SUPREME COURT NO.
98745-9
COA NO. 52092-3-II

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Respondent,

v.

JEFFREY KAZULIN,
Petitioner.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR PIERCE COUNTY

Pierce County Cause No. 17-1-04489-1

The Honorable Philip K. Sorensen, Judge

PETITION FOR REVIEW

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

FEDERAL CASES

WASHINGTON STATE CASES

CONSTITUTIONAL PROVISIONS

STATUTES

OTHER AUTHORITIES

I. IDENTITY OF PETITIONER

Petitioner Jeffrey Kazulin, the appellant below, asks the Court to review the decision of Division II of the Court of Appeals referred to in Section II below.

II. COURT OF APPEALS DECISION

Jeffrey Kazulin seeks review of the Court of Appeals unpublished opinion entered on June 9, 2020. A copy of the opinion is attached.

III. ISSUE PRESENTED FOR REVIEW

> An Information charging a theft offense must "clearly" charge the accused with a crime relating to "specifically described property" in order to provide the accused with constitutionally adequate notice of the charge against him/her. Was language charging Mr. Kazulin with possession of a stolen motor vehicle constitutionally deficient when it did not include any language describing the stolen vehicle he was alleged to have possessed?

IV. STATEMENT OF THE CASE

The state charged Mr. Kazulin with possession of a stolen motor vehicle using the following language:

> That JEFFREY JAY KAZULIN, in the State of Washington, on or about the 22nd day of November, 2017, did unlawfully and feloniously knowingly possess a stolen motor vehicle, knowing that it had been stolen and did withhold or appropriate the same to the use of any person other than the true owner or person entitled thereto, contrary to RCW 9A.56.068 and 9A.56.140, and against the peace and dignity of the State of Washington.
> CP 1.

There was no language in the charging document describing the motor vehicle that Mr. Kazulin was alleged to have unlawfully possessed. CP 1.

The case proceeded to trial, where the jury found Mr. Kazulin guilty of possession of a stolen motor vehicle. CP 35. Mr. Kazulin timely appealed. CP 54. The Court of Appeals affirmed his conviction in an unpublished opinion. *See* Appendix.

V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

THE SUPREME COURT SHOULD ACCEPT REVIEW AND HOLD THAT THE CHARGING LANGUAGE IN MR. KAZULIN'S CASE WAS CONSTITUTIONALLY DEFICIENT. COURT OF APPEALS' JURISPRUDENCE ON THIS ISSUE DIRECTLY CONTRADICTS THE MANDATES OF THE UNITED STATES SUPREME COURT.

A. The Information charging Mr. Kazulin failed to allege any "critical facts," in violation of his Sixth Amendment right to notice of the "nature and cause" of the accusation against him.

The Sixth Amendment right "to be informed of the nature and cause of the accusation" and the federal guarantee of due process impose certain requirements on charging documents. U.S. Const. Amends. VI, XIV.[1] A charging document "is only sufficient if it (1) contains the

[1] Wash. Const. art. I, §§ 3 and 22 impose similar requirements.

elements of the charged offense, (2) gives the defendant adequate notice of the charges, and (3) protects the defendant against double jeopardy." *Valentine v. Konteh*, 395 F.3d 626, 631 (6th Cir. 2005).

The charging language must include more than "the elements of the offense intended to be charged." *Russell v. United States*, 369 U.S. 749, 763-64, 82 S.Ct. 1038, 8 L.Ed.2d 240 (1962) (citations and internal quotation marks omitted).[2] Any offense charged in the language of the statute "must be accompanied with such a statement of the facts and circumstances as will inform the accused of the specific offense." *Id*. (citations and internal quotation marks omitted). The charge must also be specific enough to allow the defendant to plead the former acquittal or conviction "in case any other proceedings are taken against him for a similar offense." *Id*.

Any "critical facts must be found within the four corners of the charging document." *City of Seattle v. Termain*, 124 Wn. App. 798, 803, 103 P.3d 209 (2004).

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[2] Challenges to the sufficiency of a charging document are reviewed *de novo*. *State v. Rivas,* 168 Wn. App. 882, 887, 278 P.3d 686 (2012) *review denied*, 176 Wn.2d 1007, 297 P.3d 68 (2013). Such challenges may be raised for the first time on appeal. *Id*.

Where the Information is challenged after verdict, the reviewing court construes the document liberally. *Rivas*, 168 Wn. App. at 887. The test is whether the necessary facts appear or can be found by fair construction in the charging document. Id. If the Information is deficient, prejudice is presumed. *Id*., at 888. The remedy for an insufficient charging document is reversal and dismissal without prejudice. *Id*., at 893.

In cases involving offenses related to theft, the Information must "clearly" charge the accused person with a crime relating to "specifically described property." *State v. Greathouse*, 113 Wn. App. 889, 903, 56 P.3d 569 (2002). When the charging document includes "not a single word to indicate the nature, character, or value of the property," the charge is "too vague and indefinite upon which to deprive one of his [or her] liberty." *Edwards v. United States*, 266 F. 848, 851 (4th Cir. 1920); *See also United States v. Cruikshank*, 92 U.S. 542, 558, 23 L. Ed. 588 (1875).

In this case, the Information passes only the first of these three requirements: it charges the language of the statute, and thus "contains the elements of the offense intended to be charged." *Russell*, 369 U.S. at 763-64. It fails the other two requirements because it omits critical facts. In the absence of critical facts, the Information does not provide adequate notice of the charges, nor does it provide any protection against double jeopardy. *Id*.; *Valentine*, 395 F.3d at 631.

Here, the Information does not provide any allegations regarding the nature or character of the motor vehicle that Mr. Kazulin was alleged to have possessed. CP 1. Because of this, the allegation is "too vague and indefinite upon which to deprive [Mr. Kazulin] of his liberty." *Id*. The Information provides neither notice nor protection against double jeopardy. *Russell*, 369 U.S. at 763-64; *Valentine*, 395 F.3d at 631. The

critical facts related to the charge against Mr. Kazulin cannot be found by any fair construction of the charging document. *Rivas*, 168 Wn. App. at 887.

The Information is constitutionally deficient. Mr. Kazulin's conviction must be reversed and the charge dismissed without prejudice. *Russell*, 369 U.S. at 763-64; *Rivas*, 168 Wn. App. at 893.

B. Mr. Kazulin's challenge to the violation of his constitutional right to notice of the charge against him can be raised for the first time on appeal.

Manifest error affecting a constitutional right may be raised for the first time on appeal. RAP 2.5(a)(3). A constitutionally deficient charging document presents such an error. *Rivas,* 168 Wn. App. at 887.

The United States Supreme Court has long held that charging document which fails to advise the accused of any of the critical facts related to the allegations against him/her is inadequate under the Sixth Amendment. *See Cruikshank*, 92 U.S. at 558; *Hamling v. United States*, 418 U.S. 87, 117–18, 94 S.Ct. 2887, 41 L.Ed.2d 590 (1974); *Russell*, 369 U.S. 749.

The *Hamling* court made it clear that the constitution does not permit a person to be charged with a crime using only the language of the statute:

> Undoubtedly the language of the statute may be used in the general description of an offence, *but it must be accompanied with such a statement of the facts and circumstances as will inform the accused of the specific offence*, coming under the general description, with which he is charged.

Hamling, 418 U.S. at 117–18 (*quoting United States v. Hess*, 124 U.S. 483, 487, 8 S.Ct. 571, 31 L.Ed. 516 (1888) (emphasis added)). The *Russell* court referred to this rule as a "basic principle of fundamental fairness." *Russell*, 369 U.S. at 765.

Indeed, The Supreme Court has explicitly held that a document charging a theft offense is constitutionally deficient if it fails to "specify with some degree of certainty the articles stolen" because it does not advise the accused of the "particulars of the charge against him." *Cruikshank*, 92 U.S. at 558.

Yet, somehow, Washington appellate courts have strayed from this basic constitutional principle by attempting to create a doctrine in which any deficiency in a charging document that fails to specify critical facts (rather than elements of an offense) of an offense is labelled as "vague," rather than constitutionally insufficient. *See e.g. State v. Mason*, 170 Wn. App. 375, 384, 285 P.3d 154 (2012); *State v. Laramie*, 141 Wn. App. 332, 340, 169 P.3d 859 (2007); *State v. Winings*, 126 Wn. App. 75, 84, 107 P.3d 141 (2005). Such cases hold that a "vague" charging document cannot be challenged for the first time on appeal, but that the accused is

required to seek correction through a motion for a bill of particulars in the trial court. *Id.*

Decisions in cases such as *Mason*, *Laramie*, and *Winings* rely on *dicta* in the State Supreme Court's decision in *State v. Leach* for their proposition that a charging document that fails to include specific facts is merely "vague," rather than constitutionally infirm. *See Mason*, 170 Wn. App. at 385; *Laramie*, 141 Wn. App. at 340, *Winnings*, 126 Wn. App. at 84 (*all citing State v. Leach*, 113 Wn.2d 679, 690–91, 782 P.2d 552 (1989)).

But the *Leach* court did not consider any issue relating to failure to allege "critical facts" in a charging document. *See Leach*, 113 Wn.2d 679. Rather, that *Leach* court simply made an offhand statement that the accused in that case could challenge the Information for the first time on appeal because it was constitutionally deficient, rather than "vague as to some other significant matter," the issue could be raised for the first time on appeal under RAP 2.5(a)(3). *Id* at 690-91.[3]

Cases such as *Mason*, *Laramie*, and *Winings* misconstrue the *dicta* from *Leach* in a manner that directly contradicts the requirements of the

[3] Notably, the *Leach* court also held that the constitutional requirements regarding charging language are more stringent in felony cases than in those charging only misdemeanors, such as those addressed by the Supreme Court in that case. *Leach*, 113 Wn.2d at 697.

Sixth Amendment, as laid out by the United States Supreme Court. This court should overrule or decline to follow those precedents because they violate the constitution an erode a "basic principle of fundamental fairness" enshrined in the Sixth Amendment. *Russell*, 369 U.S. at 765.

Even so, the Court of Appeals affirmed his conviction, relying exclusively on *Mason*. Opinion, pp. 3-4. The Court of Appeals' decision directly contradicts the United State's Supreme Court's prior decision in *Russell*. *Russell*, 369 U.S. at 765.

This Court should grant review in order to resolve the discrepancy between decisions in the United States Supreme Court and in the Washington Court of Appeals regarding the circumstances in which an alleged failure to provide constitutionally-mandated notice may be raised for the first time on appeal. *See* RAP 13.4(b)(1).

The issue raised in this case also merits review because it is a significant question of constitutional law, which is of substantial public interest. RAP 13.4(b)(3), (4).

VI. CONCLUSION

The Court of Appeals should have considered Mr. Kazulin's challenge to the notice he received for the first time on appeal. This Court should grant review under RAP 13.4(b)(1). (3), and (4).

Respectfully submitted July 9, 2020.

Skylar T. Brett, WSBA No. 45475
Attorney for Appellant/Petitioner

CERTIFICATE OF SERVICE

I certify that I mailed a copy of the Petition for Review, postage pre-paid, to:

Jeffrey Kazulin/DOC#772084
Washington State Penitentiary
1313 North 13th Avenue
Walla Walla, WA 99362

and I sent an electronic copy to

Pierce County Prosecuting Attorney
pcpatcecf@co.pierce.wa.us

through the Court's online filing system, with the permission of the recipient(s).

In addition, I electronically filed the original with the Court of Appeals.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Seattle, Washington on July 9, 2020.

Skylar T. Brett, WSBA No. 45475
Attorney for Appellant/Petitioner

APPENDIX:

Filed
Washington State
Court of Appeals
Division Two

June 9, 2020

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. JEFFREY JAY KAZULIN, Appellant.	No. 52092-3-II (consolidated with)
In the Matter of the Personal Restraint of JEFFREY JAY KAZULIN, Petitioner.	No. 53835-1-II UNPUBLISHED OPINION

GLASGOW, J.—Jeffrey Jay Kazulin appeals his conviction for unlawful possession of a stolen vehicle. Kazulin argues the information in his case was constitutionally defective because it did not include a description of the stolen vehicle. Kazulin did not request a bill of particulars below and he agrees that the information contained all the essential elements of the charged crime. We hold that Kazulin waived his right to challenge the information by not requesting a bill of particulars below and affirm his conviction.

Kazulin raises several other arguments for reversal in a statement of additional grounds (SAG) and a consolidated pro se personal restraint petition (PRP). None of the arguments in Kazulin's SAG merits reversal of his conviction, and we deny Kazulin's PRP.

FACTS

Kazulin accompanied his friend, Phillip Wells, to the house of Gary and Shirley Wells[1] (unrelated to Phillip Wells). Gary and Shirley's son had recently died. Phillip said he had been a friend of their son and offered to help dispose of their son's property, which included a Honda Civic and a 1999 Ford truck. Gary decided to give the Honda to Kazulin and Phillip because it was not running. Kazulin asked Gary about the truck. Gary told Kazulin he planned to sell the truck, and Kazulin told him he was interested in buying it. Kazulin helped Gary start the truck. Kazulin and Phillip then fixed the Honda and drove it away with Gary's consent.

The next morning, Gary discovered the truck was gone. His surveillance camera showed that at about 4:00 a.m. that morning, a person rode up to the house on a bicycle, pushed the truck into the street, started it, and drove away. The key to the truck was also missing.

Gary and Shirley called 911 to report their truck stolen. A few days later, Tacoma Police Officer Timothy Caber spotted the truck. Kazulin was driving it and Caber arrested Kazulin. The truck's ignition had been punched or tampered with so that the truck could be started without a key. A key was also found inside the truck that might have been Gary's truck key.

Kazulin was charged with possession of a stolen vehicle in violation of RCW 9A.56.068 and RCW 9A.56.140. The information charged Kazulin with unlawful possession of a stolen vehicle, stating in relevant part that on November 22, 2017, Kazulin "did unlawfully and feloniously knowingly possess a stolen motor vehicle." Clerk's Papers at 1.

[1] For clarity we refer to Gary Wells, Shirley Wells, and Phillip Wells by their first names.

Kazulin was convicted after a jury trial and sentenced to 48 months in prison. Kazulin appeals his conviction. Kazulin also filed a SAG and a PRP, which was consolidated with his direct appeal.

ANALYSIS

I. DIRECT APPEAL

Under the Sixth Amendment to the United States Constitution and article 1, section 22 of the Washington Constitution, a person accused of a crime has the right to be apprised of the nature and cause of the accusation. *See, e.g.*, *State v. Pry*, 194 Wn.2d 745, 751, 452 P.3d 536 (2019). A charging document must include the essential elements, both statutory and nonstatutory, of all charged crimes. *State v. Kjorsvik*, 117 Wn.2d 93, 101, 812 P.2d 86 (1991). If an essential element is missing, the charging document is constitutionally deficient. *Pry*, 194 Wn.2d at 751.

CrR 2.1(a)(1) provides that an indictment or information must also contain a "plain, concise and definite written statement of the essential facts constituting the offense charged." The information "must allege the particular facts supporting" the charged crime to inform the accused person of the nature of the accusation. *Pry*, 194 Wn.2d at 752.

Kazulin argues that the information in his case was constitutionally insufficient because it did not describe the stolen vehicle he was charged with possessing. Challenges to the constitutional sufficiency of a charging document on the basis that the document failed to allege each essential element of the charged crime may be raised at any time, including for the first time on appeal. *State v. Nonog*, 169 Wn.2d 220, 225 n.2, 237 P.3d 250 (2010). But a challenge arguing that the language in a charging document was vague as to some other matter will be waived if the defendant did not request a bill of particulars before trial. *Id*.

CrR 2.1(c) provides, "The court may direct the filing of a bill of particulars. A motion for a bill of particulars may be made before arraignment, or within 10 days after arraignment," or later with the court's permission. In *State v. Mason*, we held that a defendant who never requested a bill of particulars and then brought a vagueness challenge on appeal, arguing that the information failed to allege particular facts, had waived his right to challenge the information on vagueness grounds. 170 Wn. App. 375, 385, 285 P.3d 154 (2012).

Kazulin acknowledges that the information in his case contained all the essential elements of the charged crimes. Kazulin brings a vagueness challenge, but did not request a bill of particulars below. As a result, we hold that he waived his vagueness argument, and he cannot raise this issue for the first time on appeal. To the extent Kazulin argues that the longstanding distinction between a challenge to an information's constitutional sufficiency and vagueness as to some other matter violates the Sixth Amendment, he cites no relevant authority to support this argument.

II. STATEMENT OF ADDITIONAL GROUNDS

Kazulin raises a number of additional claims in his SAG that he argues support reversal of his conviction. None of these claims merits reversal.

A. Ineffective Assistance of Counsel

The Sixth Amendment to the United States Constitution and article I, section 22 of the Washington Constitution guarantee effective assistance of counsel. *See Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); *State v. Grier*, 171 Wn.2d 17, 32, 246 P.3d 1260 (2011). To prevail, Kazulin must show both that his counsel's performance was deficient, and that counsel's deficient performance prejudiced him. *Grier*, 171 Wn.2d at 32-33. A

failure to prove either prong ends our inquiry. *State v. Hendrickson*, 129 Wn.2d 61, 78, 917 P.2d 563 (1996).

We presume reasonableness and apply "exceptional deference" when "evaluating counsel's strategic decisions," and "[i]f trial counsel's conduct can be characterized as legitimate trial strategy or tactics, it cannot serve as a basis for a claim [of] ineffective assistance." *State v. McNeal*, 145 Wn.2d 352, 362, 37 P.3d 280 (2002). A petitioner must prove that "counsel's performance fell below an objective standard of reasonableness in light of all the circumstances." *In re Pers. Restraint of Lui*, 188 Wn.2d 525, 538, 397 P.3d 90 (2017). To prove prejudice, a petitioner must show that, but for counsel's deficient performance, "there is a reasonable probability that the result of the proceeding would have been different." *Id.*

First, Kazulin argues that his attorney was constitutionally ineffective because he failed to investigate why law enforcement did not follow up on certain issues. Kazulin refers to the portion of his counsel's closing argument where he criticized the State for sloppy police work.

Ineffective assistance of counsel claims can be based on counsel's failure to investigate a potential defense, *see, e.g.*, *In re Pers. Restraint of Davis*, 152 Wn.2d 647, 739, 101 P.3d 1 (2004), but it may be reasonable under the circumstances for an attorney not to "investigate lines of defense that he has chosen not to employ," *Riofta v. State*, 134 Wn. App. 669, 693, 142 P.3d 193 (2006). Here, Kazulin's attorney raised questions about the quality of the police investigation to cast doubt on the State's suggestion that Kazulin himself stole the truck, making it less likely that Kazulin knew it was stolen. Had Kazulin's attorney interviewed the police officers or conducted his own investigation of the bicycle or surveillance video, he might have discovered information adverse to his client. Kazulin's attorney made a reasonable tactical decision about what to investigate.

Second, Kazulin argues that his attorney was ineffective because he did not interview witnesses. He also suggests his attorney was defective because he did not have a witness list at the start of trial. Under RAP 10.10(c), an appellant who files a SAG must "inform the court of the nature and occurrence of alleged errors." Kazulin does not explain in his SAG which witnesses his counsel should have interviewed, or how interviewing them would have supported his defense. Kazulin also does not explain how the alleged witness list error made his counsel's performance deficient. Under RAP 10.10(c), Kazulin has failed to inform this court of the nature and occurrence of these alleged errors. We do not further consider these arguments.

Third, Kazulin argues that his attorney was ineffective because he did not object to the State's questions about the condition of the truck's ignition and the identity of the key found in the truck at the time of Kazulin's arrest. Washington courts have held that the decision whether or not to object during trial is a matter of trial tactics. *See, e.g., State v. Kloepper*, 179 Wn. App. 343, 355, 317 P.3d 1088 (2014) (citing *State v. Madison*, 53 Wn. App. 754, 763, 770 P.2d 662 (1989)). Kazulin has not shown that his attorney's failure to object was not a tactical decision. We conclude this ineffective assistance claim does not have merit.

Fourth, Kazulin argues his attorney's performance was deficient because he did not pursue theories of the case reflecting inconsistencies between some of the evidence presented at trial. Kazulin contends that his attorney was ineffective because he did not argue that if Kazulin were guilty, he would not have punched the ignition *and* possessed a key to the truck. Kazulin also asserts his attorney was ineffective because he did not argue that, had Kazulin known the truck was stolen, he would not have left the original license plates on the truck. Finally, Kazulin argues

his attorney was ineffective because he did not address minor inconsistencies in Caber's testimony about whether Kazulin initially gave him an incorrect birth date.

We will not "find ineffective assistance of counsel if 'the actions of counsel complained of go to the theory of the case or to trial tactics,'" so long as those tactics were reasonable. *State v. Garrett*, 124 Wn.2d 504, 520, 881 P.2d 185 (1994) (quoting *State v. Renfro*, 96 Wn.2d 902, 909, 639 P.2d 737 (1982)). Kazulin's arguments clearly fall within the domain of trial tactics and Kazulin has not shown that the defense theory his attorney pursued was unreasonable or that counsel unreasonably chose not to raise the arguments Kazulin proposes in this SAG.

Kazulin has failed to show that his attorney's performance was deficient and, therefore, his ineffective assistance of counsel claims all fail.

B. Prosecutorial Misconduct

Kazulin argues that the State committed prosecutorial misconduct: (1) when the prosecutor inadvertently referred to Phillip Wells as "Mr. Phillips" while conducting the direct examination of Gary, SAG at 3; (2) when the State argued in closing that Phillip was the one who took the truck on November 22, 2017, because that argument may have conflicted with the testimony of one of the police officers; and (3) when the State elicited testimony from Caber that Kazulin provided an incorrect birth date on arrest.

To prevail on an allegation of prosecutorial misconduct, the defendant bears the significant burden of showing that the prosecutor's conduct was both improper and prejudicial. *See State v. Thorgerson*, 172 Wn.2d 438, 442, 258 P.3d 43 (2011). None of the conduct Kazulin describes was improper. Kazulin's prosecutorial misconduct claims do not have merit.

C. Judicial Bias

Kazulin argues that the judge exhibited personal bias against him because the judge had previously been a prosecutor who charged Kazulin with a crime about 20 years earlier.

"Pursuant to the appearance of fairness doctrine, a judicial proceeding is valid if a reasonably prudent, disinterested observer would conclude that the parties received a fair, impartial, and neutral hearing." *State v. Solis-Diaz*, 187 Wn.2d, 535, 540, 387 P.3d 703 (2017). Courts presume "that a trial judge properly discharged [their] official duties without bias or prejudice." *Davis*, 152 Wn.2d at 692. "The party seeking to overcome that presumption must provide specific facts establishing bias." *Id.*

Kazulin explicitly consented to trial with this judge after the judge disclosed charging Kazulin with a crime 20 years ago. The trial judge did not remember anything about this charge, and Kazulin did not remember the judge. Kazulin's judicial bias argument does not have merit.

We decline to reverse Kazulin's conviction based on any of the grounds raised in his SAG.

III. PRP

A. PRP Standards

To obtain relief through a PRP, a "petitioner must prove either a (1) constitutional error that results in actual and substantial prejudice or (2) nonconstitutional error that 'constitutes a fundamental defect which inherently results in a complete miscarriage of justice.'" *In re Pers. Restraint of Monschke*, 160 Wn. App. 479, 488, 251 P.3d 884 (2010) (quoting *Davis*, 152 Wn.2d at 672). The petitioner must prove prejudice by a preponderance of the evidence. *In re Pers. Restraint of Lord*, 152 Wn.2d 182, 188, 94 P.3d 952 (2004). We hold a pro se petitioner to the

same standard as an attorney. *In re Pers. Restraint of Rhem*, 188 Wn.2d 321, 328, 394 P.3d 367 (2017).

B. Ineffective Assistance of Counsel

As explained above, Kazulin must show that his counsel's performance was deficient and that counsel's deficient performance prejudiced him. *Grier*, 171 Wn.2d at 32-33.

Kazulin first argues in his PRP that his attorney was ineffective because he did not interview Gary, Shirley, or the police officers who investigated the stolen truck, did not investigate possible fingerprints on a bicycle found at the scene, did not investigate whether the key found in the truck matched the truck, and did not retain an expert on keys to support an argument that the key found in the stolen truck was not for that truck. Kazulin does not explain what new information his attorney would have garnered from interviewing the people he identifies. And because Kazulin's primary defense was that he did not know the truck was stolen, his attorney had no obligation to investigate evidence about whether the key matched the truck or to present expert testimony about keys. Kazulin has not shown deficient performance or prejudice with regard to these claims.

Second, Kazulin argues that his attorney was unprepared for trial because the attorney had only 10 days to prepare, and he asserts that he never talked to his attorney prior to that 10 day period. Kazulin's attorney had more than 10 days to prepare because he appeared at a continuance hearing in February 2018, and trial did not begin until June 2018. The record does not reflect that counsel was unprepared to examine witnesses or deliver arguments. Moreover, Kazulin did not testify at trial, so he did not need his attorney to prepare him to testify. Kazulin has not shown

deficient performance or prejudice with regard to his attorney's preparation for his trial. This ineffective assistance of counsel claim also lacks merit.

The issues raised in Kazulin's PRP do not warrant relief.

CONCLUSION

We affirm Kazulin's conviction and deny his PRP. The information in Kazulin's case was constitutionally sufficient and he did not request a bill of particulars. Kazulin raises no issues in his SAG or PRP that justify relief.

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.

Glasgow, J.

We concur:

Maxa, P.J.

Cruser, J.

LAW OFFICE OF SKYLAR BRETT

July 09, 2020 - 2:48 PM

Transmittal Information

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