

No. 45732-6-II

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

STATE OF WASHINGTON, RESPONDENT

V.

JAMIE C. SATTERTHWAITE, APPELLANT

Appeal from the Superior Court of Mason County
The Honorable Judge Amber L. Finlay

No. 13-1-00171-3

BRIEF OF RESPONDENT

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A. STATE'S RESTATEMENT OF APPELLANT'S ASSIGNMENT OF ERROR

Satterthwaite contends that the trial court erred by not taking the charge of possession of a stolen motor vehicle from the jury due to a lack of the sufficiency of the information.

B. STATE'S COUNTER-STATEMENT OF ISSUE PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR

Satterthwaite contends that the charging information in this case was constitutionally insufficient because it failed to include the statutory definition of the term "possession of a stolen motor vehicle." In response, the State contends that the recent case of *State v. Johnson*, ___ Wn.2d ___, 325 P.3d 135, 138 (No. 88683-1, May 14, 2014), resolves the issue with its holding that "[t]he State need not include definitions of elements in the information."

C. FACTS AND STATEMENT OF THE CASE

For the purposes of consideration of the issue raised by Satterthwaite in this appeal, the State accepts Satterthwaite's statement of facts, but the State supplements with additional facts where needed to develop the State's arguments, below. RAP 10.3(b).

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D. ARGUMENT

In this case, the State charged Satterthwaite in a two count information with the crimes of possession of a stolen motor vehicle (Count I) and bail jumping (Count II). CP 53 (Third Amended Information). These charges were tried to jury, and the jury returned guilty verdicts for both charges. CP 50-51; RP 103-04. On appeal, Satterthwaite does not challenge her conviction for bail jumping, but she contends that the possession of a stolen motor vehicle conviction should be reversed because, she contends, the charging language for this charge was deficient.

Count I of the information, charging Satterthwaite with possession of a stolen motor vehicle, read as follows:

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 53 (Third Amended Information). Satterthwaite contends that this charging language is deficient because it does not incorporate the statutory definition of the term “possessing stolen property” and include the definition as an additional element of the offense of possession of a stolen

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motor vehicle. Br. of Appellant at 5-7. Specifically, Satterthwaite contends that the information is deficient because it does not include as an element an allegation that she withheld or appropriated the stolen vehicle to the use of any person other than the true owner or person entitled thereto. *Id.*

The crime of possession of a stolen motor vehicle is defined by statute, as follows: “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). The language of RCW 9A.56.068(1) does not specify a knowledge element, but a non-statutory element of knowledge is required where possession of stolen property is charged. *State v. Moavenzadeh*, 135 Wn.2d 359, 362, 956 P.2d 1097 (1998).

In addition to the non-statutory element of knowledge, the term “[p]ossessing stolen property” is defined by statute as follows:

“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). For the sake of argument, it is assumed here that the statutory definition of the term “possessing stolen property” would apply equally to the definition of the term “possession of a stolen vehicle.”

However, no reported case was located wherein the statutory definition of

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either of these terms creates an element that must be pled in the information.

Instead, although knowledge is a part of the statutory definition of an element of the offense, the knowledge as an element itself is nevertheless regarded as a non-statutory element. *State v. Moavenzadeh*, 135 Wn.2d 359, 362, 956 P.2d 1097 (1998). And, with the exception of *State v. McKinsey*, 116 Wn.2d 911, 913, 810 P.2d 907 (1991), no reported case was located wherein it can be construed that the phrase, “to withhold or appropriate the same to the use of any person other than the true owner or person entitled thereto,” is an element that must be pled in the information. *McKinsey*, however, is distinguishable, because its primary concern was not with whether this phrase was a definition or whether it was an element that must be pled in the information; instead, the primary concern of *McKinsey* was to decide whether possession of stolen property was a crime of dishonesty that was per se admissible for impeachment purposes. *Id.*

A charging document satisfies constitutional requirements if it states all of the essential elements of the charged offense, both statutory and non-statutory. *State v. McCarty*, 140 Wn.2d 420, 425, 998 P.2d 296 (2000). But, “[t]he State need not include definitions of elements in the

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information.” *State v. Johnson*, ___ Wn.2d ___, 325 P.3d 135, 138 (No. 88683-1, May 14, 2014). The Washington Supreme Court has “never held that the information must also include definitions of essential elements.”

Id.

In the instant case, the charge of possession of a stolen motor vehicle required the State to plead and prove that Satterthwaite knowingly possessed a stolen motor vehicle. RCW 9A.56.068(1). The information adequately expressed this element. CP 53 (Third Amended Information). The phrase, “to withhold or appropriate the same to the use of any person other than the true owner or person entitled thereto,” is a part of the definition of the term “possession of a stolen vehicle.” When charging the crime of possession of a stolen motor vehicle in this case, the State was required to include only the statutory and non-statutory elements of the offense and was not required to include the statutory definition of the required elements in the information. *State v. Johnson*, ___ Wn.2d ___, 325 P.3d 135, 138 (No. 88683-1, May 14, 2014).

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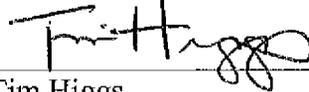
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E. CONCLUSION

For the reason stated above, the State asks the court to deny Satterthwaite's appeal and to confirm her conviction.

DATED: June 30, 2014.

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MASON COUNTY PROSECUTOR

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