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**SUPREME COURT OF THE
STATE OF WASHINGTON**

STATE OF WASHINGTON, APPELLANT

v.

CLIFFORD MELVIN PORTER, JR., RESPONDENT

Review of Court of Appeals, Division II No. 45796-2-II
Appeal from the Superior Court of Pierce County
The Honorable Frank E. Cuthbertson

No. 13-1-0010-7

Supplemental Brief of Petitioner

MARK LINDQUIST
Prosecuting Attorney

By
THOMAS C. ROBERTS
Deputy Prosecuting Attorney
WSB # 17442

930 Tacoma Avenue South
Room 946
Tacoma, WA 98402
PH: (253) 798-7400

 ORIGINAL

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A. ISSUES PRESENTED FOR REVIEW.

1. Is the definition of “to possess” an essential element that must be included in an Information alleging unlawful possession of a stolen motor vehicle?

B. STATEMENT OF THE CASE.

1. Procedure

On January 2, 2013, the State charged Clifford Melvin Porter, Jr. (hereinafter “defendant”) by Information with unlawful possession of a stolen vehicle. CP 1; RCW 9A.56.068, RCW 9A.56.140. The Information read:

I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse CLIFFORD MELVIN PORTER, JR. of the crime of UNLAWFUL POSSESSION OF A STOLEN VEHICLE, committed as follows:

That CLIFFORD MELVIN PORTER, JR., in the State of Washington, on or about the 27th day of August, 2011, did unlawfully and feloniously knowingly possess a stolen motor vehicle, knowing it had been stolen, contrary to RCW 9A.56.068 and 9A.56.140, and against the peace and dignity of the State of Washington.

CP 1. Defendant did not object to this charging document below.

After the State rested its case-in-chief, defense counsel made a motion for a directed verdict, which was denied. 3RP 259.¹ Defendant

¹ The verbatim report of proceedings will be referred to by the volume number, RP, and the page number (#RP #).

called several witnesses and took the stand himself. *See generally*, 3RP 263–321. The jury found defendant guilty as charged. CP 23; 5RP 396. The trial court sentenced defendant to forty-five days with the possibility of electronic home monitoring. CP 30. Defendant appealed to the Washington Court of Appeals, Division II. CP 41.

Division II reversed defendant's conviction in an unpublished opinion. *State v. Porter*, 2015 WL 4252605 (Appendix A). The State petitioned this Court for review, and this Court granted review.

2. Facts

On August 27, 2011, Pierce County Sheriff deputies responded to a report of a stolen car. 2RP 56. The reported car was a red 1990 Pontiac Firebird registered to Jesus Longoria. 3RP 178. The car was parked at a house owned by Longoria and his ex-wife, Sally Lockard, although no one lived at the house when the car was stolen. 2RP 117, 3RP 180. Lockard had received a phone call from a neighbor regarding the car, called the sheriff, and met the sheriff deputies at the address where the car was reportedly being held. 2RP 117–118. Longoria accompanied Lockard to meet the sheriffs. 2RP 119, 3RP 188.

When Detective Witt and Deputy Reding arrived, defendant's girlfriend, Mareta Rodocker, met them at the fence. 2RP 60. After the sheriffs requested to speak to the property owner, Rodocker got the defendant. 2RP 61. After the sheriffs said they believed a stolen car was

inside the garage on the property, defendant allowed them to enter and look around. 2RP 62–63. But a combination lock prevented access to the garage, and defendant said his father, Clifford Porter, Sr., had placed the lock on the door. 2RP 63. Defendant said he would go call his father to get the combination. 2RP 63. Instead, defendant left the property. 2RP 66.

As the sheriffs continued walking around the garage, they saw several car parts piled up, including an airbag and a red bumper, both of which had a Pontiac insignia. 2RP 64. After realizing defendant had left the property, Deputy Reding secured the scene to allow Detective Witt to apply for a search warrant. 2RP 67. After serving the warrant, sheriffs found a portion of a car inside the garage. 2RP 73. A VIN number check confirmed the car was Longoria's Pontiac Firebird. 2RP 73. The car had been cut in half. 2RP 73. The back half was gone. 2RP 73. Sheriffs found a receipt inside the car for R&R Recycling with a copy of defendant's photo identification attached. 2RP 73–74. A television found in defendant's garage belonged to Longoria as well. 3RP 194.

In his testimony, defendant said he only left the property while the sheriffs were there to find his father who had not answered his phone calls. 3RP 311. Defendant said he had been working with Rodocker to clean up the property for about a year. 3RP 297. Defendant claimed he did not have access to the locked garage, was shocked to learn the Pontiac Firebird was in the garage, and had no clue how it got there. 3RP 281, 3RP 303.

C. ARGUMENT.

1. THE INFORMATION WAS CONSTITUTIONALLY SUFFICIENT BECAUSE THE STATE WAS NOT REQUIRED TO INCLUDE THE DEFINITION OF “TO POSSESS,” WHICH DIVISION II HAS ERRONEOUSLY LABELED AN ESSENTIAL ELEMENT.

Defendants have a constitutional right to know the charges against them. Article I, section 22 of the Washington Constitution provides, “In criminal prosecutions the accused shall have the right . . . to demand the nature and cause of the accusation against him.” WASH. CONST. art. I, § 22. The U.S. Constitution similarly provides, “In all criminal prosecutions, the accused shall enjoy the right . . . to be informed of the nature and cause of the accusation.” U.S. CONST. amend. VI.

Appellate courts review the constitutional sufficiency of a charging document—or Information—de novo. *State v. Johnson*, 180 Wn.2d 295, 300, 325 P.3d 135 (2014). An Information is constitutionally sufficient if it includes all essential elements of a crime. *State v. Vangerpen*, 125 Wn.2d 782, 787, 888 P.2d 1177 (1995). To provide the accused fair notice of the charges against him and the opportunity to prepare a defense, all essential statutory and non-statutory elements of a crime must be in the Information. *Vangerpen*, 125 Wn. 2d at 787. An “essential element” is an element whose specification is necessary to establish the very illegality of the act charged. *State v. Zillyette*, 178 Wn.2d 153, 158, 307 P.3d 712 (2013). Although the Information must include all essential elements, the

State need not include *definitions* of those elements. *Johnson*, 180 Wn.2d at 302. A definition is a term that defines and limits the scope of an essential element. *Id.*

When a defendant challenges an Information for the first time on appeal, reviewing courts construe it liberally. *State v. McCarty*, 140 Wn.2d 420, 435, 998 P.2d 296 (2000). If the necessary elements appear in any form, or may be found by fair construction, on the face of the Information, it is sufficient. *Id.*

In this case, the State charged defendant with violating RCW 9A.56.068, which provides: “A person is guilty of possession of a stolen vehicle if he or she possess [possesses] a stolen motor vehicle.” RCW 9A.56.068 (alteration in original). The Information alleged, in relevant part, that defendant: “did unlawfully and feloniously knowingly possess a stolen motor vehicle, knowing it had been stolen, contrary to RCW 9A.56.068 and 9A.56.140.” CP 1. On appeal, defendant argued—and Division II agreed—the Information was deficient because it did not allege that he withheld or appropriated the stolen vehicle. *See* Appendix A.

The “withhold or appropriate” language comes from RCW 9A.56.140, which provides: “‘Possessing stolen property’ means knowingly to receive, retain, possess, conceal, or dispose of stolen property knowing that it has been stolen *and to withhold or appropriate the same to the use of any person other than the true owner or person*

entitled herein.” RCW 9A.56.140(1) (emphasis added).² At issue is whether RCW 9A.56.140, which is titled “Possessing stolen property—Definition—Presumption,” merely defines the essential element of possession or provides an additional essential element the State must allege.

In *State v. Satterthwaite*, 186 Wn. App. 359, 344 P.3d 738 (2015), Division II of the court of appeals held the above-italicized portion of RCW 9A.56.140(1) constituted an essential element of possessing a stolen motor vehicle, rather than a definition of such possession. *Id.* at 364. Division II reasoned that withholding or appropriating the stolen property by a non-owner is what ultimately makes possessing that property illegal. *Id.* Otherwise, the law would not differentiate between, “a person attempting to return known stolen property and a person choosing to keep, use, or dispose of known stolen property.” *Id.* Therefore, “withhold or appropriate” is an essential element of the crime because its specification is necessary to establish the very illegality of the act. *Id.* In the present case, Division II relied on *Satterthwaite* in reversing defendant’s conviction. Appendix A.

Contrary to *Satterthwaite*, to “withhold or appropriate” is not an essential element of the crime of possessing a stolen motor vehicle. Rather, RCW 9A.56.140(1) merely defines what it means to possess stolen

² The trial court included this definition in the jury instructions. CP 13.

property. As a definition of an element, it need not be included in the Information. *Johnson*, 180 Wn. 2d at 302.

The court of appeals in *Satterthwaite* based its decision on its view that, “[i]t is the withholding or appropriation of a stolen item of property to the use of someone other than the owner that ultimately makes the possession illegal.” *Satterthwaite*, 186 Wn. App. at 364. But it is, rather, the knowing *possession* of the stolen motor vehicle that makes the act illegal. The withholding or appropriation of the vehicle to the use of someone other than the true owner defines and limits the scope of that possession. Therefore, it is a definition of an element. Defining and limiting the scope of possession this way also still protects the person attempting to return known stolen property that seemed to motivate the court’s decision in *Satterthwaite*.

This Court discussed the difference between essential elements and the definitions of those elements in *Johnson*. 180 Wn.2d 295. In that case, the Information alleged the defendant “did knowingly restrain [J.J.], a human being.” *Id.* at 301 (alteration in original). The defendant challenged the Information because it did not define “restrain,” as “to restrict a person’s movements without consent and without legal authority in a manner which interferes substantially with his liberty,” which he argued was an essential element. *Id.* This Court rejected Johnson’s argument, reaffirming that definitions of elements do not need to be included in the Information to make it constitutionally sufficient. *Id.* at 302. This Court

also recognized that although the definition of “restrain” defined and limited the scope of the essential elements, that fact did not make the definition itself an essential element. *Id.* at 302.

The present case is analogous to *Johnson*. The statute that contained the definitional element in *Johnson* was titled, “Definitions,” and began, “‘Restrain’ means . . .” Former RCW 9A.40.010(1) (1975). In this case, the statute is titled, “Possessing stolen property—Definition—Presumption,” and similarly begins, “‘Possessing stolen property’ means . . .” RCW 9A.56.140(1). Both statutes by their plain language *define* the elements of the corresponding crimes, and legislative definitions included in statutes are controlling. *State v. Watson*, 146 Wn.2d 947, 954, 57 P.3d 66 (2002). Because to “withhold or appropriate” merely defines the essential element of possession, the State was not required to include it in the Information. Requiring the definition of an essential element is contrary to this Court’s holding in *Johnson* that no such definition is required. Therefore, the court of appeals erred in holding the Information in this case was deficient.

D. CONCLUSION.

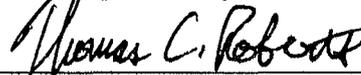
Although the State must include all essential elements in the Information, it need not include the definitions of such elements. To “withhold or appropriate” stolen property merely defines what it means to possess stolen property, it is not itself an essential element of possessing a

stolen motor vehicle. Accordingly, the court of appeals erred in holding that the Information in this case was deficient.

The State respectfully requests this Court reverse the court of appeals and affirm defendant's conviction.

DATED: February 17, 2016.

MARK LINDQUIST
Pierce County
Prosecuting Attorney



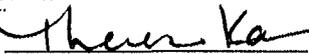
THOMAS C. ROBERTS
Deputy Prosecuting Attorney
WSB # 17442



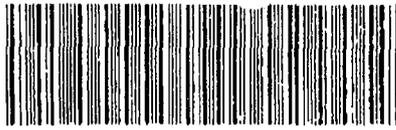
Jordan McCrite
Rule 9 Legal Intern

Certificate of Service:

The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

2.17.16 
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APPENDIX A



13-1-00010-7 45003410 CPOPIN 07-15-15

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STATE OF WASHINGTON

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

STATE OF WASHINGTON,

Respondent,

v.

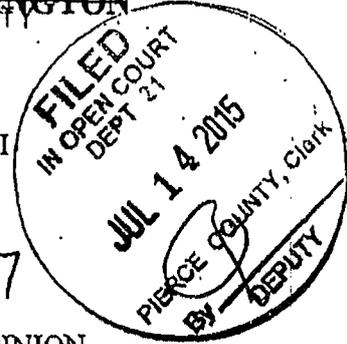
CLIFFORD MELVIN PORTER, JR.,

Appellant.

No. 45796-2-II

13-1-0010-7

UNPUBLISHED OPINION



LEE, J. — Clifford Porter Jr. appeals from his conviction for unlawful possession of a stolen motor vehicle based on a defective information. We agree, reverse Porter's conviction and remand.

Porter argues that because his information alleged only that he "did unlawfully and feloniously knowingly possess a stolen motor vehicle, knowing that it had been stolen," Clerk's Papers (CP) 1, and did not allege that he "with[e]ld or appropriate[d] the same to the use of any person other than the true owner or person entitled thereto," his information failed to allege an essential element of the crime of unlawful possession of a stolen motor vehicle. *State v. Satterthwaite*, 186 Wn. App. 359, 344 P.3d 738, 741 (2015) (quoting RCW 9A.56.140(1)).

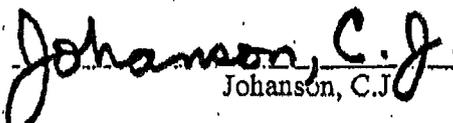
The State acknowledges *Satterthwaite* but disagrees with its reasoning and asks us not to follow it. But it shows no basis for us to not follow *Satterthwaite*. The State also suggests that because Porter's information alleged that his acts were "contrary to RCW 9A.56.068 and 9A.56.140," CP 1, and because RCW 9A.56.140 contains the essential element of withholding or appropriating the stolen property, Porter's information is distinguishable from that in

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Satterthwaite, which did not contain the statutory reference. But merely citing to the statute is insufficient to apprise a defendant of the essential elements of the crime with which he is charged. *State v. Vangerpen*, 125 Wn.2d 782, 787, 888 P.2d 1177 (1995). *Satterthwaite* is controlling, and accordingly, we reverse Porter's conviction and remand for further proceedings.¹

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

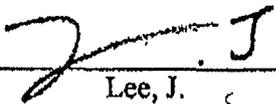
We concur:



Johanson, C.J.



Maxa, J.



Lee, J.

¹ Because we reverse on the grounds of an insufficient information, we decline to address Porter's other assignment of error that he received ineffective assistance of counsel when his trial counsel failed to object to evidence that he possessed other stolen property and had engaged in burglary, theft and other crimes.

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Please see attached the State's Supp. Brief in the below matter:

St. v. Porter
No. 92060-5
Submitted by: T. Roberts
WSB # 17442

Please call me at 253/798-7426 if you have any questions.

Therese Kahn
Legal Assistant to T. Roberts