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COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON, RESPONDENT

v.

VERA HAMILTON, APPELLANT

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APPEAL FROM THE SUPERIOR COURT  
OF THE STATE OF WASHINGTON FOR FERRY COUNTY

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**BRIEF OF RESPONDENT**

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INDEX

I. APPELLANT’S ASSIGNMENTS OF ERROR ..... 1

II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR..... 1-2

III. STATEMENT OF THE CASE ..... 2-28

IV. ARGUMENT ..... 18-418

    1. STANDARD OF REVIEW ON APPEAL. ....**ERROR!**  
    **BOOKMARK NOT DEFINED.**

    2. IN ORDER TO PROVE THE CRIME OF  
    RENDERING CRIMINAL ASSISTANCE, THE STATE NEED  
    NOT PROVE THAT THE DEFENDANT KNEW THE  
    DEGREE OF CRIME FOR WHICH THE PRINCIPAL WAS  
    BEING SOUGHT..... **ERROR! BOOKMARK NOT DEFINED.**

    3. THE STATE PRESENTED SUFFICIENT EVIDENCE  
    FROM WHICH THE JURY COULD FIND THAT MS.  
    HAMILTON KNEW THE SUSPECT WAS BEING SOUGHT  
    FOR ASSAULT IN THE FIRST DEGREE .....28

    4. SUFFICIENT EVIDENCE WAS PRESENTED FROM  
    WHICH THE JURY COULD FIND THAT MS. HAMILTON  
    POSSESSED A STOLEN FIREARM LOCATED OUTSIDE  
    HER BEDROOM DOOR ..... 28-40

    5. SUFFICIENT EVIDENCE WAS PRESENTED FROM  
    WHICH THE JURY COULD FIND THAT MS. HAMILTON  
    KNOWINGLY RETAINED, POSSESSED, CONCEALED, OR  
    DISPOSED OF STOLEN PROPERTY WHERE EVIDENCE  
    DEMONSTRATED THAT SHE WAS AWARE ITEMS  
    WERE TAKEN FROM THE VICTIM’S VEHICLE AND THE  
    ITEMS WERE DISCOVERED IN HER SHED THAT SHE  
    ENTERED EVERY DAY DURING HER CHORES. .... 40-45

    5. SUFFICIENT EVIDENCE WAS PRESENTED FROM  
    WHICH THE JURY COULD FIND THAT THE POLICE

REASONABLY RELIED UPON DEFENDANT'S FALSE STATEMENT'S REGARDING A SUSPECT'S IDENTITY AND WHEREABOUTS WHERE LAW ENFORCEMENT DID NOT KNOW THE SUSPECT'S IDENTITY OR WHEREABOUTS..... 45-49

V. CONCLUSION..... 49

## TABLE OF AUTHORITIES

### WASHINGTON CASES

<u>State v. Alvarez</u> , 105 Wn.App. 215, 222, 19 P.3d 485 (Div. III, 2001)...	19
<u>State v. Anderson</u> , 63 Wn. App. 257, 818 P.2d 40 (1991).....	21-24
<u>State v. Armstrong</u> , 188 Wn. 2d 333, 341 394 P.3d 373 (2017).....	20
<u>State v. Aver</u> , 109 Wn.2d 103, 310-311, 745 P.2d 479 (1987).....	18, 19
<u>State v. Bencivenga</u> , 137 Wn.2d 703, 706, 974 P.2d 832 (1999).....	19
<u>State v. Bowen</u> , 157 Wn. App. 821, 828, 239 P.3d 1114 (2010).....	37
<u>State v. Callahan</u> , 77 Wn. 2d 27, 459 P.2d 400 (1969).....	36
<u>State v. Camarillo</u> , 115 Wn.2d 60, 71, 794 P.2d 850 (1990).....	20
<u>State v. Chakos</u> , 74 Wn. 2d 154, 443 P.2d 815 (1968).....	35
<u>State v. Chouinard</u> . 169 Wn. App. 895, 282 P.3d 117 (2012).....	36-38
<u>State v. Cote</u> , 123 Wn. App. 546, 550, 96 P.3d 410 (2004).....	38
<u>State v. Davis</u> , 182 Wn.2d 222, 227, 349 P.3d 820 (2014).....	19, 29
<u>State v. Davis</u> , 101 Wn.2d 654, 682 P.2d 883 (1984).....	22
<u>State v. Delmarter</u> , 94 Wn.2d 634, 638, 618 P.2d 99 (1980).....	20
<u>State v. Echeverria</u> , 85 Wn. App. 777, 783, 934 P.2d 1214 (1997).....	38
<u>State v. George</u> , 146 Wn. App. 906, 920, 193 P.3d 693 (2008).....	29, 38
<u>State v. Green</u> , 94 Wn.2d 216, 221, 616 P.2d 628 (1980).....	18, 19
<u>State v. Green</u> , 91 Wn.2d 431, 588 P.2d 1370 (1979).....	19

<u>State v. Jones</u> , 146 Wn.2d 328, 333, 45 P.3d 1062 (2002).....	29
<u>State v. Joy</u> , 121 Wash.2d 333, 339, 851 P.2d 654, 657 (1993).....	18
<u>State v. Luther</u> , 157 Wash. 2d 63, 77-78, 134 P.3d 205 (2006).....	18
<u>State v. Mann</u> , 157 Wn.App. 428, 438-39, P.3d 966 (2010).....	20
<u>State v. McFarland</u> , 73 Wn. App. 57, 70, 867 P.2d 660 (1994).....	37
<u>State v. Owens</u> , 180 Wn.2d 90, 99, 323 P.3d 1030 (2014).....	20
<u>State v. Pillon</u> , 2020 Wash.App. LEXIS 166; 2020 WL 418858, Division One No. 78599-1-I.....	19
<u>State v. Randecker</u> , 79 Wn.2d 512, 487 P.2d 1295 (1971).....	19
<u>State v. Reichert</u> , 158 Wn. App. 374, 389, 242 P.3d 44 (2010).....	20, 29, 32, 39
<u>State v. Reid</u> , 40 Wn. App. 319, 326, 698 P.2d 588 (1985).....	37-38
<u>State v. Salinas</u> , 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).....	19
<u>State v. Shipp</u> , 93 Wn.2d 510, 610 P.2d 1322 (1980).....	25, 27-28
<u>State v. Shumaker</u> , 142 Wn. App. 330, 334, 174 P.3d 1214 (2007).....	29
<u>State v. Spence</u> , 81 Wn. 2d 788, 792, 506 P.2d 293 (1973).....	25
<u>State v. Thomas</u> , 150 Wn.2d 821, 874, 83 P.3d 970 (2004).....	19, 20
<u>State v. Tilton</u> , 149 Wn.2d 775, 785, 72 P.3d 735, 740 (2003).....	19
<u>State v. Turner</u> , 103 Wn. App. 515, 521, 13 P.3d 234 (2000).....	37
<u>State v. W.</u> , 18 Wn. App. 686, 571 P.2d 237 (1977).....	35-36
<u>State v. Weiss</u> , 73 Wn.2d 372, 375, 483 P.2d 610 (1968).....	29, 34
<u>State v. Witherspoon</u> , 180 Wn.2d 875, 883, 329 P.3d 888 (2014).....	20

**STATE STATUTES**

RCW 9A.08.010.....25  
RCW 9A.76.050.....21, 22  
RCW 9A.76.070..... 21

## **I. APPELLANT'S ASSIGNMENTS OF ERROR**

1. The evidence was insufficient to support the conviction for rendering criminal assistance in the first degree.
2. The evidence was insufficient to sustain the conviction for possession of a stolen firearm.
3. The evidence was insufficient to sustain the conviction for possession of stolen property.
4. The evidence was insufficient to sustain a conviction for making false or misleading statements to a public servant.

## **II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

1. In order to prove the crime of rendering criminal assistance, the State need not prove that the Defendant knew the degree of crime for which the principal was being sought.
2. Whether sufficient evidence was presented from which the jury could find that the Defendant knew the suspect was being sought for assault in the first degree when she rendered assistance to the suspect by harboring the suspect and lying to the police about his whereabouts and identity?
3. Whether sufficient evidence was presented from which the jury could find that the Defendant had dominion and control of a stolen firearm located outside her bedroom door?

4. Whether sufficient evidence was presented from which the jury could find that the Defendant knowingly retained, possessed, concealed, or disposed of stolen property where the Defendant was aware the items were taken from the victim's car and items were found inside Defendant's shed that she entered every day during her chores?

5. Whether sufficient evidence was presented from which the jury could find that the police reasonably relied upon Defendant's false statement that she did know the identity or whereabouts of a suspect in a shooting investigation where law enforcement did not know the suspect's name or whereabouts?

### **III. STATEMENT OF THE CASE**

#### *Summary*

On April 5, 2019, Ms. Hamilton was convicted of rendering criminal assistance in the first degree, possession of a stolen firearm, possession of stolen property in the third degree, and making false or misleading statements to a public servant. CP 168-171. RP 916-17. These convictions stem from an incident where Ms. Hamilton lied to the police about the identity of the person [her daughter's boyfriend, Shane Malotte] who had brutally assaulted victim Todd Griffith, Jr., and further rendered criminal assistance to Mr. Malotte by harboring Malotte for nine days between the assault and the when Mr. Malotte was arrested, despite knowing that he was

sought by the police. Ms. Hamilton was further found in possession of the firearm that Mr. Malotte stole from Mr. Griffith, as well as several items that had been stolen from Mr. Griffith's truck during the incident.

*Procedural Facts*

On April 2, 2019 Ms. Hamilton was charged with the above-listed offenses in Ferry County Superior Court by way of Amended Information. CP 122-124.

At trial, after the State's case-in-chief, Defense Counsel moved to dismiss the charge of Rendering Criminal Assistance in the First Degree, arguing that there was no evidence that Ms. Hamilton harbored or concealed Mr. Malotte, or that she had prevented or obstructed law enforcement from discovering or apprehending Mr. Malotte by way of deception. RP 772-784. The Trial Court disagreed and denied the motion. RP 782-784. Defense Counsel also moved twice to dismiss the charge of Possession of Stolen Property in the third degree, arguing there was no evidence that Ms. Hamilton knowing retained, possessed, concealed or disposed of stolen property. RP 787-95; 811. Both motions were denied. Id.

After a five-day trial, Ms. Hamilton was convicted of the above-referenced offenses. RP 916. On April 11, 2018, Defendant filed a Motion to Arrest the Judgement as to the convictions for Possession of a Stolen Firearm and Possession of Stolen Property in the third degree. CP 172-183;

RP 933-961. The Trial Court denied the motion, and on May 29, 2019, Defendant Vera Hamilton was sentenced to the low end of the standard range, 12 months and 1 day, after the Trial Court also denied a motion for a mitigated sentence. CP 196-2017; RP 961-964. Defendant now appeals her convictions.

*Facts Presented at Trial*

At trial, the State presented testimony from six witnesses. RP 152; 504; 616. The Defense declined to call any witnesses. *Id.* Witnesses called by the State were the victim, Todd “TJ” Griffith, Jr. (RP 190-291), the investigating officer, Deputy Matthew Kersten (RP 291-374; 384-477; 768-771), responding officer Sergeant Talon Venturo (RP 481-509), Dispatcher Shelby Wheaton (RP 517-524), Appellant’s son, Preston Hamilton (RP 526-579; 674-710; 764-767), and second responding deputy Christine Clark (RP 716-763). The facts presented are as follows.

In November of 2018, Todd “TJ” Griffith, Jr., aged 32, lived with his grandmother Patty Griffith at 269 Lambert Lane in rural Ferry County, Washington. RP 192-193. His neighbor, Vera Hamilton, lived about a mile away with her 14-year-old son, Preston Hamilton. RP 194-195; 526-27. Also residing at Ms. Hamilton’s residence at that time were Ms. Hamilton’s

17-year-old daughter, Destany Boyer<sup>1</sup>, and Destany's boyfriend, Shane Malotte. RP 527. Ms. Boyer and Mr. Malotte had lived at the residence for about a month as of November 2018 and had been in a relationship the entire time. RP 528.

The Hamiltons' residence was on ten acres of land where they raised a garden and numerous animals, including cows, goats, rabbits, chickens, and multiple dogs and puppies. RP 529-30. All the family members helped to take care of the animals. RP 530. The water for all the animals was kept in tanks in the shed attached to and under the house and the animals had to be watered every day. RP 531-32.

Prior to November 20, 2018, Mr. Griffith had visited with Ms. Hamilton and Preston Hamilton on a few other occasions, both in town and at the Hamilton residence. RP 195-198; 538-39. Griffith had to pass the Hamilton residence to get to his home and would often see the Hamiltons if he was picking up Ms. Hamilton to take her to town or if his Grandma was taking Ms. Hamilton to work. RP 195-197; 539.

Mr. Griffith had met Ms. Boyer and Mr. Malotte two times: once on November 20, 2018 and one other time, when he was introduced by Ms. Hamilton and purchased cigarettes for them at a local smoke-shop. RP 198-

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<sup>1</sup> Ms. Boyer's name is spelled "Destiny" throughout the report of proceedings; in this brief, the State uses the correct spelling of "Destany".

199; 274. During Mr. Griffith's interactions with the family, Ms. Hamilton always referred to her daughter and Mr. Malotte as "Destany and her boyfriend". RP 243.

On the date of November 20, 2018, Mr. Griffith went to visit Ms. Hamilton and her family, driving his "mountain truck" equipped with woodcutting tools and "truck gun", in case of coyotes or other predators. RP 200-201; 206. Also in the truck was Mr. Griffith's backpack, which contained a container of Mr. Griffith's grandpa's ashes. RP 288. Mr. Griffith parked his truck outside the fence and gate at the Hamilton residence and walked into the fenced area. RP 232-233. Present at the Hamilton residence on that date were Ms. Hamilton and Preston Hamilton, Ms. Hamilton's daughter Destany Boyer, and Destany's boyfriend, Shane Malotte. RP 201-202. Upon Mr. Griffith's arrival, the above individuals came out to greet him and Mr. Griffith shared the alcohol he had brought with him with Mr. Malotte. RP 204-205; 262; 268; 544. As they were sitting on wood "rounds" in front of the house "shooting the breeze", Mr. Griffith mentioned that he had his firearm in the truck and they discussed that Ms. Boyer had never shot a gun. RP 205-207; 268; 279. This discussion led to a session of target shooting, using beer cans or beverage bottles for targets. RP 207-208; 279; 285; 546-47. After they were finished shooting, the gun was put back in Mr. Griffith's truck. RP 685-86.

Soon thereafter, “it went kind of lights out” for Mr. Griffith, and when he awakened, he was being kicked in the face and hit with the butt of his gun in the head and face. RP 213; 215. Mr. Griffith testified that at some point prior target shooting but before losing consciousness, he jokingly made a crude remark about Preston getting money for “blowing” someone and Ms. Hamilton, who had been standing outside by the deck, “freaked out”. RP 212-214; 275.

When explaining what led up to the assault on Mr. Griffith, Preston Hamilton also testified that Mr. Griffith had made a crude remark about him that made him feel “awkward” and then Ms. Hamilton told Mr. Griffith it was “not okay” and Mr. Malotte told Mr. Griffith to leave. RP 550-51; 676. However, Mr. Griffith and Mr. Malotte subsequently “made up” and later agreed to do “body shots” [consensual fighting where the opponents do not hit each other in the face]. RP 551-52. This led to another disagreement between Mr. Malotte and Mr. Griffith, however, they once again shook hands and said they were still “cool” and “brothers”. RP 553-54. Soon thereafter, Preston Hamilton heard a “poof”, saw a white cloud, and went outside to see Mr. Griffith laying on the ground with Mr. Malotte standing over him, holding a broken propane tank and torch. RP 556. When Mr. Griffith tried to get up again, Mr. Malotte hit him again in the face and stomach with his fists. RP 557-58. Mr. Griffith got up, and was thrown

down again by Mr. Malotte, who continued to hit him. RP 558. Preston Hamilton was really scared for Mr. Griffith, and came back out of the house multiple times to make sure that Mr. Malotte wasn't about to "kill him". Id. When Preston would come outside, Ms. Hamilton came outside with him. RP 692-93. However, Mr. Malotte did not stop, but rather progressed from punching Mr. Griffith to kicking him in the face and stomach with steel-toed boots. RP 559; 691. Preston Hamilton was scared because he didn't want Mr. Griffith to "die" or "get as badly beaten as he did". RP 694.

While Mr. Malotte was assaulting Mr. Griffith, the others were also present during the ordeal, including Ms. Boyer, who talked to 911 after Ms. Hamilton dialed for her. RP 216-217; 266-67; 560-61; 690. Mr. Griffith tried to escape the assault by running to his truck and was pursued by Mr. Malotte. RP 217. Around this time, law enforcement, who had been dispatched to a fight in progress, drove up to the scene. RP 217-218; 406-07; 483; 562. When the officer arrived, Mr. Malotte told Ms. Boyer to hand him the gun, took the gun, and ran. RP 563; 686-87. Ms. Boyer had taken the gun from Mr. Griffith's pickup to give to Mr. Malotte. RP 687. The Deputy, Matthew Kersten, initially went running after Mr. Malotte, whom he observed fleeing the scene. RP 218; 276; 289; 297. Mr. Griffith "thanked god" the officer was there and tried to get into the officer's vehicle. RP 218. Deputy Kersten, of course, did not at this time know Mr. Malotte's identity,

or how he was involved in the incident. RP 299. Mr. Malotte did not respond to Deputy Kersten's orders to stop running. RP 298-99. Meanwhile, Ms. Hamilton, Ms. Boyer, and Preston Hamilton were all yelling at Deputy Kersten and gesturing toward his patrol vehicle stating "he's over here" and "he's getting into your vehicle", diverting his attention from the fleeing suspect. RP 299-300; 391; 563.

Unable to stop Mr. Malotte, and concerned that someone else was trying to get into his patrol vehicle, Deputy Kersten returned to contain the scene and continue his investigation. RP 298-300; 563-64. When he returned to the area of his patrol vehicle, he observed an individual (later identified as Mr. Griffith), covered in blood, as well as Destany Boyer and Vera Hamilton out in the yard. RP 300-301.

Deputy Kersten then identified and secured Mr. Griffith for his safety, as well as checked him for wounds. RP 218; 276; 289; 302-303. After securing Mr. Griffith, Deputy Kersten spoke to Ms. Hamilton, Ms. Boyer, and Preston Hamilton. RP 303-304; 564. Specifically, Deputy Kersten asked all three witnesses who the subject was who had run from him and, gesturing to Mr. Griffith, asked "who did this to this man?" RP 305; 564. Deputy Kersten also asked where the gun was, and Ms. Hamilton stated that "he" [pointing to the fleeing suspect] had it. RP 391-92. Deputy Kersten testified that during the course of an investigation, he would want

to know the identity of a perpetrator and would rely on statements from others at the scene as to that information. RP 293-94. In this case, the identity of the fleeing suspect was important to Deputy Kersten because he had fled from law enforcement and because Deputy Kersten heard shots coming from the direction of the fleeing subject toward himself. RP 305-306; 417.

Ms. Hamilton's son Preston later testified that everyone in their household, including his mother Ms. Hamilton, historically referred to Shane Malotte as "Shane". RP 529. However, when asked about Mr. Malotte's identity and who had assaulted Mr. Griffith, Ms. Hamilton stated that she did not know who he was, that he was "TJ's friend" [TJ is Mr. Griffith's nickname], and that his name was Shane or possibly "Shawn" or "Michael" or "Cameron" or "Jesse". RP 306; 417; 487; 499; 539; 564-65. At no time did Ms. Hamilton reveal that the fleeing subject was her daughter's boyfriend, Shane Malotte, who had been living with her in her own residence. In fact, Ms. Hamilton instead told Deputy Kersten that the fleeing suspect might be living with Mr. Griffith at Mr. Griffith's residence. RP 307. Preston Hamilton testified that although they all knew Mr. Malotte's name, neither he nor Ms. Hamilton nor Ms. Boyer told the officer who Mr. Malotte was because Mr. Malotte has asked them not to. RP 566;

696. Deputy Kersten's conversation with Ms. Hamilton, Ms. Boyer, and Preston Hamilton lasted for about twenty to thirty minutes. Id.

Sergeant Venturo arrived on scene sometime during Deputy Kersten's conversation with the three witnesses, and Deputy Christine Clark arrived on scene about 40 minutes after that. RP 219; 307-308. Deputy Kersten left written statement forms for the witnesses, including Ms. Hamilton, to fill out if they chose, but those were never completed. RP 309; 490. Deputy Kersten further tried to talk to Mr. Griffith, but he was unable to get any relevant information, due to the fact that Mr. Griffith was seriously injured - covered in blood, his eyes were swelled shut, and he had multiple contusions on the back of his head. RP 310; 488-89. The only coherent information Deputy Kersten was able to get from Mr. Griffith at that time was that the suspect was "some guy from California". RP 431.

The officers also processed the scene, looking for evidence and documenting the scene with photos. RP 313-314. Deputy Kersten observed that the passenger side door to Mr. Griffith's truck was open and items were strewn everywhere around it, including yellow tie-down straps and cable chains. RP 315; 413; 415; 489. As the officers were not at that time investigating a theft and did not know whose items they were, they did not collect the items. RP 315-316; 413; 472; 497.

When everything was “calmed down” the officers left, taking Mr. Griffith with them. RP 219; 319. The officers then drove to Mr. Griffith’s home at 269 Lambert Lane, to look for Mr. Malotte, based on the information from Ms. Hamilton. RP 219, 319-20; 492. The officers, who had no information about Mr. Malotte other than that he was small in stature and wearing a red sweatshirt, decided against entering the residence because they believed he had a rifle and did not have enough officers to safely enter the house to look for him, especially not while they had custody of the wounded Mr. Griffith. RP 320; 492. Instead, the officers took Mr. Griffith to the hospital. RP 219; 322. Mr. Griffith’s truck and all his belongings, including his backpack, were left outside the gate of Vera Hamilton’s residence. RP 289.

Late that evening, or perhaps in the early hours of the next day, Mr. Malotte returned to Ms. Hamilton’s residence where Ms. Boyer, Ms. Hamilton, and Preston Hamilton were all waiting. RP 567-68. Mr. Malotte also brought Mr. Griffith’s firearm back to the residence, where it thereafter usually stayed “upstairs”, often times laying on the ground, usually in the area of the loft close to Ms. Hamilton’s bedroom. RP 568-69; 703-04. When Mr. Malotte went places, he did not take the firearm with him, but would leave it laying around in the loft. RP 703. In order to get to Ms. Hamilton’s bedroom, a person would have to go through the loft area where

the firearm was. RP 703-04. Preston Hamilton knew that it was Mr. Griffith's gun, not Mr. Malotte's gun, and that Mr. Malotte should not have it and had no plans of returning it. RP 592; 703; 711. Mr. Malotte continued to reside at Ms. Hamilton's residence up until the day he was arrested, nine days later. RP 570. Preston Hamilton told the Defense Investigator that during that time, he witnessed his mother Vera Hamilton handling the gun at least once. RP 765-66.

Also during that time frame, Mr. Malotte and Ms. Boyer got into Mr. Griffith's pickup. RP 571; 688. Preston Hamilton specifically recalled them bringing the vial of Mr. Griffith's grandpa's ashes and giving them to Ms. Hamilton and stating that they came from Mr. Griffith's truck. *Id.*, RP 700; 707. During this time, Preston Hamilton also saw the snatch block and come-along that were missing from Mr. Griffith's truck at the residence and did not know where they came from. RP 572; 606-607.

Over the next few days, Deputy Kersten continued his investigation to try to find the identity of the suspect who had run from him, discharged the firearm, and assaulted Mr. Griffith. RP 322; 387. Had Deputy Kersten been informed of the identity of the fleeing suspect at the time of the initial incident, it would have changed the investigation substantially as he spent approximately an additional five days trying to learn the identity of the person who had assaulted Mr. Griffith, fled from him, and potentially shot

toward him. RP 394. Based on Ms. Hamilton's representation that he was Mr. Griffith's friend, Deputy Kersten had focused his investigative efforts on Mr. Griffith, rather than on the Hamilton family. Id. Nevertheless, through his efforts and research, Deputy Kersten eventually observed that Ms. Hamilton was "friends" with an individual named Shane Malotte on the social media website Facebook. RP 323. That same individual, Shane Malotte, was a member of a local Ferry County page [indicating that he could be local]. Id.

A few days later, on November 25, 2018, Mr. Griffith and his neighbor went back to Ms. Hamilton's residence to attempt to retrieve his truck. RP 219-221; 263. At this time, Mr. Griffith observed that everything had been stolen out of his truck, including his tools, groceries, keys, and wallet. RP 221-222. The only items still in the truck were Mr. Griffith's jumper cables and his backpack, which still contained his grandpa's ashes. RP 222; 289. In the fresh snow, Mr. Griffith observed footprints all around his vehicle. RP 225; 263. Unable to retrieve his truck due to mechanical difficulty, Mr. Griffith left and filed a police report the next day on November 26, 2018 about his missing items. RP 223-225; 261.

Also on November 25, 2018, Deputy Kersten and Sergeant Venturo also went back up to Ms. Hamilton's house after receiving a 911 call from Ms. Hamilton that she was terrified because Mr. Griffith was there with a

friend that Ms. Hamilton described as “looking exactly like the person who had shot at the Deputy” [Malotte]. RP 324-26; 493; 521-22; 572. However, Ms. Hamilton’s own son, Preston, stated at trial that they were unable to see Mr. Griffith’s friend as he did not exit the vehicle. RP 573-74. Moreover, Mr. Malotte was, in actuality, inside their own house with them, having continued to live with them after the assault. RP 570; 573. When he contacted Ms. Hamilton on this occasion, Deputy Kersten again asked her who the suspect was who had beat up Mr. Griffith and shot at him. RP 326-27; 427; 493. Ms. Hamilton again stated that she didn’t know that individual “*at all*” and that he was Mr. Griffith’s friend. RP 327; 493. Deputy Kersten explained to Ms. Hamilton that the identity of this person was critical because he believed that individual had shot at him and had assaulted Mr. Griffith “in a pretty significant way” and without information concerning identity, it hindered his ability to continue his investigation. *Id.*, RP 429; 475; 478. Deputy Kersten again asked Ms. Hamilton if she had her statement about the event ready and she stated that she did not. *Id.* Mr. Griffith’s vehicle was still present at Ms. Hamilton’s residence on that date. RP 426.

The next day on November 26, 2018, Deputy Kersten called Ms. Hamilton to ask whether she had completed her statement. RP 401. Again, Deputy Kersten emphasized the importance of her statement for the

investigation, and again, Ms. Hamilton stated that she had not completed a statement. RP 400-01.

Next in his investigation, Deputy Kersten talked to Mr. Griffith about the items stolen from his truck and obtained a statement from Mr. Griffith. RP 328-29. Based on the additional information, Deputy Kersten began to search for Mr. Griffith's missing items, including a snatch block, a come-along, a 762 x 39 SKS rifle, and some tie/tow straps. RP 329-330.

On November 29, 2018 and nine days after the original assault, Deputy Kersten, along with Sergeant Venturo, Deputy Clark, and two City of Republic Police Officers, executed a search warrant at Ms. Hamilton's residence in an attempt to recover the stolen items. RP 330-32; 404; 723. The officers discovered Mr. Griffith's firearm in the hall outside Ms. Hamilton's bedroom<sup>2</sup>, right at the top of the only staircase connecting the upstairs to the downstairs. RP 332; 339; 358; 363-65. The firearm was laying on some clothing completely visible to the officer and anyone else coming up the staircase. RP 339-40; 454-55. The firearm was in an open area, unsecured and not protected by any doors or locks and none of the upstairs bedrooms had doors either. RP 340; 355; 447; 535-36. All the

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<sup>2</sup> Ms. Hamilton's room was identified as it contained women's clothing, multiple of Ms. Hamilton's prescription bottles, a sheet of mailing labels with her name on it, and court paperwork with her name on it. RP 436; 446. Preston Hamilton testified that the other bedroom was his and that his sister and Mr. Malotte shared the open area in the hall. RP 532; 534-35; 592.

bedrooms are interconnected. RP 592. In fact, according to Preston, no areas of the house were off-limits to any of the residents and they all had access to the whole house. RP 536. It was not unusual for each of the residents of Ms. Hamilton's house to go into each other's rooms, and they "always went in each other's rooms". RP 548.

The Deputies located Mr. Griffith's silver come-along and the bright green snatch block hanging off the front of Ms. Hamilton's large water tank and the yellow cargo straps were located on the floor of Ms. Hamilton's shed next to the water tanks. RP 236; 273-274; 437; 725. The shed is a storage area attached to and built into the front of the Ms. Hamilton's residence. RP 367; 370. At the time of the execution of the search warrant, the doors to the shed were open, unlocked and unsecured. RP 370; 436. Anyone walking up to the front of the house would have seen the items. RP 436. Unlike other items in the shed, the snatch blocks and come-along were new, hung-up, clear of straw and hay, and appeared to be cared for. RP 438.

Deputy Kersten also located mail addressed to Shane Malotte on a chair in the joint dining room/kitchen area of Ms. Hamilton's residence, along with a purse with the phrase "Shane and Destany forever" written on it. RP 351; 360; 441.

Deputy Kersten called Mr. Griffith back to Ms. Hamilton's property where he was able to identify his stolen items, including his firearm, straps,

snatch block, and come-along. RP 226-227; 229; 371-72; 726. At this time, Mr. Griffith also discovered that his truck had been moved 2-3 miles to the other side of the mountain. RP 226. Mr. Griffith's previously-missing wallet was located on the front seat, minus \$40, and his previously-missing keys were in the ignition. RP 227-228; 272.

Later that same day, Deputy Kersten also interviewed Preston Hamilton at the Republic School and obtained a written statement from him. RP 402; 404; 421; 469; 574. A Defense Investigator also interviewed Preston Hamilton by phone on a later date. RP 574; 580. At that time, Preston told the defense investigator that he had seen his mother handle the firearm on at least one occasion. RP 764-766. He also testified at trial that he and his mother spend a lot of time together, and that they talked about the incident after the fact. RP 584.

#### **IV. ARGUMENT**

##### **1. STANDARD OF REVIEW ON APPEAL.**

The standard of review requires an appellate court to determine whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. State v. Joy, 121 Wash.2d 333, 339, 851 P.2d 654, 657 (1993); State v. Luther, 157 Wash. 2d 63, 77-78, 134 P.3d 205 (2006) [citing State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980);

State v. Aver, 109 Wn.2d 103, 310-311, 745 P.2d 479 (1987)]. “[I]n determining whether the necessary quantum of evidence exists, it is unnecessary for the reviewing court to be satisfied of guilt beyond a reasonable doubt. It is only necessary for it [the reviewing court] to be satisfied that there is substantial evidence to support the State’s case or the particular element in question. State v. Green, 94 Wash.2d at 220 [citing State v. Green, 91 Wn.2d 431, 588 P.2d 1370 (1979); State v. Randecker, 79 Wn.2d 512, 487 P.2d 1295 (1971)]; State v. Bencivenga, 137 Wn.2d 703, 706, 974 P.2d 832 (1999).

“When the sufficiency of the evidence is challenged in a criminal case, all reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant.” State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Review of a challenge to the sufficiency of the evidence is “highly deferential” to the factfinder’s decision. State v. Pillon, 2020 Wash.App. LEXIS 166; 2020 WL 418858, Division One No. 78599-1-I (order granting motion to publish February 28, 2020), citing State v. Davis, 182 Wn.2d 222, 227, 349 P.3d 820 (2014). See also State v. Thomas, 150 Wn.2d 821, 874, 83 P.3d 970 (2004); State v. Tilton, 149 Wn.2d 775, 785, 72 P.3d 735, 740 (2003) [citing State v. Salinas, 119 Wn.2d at 201]; State v. Alvarez, 105 Wn.App. 215, 222, 19 P.3d 485 (Div. III, 2001).

An appellate court also defers to the trier of fact regarding the credibility of witnesses and any conflicting testimony, and credibility determinations are not subject to review. State v. Mann, 157 Wn.App. 428, 438-39, P.3d 966 (2010) [citing State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990)]; State v. Witherspoon, 180 Wn.2d 875, 883, 329 P.3d 888 (2014); State v. Thomas, Id. at 874-75.

Evidence is sufficient if, viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. State v. Owens, 180 Wn.2d 90, 99, 323 P.3d 1030 (2014); see also State v. Armstrong, 188 Wn. 2d 333, 341 394 P.3d 373 (2017). In determining sufficiency, circumstantial and direct evidence are equally reliable. Id., citing State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980); see also State v. Thomas, 150 Wn.2d at 874; State v. Reichert, 158 Wn. App. 374, 389, 242 P.3d 44 (2010).

**2. IN ORDER TO PROVE THE CRIME OF RENDERING CRIMINAL ASSISTANCE, THE STATE NEED NOT PROVE THAT THE DEFENDANT KNEW THE DEGREE OF CRIME FOR WHICH THE PRINCIPAL WAS BEING SOUGHT.**

A person is guilty of rendering criminal assistance in the first degree if he or she renders criminal assistance to a person who has committed or is

being sought for murder in the first degree or any class A felony or equivalent juvenile offense. RCW 9A.76.070. A person “renders criminal assistance” if, with intent to prevent, hinder, or delay the apprehension or prosecution of another person who he or she knows has committed a crime or juvenile offense or is being sought by law enforcement officials for the commission of a crime or juvenile offense...he or she (1) harbors or conceals such a person; or...(4) prevents or obstructs, by use of force, deception, or threat, anyone from performing an act that might aid in the discovery or apprehension of such person. RCW 9A.76.050.

However, in order to be convicted of rendering criminal assistance, the State need not prove that a defendant knew the degree of crime being committed by the primary, only that the primary had committed a crime at the time that she or he renders criminal assistance to the primary. State v. Anderson, 63 Wn. App. 257, 818 P.2d 40 (1991). For example, in Anderson, the defendant Anderson drove the getaway vehicle after his associate, Rodney Wilson, robbed a store while displaying what appeared to be a gun. Id. at 258. Anderson admitted that when he drove from the scene, he knew that Wilson had committed a robbery, but stated that he had no advance knowledge of what Wilson was going to do. Id. Anderson appealed his conviction for rendering criminal assistance in the first degree, claiming that because he did not know that Wilson had displayed a firearm,

he could not have known that a class A felony had been committed. Id. at 259.

The Court of Appeals held that Anderson could be convicted of rendering criminal assistance in the first degree because he knew at the time of the rendering that Wilson had committed a robbery. Id. at 260. “We further hold that a person can be convicted of rendering criminal assistance in the first degree notwithstanding a lack of knowledge concerning facts that would disclose the degree of the robbery.” Id. The Appeals Court found that that “by its plain terms” RCW 9A.76.050 does not require that the person rendering criminal assistance know the degree of the crime committed by the principal and that the person rendering criminal assistance must have knowledge of the principal’s crime, but not of facts disclosing the degree of the crime. Id. The Court cited State v. Davis, 101 Wn.2d 654, 682 P.2d 883 (1984) in support of its holding, recognizing that “the law has long recognized that an accomplice, having agreed to participate in a criminal act, runs the risk of having the primary actor exceed the scope of the preplanned illegality.” Id. at 260-61. The Court went on to reason:

Because the concepts of complicity and rendering criminal assistance are similar, the reasoning of Davis applies to the present case. An accomplice is liable because he or she knowingly aids the criminal enterprise of another before the fact. One who renders criminal assistance is liable because he or she knowingly aids the criminal enterprise of another after the fact. Because the goal in both cases is to punish for

knowingly aiding the criminal enterprise of another, there is not reason to require that the renderer have more specific knowledge than the accomplice.

Id. at 261-62.

In the present case, the State at trial proposed that the Court provide a jury instruction consistent with Anderson case, supra. RP 630; 635-636. The Trial Court declined to give such an instruction, and the State took exception. RP 637-39. The instructions ultimately given to the jury included the following to-convict instruction:

To convict the defendant of the crime of rendering criminal assistance in the first degree, each of the following elements of the crime must be proven beyond a reasonable doubt:

- (1) That on or about November 25, 2018, the defendant rendered criminal assistance to a person;
- (2) That the person had committed or was being sought for Assault in the First Degree;
- (3) That the defendant knew that the person had committed or was being sought for Assault in the First Degree; and
- (4) That any of the defendant's acts occurred in Ferry County, in the State of Washington.

CP 148. The Court also defined "assault in the first degree" as:

A person commits the crime of assault in the first degree when, with the intent to inflict great bodily harm, he or she assaults another with a firearm, or by any force or means likely to produce great bodily harm or death.

CP 150. The Court further defined "assault" as:

An assault is an intentional touching or striking of another person, with unlawful force, that is harmful or offensive regardless of whether any physical injury is done to the person. A touching or striking is offensive if the touching or striking would offend an ordinary person who is not unduly sensitive.

An assault is also an act, with unlawful force, done with the intent to inflict bodily injury upon another, tending but failing to accomplish it and accompanied with the apparent present ability to inflict the bodily injury if not prevented. It is not necessary that bodily injury be inflicted.

CP 149. In addition, the Court gave the definition of great bodily harm:

Great bodily harm means bodily injury that creates a probability of death, or that causes significant serious permanent disfigurement, or that causes a significant permanent loss or impairment of the function of any bodily part or organ.

CP 151. It was error for the Trial Court to refuse to give a jury instruction consistent with Anderson.

**3. THE STATE PRESENTED SUFFICIENT EVIDENCE FROM WHICH THE JURY COULD FIND THAT THE MS. HAMILTON KNEW THE SUSPECT WAS BEING SOUGHT FOR ASSAULT IN THE FIRST DEGREE.**

While the State still contends that the trial court's decision not to use instructions consistent with Anderson was erroneous, the State nevertheless presented sufficient evidence by which the jury could, and did, convict, using the instructions that the trial court *did* give. Specifically, the State presented sufficient evidence by which the jury could find that Ms.

Hamilton knew that the suspect, Mr. Malotte, was being sought for assault in the first degree.

A person acts “knowingly” or with knowledge with respect to a fact, circumstance, or result when he or she is aware of that fact, circumstance or result. It is not necessary that the person know that the fact, circumstance, or result 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 the fact.

RCW 9A.08.010; State v. Spence, 81 Wn. 2d 788, 792, 506 P.2d 293 (1973); State v. Shipp, 93 Wn.2d 510, 610 P.2d 1322 (1980). The preceding definition was provided to the jury, and is, the State contends, an accurate statement of the law. CP 144.

The fact that Deputy Kersten did not specifically use the words “assault in the first degree” or “first degree assault” when telling Ms. Hamilton why he was looking for Mr. Malotte is of no consequence. Ms. Hamilton did not need to know, specifically, that the crime Mr. Malotte was being sought for is legally called “assault in the first degree”. Rather, the jury needed to find that Ms. Hamilton knew that Mr. Malotte was being sought in connection with *acts* or *results* that constitute assault in the first degree, which they did.

In this case, it was clear from the facts that Ms. Hamilton was fully aware of the nature of Mr. Malotte's assault on Mr. Griffith. Mr. Griffith testified that Ms. Hamilton was present while Mr. Malotte was assaulting him by punching, kicking, and hitting him with the butt of the firearm. Preston Hamilton testified that his mother was with him when they became aware that Mr. Malotte had assaulted Mr. Griffith with a metal propane tank with such ferocity that it exploded. Preston Hamilton also testified that his mother was outside during parts of the ongoing beating, and specifically stated that he would come outside when she would come outside, because he did not want to be alone. As Preston Hamilton was outside and able to witness the portions of the assault that included repeated kicking to the stomach and face with steel-toed boots, it is a reasonable inference that Ms. Hamilton was also present and witnessed these acts, which were so severe that Preston believed Mr. Malotte was about to "kill him" and was scared that Mr. Griffith might die. Further, it is evident that Ms. Hamilton herself recognized the severity of the assault, because it was she who called 911, as testified to by her son, Preston Hamilton, as well as Mr. Griffith.

Although Ms. Hamilton was charged with rendering criminal assistance on November 25, 2018, for continuing to harbor Mr. Malotte and deceiving law enforcement about his identity, there is no requirement that her knowledge be confined to what she learned on that day only. It is clear

from the record that the reason for Deputy Kersten's search and pursuit of Mr. Malotte was always related to the assault on Mr. Griffith. The moment he arrived on November 20, 2018 and saw Mr. Malotte running away from a blood-covered Mr. Griffith, Deputy Kersten stated "who did this to this man?" to Ms. Hamilton, Preston Hamilton, and Ms. Boyer. At that point, they all knew why Mr. Malotte was being sought. Moreover; it is evident that Ms. Hamilton knew Mr. Malotte had a firearm, as she pointed towards him when Deputy Kersten asked where the firearm was.

Throughout the course of the investigation, Deputy Kersten repeatedly asked Ms. Hamilton about the identity of the suspect in connection with the assault on Mr. Griffith. On November 25, 2020, he asked her who had beat up Mr. Griffith and shot at him, and she replied that she did not know. He further explained to her that the identity of this person was important because he had "assaulted Todd [Mr. Griffith] in a pretty significant way". Deputy Kersten again called Ms. Hamilton the next day, on November 26, 2018, to see if she had written a statement about the assault yet – again putting Ms. Hamilton on notice that the reason for trying to find Mr. Malotte was in connection to the investigation of the assault on Mr. Griffith.

Jurors may infer knowledge from circumstantial evidence which suggests that an ordinary person would have known a fact or circumstance

that is at issue. State v. Shipp, 93 Wn.2d at 519. Although Ms. Hamilton did not testify, as is her right, ample evidence from the other witnesses, primarily Mr. Griffith, Preston Hamilton, and Deputy Kersten, supported the reasonable inference that Ms. Hamilton was fully aware of the facts, circumstances, and result of Mr. Malotte's assault on Mr. Griffith, and was fully aware that the reason law enforcement was looking for Mr. Malotte was in connection with that assault.

Therefore, although the investigating officer did not tell Ms. Hamilton that he was seeking Mr. Malotte for assault in the first degree, the State proved that Ms. Hamilton had knowledge that would lead a reasonable person to believe that Mr. Malotte was being sought in connection with an assault involving a firearm, as well as great bodily harm – offenses which constitute assault in the first degree. Thus, sufficient evidence was presented that Ms. Hamilton knew that the officer seeking Mr. Malotte in connection with an assault in the first degree, as reflected in the Jury's verdict.

**4. SUFFICIENT EVIDENCE WAS PRESENTED FROM WHICH THE JURY COULD FIND THAT MS. HAMILTON POSSESSED A STOLEN FIREARM LOCATED OUTSIDE HER BEDROOM DOOR.**

Appellant claims that the State failed to prove that Ms. Hamilton possessed Mr. Griffith's stolen firearm because the evidence showed that

*Mr. Malotte* possessed the stole firearm. While Appellant is correct that the evidence did show that Mr. Malotte possessed the firearm, the evidence *also* showed that Ms. Hamilton *also* possessed the stolen firearm.

Possession can be either actual or constructive. State v. Reichert, 158 Wn. App. at 390; State v. Jones, 146 Wn.2d 328, 333, 45 P.3d 1062 (2002). Actual possession is where the defendant “has physical custody of the item”, whereas constructive possess in where the defendant has “dominion and control over the item.” Id. A person’s dominion and control over the premises where the items are found is one of the circumstances from which a jury can infer constructive possession of the items. State v. Shumaker, 142 Wn. App. 330, 334, 174 P.3d 1214 (2007). Having dominion and control over the premises containing the item, does not, by itself, prove constructive possession. State v. Davis, 182 Wn.2d at 234. However, other factors, such as the defendant’s ability to immediately take possession of an item can show dominion and control. Id. A person can have possession without exclusive control, and more than one person can be in possession of the same item. State v. George, 146 Wn. App. 906, 920, 193 P.3d 693 (2008); see also State v. Weiss, 73 Wn.2d 372, 375, 483 P.2d 610 (1968) (dominion and control need not be exclusive). This concept is particularly germane to the facts of the case presently on appeal.

Because possession need not be exclusive, Mr. Malotte's some-time possession of the firearm does not preclude Ms. Hamilton from also having possession, a concept which was conveyed to the jury by jury instruction No. 21 ("Dominion and control need not be exclusive to support a finding of constructive possession."). CP 154. Indeed, the State concedes that Mr. Malotte clearly had possession of the stolen firearm. However, the issue for the jury was whether Ms. Hamilton also had possession of the stolen firearm, and the State presented sufficient evidence that she did.

Preston Hamilton testified at trial that on the night of the assault, he, his sister, and his mother Ms. Hamilton witnessed Shane Malotte run away with Mr. Griffith's firearm. Thus, it is a reasonable inference that they all, including Ms. Hamilton, knew the firearm was stolen. Indeed, Appellant does not contend that Ms. Hamilton did not know the weapon was stolen. Rather, the sole contention is that Ms. Hamilton did not possess it. The evidence presented at trial, however, belies this assertion.

Preston Hamilton testified that Mr. Malotte brought Mr. Griffith's firearm back to the house later on the night of the assault, or very early the next morning, and that the firearm was in the house from that point until the execution of the search warrant nine days later. While Mr. Malotte at times carried the firearm downstairs, Preston Hamilton testified that it was usually left upstairs in the loft of the residence, and that this is where Mr. Malotte

would leave it when he left the residence. Preston observed the firearm lying in open plain view in the loft multiple times, close to Ms. Hamilton's door, in an area that she had to walk through to get to her room.

At trial, Preston Hamilton testified at length regarding the layout of the residence and where the respective residents (Ms. Hamilton, himself, Mr. Malotte, and Ms. Boyer) slept and/or had access to. Specifically, Preston testified that all residents had access to all areas of the home and that there were no areas off-limits to anyone. He also testified that it was not unusual for the residents to go into each other's rooms and specifically stated that they went into each other's rooms "all the time". Preston Hamilton testified that the area where his sister Destany and her boyfriend Shane Malotte slept (and considered their "room") was the loft area at the stop of the stairs between his room and defendant Ms. Hamilton's room. He further testified that in order to get to Ms. Hamilton's room, Ms. Hamilton would have to walk through Destany and Shane's "room". As the trial court astutely stated in its order denying Appellant's motion to arrest judgment, the stolen firearm was in an area where Ms. Hamilton "basically had to trip over it every day to get wherever she was going." RP 958.

At trial, when asked whether he ever saw his mother with actual possession of the firearm, Preston Hamilton stated that he did not know. However, after refreshing his recollection with an audio recording from his

previous interview with the defense investigator, Preston conceded that he told the defense investigator that he had seen his mother holding the firearm on at least one occasion.

Dominion and control means the defendant can immediately convert the item to their actual possession. Reichert, 158 Wn. App. At 390. When a defendant has dominion and control of the premises, a rebuttable presumption arises that the defendant also has dominion and control over items within the premises. Id. In Reichert, the court found sufficient evidence that Reichert had dominion and control over the premises in question where the State presented evidence that Reichert lived at the residence as shown by him having keys to the residence on his person, as well as by paperwork with his name on it being found in the residence. Id. at 390-91.

In the present case, Ms. Hamilton unquestionably had dominion and control over the residence where the stolen firearm was located. Testimony was presented that she owned the premises and had lived there with her son for about a year. By contrast, her daughter and Mr. Malotte had only resided there for about a month. Ms. Hamilton's dominion and control was further shown by evidence of photos of Ms. Hamilton on the walls of the residence (RP 357), medication bottles with Ms. Hamilton's name on them (RP 363), mailing envelope stickers with Ms. Hamilton's name on them and the

address of the residence on them (RP 365), and court paperwork with Ms. Hamilton's name on it (RP 369).

With Ms. Hamilton's dominion and control over the residence established, a presumption was raised that Ms. Hamilton likewise had dominion and control over the items located therein and no evidence was presented to rebut that presumption. To the contrary, additional evidence was presented that the firearm was usually located in an area in open view and easy accessibility, that no areas of the residence were off-limits to anyone, that no rooms upstairs had doors or locks on them, and that everyone was always in each other's rooms. In its closing argument, counsel for the appellant tried to argue the possibility that Ms. Hamilton was frightened of Mr. Malotte and therefore would not have dared to touch the firearm for fear of repercussion. However, this does not rebut the presumption of dominion and control, because there is no evidence to support this theory. Evidence was presented that Mr. Malotte had handed the firearm to Ms. Hamilton on one occasion (belying the assertion that Mr. Malotte would have denied her access to the firearm), and evidence was presented that Ms. Hamilton had ample opportunity to report Mr. Malotte to law enforcement if she was afraid of him, such as when she was at work, when he and Ms. Boyer went out, and when law enforcement came back to the residence on November 25, 2018 *specifically looking for Mr. Malotte*,

and Ms. Hamilton told them that she did not know who he was. In sum, no evidence was presented to rebut the presumption that Ms. Hamilton had dominion and control over the firearm, and ample evidence was presented that she did.

Washington's Supreme Court has held that dominion and control over a premises coupled with knowledge of the presence of contraband constitutes substantial evidence of constructive possession. State v. Weiss, 73 Wn.2d at 375. In Weiss, the evidence in the record indicated that the residence where the contraband drugs were found was Weiss's residence. Id. Moreover, the evidence also indicated that Weiss had dominion and control where he had been staying in the residence a month, took it upon himself to invite others over, brought furniture to the residence, and slept there. Id. In addition, the evidence showed that Weiss knew the drugs were in the residence. The Supreme Court was satisfied that the facts supporting dominion and control as well as the defendant's knowledge of the contraband amounted to constructive possession and declined to disturb the jury's verdict, finding it to be supported by substantial evidence. Id. The same facts are present in Ms. Hamilton's case: substantial evidence supports that she had dominion and control over the residence and that she knew that the stolen firearm was present. Therefore, this Court should find that substantial evidence supports the jury's finding of constructive possession.

In State v. Chakos, 74 Wn. 2d 154, 443 P.2d 815 (1968), the Washington Supreme Court examined a similar issue, concerning a situation where multiple people resided in a residence, in addition to the owner, Mrs. Chakos. Id. at 157-58. In Chakos, the defendant and her husband owned a residence but rented rooms other tenants. Id. Evidence was presented that it was common knowledge among the residents that narcotics were used and tolerated in the residence. Id. at 158. Under these circumstances, it was clear that Mrs. Chakos was in control of the premises. Id. Furthermore, the court held that it became a question of fact to be decided by the jury as to whether Mrs. Chakos knew of and was in constructive possession of the contraband narcotics. Id.

Here, as in Chakos, Ms. Hamilton is clearly in control of the premises, although she allowed her daughter and Mr. Malotte to reside there. As in Chakos, it was known by other residents, such as Preston Hamilton, that the stolen firearm was present and tolerated in the residence. Therefore, as in Chakos, the question of whether Ms. Hamilton constructively possessed the stolen firearm was a question of fact to be decided by the jurors, with great deference given to their findings as well as to their determinations about credibility. Id.

The concept of joint constructive possession was again visited in the case of State v. W., 18 Wn. App. 686, 571 P.2d 237 (1977). In State v. W.,

two defendants challenged their convictions for possession of burglary tools, claiming that insufficient evidence supported a finding of constructive possession. Id. at 688. However, the court noted that although neither defendant was found in actual possession of the tools, a neighbor had seen one of them using a wrecking bar to pry open the door, and the defendants were both found in the same area where the tools were located moments later. Id. The court distinguished W. from State v. Callahan, 77 Wn. 2d 27, 459 P.2d 400 (1969), noting that in Callahan, there was no evidence that the defendant exercised common control over the contraband and that in Callahan, someone other than the defendant had asserted sole ownership of the contraband in question. Id. at 688-89.

Appellant cites State v. Chouinard in support of her claim that that constructive possession was not proven. 169 Wn. App. 895, 282 P.3d 117 (2012). However, to the extent that the reasoning in Chouinard applies to the present facts, that case actually supports the State's position that Ms. Hamilton had constructive possession of Mr. Griffith's stolen firearm.

In Chouinard, the defendant (a convicted felon) was a backseat passenger in a vehicle and acknowledged that he had seen and knew that there was a rifle behind his seat. Id. at 898. On appeal from his conviction for unlawfully possessing a firearm, the Court of Appeals, Division II, reversed Chouinard's conviction, finding insufficient evidence of

constructive possession. Id. at 899. In Chouinard, the court's decision hinged on the fact that Chouinard was not the owner or driver of the vehicle in question. Id. at 899-900. The Court specifically noted that "courts hesitate to find sufficient evidence of dominion or control where the State charges *passengers* with constructive possession." Id. at 900. The Court then went on to distinguish Chouinard from a plethora of other cases where the court found sufficient evidence of dominion and control, noting that in each of those cases, the defendant was the *driver* or the *owner* of the vehicle where the contraband was found. State v. Bowen, 157 Wn. App. 821, 828, 239 P.3d 1114 (2010) (sufficient evidence of possession where Bowen owned, drove, and solely occupied truck containing firearm next to driver's seat); State v. Turner, 103 Wn. App. 515, 521, 13 P.3d 234 (2000) (sufficient evidence of possession, despite the fact that another claimed possession of the firearm, where firearm was in close proximity to Turner, Turner knew of its presence, Turner owned and drove vehicle where firearm was found, and Turner was able to reduce firearm to his possession); State v. McFarland, 73 Wn. App. 57, 70, 867 P.2d 660 (1994), aff'd 127 Wn. 2d 322 1995) (sufficient evidence of possession where testimony was presented that McFarland had been seen carrying the firearm and told the officer that he had knowingly transported the guns in his vehicle); State v. Reid, 40 Wn. App. 319, 326, 698 P.2d 588 (1985) (sufficient evidence of

possession where Reid admitted to having the pistol in the front seat of his car and moved it to the back seat so the police would not see it); State v. Echeverria, 85 Wn. App. 777, 783, 934 P.2d 1214 (1997) (sufficient evidence of possession where gun was sticking out from beneath Echeverria's driver's seat at the time of arrest and it was reasonable to infer that Echeverria knew it was there and that he possessed and controlled it because it was within his reach); State v. Cote, 123 Wn. App. 546, 550, 96 P.3d 410 (2004) (insufficient evidence of possession where Cote was a passenger of another's vehicle where contraband was found and was at one point in proximity to contraband); State v. George, 146 Wn. App. At 912-13 (insufficient evidence of constructive possession where contraband was found underneath passenger seat of another's vehicle where George was sitting, although he knew of its presence).

In each of the above cases where the evidence was held insufficient, as in Chouinard, the determining factor was that the vehicle where the contraband was located did not belong to, and was not being driven by the defendant. By contrast, in each of the above cases where the evidence was held sufficient on the issue of possession, the court found that the defendant was either the owner or driver of the vehicle where the contraband was located. When we apply this principle to situation where contraband is found in a residence, rather than a vehicle, it clearly supports that Ms.

Hamilton was in constructive possession of the stolen firearm. She owned the premises where the firearm was located, thereby raising the rebuttable presumption that she had dominion and control over the contents therein. Reichert, 158 Wn. App. At 390. This presumption was never rebutted by Appellant. To the contrary, more evidence was presented that not only was the item within Ms. Hamilton's house, but it was in plain and open view literally *right outside her bedroom door*, versus secreted in a place where she might not notice it. Evidence was also presented that Ms. Hamilton would have had to walk past the location of the firearm to get to her bedroom and that it left there unattended any time Mr. Malotte had to go into town. As the trial court noted, during this lengthy time (9 days), Ms. Hamilton, knowing the firearm did not belong to her or anyone in the house, took no action to resolve the situation, continuing to hold it as against the world, as proven by circumstantial evidence. RP 958.

In summary, the determination as to dominion and control, and therefore, constructive possession, is an issue that is fact-dependent on the totality of the circumstances. Such circumstances may include ownership or control of the location where the contraband is discovered, immediate ability to take actual possession of the item, and the defendant's ability to exclude others from possession of the item. These factors are not exclusive and no single factor controls a fact-finder's decision. In the present case,

the State presented substantial evidence by which the jury could find all of the above factors. Ms. Hamilton had dominion and control of the premises, she had dominion and control over the specific area where the firearm was located, the firearm was located in open and plain view and was accessible to everyone in the residence, the firearm was often left unattended by Mr. Malotte and therefore was immediately reduceable to Ms. Hamilton's actual possession, and Ms. Hamilton, as with the others in the residence, had the ability to exclude others from possession of the firearm. In addition, Ms. Hamilton had ample opportunity to report the firearm to law enforcement or Mr. Griffith when they came back to the residence and failed to do so. Therefore, as the trial court found, Ms. Hamilton "certainly had access to it and the ability to deny others the right to possess." RP 959. Taking every potential inference from the facts in favor of the State, the jury was well within their rights to find that Ms. Hamilton possessed the stolen firearm, and their verdict was supported by substantial evidence.

5. **SUFFICIENT EVIDENCE WAS PRESENTED FROM WHICH THE JURY COULD FIND THAT MS. HAMILTON KNOWINGLY RETAINED, POSSESSED, CONCEALED, OR DISPOSED OF STOLEN PROPERTY WHERE EVIDENCE DEMONSTRATED THAT SHE WAS AWARE THE ITEMS WERE TAKEN FROM THE VICTIM'S CAR AND THE ITEMS WERE FOUND**

**INSIDE HER SHED THAT SHE ENTERED EVERY DAY  
DURING HER CHORES.**

Appellant next contends that insufficient evidence was presented to prove that Ms. Hamilton possessed the items stolen from Mr. Griffith's truck, specifically, the come-along, snatch block, and tow straps. Again, Appellant is mistaken. In responding to this claim, the State relies upon the above-cited case law with regards to the concepts of constructive possession and dominion and control.

Again, Appellant claims that because the evidence indicates that Mr. Malotte and Destany may have had possession of the stolen items, Ms. Hamilton cannot also have had possession. Again, Appellant ignores case doctrine which states that possession need not be exclusive, supra.

Here, there is no doubt that the items in question came from Mr. Griffith's vehicle: Mr. Griffith testified that they had been in his vehicle at the time of the assault and were subsequently missing, and Deputy Kersten testified that he saw at least one of the items (the tow straps) on the ground outside Griffith's vehicle, immediately following the assault, but did not know whose they were. Nine days later, after they were found in Ms. Hamilton's shed, Mr. Griffith positively identified the items as his.

Likewise, there is little question as to who brought the items to the residence from the truck: Preston Hamilton testified that he observed his

sister and her boyfriend Mr. Malotte, in and around the vehicle in the days following the assault. It is a reasonable inference that the items were removed from the truck on or before November 25, 2018, because they were missing from Mr. Griffith's truck when he went to try to retrieve his truck on that day.

The State does not contend that Ms. Hamilton removed the items, nor does the State need to prove this in order to prove possession. As with the stolen firearm discussed above, constructive possession and dominion and control need not be exclusive. What matters is that Ms. Hamilton knowingly had constructive possession over the items.

As discussed above, it is apparent that Ms. Hamilton and her family were extremely close as evidenced by testimony that they spent most of their time together and were "always" in each other's rooms when they were at home. The close relationship is also evidenced by Ms. Hamilton's acts of "covering" for her daughter and Mr. Malotte, even to the extent of lying and misleading the police. In addition, Ms. Hamilton's house was littered with items decorated with swastikas and she did not hesitate to lie to law enforcement about Mr. Malotte's identity at his request, indicating that she was somewhat familiar with his checkered past. This indicates that her daughter and Mr. Malotte obviously felt free to discuss this type of information with Ms. Hamilton without fear of reprisal. That Ms. Boyer

and Mr. Malotte felt free to come to Ms. Hamilton to discuss their illegal acts is also made clear by Preston's testimony that his sister and Mr. Malotte brought items that they had taken from Mr. Griffith's truck to Ms. Hamilton for identification, including the cannister of Mr. Griffith's grandfather's ashes. It is thus apparent that Ms. Hamilton had knowledge that her daughter and Mr. Malotte were taking items belong to Mr. Griffith. Additionally, Preston testified explicitly that his mother knew Destany and Mr. Malotte had gone through Mr. Griffith's truck. RP 707.

Sometime during this same time period, Preston Hamilton observed Mr. Griffith's other missing items, the come-along and the snatch-block "somewhere around the house". RP 608. Contrary to Appellant's assertion that these items were all "dirty and stinky" such that a reasonable person would not be able to tell what they were, Preston Hamilton clearly testified that he was able to recognize the items as not belonging at their residence and stated that they were green and silver - not muddy. As further corroboration, Deputy Kersten testified that the items were clean, hung up, and appeared well-cared for, in contrast to other items in the shed and on the property. Moreover, the jury was presented with photos showing the items as they were discovered and they were not, as Appellant contends, "dirty and stinky".

The question before the jury was whether sufficient facts were presented to prove that Ms. Hamilton possessed the stolen items. Obviously, a prerequisite for possession is knowledge. Defense claims that there was no evidence that Ms. Hamilton knew the stolen property was in her shed, but the facts presented at trial do not support this. First, Preston Hamilton saw the stolen items around the house *before* they were put in the shed. As Preston indicated that he and his mother were almost always together and discussed the events in question, it is a reasonable inference that Ms. Hamilton also saw the items around the house, perhaps at the same time that Destany and Mr. Malotte were bringing other items, such as the canister of ashes, that they had taken from Mr. Griffith's truck. Second, the testimony at trial established that everybody had access to and was frequently, if not daily, in the storage area under the house, because that is where the water was kept for the numerous animals, as well as for domestic use. In this area, Mr. Griffith's bright green and shiny silver items were hung upon those very water tanks immediately inside the open double doors where all person entering the shed would see them. Given that Preston, a 14-year-old, was able to easily determine that the items were new to the residence after the assault and the raid on Mr. Griffith's truck, the jury could reasonably infer that Ms. Hamilton, the adult owner of the property, would also recognize that the items did not belong to them.

However, despite her knowledge that her daughter and Mr. Malotte had raided Mr. Griffith's vehicle, despite the fact that new property had shown up in her house and in her shed immediately afterward, despite the fact that she had ample opportunity to replace the property back in Mr. Griffith's vehicle (or direct the others to replace it, the same way she did the cannister of ashes), despite the fact that she could have returned the property to the police who subsequently came back to her residence, Ms. Hamilton did none of the above and the items remained in her shed, in her residence, appropriated to the use of someone other than the true owner. Based on the above testimony and exhibits, the jury's verdict was supported by sufficient evidence and the Appellant's motion must be denied.

**6. SUFFICIENT EVIDENCE WAS PRESENTED FROM WHICH THE JURY COULD FIND THAT THE POLICE REASONABLY RELIED UPON DEFENDANT'S FALSE STATEMENT THAT SHE DID NOT KNOW THE IDENTITY OR WHEREABOUTS OF A SUSPECT IN A SHOOTING INVESTIGATION WHERE LAW ENFORCEMENT DID NOT KNOW THE SUSPECT'S NAME OR WHEREABOUTS.**

Finally, Appellant contends that insufficient evidence supported Ms. Hamilton's conviction for making false or misleading statements to law enforcement because her statements were not technically "false" and moreover, were not "material", that is, not likely to be relied upon by law enforcement. This argument defies all reason, as the sole purpose for Ms.

Hamilton's statements was *because* she wanted law enforcement to rely upon them and to be unable to identify her daughter's boyfriend, Mr. Malotte.

Appellant's argument focuses only on Ms. Hamilton's statements that Mr. Malotte "might or could be at Mr. Griffith's home". In reality, the scope of Ms. Hamilton's false or misleading statements was much broader and the purpose was indubitably to confuse and frustrate the police. Preston Hamilton testified that the reason that he, his mother, and his sister denied knowing Mr. Malotte's identity was because Mr. Malotte told them that he "didn't want to have anything to do with the police" as he was fleeing with Mr. Griffith's firearm after the assault. It is also apparent from the record that Deputy Kersten was very clear that he was trying to locate the actual person, as well as the identity of the person, who has assaulted Mr. Griffith. Ms. Hamilton, having been present for the assault, knew exactly who that was – Mr. Malotte. Thus, it is apparent that (1) the police were trying to locate Mr. Malotte, (2) this was clearly communicated to Ms. Hamilton, and (3) Ms. Hamilton's actions were motivated by a desire to keep the police from identifying and/or apprehending Mr. Malotte, per his stated request. Unquestionably, Ms. Hamilton knew that Deputy Kersten would rely on her statements, because that was her intent.

The next question is whether Ms. Hamilton's statements were false or misleading. Despite Preston Hamilton's testimony that everyone in the residence *knew* that Mr. Malotte was and had been Destany's boyfriend since moving in a month prior, Ms. Hamilton stated that she did not know who he was (false) and that he was "T.J.'s friend". There was little in the record to support that Mr. Malotte was Mr. Griffith's "friend", given that they had met only twice, with the second meeting ending in a brutal assault. Referring to Mr. Malott in terms of "T.J.'s friend" rather than as her daughter's boyfriend and cohabitating partner was clearly designed to mislead Deputy Kersten as to the nature and strength of Mr. Malotte's connection to the Hamilton family. Further, evidence was presented that Ms. Hamilton told Deputy Kersten that Mr. Malotte's name was "Shane, Shawn, Jesse, Cameron, or Michael". While Preston did testify that Mr. Malotte sometimes went by "Shawn", he also testified that everyone in the house, including his mother, referred to him as "Shane". Providing the names of Jesse, Cameron, or Michael was clearly another attempt by Ms. Hamilton to prevent law enforcement from ascertaining his identity. Ms. Hamilton also stated not, as Appellant contends, that Mr. Malotte might be *located* at Mr. Griffith's residence, but that he might be *living* at Mr. Griffith's residence. This was patently false, and Ms. Hamilton knew it, as Mr. Malotte was presenting residing in her own house.

The above statements were clearly the type upon which law enforcement would rely. Deputy Kersten explicitly testified that he would typically rely on statements from witnesses at the scene as to the identity of a perpetrator and that the identity of a perpetrator was important for his investigation. Based on the representations that Mr. Malotte had no connections to her family, law enforcement's ability to identify and apprehend Mr. Malotte was frustrated for several days. As Deputy Kersten testified, rather than focusing on the Hamilton family (which he would have done had he known the degree of association), he was focusing on Mr. Griffith in his efforts to identify who had assaulted him. Unquestionably, had Deputy Kersten known that Mr. Malotte was intimately connected to the Hamilton family, he could have questioned them further as to likely whereabouts and/or history, requested that they contact him when Mr. Malotte reappeared, etc. But again, the whole point of the statements to Deputy Kersten was to prevent law enforcement from identifying Mr. Malotte's identity and subsequent whereabouts. This is made abundantly clear from Ms. Hamilton's subsequent and continued statements, days later, still denying knowledge of Mr. Malotte's identity and still hiding the fact that he was hiding out at her very own residence.

Whether or not Ms. Hamilton was reluctant, as Appellant contends, to come into contact with law enforcement because she mistrusted them,

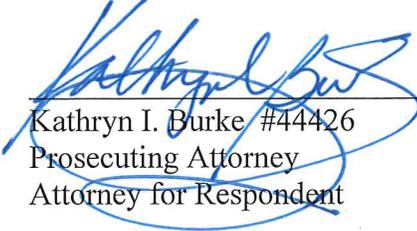
Ms. Hamilton's statements went beyond mere false disavowals of knowledge. She made statements that were blatantly false with the goal of confusing law enforcement and frustrating their investigation. Sufficient evidence was presented by which the jury could find the required elements of the crime, and Appellant's motion must be denied.

## V. CONCLUSION

For the above reasons, sufficient evidence was presented by which the jury could, and did find Ms. Hamilton guilty of the crimes of rendering criminal assistance in the first degree, possession of a stolen firearm, possession of stolen property in the third degree, and making false or misleading statements to a public servant. Therefore, the State respectfully requests that the Court enter an order denying Appellant's motions to reverse her convictions, and affirming Defendant's convictions and sentence.

Dated this 13 day of September, 2020.

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# FERRY COUNTY PROSECUTORS OFFICE

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