

FILED
Court of Appeals
Division II
State of Washington
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No. 53265-4

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

STATE OF WASHINGTON, Respondent

v.

JOKANE RIKLON, Appellant

APPEAL FROM THE SUPERIOR COURT
OF PIERCE COUNTY
THE HONORABLE JUDGE MICHAEL SCHWARTZ

BRIEF OF APPELLANT

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I. ASSIGNMENT OF ERRORS

A. The conviction for possession of a stolen motor vehicle violated Mr. Riklon's state and federal constitutional right to an adequate charging document.

LEGAL ISSUE: Must a charging document set forth the specifically described property alleged to have been unlawfully possessed? If it does not, is it constitutionally deficient?

II. STATEMENT OF FACTS

On October 29, 2018, Pierce County prosecutors charged Jokane Riklon with unlawful possession of a stolen motor vehicle, attempt to elude a pursuing police vehicle, and forgery. CP 1-2.

The charging document for unlawful possession of a stolen motor vehicle read:

That JOKANE RIKLON, in the State of Washington, on or about the 27th day of October, 2018, did unlawfully and feloniously knowingly possess a stolen motor vehicle, knowing that it had been stolen and did withhold or appropriate the same to the use of any person other than the true owner or person entitled thereto, contrary to RCW 9A.56.068 and 9A.56.140, and against the peace and dignity of the State of Washington. CP 1.

The court dismissed the forgery charge for lack of evidence.

RP 206, CP 97. A jury convicted Mr. Riklon on the two remaining

counts. CP 102-104. The court imposed a standard range sentence. CP 107-119. This timely appeal follows. CP 162.

III. ARGUMENT

A. The Charging Language in The Information Is Constitutionally Deficient.

An accused has a constitutional right to be informed of the nature and cause of the charges against him. Const. art. 1§22¹; U.S. Const. amend. VI². A challenge to the sufficiency of a charging document is reviewed de novo. *State v. Williams*, 162 Wn.2d 177, 182, 170 P.3d 30 (2007). Where a defendant claims a manifest error affecting a constitutional right, such as constitutionally deficient charging document, the error may be raised for the first time on appeal. RAP 2.5(a).

A charging document must be a plain, concise and definite written statement of the essential facts constituting the offense charged. CrR 2.1(a). It must allege facts supporting every element of the offense, besides adequately identifying the crime with which the defendant is charged. *State v. Leach*, 113 Wn.2d

¹ In all criminal prosecutions the accused shall have the right ... to demand the nature and cause of the accusation against him,

² In all criminal prosecutions, the accused shall ... be informed of the nature and cause of the accusation;...

679, 689, 782 P.2d 552 (1989); *State v. Courneya*, 132 Wn.App. 347, 350, 131 P.3d 343 (2005). The legal and factual requirements are necessary to give the defendant adequate notice of the charges so he may prepare a defense. *Id.* at 351.

A mere recitation of the statutory elements of the crime may not be sufficient. *Id.* at 688. A void in a defective count in a charging document is not cured by facts located elsewhere in the information. *State v. Clowes*, 104 Wn.App. 935, 18 P.3d 596 (2001).

In cases involving stolen property, the information must charge the defendant with a crime relating to “specifically described property.” *State v. Greathouse*, 113 Wn.App. 889, 903, 56 P.3d 569 (2002); *U.S. v. Cruikshank*, 92 U.S. 542, 558-59, 2 Otto 542, 23 L.Ed.588 (1875)(“it is a crime to steal goods and chattels; but an indictment would be bad that did not specify with some degree of certainty the articles stolen”).

Here, the information accused Mr. Riklon did “unlawfully and feloniously knowingly possess a stolen motor vehicle, knowing that it had been stolen”. The information used the language of the statute but did not include critical facts. Failing to specifically

describe the property, such as the type, make, license plate, or even the color of the vehicle, was an omission of critical facts.

A charging document which does not include necessary critical factual information amounts to a charge which is both vague and indefinite. *Cruikshank*, 92 U.S. at 559. “Where the statutory definition of an offense employs generic terms, it is not sufficient to charge the offense in the same terms employed by the statute; the indictment must ‘descend to particulars.” *Russell v. U.S.*, 369 U.S. 369 U.S. 749, 765, 82 S.Ct. 1038, 8 L.Ed.2d 240 (1962); see *Hamling v. U.S.*, 418 U.S. 87, 118, 94 S.Ct. 2887, 41 L.Ed.2d 590 (1974).

Washington courts have addressed the problem of failure to include statutory elements, however, *Leach* and its progeny do not apply to the facts of this case. They do not address the issue of the requirement of particular facts rather than statutory elements of the crimes. In *Leach*, the defendant complained that the charging document was deficient because it did not adequately describe the statutory elements of the offense. *Leach*, 113 Wn.2d at 682. Agreeing with *Leach*, the Court noted “...a charging document which states the statutory elements of a crime but is vague as to some other significant matter may be corrected under a bill of

particulars. A defendant may not challenge a charging document for ‘vagueness’ on appeal if no bill of particulars was requested at trial.” *Leach*, 113 Wn.2d at 687. The Court cited to *State v. Holt*, 104 Wn.2d 315, 320, 704 P.2d 1189(1985) and *State v. Bonds*, 98 Wn.2d 1, 17, 653 P.2d 1024 (1982).

Holt and Bonds similarly do not address the issue here because they do not involve facts critical to the charge. In *Bonds*, the defendant argued the information was constitutionally deficient because it failed to allege the crime he intended to commit when he unlawfully entered the building where the victim was located.

Bonds, 98 Wn.2d at 16.

The Court reasoned a criminal charge might be so vague as to fail to state *any* criminal offense, and thus constitutionally defective and subject to dismissal. *Id.* Similarly, in *Holt*, the Court held that the information failed to state two of the statutory elements of the crime, and was therefore constitutionally defective, requiring dismissal. *State v. Holt*, 104 Wn.2d at 321. *Leach*, *Bonds*, and *Holt* were not concerned with the requirement of a statement of critical facts to support the charged offense.

In a post-trial challenge of the charging document, the Court must construe the document liberally. *State v. Rivas*, 168 Wn.App.

882, 887, 278 P.3d 686 (2012). Here, the failure to specifically describe and identify the alleged stolen motor vehicle in the charging document left out a necessary critical fact to support the charge. Where the information is deficient, the Court presumes prejudice and reverses without considering whether the omission prejudiced the defendant. The appellate Court must reverse the conviction even if the defendant had actual knowledge of all the essential elements of the alleged crime. *Id.* at 888.

IV. CONCLUSION

Based on the foregoing facts and authorities, Mr. Riklon respectfully asks this Court to reverse his conviction.
Respectfully submitted this 14th day of October 2019.



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CERTIFICATE OF SERVICE

I, Marie Trombley, do hereby certify under penalty of perjury under the laws of the State of Washington, that on October 14, 2019, I mailed to the following US Postal Service first class mail, the postage prepaid, or electronically served, by prior agreement between the parties, a true and correct copy of the Appellant's Opening Brief to the following: Pierce County Prosecuting Attorney at pcpatcecf@co.pierce.wa.us and to Jokane Riklon/DOC#415145, Coyote Ridge Corrections Center PO Box 769, Connell, WA. 99326



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