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JAN 24, 2014  
Court of Appeals  
Division III  
State of Washington

NO. 31502-9-III

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

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STATE OF WASHINGTON,

RESPONDENT,

v.

BENJAMIN EARL GARFIELD,

APPELLANT.

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BRIEF OF RESPONDENT

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PROSECUTING ATTORNEY

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## **I. IDENTITY OF RESPONDENT**

The State of Washington, represented by the Grant County Prosecutor, is the Respondent herein.

## **II. RELIEF REQUESTED**

Respondent asserts no error occurred in the trial and conviction of the Appellant.

## **III. ISSUES**

Did the State fail to meet its burden to prove Appellant's knowledge beyond a reasonable doubt when he purchased a firearm from an unknown subject at a gas station who was selling the weapon from the trunk of his car to earn money to travel to Mexico?

## **IV. STATEMENT OF FACTS**

The Defendant, Benjamin Earl Garfield, was charged with Possessing a Stolen Firearm. CP 1. At a jury trial the State presented the following relevant testimony:

In November of 2008, a number of guns and some tools were reported stolen from the Grant County residence of Mr. and Mrs. Lecocq. One of the guns stolen was a .30-06 Eddy Stone rifle. RP 64-71, 200. The thief of the property reported stolen has never been identified.

Nearly four years later - on September 11, 2012 the defendant pawned the Eddy Stone rifle for \$75 at the Olde World Trading Company business in Ephrata because he needed gas money. CP 1, 87; RP 72-73, 78-80, 84, 184. The defendant said he owned the gun. RP 82. The defendant provided information to the employee of Olde World Trading Company for purposes of filling out the pawn slip, including his full name and physical information, date of birth, driver's license number, a description of the rifle and his current address. RP 77-78, 195-196. As required by law, the pawn transaction was reported to the Ephrata Police Department. RP 74, 76.

Logan Nelson, an Ephrata Police Department employee that handles the evidence room, ran the serial number in a local database and found the rifle had been reported stolen. RP 94, 96, 99-101. The following day, Ephrata Police Officer Billy Roberts confiscated the stolen firearm as evidence. RP 111-18. Grant County Sheriff's Deputy Michael Earney contacted the defendant at his residence in rural Grant County, which was located outside of George, Washington. RP 181, 183. The defendant told the deputy that he had pawned the gun, which he had bought a couple years ago from a Hispanic male who needed money to buy gas. RP 184-86, 188. The defendant said he didn't know the gun was stolen. The defendant told the deputy that the rifle had been checked

during a past contact by the Wenatchee National Forest Service and the park ranger didn't tell him it was stolen. RP 184. The defendant gave a statement to the officers and accepted the deputy's offer of a ride to the police department as he didn't have a car. RP 184-86.

Once at the Ephrata Police Department, Detective Christopher Todd Huffman interviewed the defendant for approximately 36 minutes. RP 193-94, 201-02, 213. At that interview the defendant informed the detective that he had pawned the rifle a few days earlier. RP 202. He said he had also pawned the same rifle on a previous occasion, located at the Moses Lake office of the Olde World Trading Company. RP 221.

The defendant informed Detective Huffman that he had purchased the Eddy Stone rifle a couple of years before from a Hispanic man at the Quik Stop in Quincy Washington. RP 203, 205. He explained to the detective that while he was getting fuel he overheard the man attempting to sell a rifle unsuccessfully to three men in a black Dodge pickup. The defendant described the three men as all "camo[uflaged]" out, as if they were duck hunters or some type of hunters. RP 204, 226. The defendant told the detective that the Hispanic man said he was selling the gun because he needed gas money to get to Mexico. He said he told the man selling the rifle he might be interested. After looking at the rifle in the man's trunk, the defendant bought it for \$120 to \$140 because he liked old

rifles. RP 205-06. The defendant denied that he knew the rifle was stolen. RP 217-18.

The defendant said that once when he was on a hunting trip in November 2009, he and some friends were contacted by a Fish and Wildlife agent and the agent had checked the rifle at that time. Later the defendant said he was only 70 to 75% sure that it was the same rifle that had been checked. RP 210-11, 215, 221-22. This statement was only made to the detective after the defendant was informed that his story would be checked out with the game agent.

Agent Chad McGary, who works for the Washington Department of Fish and Wildlife as a game warden, testified about the November 2009 encounter that took place with the defendant in the Colockum Pass during elk season. RP 154-55, 162, 244. Agent McGary said he checked the hunting licenses of the defendant and his two companions in the car. RP 165. The agent didn't remember ever running across an Eddy Stone rifle, which he described as an uncommon rifle. RP 163. Agent McGary did say that in 2009 he looked at lots of rifles because he checks every hunter's gun to see if it's loaded or unloaded, and didn't remember every single situation. RP 175-76. The agent did not recall whether he did or did not run a records check on the defendant's rifle he was in possession of at the time. If a gun checked stolen, registered to someone else, or was

involved in some other violation, he would issue a citation and generate a report. RP 177-78. A report was generated from that contact.

At the close of the State's case, defense counsel made a motion to dismiss the charge, arguing there was insufficient evidence the defendant knew the gun was stolen or had intentionally withheld or appropriated the gun from its true owner. RP 236-38. The court denied the motion, stating there was sufficient circumstantial evidence to allow the jury to decide. RP 241-45.

The defendant did not testify.

The jury found the defendant guilty of possessing a stolen firearm as charged. CP 86. The defendant had no prior felony offenses, and the court sentenced him to 90 days of confinement under the First Time Offender Waiver of Standard Sentence provisions. CP 88, 90.

This appeal followed. CP 105-106. The court entered an order staying the sentence pending appeal. CP 107-08.

## V. ARGUMENT

The evidence was sufficient to convict the defendant of possession of a stolen firearm as the evidence presented by the State showed he knew or should have known the weapon was stolen.

The test for determining the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *State v. Joy*, 121 Wn.2d 333, 338, 851 P.2d 654 (1993). When the sufficiency of evidence is challenged in a criminal case, all reasonable inferences from the evidence must be drawn in the State's favor and interpreted most strongly against the defendant. *State v. Partin*, 88 Wn.2d 899, 906-07, 567 P.2d 1136 (1977). A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992) (en banc) (citing *State v. Theroff*, 25 Wn. App. 590, 593, 608 P.2d 1254, aff'd, 95 Wn.2d 385, 622 P.2d 1240 (1980)).

In determining the sufficiency of the evidence, circumstantial evidence is not inherently less reliable than direct evidence. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980) (citing *State v. Gosby*, 85 Wn.2d 758, 539 P.2d 680 (1975)). In fact under this test, circumstantial evidence is as reliable as direct evidence. *Id.*

Credibility determinations are for the trier of fact and we will not review on appeal. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). We defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. *State v.*

*Thomas*, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004) (citing *State v. Cord*, 103 Wn.2d 361, 367, 693 P.2d 81 (1985)).

The specific criminal intent of the accused may be inferred from the conduct where it is plainly indicated as a matter of logical probability. *Delmarter*, 94 Wn.2d at 638.

The defendant is correct that, “without any knowledge that the gun is stolen, merely possessing the stolen firearm is insufficient to support a conviction.” *State v. Mace*, 97 Wn.2d 840, 843, 650 P.2d 217 (1982); see RCW 9A.56.140(1) (possessing stolen property means “knowingly to receive, retain, [or] possess . . . stolen property knowing that it has been stolen”); RCW 9A.56.310(1) (“A person is guilty of possessing a stolen firearm if he or she possesses, carries, . . . or is in control of a stolen firearm.”). The existence of a fact cannot rest upon guess, speculation, or conjecture. *State v. Hutton*, 7 Wn. App. 726, 728, 502 P.2d 1037 (1972). The court does not, however, require a defendant's actual knowledge that the property was stolen. Rather, constructive knowledge is sufficient and the jury may infer knowledge from corroborative facts. *State v. Jennings*, 35 Wn. App. 216, 219, 666 P.2d 381 (1983).

A person knows of a fact by being aware of it or having information that would lead a reasonable person in the same situation to conclude the fact exists. RCW 9A.08.010(1)(b). As stated earlier,

circumstantial evidence and direct evidence are equally reliable to establish knowledge. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). The defendant told the detective he had purchased the Eddy Stone rifle a couple of years before from a Hispanic man at the Quik Stop gas station in Quincy, Washington. RP 203, 205. He went on to explain to Detective Huffman that while he was getting fuel he overheard the Hispanic male attempting to sell a firearm to three men in a black Dodge pickup. He described the three men as all “camo[u]flaged” out, as if they were duck hunters or some type of hunters. He said the men appeared not to be interested and did not buy the firearm. RP 204.

The defendant then stated that he then went over and contacted the Hispanic male and told him he was interested in buying the firearm. They walked over to the Hispanic’s vehicle, which he thought was an older Lincoln. The trunk was then opened and in it was a rifle. The defendant bought the rifle for what he thought was \$120 to \$140. The defendant said that the Hispanic male said to him that he was selling the gun as he needed money for gas to get to Mexico. RP 206. At the time of the interview the defendant did not say he asked for the Hispanic male’s identification or name, he did not provide a license number of the Lincoln he bought the gun out of, he did not provide information that he checked with the local

police about the rifle not being stolen. RP 206–208. In fact there was never any evidence provided by the defendant that he bought the rifle.

The defendant also informed the detective during the questioning that the rifle he had purchased from the Hispanic male had been checked for status by the game warden once when he was hunting and that it was not stolen. When the detective informed the defendant he was going to be checking on that information with the game warden, the defendant then changed his story and said well he was only 70 to 75 percent sure that the rifle was checked stolen. He also advised the detective that he had other firearms at his residence that were his. RP 210-211.

Here, sufficient evidence supported the jury's conclusion that the defendant possessed the firearm with the knowledge that it was stolen.

Viewing the evidence in a light most favorable to the State, any rational trier of fact could have found that Mr. Garfield knew or should have known that the firearm was stolen. People do not buy and sell guns at a gas station out of the trunk of a car. A reasonable person in the same situation would know this.

A person commits possession of a stolen firearm when “he or she possesses, carries, delivers, sells, or is in control of a stolen firearm.” RCW 9A.56.310(1). The statute defines “possessing stolen property” as 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). This definition applies to the crime of possession of a stolen firearm. RCW 9A.56.310(4).

In order for the jury to find the defendant guilty of the crime of “possession of a stolen firearm” they needed to find that the defendant had knowledge the firearm was stolen.

The jury received an instruction on knowledge that provided, in part: If a person has information that would lead a reasonable person in the same situation to believe that a fact exists, the jury is permitted but not required to find that he or she acted with knowledge of that fact. Jury Instruction No. 7; CP 76.

This instruction amounted to a definition of constructive knowledge, entitling the jury to draw reasonable inferences about what the defendant did or did not know. While there was no direct evidence to prove the defendant’s knowledge of the gun's origin, the State did present ample circumstantial evidence to enable a rational trier of fact to conclude the defendant had constructive knowledge that the firearm was stolen. The State argues that the procedures that are set up for the purchasing and selling of firearms are very vital in our society. Each person doing so should adhere to the procedures and guidelines set up by society and

purchasing a gun out of the trunk of a car at a gas station is not one of them. In fact when one does such an act the State argues that a reasonable person is given notice that the gun is stolen and citizens can look at those actions as being made to hide something.

Defendant did not do anything to take steps that were cautious when buying the gun. No evidence was presented that the defendant ever took actions to see if the firearm was indeed stolen. He did not get the name of the person, the car license plate number, the telephone number of the "seller", or take the gun to the police to have it checked. It is reasonable to believe that a gun might just be stolen if it was sold out of a trunk of a car as this is not a common way to buy or sell guns.

The defendant agreed with the detective that the story was far-fetched, but never acknowledged he knew the rifle was stolen. RP 218. The situation itself brings the question of the gun being stolen into question. It was not at a flea market; it was not at a garage sale; it was not purchased from a friend he knows or a reputable business.

## **VI. CONCLUSION**

Taking this evidence in the light most favorable to the State, there was sufficient evidence for a rational trier of fact to find that the defendant had information that would lead a reasonable person to believe the firearm

was stolen. The jury was entitled to conclude that he had constructive knowledge and knowingly possessed a stolen firearm.

Dated this 24<sup>th</sup> day of January 2014.

Respectfully submitted,

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COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION III

STATE OF WASHINGTON,	)	
	)	
Respondent,	)	No. 31502-9
	)	
vs.	)	
	)	
BENJAMIN EARL GARFIELD,	)	DECLARATION OF SERVICE
	)	
Appellant.	)	
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Under penalty of perjury of the laws of the State of Washington, the undersigned declares:

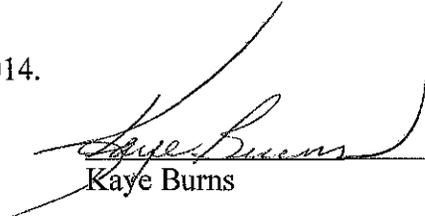
That on this day I served a copy of the Brief of Respondent in this matter by e-mail on the following party, receipt confirmed, pursuant to the parties' agreement:

Susan Marie Gasch  
[gaschlaw@msn.com](mailto:gaschlaw@msn.com)

That on this day I deposited in the mails of the United States of America a properly stamped and addressed envelope directed to Appellant, containing a copy of the Brief of Respondent in the above-entitled matter.

Benjamin E. Garfield  
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Dated: January 24, 2014.

  
Kaye Burns