IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	**No. 27983-9-III**
Respondent,	)	
	)	**Division Three**
v.	)	
ERIC EUGENE EVENSON,	)	
	)	**UNPUBLISHED OPINION**
Appellant.	)	

Sweeney, J. — The defendant here appeals his convictions for possession of stolen property and possession with intent to deliver methamphetamine. He challenges the admissibility of evidence of the former and the sufficiency of the evidence to support the latter. Relevant evidence that is not overly prejudicial is not inadmissible just because it connects a defendant to an uncharged crime, and the courts have so held. *State v. Flint*, 4 Wn. App. 545, 546-47, 483 P.2d 170 (1971). The evidence here (shaved keys and burglary tools) suggests the defendant stole the property in his possession. And it also suggests that he knew the property was stolen—an essential element of possession of stolen property. The trial court, then, did not abuse its considerable discretion by

admitting the evidence. And possession of one or more controlled substances, baggies, and scales is substantial evidence of intent to deliver a controlled substance. *State v. Taylor*, 74 Wn. App. 111, 123-24, 872 P.2d 53 (1994). Here, the defendant had three controlled substances, a cutting agent, a measuring spoon containing methamphetamine residue, digital scales, *and* baggies. The evidence, then, shows he intended to deliver the methamphetamine in his possession. We affirm the convictions.

FACTS

Spokane County Deputy Mark Speer stopped Eric Evenson for driving with a suspended license. Mr. Evenson told Deputy Speer that there was probably an outstanding warrant for his arrest. The deputy confirmed the warrant and the suspended license and arrested Mr. Evenson.

Mr. Evenson locked his keys inside his car by kicking the car door shut as he was being handcuffed. Deputy Speer looked through the car's windows and noticed several shaved keys on the front passenger seat, a vehicle identification number plate that had been tampered with, and many electric tools in the back of the car. Based on this, the deputy suspected the car had been stolen. He impounded the car so he could get a warrant to search it.

A detective also looked in the back window of the car after he reviewed a

February 25 burglary report. Tools in the back of the car looked like items referred to in the February 25 report. He obtained and executed a warrant to search the car for the list of property reported stolen. He found several items from the list inside the car as well as a bag of burglary tools, a collection of shaved keys, 2.2 grams of cocaine, 7.6 grams of marijuana, and 8.8 grams of methamphetamine mixed with a cutting agent. He also found digital scales, a pinky-sized spoon in a shot glass (both bearing methamphetamine residue), and hundreds of small, empty baggies with bulldog or pink panther stickers on them.

The State charged Mr. Evenson with first degree possession of stolen property, possession of a controlled substance (marijuana), and two counts of possession with intent to deliver a controlled substance (cocaine and methamphetamine).

Mr. Evenson moved to suppress the items seized from his car. He argued that the traffic stop was pretextual, that his car was unlawfully impounded, and that police lacked probable cause to search it in the first place. The trial court denied his motion.

Mr. Evenson also moved in limine to exclude evidence of a stolen company work truck, the bag of burglary tools, and the ring of shaved keys. The trial court concluded that the tools and keys were relevant to the charge of possession of stolen property and not overly prejudicial and refused to exclude them. The court, however, excluded

evidence of the stolen truck.[1] Mr. Evenson did not object when two burglary victims testified that a company work truck had been stolen on or about the day he was pulled over and arrested.

A jury ultimately found Mr. Evenson guilty of first degree possession of stolen property, possession with intent to deliver methamphetamine, possession of cocaine, and possession of marijuana.

Mr. Evenson appeals his convictions for possession of stolen property and possession with intent to deliver methamphetamine.

DISCUSSION

Possession of Stolen Property—Evidentiary Rulings

Mr. Evenson first contends that the trial court erred by admitting a ring of shaved keys, a bag of burglary tools, and testimony about a stolen company truck. He argues that the evidence is either irrelevant to the possession of stolen property charge or overly prejudicial because it suggests he is a burglar.

We review a trial court's ruling on admissibility of evidence for abuse of discretion. *State v. Powell*, 126 Wn.2d 244, 258, 893 P.2d 615 (1995). Mr. Evenson

[1] The trial court's oral ruling admitting the stolen truck evidence conflicts with its written ruling excluding it. A written ruling controls where it conflicts with an oral decision. *State v. Dailey*, 93 Wn.2d 454, 458-59, 610 P.2d 357 (1980).

must then show that the court's decision is manifestly unreasonable or was based on untenable grounds or untenable reasons. *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971).

The trial court excluded all evidence of the stolen truck. Clerk's Papers (CP) at 161. Two witnesses, nevertheless, testified about the truck without objection. And Mr. Evenson had to object to preserve the error for review, but he did not. *Lewis v. Simpson Timber Co.*, 145 Wn. App. 302, 331 n.22, 189 P.3d 178 (2008); *City of Bellevue v. Kravik*, 69 Wn. App. 735, 742, 850 P.2d 559 (1993). We, then, decline his invitation to review this assignment of error.

The judge admitted into evidence a ring of shaved keys and a bag of burglary tools after he concluded they were not overly prejudicial and relevant to the charge of possession of stolen property:

> With regard to the duffle bag, that, again, did have implements that are key to evidentiary items that the State wishes to advance. As I understand it, there was a screwdriver. . . . It's necessary to portray the entire res gestae here, so to speak. Again, I don't believe that the probative value is substantially outweighed by the prejudicial effect under Evidence Rule 403 . . . , so I must deny that motion.
>
> With regard to the shaved keys, again, that is an item that law enforcement will encounter from time to time, and those shaved keys, thus, have a heightened probative value. Prejudicial effect does not substantially outweigh the probative value of reference to those items being in Mr. Evenson's vehicle. And the Court must again respectfully deny that motion.

Report of Proceedings (RP) (Vol. I) at 39-

40; CP at 160-62. Evidence is relevant and admissible if it tends to prove or disprove a material fact. The standard of review has been described as the so-called abuse of discretion standard. *State v. Foxhoven*, 161 Wn.2d 168, 176, 163 P.3d 786 (2007). But the undertaking appears to be closer to a de novo standard of review. *Id.* The court will, nonetheless, exclude the evidence if its probative value is outweighed by the danger of unfair prejudice. ER 403; *State v. Stein*, 140 Wn. App. 43, 67, 165 P.3d 16 (2007). That is a question vested in the discretion of the trial judge. *Stein*, 140 Wn. App. at 67.

First degree possession of stolen property requires proof that the defendant knowingly possessed stolen property worth more than $1,500. RCW 9A.56.140(1); former RCW 9A.56.150(1) (2007). A person acts knowingly when he is aware of facts that constitute a crime or has information that would lead a reasonable person to believe that a crime has occurred. RCW 9A.08.010(1)(b)(i), (ii). A showing that the defendant stole the property is certainly evidence that he knew it was stolen. *Flint*, 4 Wn. App. at 547. Here, the shaved keys and bag of burglary tools found in Mr. Evenson's car suggest that Mr. Evenson used them. The keys and tools were then relevant to the issue of whether Mr. Evenson knowingly possessed stolen property. They were, therefore, admissible even though they connected Mr. Evenson to another uncharged crime. *Id.* at 546. There was, then, no abuse of discretion.

Possession with Intent to Deliver Methamphetamine—Substantial Evidence

Mr. Evenson next contends that the State failed to show his intent to deliver methamphetamine. His assignment of error requires that we view the evidence in a light most favorable to the State and then pass on whether it is sufficient to support the elements of possession with intent to deliver methamphetamine. *State v. Goodman*, 150 Wn.2d 774, 781, 83 P.3d 410 (2004).

Intent to deliver is an essential element of the crime of possession of a controlled substance with intent to deliver. RCW 69.50.401(1); *Goodman*, 150 Wn.2d at 782. Intent to deliver may be inferred from circumstantial evidence as a matter of logical probability. *Taylor*, 74 Wn. App. at 123. The State must show the defendant possessed a controlled substance and other evidence of the defendant's intent to distribute or sell it. *Goodman*, 150 Wn.2d at 783; *State v. Zunker*, 112 Wn. App. 130, 135-36, 48 P.3d 344 (2002).

Possession of several types of drugs, baggies, and scales is enough to prove intent to deliver. *Taylor*, 74 Wn. App. at 123-24. And Mr. Evenson possessed all these things and more. He had 2.2 grams of cocaine, 7.6 grams of marijuana, and 8.8 grams of methamphetamine mixed with a cutting agent. He had digital scales, hundreds of baggies, and other drug paraphernalia, including a pinky-sized spoon bearing

methamphetamine residue. A cutting agent reduces a drug's purity and thereby increases the amount of drug for sale and the amount of money the seller makes selling it. RP (Vol. I) at 143-44. A small spoon, like the one found here, is "generally used to take a portion of narcotic to place it into a Baggie or onto a scale." *Id.* at 147. Digital scales are commonly used to weigh drugs to establish a weight-based sale price. *Id.* at 146. And the symbols on the baggies found in Mr. Evenson's possession often identify the type and quality of the drug inside. *Id.* at 149. The evidence here, then, easily supports the conclusion that Mr. Evenson intended to package and sell the methamphetamine in his possession. *Taylor*, 74 Wn. App. at 123-24.

Statement of Additional Grounds

Mr. Evenson further contends in a statement of additional grounds that (1) the traffic stop leading to his arrest was pretextual; (2) his car was unlawfully impounded; (3) the warrant to search his car was not based on probable cause; (4) his speedy trial rights were violated; and (5) he should have been allowed to view his car before trial.

His first three contentions were raised in two pretrial motions to suppress evidence found in his car. The court denied both motions. We review de novo the court's conclusions of law. *State v. Johnson*, 128 Wn.2d 431, 442-43, 909 P.2d 293 (1996).

The trial court concluded that the traffic stop here was not pretextual. Mr.

Evenson maintains that it was pretextual because Deputy Speer provided inconsistent reasons for stopping him and because Mr. Evenson suspects that the Regional Drug Task Force prompted the deputy to stop him and search his car for drugs. We consider Deputy Speer's subjective intent (a question of fact) and the objective reasonableness of his actions (a question of law) to determine whether the stop here was pretextual. *State v. Ladson*, 138 Wn.2d 343, 358-59, 979 P.2d 833 (1999). He testified that he stopped Mr. Evenson because he noticed that Mr. Evenson's license was suspended and that his license plate light was broken. RP (July 24, 2008) at 7. He did not notice the tools in the back of Mr. Evenson's car before stopping him. *Id.* at 23. And no one from the Regional Drug Task Force told him to stop Mr. Evenson. *Id.* at 20. Deputy Speer subjectively intended to stop Mr. Evenson for a broken light and a suspended license. And both are objectively valid reasons for stopping a driver. RCW 46.20.349; RCW 46.37.010(1)(b). The stop here was not pretextual.

The trial court also concluded that Mr. Evenson's car was lawfully impounded. Mr. Evenson claims that Deputy Speer could not lawfully impound his car because he did not first consider alternatives to impoundment and instead impounded the car so the police could search it. First, police may obtain warrants to search an impounded car. *State v. Mitzlaff*, 80 Wn. App. 184, 189, 907 P.2d 328 (1995). Next, a police officer

validly impounds a vehicle when the facts lead to the reasonable conclusion that the vehicle was probably stolen or used in the commission of a felony and its retention as evidence is necessary. *State v. Reynoso*, 41 Wn. App. 113, 117, 702 P.2d 1222 (1985); *see State v. Leffler*, 142 Wn. App. 175, 185, 178 P.3d 1042 (2007) (defining probable cause).

Here, the vehicle identification number plate had been tampered with, a ring of shaved keys sat on the car's passenger seat, and the car's hatchback was full of heavy duty tools. Impoundment was, therefore, legally appropriate regardless of the alternatives or the offense of arrest. *Reynoso*, 41 Wn. App. at 117. Officers needed to retain the car to preserve its contents and search the car pursuant to a warrant.

Finally, the court concluded that probable cause supported the warrant to search Mr. Evenson's car. We review an issuing judge's probable cause determination for abuse of discretion. *State v. Garbaccio*, 151 Wn. App. 716 , 728, 214 P.3d 168 (2009). The court properly issued the search warrant here if the affidavit for the search warrant offered facts and circumstances sufficient to reasonably infer that Mr. Evenson possessed stolen property and that evidence of that crime could be found in his car. *Id.* at 727. A person possesses stolen property in the first degree if he knowingly possesses stolen property that is worth more than $1,500. Former RCW 9A.56.150(1). And Detective

Kirk Keyser's affidavit shows that two businesses were burglarized no more than two days before Mr. Evenson was stopped, that shaved keys and burglary tools were in Mr. Evenson's car in plain view, and that electric tools that matched the description of tools stolen from these two businesses were also in plain view in the car. CP at 69-70. Reasonable inferences from the affidavit suggest Mr. Evenson held stolen property worth more than $1,500 in his car. The decision to issue the warrant here is, then, supported by probable cause. And the trial court properly denied Mr. Evenson's motions to suppress.

Mr. Evenson next claims that his right to a speedy trial was violated because the trial court set his trial date more than 260 days after his arraignment. He relies on *State v. Iniguez*.[2] Our Supreme Court reversed *Iniguez* and held that an eight-month delay did not violate the defendant's speedy trial rights. *Iniguez*, 167 Wn.2d at 296. And the record here on appeal does not show when Mr. Evenson was arraigned or whether he was detained in jail at the time. All we know is that the information was filed on April 22, 2008; the case was stayed for 138 days to determine his competency to stand trial; and trial began on March 2, 2009. The record is, then, insufficient to pass on whether Mr. Evenson's trial was held more than 260 days after his arraignment date and whether that delay violated his speedy trial rights.

[2] *State v. Iniguez*, 143 Wn. App. 845, 180 P.3d 855 (2008), *rev'd*, 167 Wn.2d 273, 217 P.3d 768 (2009).

Finally, Mr. Evenson contends that the trial court should have let him look at his car before trial. The trial court has discretion to determine the scope of discovery. *State v. Blackwell*, 120 Wn.2d 822, 826, 845 P.2d 1017 (1993). And seized items, like Mr. Evenson's car, are discoverable upon request. CrR 4.7(c)(1), (d). Despite Mr. Evenson's claim to the contrary, the record here does not show any request to view the car before trial. He, then, has not shown that the trial court abused its discretion by failing to make the car available to him.

We affirm Mr. Evenson's convictions.

A majority of the panel has determined that this opinion will not be printed in the Washington Appellate Reports but it will be filed for public record pursuant to RCW 2.06.040.

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Sweeney, J.

WE CONCUR:

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Kulik, C.J.

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Brown, J.