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Court of Appeals
Division II
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NO. 52956-4-II

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

STATE OF WASHINGTON, Respondent

v.

MATTHEW DAVID SCHMIDT, Appellant

FROM THE SUPERIOR COURT FOR CLARK COUNTY
CLARK COUNTY SUPERIOR COURT CAUSE NO.18-1-00980-4

BRIEF OF RESPONDENT

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RESPONSE TO ASSIGNMENTS OF ERROR

- I. **The jury instruction defining knowledge did not violate appellant's right to due process because it permitted, but did not require, the jury to find the appellant guilty of possession of a stolen vehicle if a reasonable person should have known the vehicle was stolen.**

STATEMENT OF THE CASE

Ryan Dillman testified at trial that during the night of December 11, 2017 his 1998 Jeep Cherokee had been stolen off the street just outside his residence. RP 215. He reported the stolen vehicle to Officer Matthew Bachelder of the Vancouver Police the next day on December 12, 2017. RP 227-229.

Officer Aaron Yoder of the Vancouver Police testified at trial that around 1:00 a.m. on December 17, 2017, he stopped a dark-colored 1998 Jeep Cherokee near the intersection of Fourth Plain and Main Street because the vehicle was travelling without license plates. RP 235, 236. The vehicle was driven by the appellant, Matthew Schmidt, who was the sole occupant of the vehicle besides his two dogs. RP 236, 237. Schmidt provided Officer Yoder with his driver's license. RP 238.

Officer Yoder identified the vehicle using the VIN located on the dashboard near the windshield. RP 238, 239. After running the VIN through dispatch, Officer Yoder discovered that the vehicle had been

flagged as stolen. RP 240. He detained Schmidt and read him his Miranda rights from a department-issued notebook. RP 240. After stating that he understood his rights, Schmidt explained to Officer Yoder how he had come into possession of the vehicle. RP 241. Schmidt explained that he had been in possession of the vehicle for two or three days. RP 242. That he had obtained it from his girlfriend, Jessica, and that she obtained it from her uncle, Randy. RP 241.

Ryan Dillman testified at trial that he had been contacted by police on December 17, 2017 because they had found his Jeep and asked him to come down to the 7-Eleven near the corner of Fourth Plain and Broadway. RP 216, 217. There was damage and a significant effort to change or alter the appearance of the vehicle. RP 217. The front bumper had been removed, the logos had been removed, pin striping had been covered up with black spray paint, the license plates had been removed, the ignition had been significantly tampered with to the point that it was hanging off the steering column, and Dillman's spare key would not work in the ignition due to tampering. RP 218, 219. Schmidt then offered Dillman the key that he was using in the Jeep which was a shaved key typically used in stolen vehicles. RP 220, 234.

The Court instructed the jury on the elements of the offense. CP 22. One of the elements the jury was instructed to find beyond a

reasonable doubt was, “[t]hat the defendant acted with knowledge that the motor vehicle had been stolen.” RP 292. The jury was instructed on the phrase “knowledge” in the following language:

A person knows or acts knowingly or with knowledge with respect to a fact or circumstance when he or she is aware of that fact or circumstance. It’s not necessary that the person know the fact or circumstance is defined by law as being unlawful or an element of a crime.

If a person has information that would lead a reasonable person in the same situation to believe that a fact exists, the jury is permitted, but not required, to find that he or she acted with knowledge of that fact.

When acting knowingly as to a particular fact is required to establish an element of a crime the element is also established if the person acts intentionally as to that fact.

RP 293 (emphasis added); CP 24.

Defense counsel emphasized the underlined portion of the instruction when he stated during his closing argument that the prosecutor’s burden of proof “is that my client knew that it was stolen or a reasonable person in his circumstances should have known it was stolen.”

RP 311, 312.

Schmidt was found guilty by jury verdict of possessing a stolen motor vehicle. RP 337; CP 27. The Court sentenced Schmidt to a standard range sentence. This appeal timely follows.

ARGUMENT

- I. The jury instruction defining knowledge did not violate appellant's right to due process because it permitted, but did not require, the jury to find the appellant guilty of possession of a stolen vehicle if a reasonable person should have known the vehicle was stolen.**

Schmidt claims the trial court erred in its instruction to the jury on the definition of knowledge by allowing the jury to find him guilty of possession of a stolen motor vehicle if a reasonable person would have known the vehicle was stolen. However, the trial court properly instructed the jury on the definition of knowledge pursuant to *State v. Shipp*, 93 Wn.2d 510, 610 P.2d 1322 (1980).

RCW 9A.08.010(b) states:

(b) KNOWLEDGE. A person knows or acts knowingly or with knowledge when:

(i) he or she is aware of a fact, facts, or circumstances or result described by a statute defining an offense; or

(ii) he or she has information which would lead a reasonable person in the same situation to believe that facts exist which facts are described by a statute defining an offense.

(Emphasis added). It is clear from the plain language of the statute, RCW 9A.08.010(b)(ii), that the legislature intended to allow juries to find a defendant had knowledge if a reasonable person would have known that certain relevant facts exist. Realizing that the language of the statute could

mislead jurors, the Supreme Court of Washington elaborated on how to properly instruct juries on knowledge in *Shipp*. In *Shipp*, three separate trial courts erred when they required the jury to find a defendant had knowledge if it found that “he has information which would lead a reasonable (person) in the same situation to believe that (the relevant) facts exist.” *Id.* at 512, 1324. The Court explained this instruction was unconstitutional because it *required* the jury to find the defendant guilty based on an objective reasonableness standard *without allowing* the jury to consider the “subjective intelligence or mental condition of the defendant.” *Id.* at 524, 1325.

To balance the legislature’s intent in RCW 9A.08.010(b)(ii) with a defendant’s constitutional due process rights, the court held the proper way to instruct juries is to *allow, but not require*, a jury to find a defendant guilty of knowledge if a reasonable person would have known that certain relevant facts exist. *Id.* at 516, 1326. “The jury must still be allowed to conclude that he was less attentive or intelligent than the ordinary person.” *Id.*

The revised pattern jury instruction states that a jury is permitted but not required to find that a person acted with knowledge if that person has information that would lead a reasonable person to believe that facts exist that constitute a crime. WPIC 10.02. The constitutionality of this

revised language has been upheld repeatedly. See *State v. Davis*, 39 Wn.App. 916, 919-20, 696 P.2d 627 (1985); *State v. Goglin*, 45 Wn.App. 640, 647, 727 P.2d 683 (1986); *State v. Kees*, 48 Wn.App. 76, 82, 737 P.2d 1038 (1987); *State v. Rivas*, 49 Wn.App. 677, 689, 746 P.2d 312 (1987); *State v. Barrington*, 52 Wn.App. 478, 485, 761 P.2d 632 (1988), *review denied*, 111 Wn.2d 1033 (1989).

The definition of knowledge instruction (instruction 10) given by the trial court in this case is not the instruction condemned in *Shipp* and avoids the due process problem identified in *Shipp*; it was not unconstitutional. *State v. Leech*, 114 Wn.2d 700, 790 P.2d 160 (1990).

Here, the trial court's jury instructions on knowledge fall squarely within the *Shipp* requirements. The court instructed the jury:

If a person has information that would lead a reasonable person in the same situation to believe that a fact exists, the jury is permitted, but not required, to find that he or she acted with knowledge of that fact.

RP 293. (Emphasis added); CP 24.

Because the trial court allowed, but did not require, the jury to find Schmidt had knowledge the vehicle was stolen if a reasonable person would have known the vehicle was stolen, and the Washington Supreme Court has ruled this instruction is constitutional, Schmidt's claim lacks merit. Here, Schmidt is asking the court to change the law. He is asking

the court to ignore prior Washington Supreme Court rulings on jury instructions on knowledge and requests a new standard of jury instruction on knowledge by asking the court to expand the ruling from *Shipp*. Schmidt cites no legal authority to support his request to expand the ruling in *Shipp*.

In *State v. Allen*, 182 Wn.2d 364, 341 P.3d 268 (2015), the Washington Supreme Court continued to uphold that this jury instruction on knowledge is constitutional. In that case, the court reversed Allen's convictions only because the prosecutor had improperly stated the law during closing arguments which the court concluded might have had a prejudicial effect on the jury's verdict. *Id.* Here, Schmidt does not claim the prosecutor improperly prejudiced the jury, but rather contends that the jury instructions alone are a violation of his constitutional due process rights. As addressed above, the Supreme Court of Washington has repeatedly upheld these instructions as constitutional.

Because "we presume that juries follow all instructions that the trial court gives them," *State v. Keend*, 140 Wn.App. 858, 166 P.3d 1268 (2007) (citing *State v. Stein*, 144 Wn.2d 236, 247, 27 P.3d 184 (2001)), the jury was instructed to find that Schmidt had actual knowledge. The court instructed "Possessing a stolen motor vehicle means *knowingly* to receive, retain, possess, conceal, or dispose of a stolen motor vehicle *knowing* has

(sic) been stolen.” RP 292. (Emphasis added.) The court further instructed, “That the defendant *knowingly* received, retained, possessed, concealed, or disposed of a stolen motor vehicle.” RP 292. (Emphasis added.) The trial court’s jury instruction on knowledge merely balanced the legislature’s intent in RCW 9A.08.010(b)(ii) with Schmidt’s due process rights as deemed constitutional in *Shipp*. By instructing the jury they were allowed to find knowledge based on “a reasonable person in the same situation” standard, RP 293, the jury was instructed to apply the facts to Schmidt himself. By allowing them to find knowledge based on a reasonable person standard, but not requiring them to, the jury was still allowed to decide whether Schmidt was less attentive or intelligent than the average person. Because the defense never submitted evidence during trial that Schmidt was less intelligent or attentive than the average person, the jury had no choice but to assume Schmidt was of average intelligence and attentiveness. Therefore, the jury was properly allowed to find that Schmidt had actual knowledge that the vehicle was stolen based on a subjective reasonable person standard.

The instruction was proper. It did not deny Schmidt of any constitutional rights and Schmidt was properly convicted. Schmidt’s claim fails.

CONCLUSION

For the reasons stated above, this Court should affirm Schmidt's conviction.

DATED this 9th day of October, 2019.

Respectfully submitted:

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