

NO. 47290-2

**COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

JOSHUA MULLENS, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Stanley Rumbaugh, Judge

No. 14-1-04317-3

BRIEF OF RESPONDENT

MARK LINDQUIST
Prosecuting Attorney

By
KATHLEEN PROCTOR
Deputy Prosecuting Attorney
WSB # 14811

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

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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Where the charging language of the Information is similar to that struck down in *Satterthwaite* because it does not contain the definition (to “withhold or appropriate”) of possessing stolen property, is the Information in this case constitutionally insufficient?

B. STATEMENT OF THE CASE.

On October 30, 2014, the Pierce County Prosecutor’s office (State) charged Joshua James Mullens (defendant) by Information with one count of unlawful possession of a stolen vehicle, Pierce County cause No. 14-1-04317-3. CP 1. The Information stated:

That JOSHUA JAMES MULLENS, in the state of Washington, on or about the 29th day of October, 2014, did unlawfully and feloniously knowingly possess a stolen motor vehicle, knowing that 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.

On February 18, 2015 following trial, a jury found the defendant guilty as charged. CP 49. He was sentenced on February 27, 2015 to a standard range sentence of 57 months total confinement. CP 57-68.

Defendant filed a timely notice of appeal on February 27, 2015. CP

74.

C. ARGUMENT.

1. THE STATE RECOGNIZES UNDER ***SATTERTHWAITE***, THE INFORMATION IN THIS CASE IS CONSTITUTIONALLY INSUFFICIENT. HOWEVER, THE STATE RESPECTFULLY DISAGREES WITH THE REASONING IN ***SATTERTHWAITE***.

The State acknowledges that this court recently held as a matter of first impression that “withhold or appropriate” is an essential element of possession of a stolen motor vehicle. *State v. Satterthwaite*, 186 Wn. App. 359, 364, 344 P.3d 738 (2015). Given the similarity in the language of the Information in *Satterthwaite* and the present case, the Information in this case is deficient because it did not include “withhold or appropriate.”

However, the State respectfully disagrees with the reasoning in *Satterthwaite*. An Information is constitutionally sufficient if it includes all the essential elements, statutory and nonstatutory, of a crime. *State v. Vangerpen*, 125 Wn.2d 782, 787, 888 P.2d 1177 (1995). 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). The purpose of the essential elements rule is to apprise the defendant of the charges against him allowing him to prepare a defense. *State v. Johnson*, 180 Wn.2d 295, 300, 325 P.3d 135 (2014) (citing *Vangerpen*, 125 Wn.2d at 787).

Although essential elements are required to make an Information constitutionally sufficient, the State need not include definitions of the elements. *Johnson*, 180 Wn.2d at 302. In *Johnson*, the Information alleged the defendant “did knowingly restrain [J.J.], a human being.” *Id.* at 301. 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.* at 301-02. The Supreme Court rejected this argument, reaffirming that definitions of elements do not need to be included in the Information to make it constitutionally sufficient. *Id.* at 302.

The case at hand presents a similar issue to that addressed in *Johnson*. The Information in this case alleged that defendant “did unlawfully and feloniously knowingly possess a stolen motor vehicle, knowing it had been stolen.” CP 1. *Satterthwaite* requires the definition of “possess” with the additional verbiage of “withhold or appropriate to the use of any person other than the true owner or person entitled thereto.” *Satterthwaite*, 186 Wn. App. at 365-66 (quoting RCW 9A.56.140(1)). Requiring the definition of an essential element is contrary to the Supreme Court’s holding in *Johnson* that no such definition is required.

The State presented this argument in another case recently determined by Division II. *State v. Porter*, 2015 WL 4252605 at *1. In that case this court maintained the position it had taken in *Satterthwaite*.

The State is seeking review in *Porter*. If the Supreme Court takes review of *Porter*, then this Court should stay resolution of this case until a decision is issued.

D. CONCLUSION.

The State recognizes that under *Satterthwaite*, the Information in this case would be deficient for failure to include the definition of “possessing stolen property.” However, the State respectfully disagrees with the reasoning in *Satterthwaite* and is seeking review of this issue in another case, *Porter*; should review be granted, this case should be stayed until a decision is issued.

DATED: September 10, 2015.

MARK LINDQUIST
Pierce County
Prosecuting Attorney


KATHLEEN PROCTOR
Deputy Prosecuting Attorney
WSB # 14811


Stacy Norton
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.

9/15 Therex Kar
Date Signature

PIERCE COUNTY PROSECUTOR

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