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NO. 53265-4

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JOKANE RIKLON,

Appellant.

Appeal from the Superior Court of Pierce County
The Honorable Michael Schwartz, Judge

No. 18-1-04303-6

BRIEF OF RESPONDENT

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I. INTRODUCTION

The Defendant Jokane Riklon has been convicted of attempting to elude a pursuing police vehicle and possessing a stolen motor vehicle. For the first time on appeal, the Defendant alleges that the State was required to describe the stolen car's make, model, plate, VIN, or color in the charging information. None of these descriptors are essential or critical facts constituting the offense charged. There is no error.

Because the claim is raised for the first time on appeal, the court should refuse review under RAP 2.5(a)(3). The Defendant was not confused about which car he was accused of possessing. After running from police, he crashed the stolen car into a fence and was arrested at the scene. Therefore, the Defendant cannot demonstrate that the absence of a description of the car in the information prejudiced him so as to establish the alleged error is manifest.

II. RESTATEMENT OF THE ISSUES

1. Where the information and probable cause statement provide sufficient details to identify the single vehicle at issue, has the Defendant demonstrated manifest constitutional error under RAP 2.5?
2. Is a description of the stolen motor vehicle an essential element which needs to be pled in the charging information?

III. STATEMENT OF THE CASE

The Defendant Jokane Riklon has been convicted of possessing a stolen motor vehicle and attempting to elude a pursuing police vehicle. CP 1-2, 102, 103, 109.

Seven witnesses testified against Riklon at trial. RP¹ 59, 73, 106, 116, 142, 161, 174. One of those witnesses was Letecia Medina Castro, the owner of a white Mitsubishi Lancer that was stolen on October 25, 2018. RP 176. That day, Ms. Medina Castro started the car as she gathered her children to take them to school and her mother's house. RP 175-78. Within the five minutes she left the car running, the car had been taken. RP 178. She had not given anyone permission to possess the car. RP 180.

A neighbor had a camera system that caught the taking on video. RP 62-63. The footage showed two people, a man and a woman, walking by, getting in the car, and driving away. RP 63.

Two days later, Pierce County Sheriff's Deputies Chapman and Jorgensen were working the graveyard shift when they saw a white Mitsubishi Lancer on the side of the road at approximately 2:00 a.m. RP 117-20. The car was running with its front lights on. RP 120. The deputies ran the license plate and learned that the vehicle was stolen. RP 123.

¹ "RP" refers to the trial transcript of March 18, 19, 20, 21, and 25, 2019 prepared by Official Court Reporter Raelene Semago.

The deputies attempted to stop the vehicle. RP 124-25. Initially, the driver complied by stopping the car and putting his hands outside the vehicle. RP 124-25. Deputy Chapman saw the driver from the neck-up and confirmed that the driver was Riklon. RP 119, 124-25. Riklon then pulled the door shut, put the vehicle into drive and drove away. RP 125. The deputies gave chase through several stop signs and a stop light, exceeding speeds of 80 miles per hour. RP 126. Riklon ran a red light, nearly hitting a truck. RP 126-27. Catching the lip of the intersection, the car “got air,” discharging sparks as it came to ground. RP 127. The car began to fishtail upon landing but Riklon continued to flee. RP 127. Eventually, Riklon lost control of the vehicle and crashed into a chain link fence. RP 129. The deputies were able to arrest him at the scene. RP 129. The passenger, who was pregnant at the time, had to be transported to the hospital to receive care for abdominal pain. RP 138.

The jury convicted Riklon of possessing a stolen vehicle and attempting to elude a pursuing police vehicle. CP 102-04. By special verdict, the jury found that the attempt to elude threatened others with physical injury or harm. CP 102-04. This appeal follows. CP 162.

IV. ARGUMENT

A. Riklon fails to establish manifest constitutional error warranting review.

For the first time on appeal, Riklon challenges the sufficiency of the information charging him, but only with respect to the unlawful possession of a stolen motor vehicle. Brief of Appellant, 1. Generally, reviewing courts will refuse to review an issue raised for the first time on appeal. RAP 2.5(a). The court may allow an exception for a claim of “manifest error affecting a constitutional right.” RAP 2.5(a)(3); *State v. Grimes*, 165 Wn. App. 172, 186-87, 267 P.3d 454 (2011). However, the Defendant must show that the alleged error was truly of constitutional dimension and actually affected his rights at trial. *State v. Kirkman*, 159 Wn.2d 918, 926, 155 P.3d 125 (2007). “It is this showing of actual prejudice that makes the error ‘manifest,’ allowing appellate review.” *Kirkman*, 159 Wn.2d at 927.

As a threshold matter, Riklon has not asserted any actual prejudice from any alleged deficiency. Instead, he argues that because he is claiming constitutional error, he has met the threshold for review. Brief of Appellant, 2. He has not. Riklon cannot show that the absence of descriptors in the charging document affected his trial. This is not a case where the defendant possessed a great number of stolen vehicles, so as to be confused as to which vehicle was the subject of this prosecution. There was a single car. It was

the car he used in fleeing from police on 46th Street at 80 mph. CP 165-66. It was the car he crashed into a dirt hill before being arrested. *Id.*

Riklon has failed to demonstrate *manifest* error. This Court should refuse to review his claim.

B. The information contains all the essential elements of the crime.

The Defendant's claim also fails on its merits.

The requirements for a criminal charging information will differ between jurisdictions. *State v. Lee*, 128 Wn.2d 151, 159, 904 P.2d 1143 (1995). Therefore, Riklon's reliance on federal cases is misplaced. In Washington, an offense is properly charged when the information apprises the defendant of the nature and cause of the accusation by setting forth "every essential statutory and nonstatutory element" of the crime. *State v. Pry*, No. 96599-4, slip. op. at 5 (Wash. filed Nov. 21, 2019). Notwithstanding vagueness as to other matters significant to defense, the essential elements test alone determines constitutional sufficiency. *State v. Mason*, 170 Wn. App. 375, 378-79, 285 P.3d 154 (2012).

The information charged:

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. This information includes each essential element of the crime of unlawful possession of a stolen motor vehicle. The date informs the crime was charged within the statute of limitations. The location provides the jurisdictional element. And the information alleges that Riklon knew the vehicle he possessed was stolen and that he intended to withhold or appropriate the vehicle for the use of a person other than the true owner.

The Defendant argues that some description of the vehicle, whether make, model, color, plate, or VIN, is an essential fact constituting the offense charged and is therefore constitutionally required. The court of appeals recently held otherwise in an unpublished case. *State v. Hernandez*, 198 Wn. App. 1019, 2017 WL 1066880 (2017).² A description of the property stolen is not an essential element in possession of stolen property cases. *State v. Tresenriter*, 101 Wn. App. 486, 495, 4 P.3d 145 (2002). See also *State v. Porter*, 186 Wn.2d 85, 88, 375 P.3d 664 (2016) (rejecting challenge to the charging language which only alleged the defendant “did unlawfully and feloniously knowingly possess a stolen motor vehicle, knowing that it had been stolen”). The State is only required to plead and prove that the vehicle was motorized and stolen. RCW 9A.56.085.

² Unpublished cases have no precedential value and are not binding on any court. An unpublished case filed after March 1, 2013 may be cited as non-binding authority and may be accorded such persuasive value as this Court deems appropriate. GR 14.1(a).

The *Tresenriter* court rejected the defendant's claim that the charging instrument had to identify "what the stolen property was, where the property was located when he allegedly possessed it, or if it was connected to the thefts and burglary." *Id.*

... none of these are elements of the crime of possession of stolen property. At best, the allegation may have been too general, and Tresenriter's remedy for this was to ask for a bill of particulars.

Id. The court determined the essential elements for second-degree possession of stolen property were limited to the statutory elements. *See Tresenriter*, 101 Wn. App. at 495 n. 3 (referencing RCW 9A.56.140(1) and RCW 9A.56.160).

In the Washington cases the Defendant cites, the opinions discuss the "essential elements rule." *State v. Leach*, 113 Wn.2d 679, 689, 782 P.2d 552 (1989); *State v. Courneya*, 132 Wn. App. 347, 350, 131 P.3d 343 (2005). This rule observes that sometimes not all elements of a crime are listed in the statute. "It is sufficient to charge in the language of a statute *if* the statute defines the offense with certainty." *State v. Kjorsvik*, 117 Wn.2d 93, 99, 812 P.2d 86 (1991).

It is neither reasonable nor logical to hold that a *statutory* element of a crime is constitutionally required in a charging document, but that an *essential* court-imposed element of the crime is not required, in light of the fact that the primary purpose of such a document is to supply the accused with notice of the charge that he or she must be

prepared to meet. Statutory elements are, of course, easier to ascertain since the statutes are usually cited in the charging document, whereas court-imposed elements must be discovered through at least cursory legal research. This court has stated that defendants should not have to search for the rules or regulations they are accused of violating. We therefore conclude that the correct rule is that *all* essential elements of an alleged crime must be included in the charging document in order to afford the accused notice of the nature of the allegations so that a defense can be properly prepared.

Kjorsvik, 117 Wn.2d at 101–02.

Put simply, “an essential element is one whose specification is necessary to establish the very illegality of the behavior charged.” *Porter*, 186 Wn.2d at 89, quoting *State v. Zillyette*, 178 Wn.2d 153, 158, 307 P.3d 712 (2013).

While charging documents and jury instructions serve different purposes, the latter must convey to the jury every essential element of the offense. *Porter*, 186 Wn.2d at 93. Every fact which the State had to prove was included in the to-convict instruction.

- (1) That on or about October 27, 2018, the defendant knowingly possessed a stolen motor vehicle;
- (2) That the defendant acted with knowledge that the motor vehicle had been stolen;
- (3) That the defendant withheld or appropriated the motor vehicle to the use of someone other than the true owner or person entitled thereto;
- (4) That any of these acts occurred in the State of Washington.

CP 85. *Cf.* RCW 9A.56.068; WPIC 77.21. The Defendant has not alleged otherwise. Those essential facts include: date, location, *mens rea*, and possession of a stolen motor vehicle.

The jury instruction did not include the car's color, make, model, plate, true owner, etc. This is because those are not facts constituting the offense charged and not facts that the State was required to prove.

The Defendant has cited *State v. Greathouse*, 113 Wn. App. 889, 903, 56 P.3d 569 (2002) for the proposition that stolen property must be "specifically described." BOA at 3. The discussion at the pinpoint cite was whether an information must identify the true owner of stolen property, another descriptor. The opinion held that there was no such requirement. *Id.* at 905. The information contained all of the required elements of the crime of theft by embezzlement, i.e. the date and place of the crime, the number of "gallons of fuel alleged to have been converted on that date, the value of the fuel, the allegation that the fuel belonged to another, and the allegation that Greathouse exerted unauthorized control over the fuel with intent to deprive another of that value." *Id.* Evidently, the court found that any requirement that the property be "specifically described" was met in *Greathouse*.

The opinion also recites the test which applies to this challenge.

If an information is not challenged until appeal, as is so in this case, the appellate court evaluates the sufficiency of the information under a two-prong test: (1) an inquiry into whether the charging document contains the crime's essential elements, and if so (2) an inquiry into whether there was nevertheless actual prejudice caused by unartful drafting of the charging document. *Kjorsvik*, 117 Wn.2d at 105-06.

Greathouse, 113 Wn. App. at 900.

“The first prong of the test—the liberal construction of the charging document’s language—looks to the face of the charging document itself.” *Kjorsvik*, 117 Wn.2d at 106. This prong requires at least some language giving notice of the allegedly missing elements. *Id.* Here, all the essential elements are present. CP 1.

The second prong may look beyond the face of the information to determine if the accused actually received notice of the charges. *Kjorsvik*, 117 Wn.2d at 106. A defendant is not prejudiced where the State’s theory was spelled out in the Declaration of Probable Cause. *Greathouse*, 113 Wn. App. at 906. Riklon received additional detail through the probable cause statement. CP 165-66.

Riklon has not claimed and cannot claim that he was actually prejudiced by alleged infirmities in the information. If a defendant believes a charging document is deficient and too general, his remedy is to ask for a bill of particulars. *Leach*, 113 Wn.2d at 687; *Tresenriter*, 101 Wn. App. at

495. If the defendant fails to request a bill of particulars at trial, he may not claim on appeal that the information was vague. *Leach*, 113 Wn.2d at 687; *State v. Holt*, 104 Wn.2d 315, 320, 704 P.2d 1189 (1985). Riklon did not ask for a bill of particulars, because he was not confused as to which vehicle was the subject of the prosecution. CP 8 (defense motion describing that Riklon was removed from the driver's seat); CP 9 (defense motion identifying the car as a Mitsubishi Lancer).

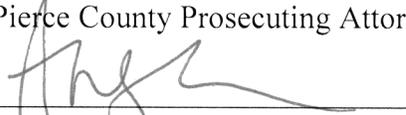
Here, the information provided all the essential elements. The Declaration of Probable Cause provided the State's theory of the case. And Riklon cannot show and does not claim prejudice from any alleged deficiency. The appeal is without merit.

V. CONCLUSION

For the above stated reasons, the State requests this Court affirm Riklon's convictions and sentence.

RESPECTFULLY SUBMITTED this 12th day of December, 2019.

MARY E. ROBNETT
Pierce County Prosecuting Attorney



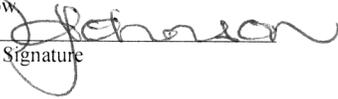
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