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SUPREME COURT
STATE OF WASHINGTON
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SUPREME COURT NO. _____

NO. 87673-2-I

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

TWO DOGS SALVATORE FASAGA,

Petitioner.

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

The Honorable J. Andrew Toynbee, Judge

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Petitioner, Two Dogs Salvatore Fasaga asks this Court to review the decision referred to in Section B.

B. THE COURT OF APPEALS DECISION

Fasaga requests review of the Court of Appeals decision in *State v. Fasaga*, entered on June 16, 2025. A copy is attached as Appendix A.

C. ISSUES PRESENTED FOR REVIEW

1. Does *State v. Green*¹ or does *State v. Homan*² set forth the correct standard for reviewing a sufficiency challenge to a conviction for unlawful possession after a bench trial?

2. Under either legal standard, does the Court of Appeals overstep its constitutional authority and violate a basic tenet of appellate review by substituting its credibility determination for

¹ 94 Wn.2d 216, 616 P.2d 628 (1980).

² 181 Wn.2d 102, 330 P.3d 182 (2014)

that of the trial court based on a misapplication of this Court's decision in *Butler v. Ringrose*³?

3. Does a conviction for unlawful possession of a firearm require more than mere proof that the accused had dominion and control over a particular property and that they knew there were guns on the property being fired by others?

D. STATEMENT OF THE CASE

1. Procedural Facts

On February 2, 2020, the King County prosecutor charged Fasaga with one count of unlawful possession of a firearm in the first degree and one count of first-degree murder while armed with a deadly weapon. CP 10-11. A bench trial took place in July 2023. The Court acquitted Fasaga of the murder counts. RP 1375. However, it found him guilty of unlawful possession of a firearm. RP 1376; CP 897-98. Fasaga appealed this conviction, but the Court of Appeals upheld it.

³ 170 Wash. 211, 15 P.2d 117 (1932)

2. Substantive Facts

In May of 2018, Paul Snarski went missing. RP 96. Throughout the investigation of Snarski's disappearance, Rachel Donnelly's name surfaced. RP 118. Fasaga and Donnelly became romantically involved at some point. RP 1202, 1239. After Donnelly was arrested in July 2018 and was facing charges of her own, Donnelly became a confidential informant for police, pointed the finger at Fasaga regarding Snarski's disappearance, and would eventually become the lynchpin of the State's murder case against Fasaga. RP 673-744, 1310-20, 1367.

Donnelly told multiple versions of what allegedly happened to Snarski, spinning a series of admitted lies. RP 690, 698, 736, 742, 748, 754, 757-58, 763, 765, 768, 778, 784, 856-36, 866-67, 1367. At trial, she claimed Fasaga shot Snarski with a particular Colt .45 firearm while at his property at 415 Viewridge Road in Onalaska. RP 706-07, 800, 897. The trial court did not believe Donnelly and acquitted Fasaga as to the

murder charge. RP 1375-77. However, it found that Fasaga knowingly possessed that Colt .45 on or about May 11, 2018, on the Viewridge property. CP 898.

As to the Viewridge property, Fasaga testified he was living at his grandmother's house and just spending time at the Viewridge property in May 2018.⁴ RP 1173, 1198. The Viewridge property was used by extended family and friends to store items or spend time recreating. RP 1173, 1189, 1192, 1194, 1201. It was an approximately five-acre, heavily wooded, compound-like property with a rudimentary living structure, a trailer, and lots of mostly broken-down vehicles. RP 148-49, 232, 269, 1208. Donnelly and Fasaga would go out to the property, where Donnelly shot guns into the woods while Fasaga did other things around the property. RP 1189-90.

⁴ The official property ownership had been transferred to Fasaga from his mother, which led law enforcement to believe he was residing there. RP 1283-84. Law enforcement also had observed Fasaga on the property, so they concluded he had been splitting time between his grandmother's home and the Viewridge property. RP 1113-15, 1123.

As to the Colt .45 firearm, Donnelly claimed that Fasaga shot Snarski with this distinctive gun, she had never seen that gun before that night, she had fixed this gun a month after the alleged shooting, and she shot it regularly on the property thereafter. RP 725-26, 839-40, 895, 897. She claimed Fasaga had left the Colt. 45 at the house, and she started keeping it with her for safety purposes. RP 728, 732, 734-35, 842-43. While the trial court found Donnelly not credible with regard to much of her testimony, it did single out one point of testimony it found credible – her claim that she fired the Colt .45 on the Viewridge property. CP 898; RP 1375-77.

Fasaga testified that the Colt .45 pistol was not his gun and that he had not seen it before his arrest. RP 1249. He said that he was aware there were rifles and a nine-millimeter pistol on the Viewridge property. RP 1198, 1205. He also said he knew that Donnelly would go off and shoot on the property a lot. RP 1189-90.

The trial court concluded Fasaga had unlawfully possessed the Colt .45 on or about May 11, 2018. CP 898; RP 1381. The trial court's conclusion of guilt hinged on its determination that Fasaga had dominion and control over Viewridge property. CP 897-98; Appendix B. The trial court's written findings show it did not find Fasaga actually knowingly possessed any firearm; it did not find that Fasaga knowingly had dominion and control over the Colt .45; and it did not find that he had dominion and control over any other firearms that were stored or used on the property. RP 898; Appendix B.

Fasaga appealed. He asserted there was not substantial evidence supporting key findings of facts, and the trial court's findings did support its conclusion that Fasaga unlawfully possessed a gun. Brief of Appellant (BOA) at 14-17; Reply Brief of Appellant (RBOA) at 1-4. He pointed out that the record merely established dominion and control over the Viewridge premises where others used guns, but this was not

sufficient to establish that he knowingly possessed the Colt .45 or any other firearms on or about May 11, 2018. *Id.*

The Court of Appeals affirmed. It first noted that case law indicates confusion as to the proper standard of review when a court reviews a sufficiency claim arising from a bench trial. Appendix A at 4-5. Out of an “abundance of caution”, it applied both the *Homan* and *Green* standards. *Id.* at 4-9 In doing so, however, it failed to apply either test correctly. *Id.*

Under both standards, the Court of Appeals erroneously relied heavily on aspects of Donnelly’s testimony that the trial court found never identified as credible. *Id.* at 1, 6-7, 9. It also relied on an aspect of Fasaga’s testimony the trial court did not specify as credible or as facts relied upon in reaching its decision. *Id.* at 3, 8, 10.; RP 1381; CP 898. Other facts relied upon merely established that Fasaga had dominion and control over the property and knew that there were some firearms there at some time. Appendix A at 4-11.

E. ARGUMENT IN SUPPORT OF REVIEW

I. THIS COURT SHOULD TAKE REVIEW BECAUSE THERE IS A CONFLICT AS TO WHAT LEGAL STANDARD APPLIES TO SUFFICIENCY CHALLENGES FOLLOWING A BENCH TRIAL.

The Court of Appeals' decision highlights the existing and growing confusion as to the proper standard to applied when considering a sufficiency challenge after a bench trial. Appendix A at 4-5. It points out that ordinarily when reviewing a challenge for insufficient evidence, reviewing courts consider “whether, after viewing the evidence in the light most favorable to the prosecution, *any rational trier of fact* could have found the essential elements of the crime *beyond a reasonable doubt*.” *Green*, 94 Wn.2d at 221 (emphasis added) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979)), *overruled on other grounds* by *Washington v. Recuenco*, 548 U.S. 212, 126 S. Ct. 2546, 165 L. Ed. 2d 466 (2006). It noted that under this standard, the sufficiency of the evidence is a question of constitutional law

that is reviewed de novo. State v. Rich, 184 Wn.2d 897, 903, 365 P.3d 746 (2016).

Yet, the Court of Appeals also recognized that 34 years after *Green* this Court in *Homan* applied a different standard to a sufficiency challenge following a bench trial. Appendix A at 5. *Homan* held that “following a bench trial, appellate review is limited to determining whether substantial evidence supports the findings of fact and, if so, whether the findings support the conclusions of law.” 181 Wn.2d at 105-06; *see also*, *State v. Stevenson*, 128 Wn. App. 179, 193, 114 P.3d 699 (2005).

The Court of Appeals suggests that because this Court did not expressly overrule *Green* then the legal standard this Court set forth in *Homan* may be disregarded. Appendix A at 5. However, *Homan* has been previously recognized as explicating carving out an exception to the *Green* rule. *See*, State v. Stewart, 12 Wn. App. 2d 236, 245, 457 P.3d 1213 (2020) (Dwyer J., concurring).

In *Stewart*, Judge Dwyer raised a question as to whether this Court’s adoption of the *Homan* carve out is constitutionally and analytically sound, but he accepted its application. Here, that the Court of Appeals is willing to go one step further and suggest that *Homan* does not carve out an exception because this Court failed to explicitly overrule *Green*. While the Court of Appeals here applied both the *Green* and the *Homan* standard “out of an abundance of caution,” it clearly believes that until this Court overrules *Green* that standard applies even to a sufficiency challenge to a conviction after a bench trial.

This doctrinal drift undercuts this Court’s clear statement in *Homan*. This is concerning and begs for clarification from this Court. Reviewing courts and the parties are required to follow this Court’s articulation of the proper legal standard for considering sufficiency challenges in the bench trial context. Sufficiency challenges are common, and bench trials are not a rare occurrence. Having the Court of Appeals openly drift away from the legal standard that was set by this Court and indicate

that *Homan* is not good law until this Court expressly overrules *Green* creates confusion, a lack of uniformity, and defies the concept of vertical *stare decisis*.

The confusion over this standard is not limited to Division One of the Court of Appeals. Recently, Division Three waded into the *Green* and *Holman* confusion when the parties disagreed over the legal standard for sufficiency challenges in the context of bench trial. *State v. Pack*, 39581-2-III, 2025 WL 1638465, at *4 (Wash. Ct. App. June 10, 2025) (unpublished). Division Three outright rejected the *Holman* standard. It claimed that this Court reaffirmed the *Green* standard in *State v. Bergstrom*, 199 Wn.2d 23, 41 n.14, 502 P.3d 837 (2022). *Id.* It claims that there this Court “reaffirmed that the correct standard for reviewing sufficiency of the evidence following a bench trial is set forth in *Jackson* and *Green*.” *Id.* However, *Bergstrom* was not a bench trial. It was a jury trial. *Bergstrom*, 199 Wn.2d 23, 41 n.14, 502 P.3d 837. The confusion as to this standard thus prevails and is leading Washington appellate courts to

apply different standards. *See., State v. Roberts*, 32 Wn. App. 2d 571, 588, 553 P.3d 1122, 1136 (2024), review granted in part, 4 Wn.3d 1009, 564 P.3d 547 (2025) (pointing out that this Court has yet to clarify “these conflicting standards”).

In sum, review should be granted in this case to definitively answer the question of whether the *Green* or the *Homan* standard applies in the bench trial context. Uniform application of the correct standard of review for sufficiency challenges to criminal convictions following bench trials is an issue of substantial public interest that apparently can only be answered by this Court given the Court of Appeal’s suspicion of *Homan’s* binding effect and its fidelity to *Green* until expressly overturned. This case also raises constitutional implications. *E.g., State v. Rich*, 184 Wn.2d 897, 903, 365 P.3d 746 (2016). Thus, review is appropriate under RAP 13.4(b)(1), (3), and (4).

II. REVIEW IS NEEDED TO GUIDE REVIEWING COURTS AS TO THE EXTENT THEY ARE CONSTITUTIONALLY PERMITTED TO RELY ON PARTICULAR ASPECTS OF A WITNESSES' TESTIMONY WHERE THE TRIAL COURT ONLY FINDS "SOME" OF THE WITNESS' TESTIMONY CREDIBLE.

Under either legal standard, the Court of Appeals' decision raises an important constitutional question: Does the Court of Appeals overstep its constitutional authority and violate a basic tenet of appellate review where the trial court finds only "some" aspects of a witness' testimony credible but the Court of Appeals decides to rely on other aspects of the same witness' testimony?

In Washington, Superior Courts are fact-finding courts of original jurisdiction. Const. art. 4, § 6. The Court of Appeals and this Court are not. Const. art. 4, § 4, 30; *see also*, *Community Care Coalition of Washington v. Reed*, 165 Wn.2d 606, 617, 200 P.3d 701 (2009). It is constitutional error for Washington appellate courts to engage in improper appellate fact-finding. *State v. McDonald*, 89 Wn.2d 256, 264, 571 P.2d

930 (1977), *overruled by State v. Sommerville*, 111 Wn.2d 524, 760 P.2d 932 (1988).

It is well established that credibility determinations are solely for the fact finder and are not reviewable on appeal. *State v. Brockob*, 159 Wn.2d 311, 336, 150 P.3d 59 (2006). A reviewing court may not substitute its judgment for that of the trial court when it comes to credibility even when it disagrees with the trial court. *In re Marriage of Black*, 188 Wn.2d 114, 127, 392 P.3d 1041 (2017). Even when evaluating the totality of the circumstances, as is the case in *Green*, a reviewing court may not invade the role of the factfinder when it comes to credibility determinations. *Brockob*, 159 Wn.2d at 336.

Whether applying *Green* or *Homan*, the Court of Appeals' determination that Fasaga's conviction was supported by sufficient evidence relies upon a suspect credibility determination. Appendix A at 1, 6-7, 9. A key fact that sits at the center of the Court of Appeals' analysis is Donnelly's testimony that Fasaga possessed and fired a Colt .45 firearm on

the Viewridge property on May 12, 2018. *Id.* However, the trial court did not specifically find this aspect of Donnelly's testimony credible.

The trial court generally found Donnelly testimony was not credible based on specific observations during her testimony, factors the Court of Appeals could never assess off a cold paper record. RP 1377-80. It did not believe her with regard to the murder and all gun possession aspects of the murder testimony. *Id.* While the trial court stated it found "some" of her testimony credible, this statement was qualified by the court's specific statements as to what it found credible. RP 1378; CP 895; Appendix B. Yet, the Court of Appeals viewed the trial court's use of the word "some" as an open door to step into the role of the factfinder. Appendix A at 6.

The Court of Appeals cited this Court's decision *Butler v. Ringrose*, 170 Wash. at 213, for the proposition that a trier of fact may believe part of a witness's testimony and disbelieve another part of that same testimony. Appendix A at 1, 6-7, 9.

However, it erroneously expanded that concept beyond constitutional limits. Unlike in *Butler*, here the trial court was unequivocal as to exactly what aspect of the witness testimony it found credible. If *Butler* can be applied as the Court of Appeals did here to step into the role of the factfinder, then that decision raises a serious constitutional concern and requires a limiting interpretation by this Court.

Here, the trial court specified in its written findings exactly what part of Donnelly's testimony it found credible – the fact that she shot the Colt. 45 on the Viewridge property. Appendix B. Despite this specificity, the Court of Appeals used the trial court's generalized statement in its oral ruling that it found “some of [Donnelly's] testimony to be credible” to essentially wedge itself into the role of a fact-finder and make its own determination as to whether other aspects of her testimony were credible. Then the Court of Appeals went on to rely on its own credibility determination regarding Donnelly to affirm the conviction. Appendix A at 1, 6-7, 9.

As to other firearms beyond the Colt .45, the Court of Appeals also relied on an aspect of Fasaga's testimony that the trial court did not specify as credible. The trial court only found Fasaga's testimony credible as to these facts: there were firearms on the premises, Fasaga personally observed others firing these guns on the property, he observed Donnelly firing a gun a lot, and he knew he was prohibited from possessing firearms. RP 1381; CP 898; Appendix B. Notably, the trial court did not specify it found credible Fasaga's testimony that that he would have been able to "use" firearms on his property. RP 1381; CP 898; Appendix B. Despite this, the Court of Appeals relied upon this aspect of Fasaga's testimony to determine there was sufficient evidence to support his conviction. Appendix A at 3, 8, 10. Again, the Court of Appeals overstepped its role as a reviewing court by substituting its credibility determination for that of the factfinder.

In sum, this case raises a significant question of law under the constitution. Appellate courts apparently need

guidance in finding the constitutional limitation on appellate fact-finding where a trial court has found only “some” of the witnesses’ testimony credible. Granting review will give this Court an opportunity to clarify *Butler* and limit its application to avoid constitutional overreach by the Court of Appeals. Because the constitutional integrity of Washington’s reviewing courts is an essential element of due process and essential to public confidence in the judiciary, this case also raises an issue of substantial public interest that should be determined by this Court. As such, review is proper under RAP 13.4(b)(3) and (4),

III. REVIEW SHOULD BE GRANTED TO DETERMINE WHETHER PROOF OF ONE’S DOMINION AND CONTROL OVER A PREMISES AND ONE’S KNOWLEDGE THAT GUNS ARE BEING FIRED BY OTHERS ON THE PREMISES IS SUFFICIENT TO UPHOLD A CONVICTION FOR UNLAWFUL POSSESSION OF A GUN.

“It is not a crime to have dominion and control over the premises where the [firearm] is found.” *State v. Shumaker*, 142 Wn. App. 330, 334, 174 P.3d 1214 (2007) (quoting *State v.*

Olivarez, 63 Wn. App. 484, 486, 820 P.2d 66 (1991)). Likewise, mere proximity to a firearm and knowledge of its presence is insufficient to show dominion and control. *State v. Chouinard*, 169 Wn. App. 895, 899, 282 P.3d 117 (2012). Yet, under either the *Homan* or the *Green* analysis, this was the basis of Fasaga's conviction.

Applying *Homan*, when you strip away the Court of Appeals' improper use of Donnelly's testimony, the trial court's findings merely establish that Fasaga had dominion and control over the Viewridge property where the Colt .45 was located and that he was aware guns were on the premises. Glaringly absent from the Court's findings are any findings establishing that Fasaga possessed the Colt .45 gun or had dominion and control over that gun.

This Court has stated that a reviewing court must presume that the party with the burden of proof failed to meet its burden when a fact finder omits a particular finding of fact on a litigated issue. *State v. Armenta*, 134 Wn.2d 1,14, 948 P.2d

1280 (1997). Here, the parties litigated whether Fasaga had actual possession of the gun and/or dominion and control over the gun. Yet the State failed to procure a finding that Fasaga actually possessed a gun or had dominion and control over any particular gun. While the Court of Appeals points to Fasaga's testimony that he could have accessed and use firearms other than the Colt .45 that were stored on the premises, the trial court did not find this testimony credible and did not rely on it to establish dominion and control over the gun. Appendix B.

Even in its conclusions, the trial court merely specifies that Fasaga had dominion and control over the premises. Appendix B. It never finds or concludes that Fasaga had possession or dominion and control over a firearm. Its findings are thus insufficient to support a firearms conviction. There must be a nexus between control over the premises and control over the gun beyond having mere knowledge of and proximity to a gun. *Shumaker*, 142 Wn. App. at 334,

Likewise, under the *Green* standard, there is insufficient evidence once you discount that aspect of Donnelly's testimony that the Court of Appeals improperly relied upon. "The totality of the circumstances must provide substantial evidence for a fact finder to reasonably infer that the defendant had dominion and control." *State v. Enlow*, 143 Wn. App. 463, 469, 178 P.3d 366 (2008). That did not occur here. *See*, BOA at 15-17.

The State proceeded on the theory that Fasaga actually possessed the Colt .45 on March 11, 2018, when he allegedly shot Snarski. RP 84, 1310. It relied on Donnelly's testimony to establish both the murder and the actual gun possession. The trial court did not believe Donnelly's testimony as to what happened on May 11, 2018, and consequently it acquitted him on the murder charges. RP 1376. She is the only person that put the gun in Fasaga's hands, and she offered the only evidence that might have established that Fasaga had dominion and control over the Colt .45 on or about May 11, 2018. In other words, Donnelly's discredited testimony was the only evidence

that provided the necessary nexus between Fasaga's control over the premises and his alleged dominion and control of the Colt .45. Even under the totality of circumstances standard, without Donnelly's discredited testimony the State's evidence merely proved Fasaga had dominion and control of the View Ridge property and proximity to and knowledge of operational guns being fired by others on that property.

In sum, the Court of Appeals affirmed a case for possession of a firearm, which showed nothing more than Fasaga had dominion and control over a property, and he had knowledge of and was in proximity guns being fired by others on that property. Thus, the Court of Appeals decision below conflicts with other published decisions of the Court of Appeals (cited above), and review is appropriate under RAP 13.4(2).

F. CONCLUSION

For the reasons stated above, Petitioner asks this Court to grant review.

I certify that this document contains 3790 words in 14-point font excluding the parts exempted by RAP 18.17.

Dated this 16th day of July, 2025.

Respectfully submitted,

NIELSEN KOCH & GRANNIS

A handwritten signature in black ink, appearing to read "JL Dobson", written in a cursive style.

JENNIFER L. DOBSON,
WSBA 30487

Appendix A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON,

Respondent,

v.

TWO DOGS SALVATORE FASAGA,

Appellant.

No. 87673-2-I

DIVISION ONE

UNPUBLISHED OPINION

BIRK, J. — Two Dogs Fasaga appeals his conviction of unlawful possession of a firearm in the first degree, arguing the State failed to prove he had dominion and control over a firearm. We hold the evidence was sufficient to support Fasaga’s conviction, and affirm.

I

The State charged Fasaga by information with unlawful possession of a firearm in the first degree,¹ alleging that on or about May 11 or 12, 2018, Fasaga “knowingly did own, have in his possession, or have in his control, a semi-automatic handgun.”

On May 11, 2018, Fasaga lived at 415 View Ridge Road in Onalaska, Washington. Fasaga’s mother owned the home, and at some point, the property was transferred into Fasaga’s name. Rachel Donnelly testified that on May 12, 2018, Fasaga had, and fired, a .45 pistol. Donnelly testified she used that gun

¹ The State also charged Fasaga with murder in the first degree and murder in the second degree. The trial court acquitted Fasaga of these charges.

"months after," as well as a rifle, for shooting practice at the property. Donnelly testified Fasaga left the .45 pistol at the house "most of the time," but would carry the gun on his person if the two were leaving together.

Fasaga testified that in May 2018 he was living at his grandmother's house, but he would visit the 415 View Ridge Road property "[e]very few days" to check on the property. Fasaga testified he kept "some stuff" on the property, including three vehicles that he owned, he had "cameras everywhere" on the property for security purposes, and he had two dogs on the property. Fasaga testified that he often saw Donnelly shooting guns at the 415 View Ridge property, and those guns were his. During cross-examination, the following occurred,

Q. Mr. Fasaga, you are a convicted felon, right?

A. Yes, ma'am.

Q. And based on your felony convictions, you are aware that you are not allowed to possess any firearms?

A. Yes, ma'am.

Q. And in May of 2018, you testified that you were living at your grandmother's house . . . but that you were also on the 415 View Ridge Road property at times. That's your testimony, right?

A. Yes, ma'am.

Q. And you were aware that there were firearms on that property; fair to say?

A. Yes.

Q. And you had access to those firearms?

A. Yes.

Q. And you would have been able to use them at any time based on your access to that property?

A. Yes, ma'am.

Fasaga testified that the guns on the property included a ".223 rifle, .22 rifles, [and] 9 millimeter pistols."

Lewis County Sheriff's Detective Skylar Eastman testified he was familiar with the 415 View Ridge Road address and it was his understanding that Fasaga resided there. Detective Eastman testified that in March 2019 he responded to the address, Fasaga was present, and Fasaga gave the detective permission to come onto the property.

On July 28, 2023, the trial court convicted Fasaga of unlawful possession of a firearm in the first degree. The trial court found beyond a reasonable doubt that on May 11, 2018, Fasaga possessed a firearm by having a firearm in his dominion and control. The trial court based its findings on the fact that Fasaga testified there were firearms on the property, he was aware of those firearms, and he could access them. On September 8, 2023, Fasaga filed a motion to arrest judgment, or in the alternative, a motion for a new trial. The trial court denied the motion because it was untimely, and concluded there was sufficient evidence that Fasaga possessed a firearm and the Colt .45 firearm was operational on May 11, 2018. Fasaga appeals.

II

Fasaga argues the State presented insufficient evidence he exercised dominion and control over a firearm. He also assigns error to findings of fact and conclusions of law on that same basis.

Due process requires the State to prove beyond a reasonable doubt every element of a crime. State v. Rodriguez, 187 Wn. App. 922, 930, 352 P.3d 200 (2015). In reviewing a claim for insufficient evidence, we consider “ ‘whether, after viewing the evidence in the light most favorable to the prosecution, *any rational trier of fact* could have found the essential elements of the crime *beyond a reasonable doubt.*’ ” State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980) (emphasis added) (quoting Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979)), overruled on other grounds by Washington v. Recuenco, 548 U.S. 212, 126 S. Ct. 2546, 165 L. Ed. 2d 466 (2006). In a sufficiency of the evidence claim, the defendant admits the truth of the State’s evidence and all inferences that reasonably can be drawn from that evidence. State v. Colquitt, 133 Wn. App. 789, 796, 137 P.3d 892 (2006). We defer to the finder of fact on issues of witness credibility, persuasiveness, and conflicting testimony. In re Pers. Restraint of Martinez, 171 Wn.2d 354, 364, 256 P.3d 277 (2011). The sufficiency of the evidence is a question of constitutional law that we review de novo. State v. Rich, 184 Wn.2d 897, 903, 365 P.3d 746 (2016).

Roughly 34 years after Green, our Supreme Court issued its opinion in State v. Homan and applied a standard different than Green to review a sufficiency

challenge to a conviction by a judge after a bench trial. 181 Wn.2d 102, 105-06, 330 P.3d 182 (2014). Specifically, the court said that “following a bench trial, appellate review is limited to determining whether substantial evidence supports the findings of fact and, if so, whether the findings support the conclusions of law.”

Id. “However, the Homan court did not explain that it was overruling the precedent set out in Green . . . and ‘[i]t is a longstanding principle that when our Supreme Court has expressed a clear rule of law, it will not overrule such binding precedent sub silentio.’ ” State v. Roberts, 32 Wn. App. 2d 571, 586, 553 P.3d 1122 (2024) (second alteration in original) (internal quotation marks omitted) (quoting State v. I.J.S., No. 82559-3-I, slip op. at 6 (Wash. Ct. App. Mar. 14, 2022) (unpublished), <https://www.courts.wa.gov/opinions/pdf/825593.pdf>), review granted in part, 4 Wn.3d 1009, 564 P.3d 547 (2025). We begin with the Green standard, and in an abundance of caution apply Homan in addition.

A

Under the Jackson standard, we “review *all of the evidence*” in the light most favorable to the State to determine whether “*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” 443 U.S. at 319.

To convict Fasaga of unlawful possession of a firearm in the first degree, the State must prove beyond a reasonable doubt that Fasaga owned, accessed, had in his custody, control, or possession, or received any firearm and that he had

previously been convicted or found not guilty by reason of insanity in this state or elsewhere of any serious offense. RCW 9A.41.040(1)(a). "Possession may be actual or constructive, and constructive possession can be established by showing the defendant had dominion and control over the firearm or over the premises where the firearm was found." State v. Echeverria, 85 Wn. App. 777, 783, 934 P.2d 1214 (1997). For either type, "[t]o establish possession the prosecution must

prove more than a passing control; it must prove actual control." State v. Staley, 123 Wn.2d 794, 801, 872 P.2d 502 (1994). The length of time in itself does not determine whether control is actual or passing; whether one has actual control over the item at issue depends on the totality of the circumstances presented. Id. at 802.

Donnelly testified that on May 12, 2018, Fasaga had, and fired, a .45 pistol while at 415 View Ridge Road. Fasaga argues that because the trial court acquitted Fasaga of the murder charges in part due to Donnelly's credibility, Donnelly's testimony in its entirety was not credible. However, in its oral ruling, the trial court articulated certain parts of Donnelly's testimony it did not find credible, and stated it found "some of [Donnelly's] testimony to be credible." A trier of fact may believe part of a witness's testimony and disbelieve another part of that same testimony. Butler v. Ringrose, 170 Wash. 211, 213, 15 P.2d 1117 (1932). The trier of fact makes credibility determinations and we do not review those

determinations on appeal. State v. Thomas, 150 Wn.2d 821, 874, 83 P.3d 970 (2004).

Relying on State v. Shumaker, 142 Wn. App. 330, 334, 174 P.3d 1214 (2007), Fasaga argues the evidence of his dominion and control over the premises is insufficient to establish that he had dominion and control of a firearm. However, his reliance on Shumaker is misplaced. In Shumaker, the issue was whether the court's instructions to the jury were wrong because the jury could find the defendant guilty based solely on dominion and control over the premises rather than the drugs. Id. at 333. We concluded that the instruction was erroneous, noting that dominion and control over the premises without more does not mandate a conclusion of constructive possession of contraband found on the premises—rather, it “is only one of the circumstances from which constructive possession can be inferred by the jury.” Id. at 334.

Here, Fasaga contends the evidence is insufficient because the State has shown dominion and control only over the premises, not the firearm. However, in State v. Cantabrana, 83 Wn. App. 204, 208, 921 P.2d 572 (1996), this court noted the distinction between instructional error and claims of insufficient evidence:

When the sufficiency of the evidence is challenged on the basis that the State has shown dominion and control only over premises, and not over drugs, courts correctly say that the evidence is sufficient because dominion and control over premises raises a rebuttable inference of dominion and control over the drugs.

Here, the totality of the circumstances allowed any rational trier of fact to permissively conclude that Fasaga had dominion and control over the firearm. The evidence shows that Fasaga had dominion and control over 415 View Ridge Road.

Fasaga lived at the property, the property was titled in Fasaga's name, Fasaga kept vehicles and his dogs at the property, he installed cameras on the property for security, and he gave permission for detectives to enter the property in March 2019. This, in turn, permitted the trier of fact to draw the inference of dominion and control over the firearm that Donnelly testified was at the property. Fasaga also testified that he was aware there were semi-automatic firearms at the property, he had access to the firearms, and he could have been able to use them at any time. Viewing these facts in favor of the State, any rational trier of fact could find beyond a reasonable doubt that Fasaga possessed a firearm.²

B

According to Homan, the scope of our review is "limited to determining whether substantial evidence supports the findings of fact and, if so, whether the findings support the conclusions of law." 181 Wn.2d at 105-06. Substantial evidence is evidence that would convince an unprejudiced, thinking mind of the truth of the fact to which the evidence is directed. State v. Hutton, 7 Wn. App. 726, 728, 502 P.2d 1037 (1972). The existence of a fact cannot rest on guess, speculation, or conjecture. Id. We accept unchallenged findings of fact as true.

² Fasaga also assigns error to numerous findings of fact and conclusions of law from the trial court's order denying the motion to arrest judgment. A motion to arrest judgment challenges the sufficiency of the evidence to take the case to the jury. State v. Randecker, 79 Wn.2d 512, 515, 487 P.2d 1295 (1971). An appellate court's only function is to determine whether the evidence is legally sufficient to support the finder of fact's verdict. State v. Pleasant, 38 Wn. App. 78, 80, 684 P.2d 761 (1984). In ruling on such a motion, we must assume the truth of the State's evidence and view it most strongly against the defendant in a light most favorable to the State. Id. Because we conclude there was sufficient evidence to support Fasaga's conviction, we do not reach these findings.

State v. Luther, 157 Wn.2d 63, 78, 134 P.3d 205 (2006). We review de novo the trial court's conclusions of law to determine if they are supported by the findings of fact. State v. Manion, 173 Wn. App. 610, 633, 295 P.3d 270 (2013).

Fasaga challenges finding of fact 1.3, which states, "The defendant was the principal resident at [415 View Ridge Road], exercising control over the activities therein." Unchallenged finding of fact 1.1 states Fasaga lived at 415 View Ridge Road. Other evidence established that the property was titled in Fasaga's name, Fasaga kept his vehicles and dogs at the property, he installed cameras on the property for security, and he gave permission for detectives to enter the property in March 2019. This evidence is sufficient to persuade a rational trier of fact of the finding's truth. Substantial evidence supports the trial court's finding of fact 1.3.

Fasaga challenges finding of fact 1.14, which states, "The Colt .45 firearm was located at the 415 [View Ridge] Road premises while the Defendant had dominion and control over those premises on or about May 11, 2018." Unchallenged findings of fact 1.1 and 1.2 state Fasaga lived at 415 View Ridge Road on or about May 11, 2018. Donnelly testified that on May 12, 2018, Fasaga had, and fired, a .45 pistol while at 415 View Ridge Road. This evidence is sufficient to persuade a rational trier of fact of the finding's truth. Substantial evidence supports the trial court's finding of fact 1.14.

Fasaga challenges conclusion of law 2.2, which states, "On or about May 11, 2018, the defendant knowingly had in his possession a firearm." Finding of fact 1.14, which we found to be supported by substantial evidence, states the Colt

.45 firearm was located at the 415 View Ridge Road property while Fasaga had dominion and control over the premise on or about May 11, 2018. Fasaga's dominion and control over the property among other facts noted above permitted an inference of dominion and control over the firearm. Conclusion of law 2.2 is supported by the trial court's findings of fact.

Affirmed.

Birk, J.

WE CONCUR:

Chung, J.

HSG

Appendix B

FILED
Lewis County Superior Court
Clerk's Office

NOV 13 2023

Scott Tinney, Clerk
By _____, Deputy

23-1-00343-21
FNFCI 47
Findings of Fact and Conclusions of Law
15684587



SUPERIOR COURT OF WASHINGTON FOR LEWIS COUNTY

STATE OF WASHINGTON,)
)
Plaintiff,) No. 23-1-00343-21
)
vs.)
) FINDINGS OF FACT AND
TWO DOGS SALVATORE FASAGA,) CONCLUSIONS OF LAW AFTER
a.k.a. JUSTIN ROY McCLOUD,) TRIAL WITHOUT JURY
)
Defendant.)

THE ABOVE-ENTITLED CAUSE having come on for trial from July 10th through July 21st of 2023, before the undersigned judge in the above-entitled court; the State of Washington having been represented by Deputy Prosecuting Attorney Jacqueline Lawrence and Matei Stroescu; the defendant appearing in person and having been represented by his attorney, Peter T. Geisness and Peter Connick; the court having heard sworn testimony and arguments of counsel, and having received exhibits, now makes and enters the following findings of fact and conclusions of law.

FINDINGS OF FACT

- 1.1 The Defendant lived at 415 Viewridge Road, in Onalaska, Washington;
- 1.2 The defendant lived at these premises on or about May 11, 2018;
- 1.3 The defendant was the principal resident at that address, exercising control over the activities therein;
- 1.4 The defendant was previously convicted of Assault in the Second Degree—a serious offense as defined by Washington statutes;

FINDINGS OF FACT AND CONCLUSIONS OF LAW
AFTER TRIAL WITHOUT A JURY - 1

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1 1.5 The defendant testified that he was aware that there were firearms on the above-
2 referenced premises;
3 1.6 The defendant testified that he observed persons on the property firing firearms.
4 1.7 The defendant testified that he observed witness Rachel Donnelly firing firearms on the
5 property "a lot;"
6 1.8 The defendant testified that he knew he was prohibited from possessing firearms;
7 1.9 The defendant's testimony regarding the foregoing four findings was credible;
8 1.10 Firearms examiner Brenda Walsh testified that the Colt .45 firearm was capable of firing
9 a projectile by the use of an explosive such as gunpowder;
10 1.11 Brenda Walsh's testimony was credible;
11 1.12 Rachel Donnelly testified that she fired the Colt .45 on the property described in these
12 findings;
13 1.13 Ms. Donnelly's testimony in the foregoing finding of fact was credible;
14 1.14 The Colt .45 firearm was located at the 415 Viewridge Road premises while the
15 Defendant had dominion and control over those premises on or about May 11, 2018.
16

17 And having made the foregoing Findings of Fact, the Court also now enters the
18 following:

19 CONCLUSIONS OF LAW

20 2.1 This court has jurisdiction over the defendant and the subject matter of this case.
21 2.2 On or about May 11, 2018, the defendant knowingly had in his possession a firearm.
22 2.3 The defendant had dominion and control over the premises at 415 Viewridge Road, in
23 Onalaska, Washington;
24

FINDINGS OF FACT AND CONCLUSIONS OF LAW
AFTER TRIAL WITHOUT A JURY - 2

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- 1 2.4 The defendant had previously been convicted of a serious offense;
2 2.5 The foregoing occurred in the State of Washington.

3 ORDER

4 The defendant is guilty beyond a reasonable doubt of the crime of Unlawful Possession
5 of a Firearm In The First Degree.

6 In addition to these written findings and conclusions, the Court hereby incorporates its
7 oral findings and conclusions as reflected in the record.

8 Signed this 13 day of November, 2023.

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JUDGE J. Andrew Toynbee

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FINDINGS OF FACT AND CONCLUSIONS OF LAW
AFTER TRIAL WITHOUT A JURY - 3

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NIELSEN KOCH & GRANNIS P.L.L.C.

July 16, 2025 - 11:25 AM

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Appellate Court Case Title: State of Washington, Respondent v. Two Dogs Salvatore Fasaga, Appellant
Superior Court Case Number: 23-1-00343-2

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