the State presented the following evidence relating to the ownership of the car. On March 14, LeeRoy Jackson appeared at the police station to claim the car. Jackson testified that he owned the car, the car was stolen on March 4 from his driveway when it was running with the

[1] *State v. Knapstad*, 107 Wn.2d 346, 353-54, 729 P.2d 48 (1986).

keys in the ignition, and he had only owned the car for about 10 days at that point. He paid $3,000 cash for the car at a dealership in Tacoma, but he did not have a purchase agreement or bill of sale. Jackson's and his wife's names were not on the car's registration, but the dealership had told him that everything would be "all good to go and coming in the mail." 4 Verbatim Report of Proceedings at 447. Officer Fleming testified that Reinhold told him he purchased the car from a person named Ashley but could not provide any contact information or any details about the transaction. Officer Fleming also testified that Reinhold told him another person, Jennifer, possibly reported the car stolen.

At the conclusion of the State's case, Reinhold moved to dismiss the case again, arguing that there was insufficient evidence to prove that he knowingly possessed the stolen vehicle. The trial court denied the motion.

The jury found Reinhold guilty as charged. After trial, but before sentencing, Reinhold requested a continuance because his private investigator discovered that Jackson was never identified as the purchaser, legal owner, or registered owner of the car. The State argued that this information was already testified to, Reinhold had thoroughly cross-examined Jackson on the matter, and Reinhold had the opportunity to conduct such an investigation before trial. The trial court held that a continuance was not required in the administration of justice because sentencing would not affect Reinhold's remedies for a new trial, denied Reinhold's motion, and sentenced Reinhold. Reinhold appeals.

ANALYSIS

A. SUFFICIENCY OF EVIDENCE

Reinhold argues that there was insufficient evidence to prove an essential element of unlawful possession of a stolen vehicle—that he knowingly possessed the stolen vehicle. Specifically, Reinhold argues that there was no evidence that he knew the car was stolen. Reinhold also argues in a SAG that there was insufficient evidence to prove who the true owner of the car was. We disagree.

1. Legal Principles

To sustain a conviction, the State must prove all the elements of an offense beyond a reasonable doubt. *In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970); U.S. CONST. amend. XIV; WASH. CONST. art. I, § 3. The test for determining the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the defendant guilty beyond a reasonable doubt. *State v. Rich*, 184 Wn.2d 897, 903, 365 P.3d 746 (2016). Circumstantial evidence and direct evidence are equally reliable. *State v. Farnsworth*, 185 Wn.2d 768, 775, 374 P.3d 1152 (2016).

We review a challenge to the sufficiency of the evidence de novo. *Rich*, 184 Wn.2d at 903. A sufficiency challenge admits the truth of the State's evidence and all reasonable inferences drawn from it. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). We defer to the fact finder on issues of conflicting testimony, witness credibility, and persuasiveness of the evidence. *State v. Ague-Masters*, 138 Wn. App. 86, 102, 156 P.3d 265 (2007).

Under RCW 9A.56.068, a "person is guilty of possession of a stolen vehicle if he or she possess [possesses] a stolen motor vehicle." "Possess" is defined as "knowingly to receive, retain,

possess, conceal, or dispose of stolen property knowing that it has been stolen and to withhold or appropriate the same to the use of any person other than the true owner or person entitled thereto." RCW 9A.56.140(1). Thus, to be convicted of unlawful possession of a stolen vehicle, the defendant must have withheld or appropriated the vehicle for the use of a person other than "the true owner or person entitled thereto." RCW 9A.56.140(1). "Owner" is defined as "a person, other than the actor, who has possession of or any other interest in the property or services involved, and without whose consent the actor has no authority to exert control over the property or services." RCW 9A.56.010(11).

"[B]are possession of recently stolen property alone is not sufficient to justify a conviction." *State v. Couet*, 71 Wn.2d 773, 775, 430 P.2d 974 (1967). But possession of recently stolen property combined with slight corroborative evidence may justify a conviction. *State v. Withers*, 8 Wn. App. 123, 128, 504 P.2d 1151 (1972). Such corroborative evidence includes an explanation of how the defendant came to possess the property which a "jury could regard as improbable." *State v. Portee*, 25 Wn.2d 246, 254, 170 P.2d 326 (1946); *State v. Womble*, 93 Wn. App. 599, 604, 969 P.2d 1097 (1999).

2. Sufficient Evidence Supports Knowing Possession

In this case, the State presented sufficient evidence of Reinhold's knowing possession of a stolen vehicle. At trial, Jackson testified that he owned the car, having purchased it from a dealership on March 4, about 10 days before it was stolen from his driveway with the keys in the ignition. Reinhold was in possession of the car after it was stolen from Jackson. Reinhold said he bought the car from a person named Ashley three days before his arrest, but he was unable to provide Ashley's contact information, a bill of sale, title, vehicle registration, or any other

information about Ashley or the transaction. And the property found inside the car did not belong to Reinhold.

Reinhold argues that there was no physical indication that the car was stolen and that Officer Fleming admitted Reinhold looked surprised when he was told the car was stolen. However, the evidence is viewed in the light most favorable to the State. We also defer to the fact finder on issues of conflicting testimony, witness credibility, and persuasiveness of the evidence. Because Reinhold was unable to provide any details whatsoever about Ashley or his transaction with her, a jury could regard Reinhold's explanation as improbable. Similarly, a jury could regard Reinhold's vague claim that Jennifer may have reported the car as stolen to get him into trouble as improbable. An improbable explanation combined with possession of a recently stolen vehicle is sufficient to justify a conviction. Based on the evidence, a reasonable jury could conclude beyond a reasonable doubt that Reinhold knew the car was stolen. Therefore, we hold that there was sufficient evidence to prove that Reinhold knew the car he possessed was stolen.

3. Sufficient Evidence Supports True Ownership

Reinhold also argues in a SAG that there was insufficient evidence to support his conviction because the State failed to prove who the true owner of the car was. We disagree.

Jackson testified that he owned the car and that it was stolen on March 4. He paid $3,000 cash for the car at a dealership in Tacoma. Jackson's and his wife's names were not on the car's registration, but the dealership had told him that everything would be "all good to go and coming in the mail." 4 VRP at 444-45. While Reinhold argues that Jackson did not have any physical proof of ownership and that the car was not registered to him at the time it was stolen, the evidence is viewed in the light most favorable to the State. Viewed in this light, the amount of detail

contained in Jackson's testimony was sufficient for a jury to infer that Jackson was the true owner and conclude beyond a reasonable doubt that Reinhold withheld or appropriated the car from the true owner. Moreover, where conflicting testimony exists, we defer to the fact finder on issues of witness credibility and persuasiveness of the evidence. Therefore, we hold that Reinhold's challenge fails.

B. CONSTITUTIONALITY OF THE CHARGING DOCUMENT

Reinhold argues that the charging information was constitutionally deficient because it failed to set forth all the essential elements of first degree unlawful possession of a stolen vehicle, citing *State v. Satterthwaite*, 186 Wn. App. 359, 344 P.3d 738 (2015). We disagree because *State v. Porter*, 186 Wn.2d 85, 375 P.3d 664 (2016), disapproved of *Satterthwaite* and resolves this exact issue.

1. Legal Principles

A defendant has the constitutional right to be informed of the charges against him. *State v. Johnson*, 180 Wn.2d 295, 300, 325 P.3d 135 (2014); U.S. CONST. amend. VI; WASH. CONST. art. I, § 22. The State formally gives notice of charges by information, which "shall be a plain, concise and definite written statement of the essential facts constituting the offense charged." CrR 2.1(a)(1). We review the adequacy of a charging document de novo. *Johnson*, 180 Wn.2d at 300.

The information is constitutionally sufficient if all the essential elements of the crime are included in the document. *State v. Vangerpen*, 125 Wn.2d 782, 787, 888 P.2d 1177 (1995). "'An essential element is one whose specification is necessary to establish the very illegality of the behavior charged.'" *State v. Zillyette*, 178 Wn.2d 153, 158, 307 P.3d 712 (2013) (internal quotation marks omitted) (quoting *State v. Ward*, 148 Wn.2d 803, 811, 64 P.3d 640 (2003)). The

primary purpose of the essential element rule is "to apprise the accused of the charges against him or her and to allow the defendant to prepare a defense." *Vangerpen*, 125 Wn.2d at 787. Definitions of essential elements are not necessary to include. *Porter*, 186 Wn.2d at 94. If the State fails to allege every essential element of the crime, then the information is deficient and the charge must be dismissed without prejudice. *State v. Nonog*, 169 Wn.2d 220, 226, 237 P.3d 250 (2010).

2. Charging Document Was Constitutionally Sufficient

Porter resolves the exact argument that Reinhold raises. In *Porter*, the court addressed the argument that Porter's conviction should be overturned because the charging document omitted an essential element of the offense of possession of a stolen vehicle—RCW 9A.56.140(1)'s definition of possession as to "withhold or appropriate [stolen property] to the use of any person other than the true owner or person entitled thereto." 186 Wn.2d at 88. The charging document against Porter stated

> [that Porter], 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.

Id. The court held that the charging document was constitutionally sufficient. *Id.* at 94. The court reasoned that the charging document did not need to include RCW 9A.56.140(1)'s withhold and appropriate language because it merely "define[d] and limit[ed] the scope of the essential elements of the crime of unlawful possession of a stolen motor vehicle." *Id.* at 91. The court emphasized that the charging document "sufficiently articulated the essential elements of the crime for which Porter was charged, making further elaboration of what it mean[t] to unlawfully possess stolen property unnecessary." *Id.* at 92.

Here, Reinhold also argues that the information filed against him omitted the essential element that he withheld or appropriated the stolen vehicle for use by someone who was not the true owner or person entitled thereto. The information filed against Reinhold stated

> [that 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 . . . and against the peace and dignity of the State of Washington.

Clerk's Papers at 2. The information here and in *Porter* are nearly identical. Therefore, we hold that *Porter* controls; the information did not need to include the withhold and appropriate language of RCW 9A.56.140(1), and the information charging Reinhold with possession of a stolen vehicle was constitutionally sufficient.

C. STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW

Reinhold also argues that (1) his trial counsel provided ineffective assistance, and (2) the trial court erred by denying his request for a continuance. We disagree.

1. Ineffective Assistance of Counsel

Reinhold argues that his trial counsel provided ineffective assistance because he failed to conduct a meaningful investigation before trial. We decline to address this issue on direct appeal.

We review ineffective assistance of counsel claims de novo. *State v. Sutherby*, 165 Wn.2d 870, 883, 204 P.3d 916 (2009). To establish a claim of ineffective assistance of counsel, Reinhold must show both deficient performance and resulting prejudice. *State v. McFarland*, 127 Wn.2d 322, 334-35, 899 P.2d 1251 (1995). Where the claim is brought on direct appeal, the reviewing court will not consider matters outside the trial record. *Id.* at 335. To raise an issue on appeal that requires evidence or facts not in the trial record, a personal restraint petition should be filed. *Id.*

Here, Reinhold raises claims that rely on evidence not in the trial record. Reinhold argues that his trial counsel failed to interview "Ashley Johnson," who was allegedly the person who sold him the car. SAG at 7. Reinhold also argues that his trial counsel failed to investigate who the legal owner of the car was. Because these issues rely on evidence outside the record, we decline to address them on direct appeal.

2. Request for Continuance

Reinhold argues that the trial court erred by denying his request for a continuance before sentencing and relies on CrR 3.3(f) to support his argument. We disagree.

CrR 3.3(f) allows the trial court to grant a continuance of the trial date when motioned for by the court or a party and "such continuance is required in the administration of justice and the defendant will not be prejudiced in the presentation of his or her defense." CrR 3.3(f)(2). A trial court's decision to grant or deny a continuance of the trial date falls within its sound discretion. *State v. Madsen*, 168 Wn.2d 496, 513, 229 P.3d 714 (2010).

A trial court abuses its discretion when its decision is manifestly unreasonable or based on untenable grounds or untenable reasons. *State v. Lord*, 161 Wn.2d 276, 283-84, 165 P.3d 1251 (2007). Such is the case when the trial court relies on unsupported facts, takes a view no reasonable person would take, applies an incorrect legal standard, or bases its ruling on an erroneous view of the law. *Id.* at 284.

Here, the trial court did not abuse its discretion. Reinhold requested a continuance based on the work of his private investigator after trial had concluded and the jury had returned its verdicts. The investigator had apparently discovered that Jackson was never documented as the purchaser or registered owner of the car. This evidence was testified to at trial, Reinhold had

thoroughly cross-examined Jackson on the matter, and Reinhold had the chance to conduct such an investigation before trial. Thus, a continuance was not required because the evidence in the investigator's possession was already presented at trial.[2]

Furthermore, because the request for a continuance was brought after the conclusion of trial and guilty verdicts had already been returned, the request for a continuance under CrR 3.3 was untimely. Therefore, the trial court did not abuse its discretion, and we hold that Reinhold's argument fails.

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.

Lee, J.

We concur:

Maxa, A.C.J.

Maxa, A.C.J.

Melnick, J.

Melnick, J.

[2] Additionally, the trial court's denial of Reinhold's request for a continuance did not prejudice him because he could still raise his arguments in a post trial motion.

RUSSELL SELK LAW OFFICES
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