

NO. 45732-6-II

COURT OF APPEALS, DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

JAMIE C. SATTERTHWAITE,

Appellant.

APPEAL FROM THE SUPERIOR COURT
FOR MASON COURT
The Honorable Amber Finlay, Judge
Cause No. 13-1-00171-3

BRIEF OF APPELLANT

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A. ASSIGNMENT OF ERROR

The trial court erred in not tasking count I, possession of a stolen vehicle, from the jury for lack of sufficiency of the information.

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

Whether the information charging possession of a stolen vehicle is defective in failing to allege that Satterthwaite withheld or appropriated the motor vehicle to the use of someone other than the true owner or person entitled thereto?

C. STATEMENT OF THE CASE

01. Procedural Facts

Jamie C. Satterthwaite was charged by third amended information filed in Mason County Superior Court October 2, 2013, with possession of a stolen vehicle, count I, and bail jumping, count II, contrary to RCWs 9A.56.068 and 9A.76.170. [CP 53-54].

No pretrial motions were filed nor heard regarding either a CrR 3.5 or CrR 3.6 hearing. [CP 77]. Trial to a jury commenced October 2, the Honorable Amber L. Finlay presiding. Satterthwaite was found guilty as charged, sentenced within her standard range and timely notice of this appeal followed. [CP 3, 10-21, 31-32].

02. Substantive Fact

In the early morning of April 8, 2013, a Chevy

Blazer driven by Satterthwaite was stopped by Sergeant Kelly LaFrance for a traffic infraction. [RP 28]. The sole passenger was Satterthwaite's boyfriend. [RP 58]. LaFrance could smell a strong odor of fresh paint and observed a fleece jacket laying on the steering column. [RP 29]. When she asked why, Satterthwaite said "the ignition was punched."¹ [RP 30]. The vehicle identification number did not match the "VIN plate that was on the vehicle." [RP 30]. Satterthwaite, whose license was suspended, was without identification and initially said she had just purchased the vehicle. [RP 31-32]. After advisement and waiver of rights, she said she was thinking about buying the vehicle for \$300 from "Victoria at an unknown address." [RP 32]. Fred Anderson, the registered owner of the Chevy Blazer, said the vehicle had been stolen within a month prior to Satterthwaite's stop and that it had been spray painted black. [RP 43-44].

Through Deputy Court Clerk Sharon Fogo, the State introduced the following documents relating to the bail jumping charge: order for pretrial release filed [RP 46; State's Exhibit 8], the information in the instant case [RP 47; State's Exhibit 9], order setting trial date for week of July 9, 2013 [RP 48; State's Exhibit 10], order directing issuance of bench warrant filed July 9 [RP 49; State's Exhibit 11], and Fogo's clerk's minutes for July 9,

¹ A punched ignition allows the driver to start the vehicle without a key. [RP 29, 55].

which indicate Satterthwaite failed to appear on that date and that a bail warrant was issued. [RP 49; State's Exhibit 12].

Satterthwaite testified she was test driving the Chevy Blazer for her boyfriend when she was stopped by LaFrance, explaining that "his license was like suspended worse than mine was, so I was just driving it because he was the one who was going to buy it." [RP 54]. She had been in the car for less than an hour and was unaware it was stolen. [RP 56]. She admitted to being in court on July 2 and to signing a document requiring her appearance in court the following July 9. [RP 61].

D. ARGUMENT

A CONVICTION FOR POSSESSION OF A
STOLEN VEHICLE PURSUANT TO AN
INFORMATION THAT FAILS TO ALLEGE
ALL OF THE ELEMENTS OF THE OFFENSE
MUST BE REVERSED.

The constitutional right of a person to be informed of the nature and cause of the accusation against him or her requires that every material element of the offense be charged with definiteness and certainty. 2 C. Torcia, Wharton on Criminal Procedure Section 238, at 69 (13th ed. 1990). In Washington, the information must include the essential common law elements, as well as the statutory elements, of the crime charged in order to appraise the accused of the nature of the charge. Sixth Amendment; Const. art. 1, Section 22 (amend. 10); CrR 2.1(b); State v. Kjorsvik, 117 Wn.2d 93, 812 P.2d 86 (1991). Charging documents that

fail to set forth the essential elements of a crime are constitutionally defective and require dismissal, regardless of whether the defendant has shown prejudice. State v. Hopper, 118 Wn.2d 151, 155, 822 P.2d 775 (1992). If, as here, the sufficiency of the information is not challenged until after the verdict, the information “will be more liberally construed in favor of validity....” Kjorsvik, 117 Wn.2d at 102. The test for the sufficiency of charging documents challenged for the first time on appeal is as follows:

(1) do the necessary facts appear in any form, or by fair construction can they be found, in the charging document; and, if so, (2) can the defendant show that he or she was nonetheless actually prejudiced by the inartful language which caused a lack of notice?

Kjorsvik, 117 Wn.2d at 105-06.

It is not fatal to an information that the exact words of the statute are not used; it is instead sufficient “to use words conveying the same meaning and import as the statutory language.” State v. Leach, 113 Wn.2d 679, 689, 782 P.2d 552 (1989). The information must, however, “state the acts constituting the offense in ordinary and concise language....” State v. Royse, 66 Wn.2d 552, 557, 403 P.2d 838 (1965). The question “is whether the words would reasonably appraise an accused of the elements of the crime charged.” Kjorsvik, 117 Wn.2d at 109.

The primary purpose (of a charging document) is to give notice to an accused so a defense can be prepared. (citation

omitted). There are two aspects of this notice function involved in a charging document: (1) the description (elements) of the crime charged; and (2) a description of the specific conduct of the defendant which allegedly constituted the crime.

Auburn v. Brooke, 119 Wn.2d 623, 629-30, 836 P.2d 212 (1992).

Satterthwaite was charged with possession of a stolen vehicle in the third amended information:

In the County of Mason, State of Washington, on or about the 8th day of April, 2013, the above-named defendant, JAMIE C. SATTERTHWAITE, did commit POSSESSION OF A STOLEN MOTOR VEHICLE, a Class B Felony, in that said defendant did knowingly possess a stolen vehicle, to-wit: 1988 Chevrolet S-10, WA License Number 624-XMK, belonging to Fred Anderson, contrary to RCW 9A.56.068 and against the peace and dignity of the State of Washington.

[CP 58].

Two statutes provide the essential elements of possession of a stolen vehicle:

A person is guilty of possession of a stolen vehicle if he or she possess [possesses] a stolen motor vehicle.

RCW 9A.56.068(1).

‘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 thereto.

RCW 9A.56.140(1).

WPIC 77.21, POSSESSING A STOLEN MOTOR

VEHICLE—ELEMENTS,

incorporates the definition of ‘possessing stolen property’ from RCW 9A.56.140. Although the Legislature did not expressly incorporate this definition into the crime of possession of stolen motor vehicle (compare RCW 9A.56.310, which expressly incorporates this definition into possession of a stolen firearm), the Legislature must have intended this definition to apply. This definition applies to other crimes relating to possession of stolen property in RCW Chapter 9A.56, and the definition is the source of the *mens rea* element of all possession offenses. If the definition did not apply, Legislature would have created a strict liability offense for simple possession.

Comment, 11A WASHINGTON PATTERN JURY INSTRUCTIONS:

CRIMINAL 77.21 at 178 (2008).

The withholding or appropriating of the property to the use of someone other than the true owner is thus a required element. See State v. McKinsey, 116 Wn.2d 911, 913, 810 P.2d 907 (1991) (reviewing the statutory elements in determining if possession of stolen property is a crime of dishonesty and admissible under ER 609(a)(2) and emphasizing the withholding/appropriating element). It is this element, after all, that makes the possession illegal, distinguishing between the person attempting

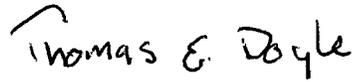
to return known stolen property and the person deciding to maintain, use, or dispose of known stolen property.

By failing to list the withholding/appropriating element, the information failed to apprise Satterthwaite of the nature of the charge of possession of a stolen vehicle. Although this language did appear in the court's to-convict instruction as an element of the offense [Court's Instruction 12; CP 48], proper jury instructions cannot cure a defective information. State v. Vangerpen, 125 Wn.2d 782, 788, 888 P.2d 1177 (1995). "(S)ince both charging documents and jury instructions must identify the essential elements of the crime for which the defendant is charged [information] and tried [jury instructions](,)" State v. McCarty, 140 Wn.2d 420, 426 n.1, 998 P.2d 296 (2000), the information is defective, and the conviction obtained on this charge must be reversed and the charge dismissed. State v. Kitchen, 61 Wn. App. 911, 812 P.2d 888 (1991). Satterthwaite need not show prejudice, since Kjorsvik calls for a review of prejudice only if the "liberal interpretation" upholds the validity of the information. See State v. Kjorsvik, 117 Wn.2d 93, 105-06, 812 P.2d 86 (1991).

E. CONCLUSION

Based on the above, Satterthwaite respectfully requests this court to reverse her conviction for possession of a stolen vehicle.

DATED this 30th day of April 2014.



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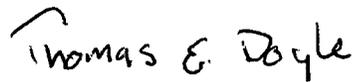
CERTIFICATE

I certify that I served a copy of the above brief on this date as follows:

Tim Higgs
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Jamie C. Satterthwaite
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DATED this 30th day of April 2014.



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DOYLE LAW OFFICE

April 30, 2014 - 4:42 PM

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