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Supreme Court No. 99899-0
Court of Appeals No. 37024-1-III

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Petitioner,

v.

MICHAEL HIATT, Respondent

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

PETITION FOR REVIEW

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I. IDENTITY OF PETITIONER

The State of Washington requests this Court exercise discretionary review over Division Three of the Court of Appeals' decision in *State v. Hiatt*, No. 37024-1-III, 2021 WL 1929311 (May 13, 2021) (unpublished). *See,* Attach. A.

II. ISSUES PRESENTED FOR REVIEW

1. Is review appropriate under RAP 13.4(b)(4) where the decision below involves whether a gratuitous bailee can possess a stolen motor vehicle, an issue of substantial public importance?

2. Is review appropriate under RAP 13.4(b)(1), (2), and (4) where the decision below conflicts with the United States Supreme Court in *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979), regarding whether sufficiency of the evidence review differs between bench and jury trials?

III. STATEMENT OF THE CASE

The defendant, Michael Hiatt, was charged in the Spokane County Superior Court by amended information, with one count of possession of a stolen motor vehicle and one count of possession of a motor vehicle theft tool. CP 4. Mr. Hiatt waived his right to a jury trial. CP 9. The Honorable Charnelle Bjelkengren presided over the trial. Mr. Hiatt was

convicted as charged by the court. *Hiatt*, No. 37024-1-III (2021), slip op. at 6.

The trial court made the following relevant findings of fact. On December 25, 2018, Officer Ethan Wilke was on patrol in the area of West Sharp Avenue and North Jefferson Street in Spokane County. CP 83 (FF 1). He observed a Ford Expedition which he believed had been reported stolen. CP 83 (FF 1).

Officer Wilke determined the vehicle was not reported stolen; however, he then observed a black Honda Accord chained to the front of the Expedition. CP 83-84 (FF 2 -3). The two vehicles were chained together and padlocked by their front bumpers, hood-to-hood. CP 84 (FF 4). Officer Wilke knew that early 1990s Honda Accords are often stolen in Spokane. CP 84 (FF 5). The Accord's driver's side window was broken out and there was shattered glass on the front seat. CP 84 (FF 6). The Accord did not have a license plate, so Officer Wilke checked the Vehicle Identification Number (VIN). CP 84 (FF 7). He learned the Accord was reported stolen. CP 84 (FF 8).

Thereafter, Michael Hiatt exited the Explorer. CP 84 (FF 9). Officer Wilke determined Mr. Hiatt had outstanding misdemeanor arrest

warrants. CP 84 (FF 10). Officer Wilke placed Mr. Hiatt under arrest and advised him of his *Miranda*[1] rights. CP 84 (FF 11). Mr. Hiatt acknowledged his rights and agreed to speak with Officer Wilke. CP 84 (FF 12).

Mr. Hiatt told Officer Wilke that the Ford belonged to him but was not registered in his name. CP 84 (FF 13). Mr. Hiatt told Officer Wilke that the Accord belonged to his buddy, but did not want to disclose his buddy's name. CP 84 (FF 14). Mr. Hiatt told Officer Wilke that his buddy had asked if he could chain the Accord to the Expedition; Mr. Hiatt allowed his friend to do so. CP 84 (FF 15-16).

K.C. Chavez was the legal owner's brother and had permission to use the Honda from approximately December 10, 2018, to December 24, 2018, when he last saw the vehicle. CP 84-85 (FF 17-18, 20). Mr. Chavez and his brother were the only two individuals with keys to the Accord. CP 85 (FF 19). Mr. Chavez last saw the vehicle on December 24, 2018, at 3:30 p.m. and filed a stolen vehicle report with Officer Zachary Johnson that same day. CP 85 (FF 20, 22).

After Officer Wilke discovered the Accord, Officer Johnson and Mr. Chavez went to the location and also observed the Accord; its ignition

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[1] *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

was "punched" and there was broken glass on the ground. CP 85 (FF 23, 25). Mr. Chavez also noted that the tires and rims were different than those affixed to the Accord the day before, and the speakers, stereo and toolbox were missing. CP 85 (FF 28-29). Those items were never recovered. CP 85 (FF 30).

During a search incident to Mr. Hiatt's arrest, Officer Wilke found three key rings containing shaved keys in his pants pocket; based upon the officer's training and experience, shaved keys are commonly used to steal vehicles. CP 85 (FF 26-27).

From these facts, the trial court concluded that Mr. Hiatt knowingly received, retained, or possessed a motor vehicle by allowing his friend to chain the Accord to his Ford Explorer. CP 86 (CL 1). The court further concluded that Mr. Hiatt acted with knowledge that the Accord was stolen because of the visibly punched ignition and broken window. CP 86 (CL 3). By allowing the Accord to be chained to his Expedition, the court found that Mr. Hiatt withheld or appropriated the Accord to the use of someone other than the true owner. CP 86 (CL 4). Lastly, the court found that Mr. Hiatt knew that the shaved keys found in his pocket were intended to be used for motor vehicle theft. CP 86 (CL 7, 9).

The trial court found Mr. Hiatt guilty beyond a reasonable doubt of both counts. CP 86-87. The trial court entered written Findings of Fact and Conclusions of Law. *See*, Attach. B.

On appeal, Mr. Hiatt claimed insufficient evidence supported his conviction for possession of a stolen motor vehicle. *Hiatt*, No. 37024-1-III (2021), slip op. at 6. A majority of the Court of Appeals agreed, citing this Court's decision in *State v. Homan*, 181 Wn.2d 102, 330 P.3d 182 (2014); the *Hiatt* majority opinion held that there was not substantial evidence contained in the trial court's written findings to show that the defendant had constructive or actual possession of the stolen vehicle. *Hiatt*, No. 37024-1-III (2021), slip op. at 7-9.

The majority believed that it was bound by the trial court's written findings of fact in its review of sufficiency of the evidence on appeal. *Id.* at 12. This belief ostensibly limited the majority's review of sufficiency of evidence to the trial court's written findings. *Id*. Under that standard of review, the majority held that the defendant was not a bailee and RCW 9A.56.010(23) did not apply because the defendant did not accept possession of the stolen vehicle from its true owner. *Id.* at 6.

Judge Pennell disagreed with the majority opinion. *Hiatt*, No. 37024-1-III (2021), slip op. at 1 (Pennell, J., dissenting). Judge Pennell found that the defendant was, at a minimum, a bailee for the stolen vehicle as he told police that he had allowed the Accord to be chained to his own vehicle so it would not get stolen. *Id*. Judge Pennell also observed that sufficiency of the evidence review should not have been limited to the trial court's findings of fact in a bench trial. *Id*. at 7-8.

Judge Pennell found that even if the defendant were not a bailee (as established by his own statement to law enforcement), the State's evidence would be sufficient to prove possession *even absent* this admission. *Id*. at 4. The Accord was found *chained and padlocked to the defendant's vehicle*, and was obviously stolen, with a punched-out ignition and a broken window; further, shaved keys, used for motor vehicle theft, were found on the defendant's person. *Id*. at 1, 3-4.

IV. REASONS REVIEW SHOULD BE ACCEPTED AND ARGUMENT

Review by this Court is appropriate where one or more of RAP 13.4's criteria are met. Here, the opinion below presents a conflict with United States Supreme Court case law adopted and relied upon by this Court. RAP 13.4(b)(1), (2).

In *Jackson*, 443 U.S. at 319, the petitioner was convicted of first-degree murder *after a bench trial*. *Id*. at 307. The U.S. Supreme Court affirmed the conviction, holding that a review of the record in the light most favorable to the prosecution showed that any rational factfinder could have found the petitioner guilty. *Id*. Specifically, this inquiry did not require a reviewing court to ask whether *it* believed the evidence at trial established guilt beyond a reasonable, but whether *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Id*. at 318-19. This Court adopted the *Jackson* standard in *State v. Green*, 94 Wn.2d 216, 221-22, 235, 616 P.2d 628 (1980).

Here, the majority opinion has created a double standard that could encourage criminal litigants to waive their right to a jury trial and gamble that poorly written findings of fact could result in reversal and dismissal despite the presence of sufficient evidence in the record that would support affirming the conviction had the matter been tried to a jury.

Second, the opinion below appears to require proof that a defendant obtained some benefit or that he "used" a stolen vehicle in some other fashion, additional elements that are not required by RCW 9A.56.068. The majority decision rejected the notion that the defendant could be considered

a gratuitous bailee and still be in possession of a stolen motor vehicle. Given that this is not an uncommon fact pattern for possession of stolen motor vehicle cases (i.e., where a defendant claims that he or she "received" stolen property from a friend) and bench trials are a common occurrence in this state, the two issues presented are issues of substantial public interest. RAP 13.4(b)(4).

A. THIS COURT SHOULD GRANT REVIEW TO CLARIFY WHETHER A GRATUITOUS BAILEE "POSSESSES" STOLEN GOODS SUCH THAT HE OR SHE MAY BE CRIMINALLY LIABLE.

A person is guilty of possession of stolen motor vehicle if he or she possesses a stolen vehicle. RCW 9A.56.068(1). "Possessing stolen property" means to "knowingly *receive*, *retain*, *possess*, conceal or dispose of property" knowing it has been stolen and withholding it from the true owner. RCW 9A.56.140(1) (emphasis added). Property that is obtained by theft is "stolen." RCW 9A.56.010(17). "Theft" means to wrongfully obtain or exert unauthorized control over the property of another with the intent to deprive that person of such property. RCW 9A.56.020. Theft may be committed by having property in one's possession, custody or control as a bailee. RCW 9A.56.010(23)(b).

A bailee is one entrusted with the *possession* of another's property. 3 Wharton's Criminal Law § 359 (15th ed. 2020). By definition, a bailee *receives* personal property from another and has *possession* of. but not title to. the property. BLACK'S LAW DICTIONARY 173 (11th ed. 2019). It is sufficient to prove a bailee's *acceptance* of the article bailed by showing, either directly or circumstantially, constructive acceptance. *See e.g.*, *Bertig Bros. v. Norman*, 101 Ark. 75, 141 S.W. 201 (1911). "Accept" means to "receive with consent." MERRIAM-WEBSTER'S DICTIONARY AND THESAURUS 5 (2007). A bailment may exist even where property has come into the possession of a person by accident or mistake, as long as that person knows or has notice that he has possession and custody of the property. *Bertig Bros.*, 101 Ark. at 203; *see also State v. Kealey*, 80 Wn. App. 162, 907 P.2d 319 (1995) ("Mislaid property is presumed to have been left in the custody of the owner or occupier of the premises upon which it is found. When [one] takes possession of mislaid property he or she becomes a gratuitous bailee by operation of law"). "The essence of a [gratuitous bailment] is the absence of any compensation to the bailee." *United States v. Frank*, 207 F. Supp. 216 (S.D.N.Y 1962). By accepting control over the property, a person becomes a gratuitous bailee and is required to explain

any loss of the goods. *Murphy v. Schwark*, 117 Wash. 461, 462, 201 P. 757 (1921).

Viewing the facts found by the trial court in the light most favorable to the State, the defendant told law enforcement that he had allowed an unidentified friend to chain and padlock the Accord to his own vehicle to prevent it from being stolen. By this statement, as acknowledged by Judge Pennell's dissent, Mr. Hiatt consented to the stolen vehicle being secured to his own and was aware of the vehicle being in his safe-keeping. Having apparently received no benefit for compensation for chaining the Honda to his own, Hiatt's admission establishes him as a gratuitous bailee. The defendant had knowledge that the vehicle was stolen because of the visibly punched ignition and broken window.[2] This is sufficient to support the conviction of possession of a stolen motor vehicle. *State v. Couet*, 71 Wn.2d 773, 775, 430 P.2d 974 (1967).

However, the majority opinion would require more to establish Mr. Hiatt's possession of the vehicle that he accepted and permitted to be chained to his own. It appears that the majority would require: (1) Hiatt have

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[2] The sufficiency of the evidence of defendant's knowledge that the vehicle was stolen has not been challenged on appeal.

expressly promised to protect the vehicle; (2) Hiatt's provable entry into the vehicle; (3) Hiatt to have had express permission to saw off the lock; and/or (4) Hiatt to have had an ability to pay for repairs to his *own* vehicle so as to allow the Accord to be moved.

The majority opinion requires that the State must prove a defendant's "control" over a stolen vehicle gives him or her some benefit or that he or she "used" the vehicle in some other fashion. *See Hiatt*, slip op. at 3 (Pennell, J. dissenting). However, courts cannot add words or clauses to an unambiguous statute. *State v. Delgado*, 148 Wn.2d 723, 727, 63 P.3d 792 (2003). The majority opinion requires the State to prove more than is required by RCW 9A.56.068.

Under the majority opinion, whenever a defendant claims to have obtained stolen goods from a "friend," the State's burden would be heightened to prove the defendant's benefit from or actual use of that property, rather than simply the receipt of stolen goods. Yet, statutorily, a person possesses a stolen vehicle when he or she knowingly receives, retains or possesses a vehicle. RCW 9A.56.068; RCW 9A.56.140(1). The majority opinion adds an additional non-statutory and non-common law element to the offense – use of or benefit from the stolen goods.

"Exclusive possession" is the "exercise of exclusive dominion over property, including the use and benefit of the property." BLACK'S LAW DICTIONARY 949 (7th ed. 2000). RCW 9A.56.068 does not require "exclusive possession" by use and benefit; it merely requires the knowing receipt, retention or possession of stolen goods. While this Court has clearly held that more than mere passing control is required to establish possession, *see Couet*, 71 Wn.2d at 775, this Court has never required "exclusive possession," use of or benefit from the possessed goods. This heightened burden of proof is a substantial issue of public interest to prosecutors, courts and Washington's citizens.

B. THE COURT SHOULD GRANT REVIEW TO CLARIFY WHETHER THE COURT OF APPEALS IS TO APPLY A DIFFERENT STANDARD OF REVIEW TO SUFFICIENCY OF THE EVIDENCE CLAIMS FOR BENCH TRIALS THAN IS APPLICABLE TO JURY TRIALS.

"To determine whether sufficient evidence supports a conviction, [the court] view[s] the evidence in the light most favorable to the [State] and determine[s] whether any rational fact finder could have found the elements of the crime beyond a reasonable doubt." *Homan*, 181 Wn.2d at 105. In challenging the sufficiency of the evidence, the defendant "admit[s]

the truth of the State's evidence and all reasonable inferences that can be drawn from it." *Id*. at 106.

"'[F]ollowing 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.'" *Id*. Substantial evidence is evidence sufficient to persuade a fair-minded, rational person of the finding's truth. *Id*. The court considers unchallenged findings of fact verities on appeal, and review conclusions of law de novo. *Id*.

As above, there was sufficient evidence, both direct and circumstantial, and reasonable inferences that could be drawn therefrom, for the trial court to conclude beyond a reasonable doubt that Mr. Hiatt knowingly received, retained, or possessed the Accord knowing it had been stolen and withheld it from the true owner, as required by RCW 9A.56.140(1). The defendant received the recently stolen Accord from someone other than the true owner. CP 86. The defendant withheld or appropriated the Accord by allowing it to be chained to his vehicle. CP 86. By allowing it to be chained to his vehicle and physically preventing its use and return to the true owner, the defendant had dominion and control over the Accord. CP 86.

Even without the defendant's admission to law enforcement that he accepted the Honda from a "buddy" or a specific finding that the defendant was a gratuitous bailee of the vehicle, there was sufficient evidence that a rational fact finder could have found the defendant guilty of possession of a stolen motor vehicle. Possession of recently stolen property combined with slight corroborative evidence of other inculpatory circumstances will sustain a conviction for possession of stolen property. *State v. Portee*, 25 Wn.2d 246, 253-54, 170 P.2d 326 (1946).

Yet, the majority opinion ignored that evidence, instead believing itself to be confined to the trial court's express findings of fact. This misconception resulted in *less deference* being afforded to a bench verdict than is afforded to jury verdicts. As Judge Pennell's dissent pointed out:

> If, in the bench trial context, the sufficiency analysis were limited to the trial court's findings, then a defendant could prevail on appeal and prevent remand merely by pointing out a faulty finding, regardless of the overwhelming strength of the State's case. In contrast, in the jury trial context, we assess whether any rational jury could have found in favor of the State, regardless of whether the actual jury appears to have accepted a particular set of facts.

Hiatt, No. 37024-1-III (2021), slip op. at 8 n.5 (Pennell J., dissenting).

Based on *Homan*, 181 Wn.2d 102, the majority claimed that it was bound by the trial court's written findings[3] in its review of sufficiency of the evidence.[4] *Hiatt*, No. 37024-1-III (2021), slip op. at 12.

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[3] The requirement that a trial court enter written findings is based on a court rule not a constitutional right. CrR 6.1(d). The purpose of requiring written findings and conclusions in a bench trial is to ensure efficient and accurate appellate review. *State v. Cannon*, 130 Wn.2d 313, 922 P.2d 1293 (1996).

[4] In apparent conflict with its belief that its review was limited to the trial court's written findings of fact, the majority opinion *also* relied on numerous "facts" from the trial record, not mentioned by the trial court's formal findings: (1) There was too much condensation on the Expedition's windows for the officer to read the vehicle identification number (*Hiatt*, No. 37024-1-III (2021), slip op. at 2); (2) the defendant had been sleeping inside the Expedition (*id*. at 3); (3) Officer Wilke and Officer Blankenstein wanted to see if there was anyone in the Expedition so they approached it, knocked on the door and announced themselves (*id*.); (4) the officers asked for the defendant's name and date of birth and he provided them (*id*.); (5) Mr. Chavez parked and left the Accord outside his home (*id*. at 1); (6) Mr. Hiatt was homeless and living out the Expedition (*id*. at 4); (7) Mr. Hiatt testified that his friend asked if he could keep his car attached to his so that it didn't get stolen (*id*.); (8) when Mr. Chavez arrived to retrieve the Accord, officers cut the chain because no key to the padlock was found in Mr. Hiatt's possession or otherwise (*id*.); (9) Officer Wilke later testified that Mr. Chavez recognized his rims and tires as being on a white sedan located in the vicinity (*id*.); (10) Mr. Chavez testified it was actually his brother who claimed to have seen the rims and tires on a white sedan (*id*. at 4-5); (11) Officer Wilke ran the white sedan's plates and confirmed it had not been reported stolen and did not attempt to contact that vehicle's owner (*id*. at 5); (12) Officer Wilke never obtained a warrant to search the Expedition (*id*.); (13) a beer can found in the Accord that Mr. Chavez said was not his, the can was collected for evidence to check for latent fingerprints but the officer never received the results (*id*.); (14) Officer Wilke did not attempt to fingerprint the interior or exterior of the Accord (*id*.); (15) Officer Wilke did not see cuts on Mr. Hiatt's hands, broken glass on his clothing, or anything else that physically tied Mr. Hiatt to the inside of the Accord (*id*.); (16) Mr. Hiatt told Officer Blankenstein that the Expedition was inoperable (*id*.); (17) Mr. Hiatt told Officer Blankenstein that the chain connecting the cars was not his (*id*.); (18) when the officer tried the punch-out key stuck in the ignition, the Accord started up (*id*.);

However, as observed by Judge Pennell, while the *Homan* court stated that appellate review of a bench trial is limited to determining whether substantial evidence supports the findings of fact, it affirmed the conviction based on find what a *reasonable* trier of fact *could have found*. *Homan*, 181 Wn.2d at 109-10. This is consistent with the sufficiency of the evidence test outlined in *Jackson*. *See also State v. Yallup*, 3 Wn. App. 2d 546, 553, 416 P.3d 1250 (2018).

As indicated above, *Jackson* also involved the sufficiency of the evidence from a bench trial. After *Jackson*, under the federal constitution, the test for sufficiency of the evidence is "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson*, 443 U.S. at 319. This Court promptly adopted

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(19) Mr. Chavez testified that the person who had permission to drive the Accord were his brother and his friends Boogie, Trevor and Adam (*id.*); (20) Mr. Chavez testified that he knew the defendant as his friend Boogie and that he had given him permission to use his car but not that specific day (*id.* at 6); (21) the Accord was parked on a public street (*id.* at 9); (22) the majority concluded that it was possible for any passerby to enter the Accord (*id.*); (23) the majority found that given the defendant was homeless, he likely lacked the means to travel to a hardware store to obtain the necessary tools to saw off the padlock (*id.*); and (24) Mr. Hiatt was sleeping in the inoperable Expedition, with its own broken-out windows, on a "really cold" December night; the majority found that this suggests he lacked the resources to repair and fuel the Expedition (*id.*).

that standard in *Green*, 94 Wn.2d at 221–22, 235.[5] This test does not differ between bench trial and jury trials. *Jackson*, 443 U.S. at 317.

In this case, the stolen Accord was found chained and padlocked to the defendant's front bumper, it had a broken driver's seat window, glass on the driver's seat and a punched-out key stuck in the ignition. *Hiatt*, No. 37024-1-III (2021), slip op. at 2-3. The defendant admitted that he had allowed the two vehicles to be bound together and he had three key rings with shaved keys in his pants pocket. *Id*. at 3-4. Viewing the facts in the light most favorable to the State, a rational trier of fact could have found the defendant guilty of possession of a stolen motor vehicle.

Yet, the deference that would have been afforded to a jury's verdict under these facts was not afforded to the verdict of the trial judge sitting as the trier of fact. This dichotomy should be reviewed by this Court as an issue of substantial public importance. *If* there is a difference between the standards of review, which under *Jackson*, there is not, this Court should clarify those standards so as to compel Washington's trial courts to better

[5] The Court acknowledged that *Jackson* required it to determine whether, *on the whole record,* a rational trier of fact could have found guilt beyond a reasonable doubt.

assess the sufficiency and accuracy of their written findings of fact for bench trials.

Further, if a trial court's findings of fact are not entitled to deference by the Court of Appeals, more criminal defendants may opt to waive their right to a jury trial, in favor of gambling on the potential that the Court of Appeals may later find technical fault in the written bench trial findings. In such cases, defendants may receive a windfall (i.e., dismissal of charges *and* retrial barred by double jeopardy) where sufficient evidence does, in fact, exist in the record, and if tried to a jury, would have been affirmed on appeal.

V. CONCLUSION

The State respectfully requests this Court grant review of the decision below. *Hiatt* presents this Court with an opportunity to resolve two matters of substantial public importance. RAP 13.4(b)(4).

Respectfully submitted this 10 day of June 2021.

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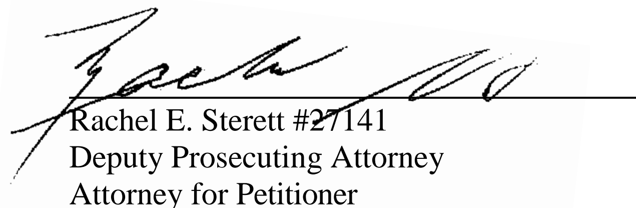
Prosecuting Attorney



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ATTACHMENT A

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In the Office of the Clerk of Court
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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON,	)	
	)	No. 37024-1-III
Respondent,	)	
	)	
v.	)	
	)	
MICHAEL RODNEY HIATT,	)	UNPUBLISHED OPINION
	)	
Appellant.	)	

SIDDOWAY, J. — Michael Hiatt appeals his conviction of possession of a stolen motor vehicle. Evidence that he gave permission to a friend to chain a vehicle recognizable as stolen to the front bumper of Mr. Hiatt's own inoperable car was insufficient, without more, to establish Mr. Hiatt's constructive possession of the stolen vehicle. We reverse the conviction, dismiss the charge, and remand for resentencing.

FACTS AND PROCEDURAL BACKGROUND

Beginning on December 10, 2018, KC Chavez possessed and was using a Honda Accord owned by his brother. Mr. Chavez parked and left the Accord outside his home two weeks later, on Christmas Eve. The next morning, it was gone. A Spokane patrol officer responded to Mr. Chavez's report of a stolen vehicle. Mr. Chavez took the officer to the location where Mr. Chavez said he had parked the Accord and the officer observed broken glass on the ground. Mr. Chavez said he and his brother were the only two people with keys to the car, and that he (Mr. Chavez) had not given anyone permission to use it at the time it went missing.

On Christmas night, another officer, Ethan Wilke, was on patrol when he observed a Ford Expedition that met the description of an Expedition that had been reported as stolen.[1] He ran the Expedition's California license plate and learned that the plate, at least, was not associated with a stolen car. There was too much condensation on the Expedition's windows for him to read the vehicle identification number (VIN).

As Officer Wilke began to leave, he saw that a black Honda Accord, which was parked nose to nose with the Expedition, was actually chained and padlocked to the

[1] The trial court's finding of fact 1, which states in part that Officer Wilke "observed a Ford Expedition which had been reported as stolen," Clerk's Papers at 83, is the only finding designated as a finding by the trial court that Mr. Hiatt challenges. There is an error; the Expedition observed by Officer Wilke turned out not to be the Expedition reported as stolen.

Expedition, through the cars' front bumpers. He also saw that the Accord had a broken driver's side window. He stopped to investigate and saw glass on the driver's seat of the Accord. It had a punch-out key stuck in its ignition that Officer Wilke was unable to remove. The Accord did not have a license plate, so Officer Wilke checked the Honda's VIN and learned that the car was Mr. Chavez's stolen Accord.

Officer Wilke and Officer Brian Blankenstein, who had joined him at the scene, wanted to see if there was anyone in the Expedition, so they approached it, knocked on the door, and announced themselves. Michael Hiatt, who had been sleeping inside, stepped out. Asked for his name and date of birth, he provided them. Officer Wilke ran Mr. Hiatt's name and learned he had misdemeanor warrants. He placed Mr. Hiatt under arrest and read him his *Miranda*[2] rights. Mr. Hiatt agreed to speak with the officers.

Mr. Hiatt told the officers the Expedition belonged to him, although it was not registered to him. He told them the Accord belonged to a friend, whose name he did not want to disclose. He said he had allowed his friend to chain the cars together. At trial, Officer Wilke provided the following testimony on this point:

> Q. . . . Did you ask him if he had any idea who the Honda belonged to?
>
> A. I did.
>
> Q. Did he reply?

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[2] *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

> A. He told me it was a friend of his. He did not wish to tell me their name.
>
> Q. Did you ask Mr. Hiatt why the sedan was chained to the Ford Expedition?
>
> A. I did.
>
> Q. Did he respond?
>
> A. He told me his friend had asked him if he could keep his car attached to his car so that it didn't get stolen.
>
> Q. Did you ask Mr. Hiatt where he was living at the time?
>
> A. I did.
>
> Q. Did he respond?
>
> A. Yeah, he told me he was homeless and living out of the Expedition.

Report of Proceedings (RP) at 30.

Officer Wilke searched Mr. Hiatt incident to arrest and found three key rings with shaved keys in Mr. Hiatt's pants pocket.

When Mr. Chavez arrived to retrieve the Accord, officers cut the chain because no key to the padlock was found in Mr. Hiatt's possession or otherwise. On examining the Accord, Mr. Chavez told officers that several items that had been in it the day before were missing, including a toolbox, speakers and a stereo. He also claimed that the rims and tires now on the Accord were not the rims and tires on the Accord when it was stolen.

Officer Wilke later testified that Mr. Chavez recognized his rims and tires as being on a white sedan located in the vicinity. (Mr. Chavez testified it was actually his brother

who claimed to have seen the rims and tires on a white sedan.) Officer Wilke ran the white sedan's plates and confirmed it had not been reported stolen. He did not attempt to contact that vehicle's owner.

None of Mr. Chavez's missing property was found in Mr. Hiatt's possession. When cross-examined about that at trial, Officer Wilke said he never obtained a warrant to search the Expedition. None of the missing items was otherwise recovered.

When cross-examined by the defense at trial, Officer Wilke acknowledged that a beer can had been found in the Accord that Mr. Chavez said was not his. The officer collected it as evidence to be checked for latent fingerprints, but never got the results back. He did not undertake fingerprint collection from the interior or exterior of the Accord. He admitted he did not see cuts on Mr. Hiatt's hands, broken glass on his clothing, or anything else that physically tied Mr. Hiatt to the inside of the Accord.

Officer Blankenstein was told by Mr. Hiatt that the Expedition was inoperable. Mr. Hiatt also told Officer Blankenstein that the chain connecting the cars was not his. Officer Blankenstein, like Officer Wilke, tried to remove the punch-out key in the Accord's ignition without success. When he tried the key, the Accord started up.

The State called Mr. Chavez as a trial witness. He testified that the persons who had permission to drive the Accord were his brother and his friends Boogie, Trevor, and Adam. In the prosecutor's redirect examination, she asked if he recognized Mr. Hiatt,

and Mr. Chavez testified he knew him as his friend Boogie. He said that he had given him permission to use his car previously, "but not, not that specific day." RP at 77.

Mr. Hiatt was charged with possession of a stolen motor vehicle and making or possessing a motor vehicle theft tool. He waived his right to a jury trial and at his one-day bench trial, the State called as witnesses the three police officers involved in the investigation and Mr. Chavez. At the close of the State's case, Mr. Hiatt made a motion to dismiss the possession of a stolen motor vehicle charge for lack of evidence of actual or constructive possession. The motion was denied. The defense presented no evidence.

The trial court found Mr. Hiatt guilty of both charges. On the element of possession of the Accord that had been raised by the dismissal motion, the trial court concluded:

> 6. Mr. Hiatt had constructive possession of the Honda Accord because he had dominion and control over the Honda Accord.
> 7. Mr. Hiatt had the ability to saw off the padlock or make the Ford Expedition operable; the Honda Accord would then [have] been in Mr. Hiatt's actual possession.

Clerk's Papers (CP) at 86.

Mr. Hiatt appeals.

ANALYSIS

Mr. Hiatt contends that insufficient evidence supports his conviction for possession of a stolen motor vehicle.

A defendant commits the crime of possessing a stolen motor vehicle when he knowingly receives, retains, possesses, conceals, or disposes of a stolen motor vehicle, knowing it has been stolen, and withholds or appropriates the vehicle to the use of any person other than the true owner or person entitled thereto. RCW 9A.56.068, .140(1). To support a conviction, the State must prove "(1) actual or constructive possession of the stolen property with (2) actual or constructive knowledge that the property is stolen." *State v. Summers*, 45 Wn. App. 761, 763, 728 P.2d 613 (1986).

We view Mr. Hiatt's principal challenge as his assignment of error to the trial court's sixth and seventh conclusions of law: that Mr. Hiatt had constructive possession of the Accord and, by sawing off the padlock or making the Expedition operable, he could have reduced it to actual possession. While labeled as conclusions of law, they are findings of fact, which is how we treat them. *Stastny v. Bd. of Trs. of Cent. Wash. Univ.*, 32 Wn. App. 239, 246, 647 P.2d 496 (1982) (We treat findings or conclusions for what they are, not how they are labeled.); *Willener v. Sweeting*, 107 Wn.2d 388, 394, 730 P.2d 45 (1986) (A finding of fact erroneously labeled as a conclusion of law is treated as a finding of fact.).

Following a bench trial, we review whether substantial evidence supports the challenged findings of fact, and whether findings that are supported by the evidence support the conclusions of law. *State v. Homan*, 181 Wn.2d 102, 105-06, 330 P.3d 182 (2014). "'Substantial evidence' is evidence sufficient to persuade a fair-minded person

of the truth of the asserted premise." *Id*. at 106. While we defer to the trial court's resolution of conflicting evidence, *see id.*, the material facts in this case were not in dispute.

To determine constructive possession a court examines whether, under the totality of the circumstances, the defendant exercised dominion and control over the item in question. *State v. Davis*, 182 Wn.2d 222, 234, 340 P.3d 820 (2014). There must be substantial evidence to show dominion and control. *Id.* at 234-35. Factors supporting dominion and control include ownership. *Id.* at 234. While ownership is not required, the fact that a defendant asserts no interest in the item is relevant. *Id.* at 235. The ability to immediately take actual possession of an item can establish dominion and control; mere proximity to the item cannot. *Id.* Frequent use of the item and the ability to exclude others are characteristics of constructive possession. *State v. Edwards*, 9 Wn. App. 688, 690, 514 P.2d 192 (1973).

Due process requires the State to prove all elements of a crime beyond a reasonable doubt. *State v. Washington*, 135 Wn. App. 42, 48, 143 P.3d 606 (2006). The test for 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 guilt beyond a reasonable doubt." *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

The State's evidence in support of Mr. Hiatt's constructive possession of the Accord is the fact that it was chained to the Expedition with Mr. Hiatt's permission.

There is no evidence Mr. Hiatt promised to protect the Accord, which was parked on a public street. There is no evidence Mr. Hiatt's friend gave him permission to enter the Accord or that Mr. Hiatt entered it. The driver's side window was broken, so it was possible for Mr. Hiatt to enter the Accord, but it was possible for any passerby to do the same thing.

The Accord was operable and a key stuck in the ignition would start it. But it was chained to the Expedition with a chain that did not belong to Mr. Hiatt and a padlock that there is no evidence he could unlock. As the trial court found, Mr. Hiatt could have sawed off the padlock and taken actual possession of the Accord, but there is no evidence he had his friend's permission to do that. And there is no evidence it would have been a feasible thing for him to do, given that he was homeless and likely lacked the means to travel to a hardware store to obtain the necessary tools.

As the trial court also found, Mr. Hiatt could, in theory, have made the Expedition operable. But the fact that Mr. Hiatt was sleeping in the inoperable Expedition, with its own broken-out window, on what Officer Wilke testified was a "really cold" December night, suggests he lacked the resources to repair and fuel it. RP at 20.

Viewing the evidence in the light most favorable to the State and admitting all reasonable inferences, substantial evidence does not support the finding that Mr. Hiatt had constructive or actual possession of the Accord.

The dissent finds sufficient evidence by making its own finding that Mr. Hiatt was

a bailee of the Accord. It states that defense counsel agreed at oral argument that Mr. Hiatt was a bailee, and since a bailee is someone responsible for keeping property safe until it is returned to its owner, defense counsel admitted that Mr. Hiatt was protecting the car and withholding it from Mr. Chavez.

Defense counsel did not agree that Mr. Hiatt was a bailee. What defense counsel said was, "You know, I don't actually know the law surrounding who qualifies as a bailee or not." Wash. Court of Appeals oral argument, *State v. Hiatt*, No. 37024-1-III (Dec. 14, 2020) at 10 min., 47 sec. through 10 min., 52 sec. (on file with court). When posing hypotheticals, *members of the panel* sometimes characterized them as bailments. And defense counsel agreed that if a hotel guest putting jewels in an in-room safe was a bailor and the hotel a bailee, then it "sounds like" Mr. Hiatt could be a bailee. *Id.* at 11 min., 18 sec. through 11 min., 20 sec. Defense counsel stated that the "best analogy" suggested during oral argument was a restaurant placing a bike rack outside its entrance for the convenience of patrons who wished to lock their bikes. *Id.* at 11 min., 43 sec. through 11 min., 52 sec.

In fact, under Washington law, a bailee is not someone responsible for keeping property safe; a bailee is someone who accepts possession of property. "Before a bailment . . . can be said to exist 'there must be a change of possession and an assumption or acceptance to possession by the person claimed to be the bailee.'" *Freeman v. Metro Transmission, Inc.*, 12 Wn. App. 930, 932, 533 P.2d 130 (1975) (quoting *Collins v.*

Boeing Co., 4 Wn. App. 705, 711, 483 P.2d 1282 (1971)). "A bailment arises generally when personalty is delivered to another for some particular purpose with an express or implied contract to redeliver when the purpose has been fulfilled." *Id.* And a gratuitous bailee (one who accepts care and custody of property without charge and without any expectation of receiving a benefit or consideration) is not responsible for keeping property safe—a gratuitous bailee can only be liable for a loss proximately caused by the bailee's own gross negligence. *White v. Burke*, 31 Wn.2d 573, 577, 197 P.2d 1008 (1948).

Mr. Hiatt never admitted to accepting possession of the Accord or to being a bailee. The evidence on which the dissent relies in saying that he did is the following testimony from an investigating officer:

> Q. Did you ask Mr. Hiatt why the sedan was chained to the Ford Expedition?
>
> A. I did.
>
> Q. Did he respond?
>
> A. He told me his friend had asked him if he could keep his car attached to his car so that it didn't get stolen.

RP at 30. One can infer from this testimony that *Mr. Hiatt's friend* believed that chaining his bumper to Mr. Hiatt's bumper would deter theft, but nothing can be inferred about Mr. Hiatt other than that he agreed his friend could attach the Accord's bumper to his Ford's bumper with a chain. The trial court did not infer anything more. Its only relevant findings are its 15th and 16th findings, that "Mr. Hiatt indicated his friend asked

if the friend could chain his Honda to Mr. Hiatt's Ford," and "Mr. Hiatt allowed his friend to do so." CP at 84. The evidence at trial did not support a finding that Mr. Hiatt was a bailee, let alone a bailee who undertook to protect the Accord.

RCW 9A.56.010(23), which is cited by the dissent, does not apply. It provides that someone who *is* a bailee from the "true owner" can "'wrongfully obtain'" or "'exert unauthorized control'" over entrusted property if the bailee "secrete[s], withhold[s], or appropriate[s] the same to his or her own use or to the use of any person other than the owner." Mr. Hiatt did not accept possession of the Accord from its owner, Mr. Chavez, and then secrete, withhold or appropriate it to his own use.

We disagree with the dissent that when reviewing a sufficiency challenge to the outcome of a bench trial we may look beyond the trial court's findings if they are "faulty," and identify other facts that support guilt. We can no more do that in a bench trial than we could in a jury trial in which findings were made in a special verdict. The dissent cites *Jackson v. Virginia*, 443 U.S. 307, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979), for this prosecution-friendly approach, but the standard for sufficiency review established in *Jackson* is intended to protect defendants, not convictions.

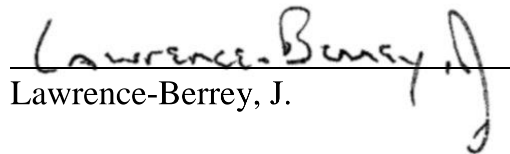
Nor do we think the trial court's findings in this case *were* faulty. It appears the trial court found what it believed it could find, in what was a weak State case.

We reverse and dismiss the charge of possession of a stolen vehicle. We remand for resentencing.[3]

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Siddoway, J.

I CONCUR:



Lawrence-Berrey, J.

[3] Mr. Hiatt's opening brief raised issues about his offender score. In a motion filed following oral argument, he requests leave to supplementally brief the impact on his criminal history of *State v. Blake*, 197 Wn.2d 170, 481 P.3d 521 (2021), and to request that we strike a provision of his judgment and sentence requiring the payment of Department of Correction supervision fees. Because all of these issues can be addressed at resentencing, the motion to file the supplemental brief is denied.

No. 37024-1-III

PENNELL, C.J. (dissenting) — KC Chavez's stolen Honda Accord was found affixed to Michael Hiatt's Ford Expedition, yet the majority claims Mr. Hiatt did not possess the Accord. The majority reaches this conclusion not because Mr. Hiatt did not know the two cars were chained together. Indeed, Mr. Hiatt admitted he allowed the Accord to be chained to his Expedition. Instead, the majority claims Mr. Hiatt did not possess the Accord because he could not drive it and had no greater access to it than any other member of the public. I disagree and therefore dissent.

As counsel for Mr. Hiatt agreed at oral argument, the evidence at trial showed Mr. Hiatt was at least a bailee for the stolen Accord. Wash. Court of Appeals oral argument, *State v. Hiatt*, No. 37024-1-III (Dec. 14, 2020), at 10 min., 42 sec. through 11 min., 27 sec. (on file with court). While he may not have specifically admitted that he promised he would guard the car, Mr. Hiatt told police he had allowed the stolen car to be attached to his car so that it did not get stolen. A fair interpretation of this statement is that Mr. Hiatt admitted to being a bailee. It is certainly a fair interpretation given the standard of review, which demands that we assess the facts in the light most favorable to the State.

A "bailee" is someone responsible for keeping property safe until it is returned to its owner. *See* BLACK'S LAW DICTIONARY 173 (11th ed. 2019). "Bailee" is a term that dates back to the 16th century and refers to "[s]omeone who receives personal property from another, and has possession of but not title to the property." *Id.* There are two types of bailees: a gratuitous bailee and a bailee for hire. *White v. Burke*, 31 Wn.2d 573, 578, 197 P.2d 1008 (1948). A gratuitous bailee is one who receives no consideration for a bailment; a bailee for hire receives some sort of compensation. *Id.* The different benefits conferred on a bailee result in different duties to protect the bailed property. A gratuitous bailee need only refrain from gross negligence. *Id.* at 582. A bailee for hire must refrain from ordinary negligence. *Id.* Both a gratuitous bailee and a bailee for hire have a duty to return property to the bailor upon request. *See State v. Kealey*, 80 Wn. App. 162, 172-73, 907 P.2d 319 (1995).

Mr. Hiatt's statement indicates he was a gratuitous bailee. According to his statement, he derived no benefit from allowing the Accord to be chained to his Expedition. Had Mr. Hiatt been able to derive some sort of benefit, such as using the Accord for sleeping or driving, he would have been a bailee for hire. *White*, 31 Wn.2d at 583 (A person is a bailee for hire if they "derive[ ] a benefit to [themselves] by taking possession of the bailor's property . . . ."). Regardless, this distinction does not matter for our purposes. A gratuitous bailee still receives and possesses property. Mr. Hiatt's claim to be a gratuitous bailee of the Accord does not mean that he did not possess the vehicle.

Washington specifically recognizes that a person who is a bailee of stolen property meets the criteria for unlawful possession. *See* RCW 9A.56.010(23)(b) ("'[w]rongfully obtains' or 'exerts unauthorized control' means . . . [h]aving any property or services in one's possession, custody or control as bailee"). By retaining a piece of property so that it is withheld from its true owner, a bailee possesses property as required to prove the crime of unlawful possession of stolen property. *See* SETH A. FINE, 13B WASHINGTON PRACTICE: CRIMINAL LAW AND SENTENCING § 31.13 (3d. ed. 2020) (An essential element of possessing stolen property is that "the defendant withheld or appropriated [the property] to the use of someone other than the true owner.").

Mr. Hiatt's admission that he was a bailee of the stolen Accord established that he was withholding the Accord from its true owner by allowing it to be chained to his vehicle. Mr. Hiatt may not have been making use of the Accord. Nor might he have derived any benefit from having the Accord chained to his vehicle. Nevertheless, he still possessed the Accord in that he appropriated it to the use of someone other than the true owner. This was all that was necessary to establish the element of possession.[1]

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[1] Mr. Hiatt does not challenge the State's ability to prove the other elements of the offense, including the requirement that he know the vehicle was stolen. Here, the circumstantial evidence (including a punched-out ignition, broken window, and recent report of stolen property) provided amply sufficient evidence of knowledge. *See State v. Couet*, 71 Wn.2d 773, 775, 430 P.2d 974 (1967).

It should be noted that the State's evidence would be sufficient to prove possession even if Mr. Hiatt was not believed to be a bailee. Mr. Hiatt need not have been taken at his word that he was holding the Accord for an unnamed friend. The Accord was obviously stolen and Mr. Hiatt was a prime suspect, especially given that he had shaved keys on his person. When caught by police, Mr. Hiatt was likely motivated to try to distance himself from responsibility for the Accord by saying something exonerating. No evidence other than his statement suggested Mr. Hiatt was a bailee. Had Mr. Hiatt said nothing, one could fairly infer from the circumstantial evidence that Mr. Hiatt equally possessed both the Expedition and Accord. Mr. Hiatt's attempt at a self-serving statement did not strip the State of the evidence in its favor or the ability to prove its case. The evidence was more than sufficient to allow the State to prove its case on multiple theories and for a reasonable fact finder to reach a guilty verdict.

The majority does not analyze this alternate view of the evidence, apparently because it goes beyond the trial court's findings. The trial court never made a finding that Mr. Hiatt's statement was not credible. Instead, consistent with the foregoing bailee analysis, the trial court found Mr. Hiatt's statement was not inconsistent with possession.

While the trial court did not specifically reject Mr. Hiatt's statement, the fact remains that it *could* have rationally done so, as set forth above.[2] The constitutional sufficiency analysis turns on whether "*any* rational fact finder could have found the elements of the crime beyond a reasonable doubt." *State v. Homan*, 181 Wn.2d 102, 105, 330 P.3d 182 (2014) (emphasis added). The test for sufficiency does not differ, regardless of whether there is a bench or jury trial. *Jackson v. Virgina*, 443 U.S. 307, 317 n.8, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979).

The majority's insistence on staying within the trial court's findings may come from language used by the Supreme Court in *Homan*. Immediately after the foregoing quote regarding the sufficiency standard of review, the *Homan* court recited the sentence: "[F]ollowing 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." *Id.* at 105-06. The *Homan* court then went on to disregard this sentence and assess the evidence in the case not according to what the trial judge actually

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[2] The fact that the trial court did not address the credibility of Mr. Hiatt's statement does not make its findings deficient. As explained, Mr. Hiatt's statement established he possessed the Accord as a gratuitous bailee. It was therefore unnecessary to decide whether Mr. Hiatt's statement was truthful. Nevertheless, a rational juror *could* have rejected Mr. Hiatt's statement as not credible and, having done so, found him guilty on the basis that he had primary possession of the stolen vehicle.

found, but with respect to what a trier of fact "could find" or "could have found." *Id.* at 107, 109-10.

I do not read *Homan*'s brief reference to the substantial evidence test, which typically applies in civil cases, as binding. *Homan* never limited its review to the actual facts found by the trial court. Instead, the analysis was entirely abstract, focused on what the evidence "could" have proved. The court's early reference to the civil standard for assessing findings appears to be dicta. I agree with our assessment in *State v. Yallup*, 3 Wn. App. 2d 546, 553, 416 P.3d 1250 (2018), that the *Homan* approach does nothing more than apply "the evidentiary sufficiency standard dictated by the Fourteenth Amendment to the United States Constitution" that asks "whether the trier of fact *could* find the element(s) proved."

It bears noting that the requirement a trial judge enter written findings is not based on the constitution, but a court rule. *See* CrR 6.1(d).[3] The purpose of the rule is to *facilitate* appellate review, not change it altogether. *See State v. Head*, 136 Wn.2d 619, 622, 964 P.2d 1187 (1998). In the bench trial setting, there are no jury instructions that can be reviewed to discern whether a verdict was based on legal error. Requiring findings

[3] In federal court, findings and conclusions are not required in criminal bench trials unless requested. FRCrP 23(c). The purpose of findings and conclusions is to preserve questions of law for appeal. *Cesario v. United States*, 200 F.2d 232, 233 (1st Cir. 1952).

enables a reviewing court to understand the trial court's interpretation of the law and ensure an accused has been tried under the proper legal criteria. *See Wilson v. United States*, 250 F.2d 312, 324-25 (9th Cir. 1957). So long as the record shows the trial court properly understood the law, limited or faulty findings will not result in relief on appeal. *See State v. Banks*, 149 Wn.2d 38, 65 P.3d 1198 (2003) (conviction affirmed despite trial court's failure to make a finding on an essential element of the offense).

To the extent I am wrong and *Homan* does alter the sufficiency analysis in criminal bench trials, it conflicts with binding precedent from the United States Supreme Court, as set forth by Judge Dwyer's opinion in *State v. Stewart*, 12 Wn. App. 2d 236, 243, 457 P.3d 1213 (2020) (Dwyer, J., concurring) (citing *Jackson v. Virginia*, 443 U.S. 307).[4] I agree with Judge Dwyer that given our court's confusion over *Homan*, the Supreme Court should clarify the sufficiency standard applicable to criminal bench trials. If, despite *Jackson*'s statement to the contrary, 443 U.S. at 317 n.8, sufficiency review differs between bench and jury trials, then there needs to be a clear statement to that effect. Clarity will help trial judges assess the necessary breadth of their findings. It will help defendants understand that exercising the right to a jury trial, as opposed to a bench

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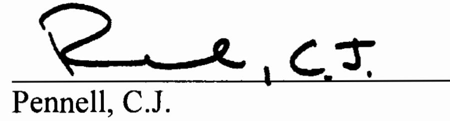
[4] Contrary to the majority's analysis, *Jackson*'s rule does not differ according to which side of the litigation benefits from its impact. The sufficiency standard is the same at bench and jury trials, regardless of whether the impact of the standard benefits the prosecution or defense.

trial, involves the loss of a more generous standard of review on appeal.[5] On the other hand, if there is not a different sufficiency standard (as is my position), then the court needs to articulate the applicable remedy where the State presents sufficient evidence to justify a conviction, but the trial court's findings are faulty. If faulty findings are a trial error,[6] similar to an erroneous jury instruction, then the court should clarify that such errors are amenable to remand and retrial, not reversal with prejudice.



Pennell, C.J.

[5] The sufficiency analysis carries a strong appellate remedy that favors the defendant. If the State's evidence at a criminal trial is insufficient, then double jeopardy prohibits remand for retrial. *See Burks v. United States*, 437 U.S. 1, 18, 98 S. Ct. 2141, 57 L. Ed. 2d 1 (1978). If, in the bench trial context, the sufficiency analysis were limited to the trial court's findings, then a defendant could prevail on appeal and prevent remand merely by pointing out a faulty finding, regardless of the overwhelming strength of the State's case. In contrast, in the jury trial context, we assess whether any rational jury could have found in favor of the State, regardless of whether the actual jury appears to have accepted a particular set of facts. Even when a trial court issues faulty jury instructions, which would necessarily lead a jury's implicit findings to be faulty, reversal is without prejudice to retrial. *See State v. Brown*, 147 Wn.2d 330, 344, 58 P.3d 889 (2002).

[6] The trial court's findings in this case were not faulty, they were simply limited to the version of the facts presented by Mr. Hiatt. I agree with the trial court that, based on this version of the facts, the conviction should be affirmed. My only point is that the trial court's verdict could have been sustained on a different set of facts.

ATTACHMENT B

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

STATE OF WASHINGTON Plaintiff, v. MICHAEL RODNEY HIATT WM 10/14/81 Defendant(s).	)	No. 18-1-05601-32 PA# 19-9-73161-0 RPT# 2018-20252612 RCW 9A.56.068-F (#65390) **FINDINGS OF FACT AND CONCLUSIONS OF LAW ON VERDICT FOLLOWING BENCH TRIAL**

THIS MATTER came before the Court for a verdict on July 29, 2019. The State of Washington was represented by EMILY L. LEDDIGE, Deputy Prosecuting Attorney. The defendant, MICHAEL RODNEY HIATT, was represented by JOY ABRAMS. The defendant was present. The Honorable Charnelle M. Bjelkengren having had the opportunity to hear testimony from Officer Ethan Wilke, Officer Brian Blankenstein, Officer Zachary Johnson, and KC Chavez, and argument of counsel, now makes the following:

FINDINGS OF FACT

1. On December 25, 2018, Officer Ethan Wilke was on patrol in the area of West Sharp Avenue and North Jefferson Street in Spokane County, Washington. He observed a Ford Expedition which had been reported as stolen.
2. Officer Wilke ran the Ford Expedition's California license plate and learned that it was

SPOKANE COUNTY PROSECUTING ATTORNEY
COUNTY CITY PUBLIC SAFETY BUILDING
SPOKANE, WA 99260 (509) 477-3662

not reported stolen.

3. Officer Wilke observed a black Honda Accord chained to the front of the Ford Expedition.
4. The Ford and Honda were chained and padlocked together by their front bumpers, hood to hood.
5. Based on Officer Wilke's training and experience, Honda Accords from the early 1990s are commonly and easily stolen in Spokane.
6. Officer Wilke observed the Honda had a broken driver's side window and there was glass on the driver's seat.
7. The Honda Accord did not have a license plate, so Officer Wilke checked the Honda's VIN (vehicle identification number).
8. Officer Wilke learned the Honda was reported stolen.
9. A man, later identified as Michael R. Hiatt, exited the Ford Explorer.
10. Officer Wilke ran Mr. Hiatt's name and learned he had misdemeanor warrants.
11. Officer Wilke placed Mr. Hiatt under arrest and read Mr. Hiatt his *Miranda* rights.
12. Mr. Hiatt stated he understood his rights and wished to continue speaking with law enforcement.
13. Mr. Hiatt said the Ford Explorer belonged to him but was not registered to him.
14. Mr. Hiatt indicated the Honda Accord belonged to his buddy and he did not want to disclose the name of his buddy.
15. Mr. Hiatt indicated his friend asked if the friend could chain his Honda to Mr. Hiatt's Ford.
16. Mr. Hiatt allowed his friend to do so.
17. The legal owner of the Honda Accord is the bother of KC Chavez.
18. Mr. Chavez was using his brother's vehicle beginning approximately December 10, 2018.

1 19. Mr. Chavez and his brother were the only two people with keys to the Honda Accord.

2 20. Mr. Chavez last saw the Honda Accord at approximately 3:30pm on December 24, 2018.

3 21. Mr. Chavez did not give anyone permission to use the keys to the Honda Accord on
4 December 24, 2018.

5 22. Officer Zachary Johnson took Mr. Chavez's stolen vehicle report for the Honda Accord
6 on December 24, 2018.

7 23. Officer Johnson and Mr. Chavez went to the location of where the Honda Accord was
8 parked, and Officer Johnson observed broken glass on the ground.

9 24. Based on his training and experience, Officer Johnson believed the Honda Accord was
10 stolen.

11 25. Officer Wilke observed the Honda Accord had a punched-out ignition key and it was
12 unable to be removed.

13 26. Officer Wilke searched Mr. Hiatt incident to arrest and found three key rings with shaved
14 keys in Mr. Hiatt's pants pocket.

15 27. Based on his training and experience, Officer Wilke knew shaved keys were commonly
16 used to steal vehicles.

17 28. When Mr. Chavez retrieved the Honda Accord, he noticed the tires and rims were different
18 from when he saw the vehicle before he reported stolen.

19 29. Mr. Chavez also noticed that multiple items were missing from the Honda, including a
20 toolbox, speakers and a stereo.

21 30. Those items were not recovered by law enforcement.

22
23
24 //
25 //

//

1 From the foregoing Findings of Fact, the Court now makes the following:

2 **CONCLUSIONS OF LAW**

3 1. On or about December 25, 2018, Mr. Hiatt knowingly received, retained, or possessed a
4 stolen motor vehicle when he allowed his friend to chain the Honda Accord to his Ford
5 Expedition.
6
7 2. Mr. Hiatt received the Honda Accord from someone other than Mr. Chavez knowing that
8 the vehicle belonged to Mr. Chavez.
9 3. Mr. Hiatt acted with knowledge that the motor vehicle had been stolen because there was
10 a broken window and a stuck punched out ignition key.
11 4. Mr. Hiatt withheld or appropriated the Honda Accord to the use of someone other than
12 the true owner or person entitled to it by allowing it to be chained to his Ford Expedition.
13 5. A motor vehicle theft tool includes but is not limited to altered or shaved keys.
14 6. Mr. Hiatt had constructive possession of the Honda Accord because he had dominion and
15 control over the Honda Accord.
16 7. Mr. Hiatt had the ability to saw off the padlock or make the Ford Expedition operable;
17 the Honda Accord would have then been in Mr. Hiatt's actual possession. On or about
18 December 25, 2018, Mr. Hiatt had in his possession, specifically in his pants pockets,
19 three rings of shaved keys.
20
21 8. A reasonable person would know that shaved keys are intended to be used for motor
22 vehicle theft.
23 9. Mr. Hiatt knew that the shaved keys were intended to be used in the commission of motor
24 vehicle related theft.
25 10. These acts occurred in the State of Washington.

11. The Court finds Mr. Hiatt guilty, beyond a reasonable doubt, of count 1: possession of a

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1 stolen motor vehicle.

2 12. The Court finds Mr. Hiatt guilty, beyond a reasonable doubt, of count 2: making or

3 possessing motor vehicle theft tools.

4 DATED this 10 day of Sept, 2019.

5

6 JUDGE

7

8 Presented by: Approved by:

9

10 EMILY L. LEDDIGE
Deputy Prosecuting Attorney
WSBA # 53367

approved via email on 9.10.19
JOY ABRAMS
Attorney for Defendant
WSBA # 50975

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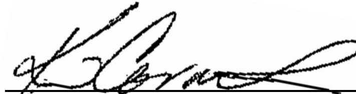
IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON, Respondent, v. MICHAEL HIATT, Appellant.	No. 37024-1-III CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington, that on June 10, 2021, I e-mailed a copy of the Petition for review in this matter, to:

Jodi Backlund and Manek Mistry
backlundmistry@gmail.com



6/10/2021	Spokane, WA	
(Date)	**(Place)**	**(Signature)**

SPOKANE COUNTY PROSECUTOR

June 10, 2021 - 1:04 PM

Transmittal Information

Filed with Court:	Court of Appeals Division III
Appellate Court Case Number:	37024-1
Appellate Court Case Title:	State of Washington v. Michael Rodney Hiatt
Superior Court Case Number:	18-1-05601-3

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