IN THE

SUPREME COURT OF VIRGINIA

RECORD NO. 080775

CHARLENE MARIE WHITEHEAD,

Appellant,

v.

COMMONWEALTH OF VIRGINIA,

Appellee.

BRIEF FOR THE COMMONWEALTH

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STATEMENT OF THE CASE

On May 24, 2006, in a bench trial in the Circuit Court of the City of Danville, Charlene Whitehead was convicted of 32 counts of receiving stolen property, 14th or subsequent offense, in violation of Virginia Code §§ 18.2-108 and 18.2-104.[1] The property had been

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[1] Whitehead was indicted for 40 counts of receiving stolen property, 14th or subsequent offense. At trial, eight of the offenses were

stolen by Jamil Walden, Whitehead's boyfriend and the father of her baby. Prior to Whitehead's trial, Walden had pled guilty to and was convicted of numerous counts of larceny stemming from a string of crimes in the Danville area wherein he broke into vehicles and stole property in order to finance the couple's living expenses.

Following a hearing on June 26, 2006, the trial court sentenced Whitehead to 30 years imprisonment for the first six convictions, with 24 years suspended. The trial court withheld sentencing on the remaining 26 convictions, conditioned on the defendant's good behavior for a period of 25 years. (App. 52-57, 207-10).

Later that same day, the court held a revocation hearing to determine whether Whitehead had violated the terms of her probation from her 13 prior convictions for receiving stolen property. Whitehead pled guilty to the charge, her probation was revoked, and she was sentenced to an active sentence of five years imprisonment. (App. 48-51, 213, 224-25).

On appeal to the Court of Appeals of Virginia, the defendant challenged the sufficiency of the evidence to convict her of the 32 counts of receiving stolen property in violation of Virginia Code §

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merged into other offenses because the thefts were part of the same transaction. (App. 190-92).

18.2-108. Whitehead also argued that if the evidence was insufficient to sustain one or more of those convictions, then the trial court had abused its discretion when it revoked her previously suspended sentence and imposed an active sentence of five years imprisonment. Following briefing and oral argument, the Court of Appeals affirmed the judgment of the circuit court in an unpublished opinion dated March 25, 2008. Whitehead v. Commonwealth, 08 Vap UNP 1699063 (2008) (App. 58-63).

On January 6, 2009, this Court awarded Whitehead an appeal as to assignments of error Nos. 1, 2 and 3. The Court rejected assignment of error No. 4 and the Commonwealth's assignments of cross-error. (App. 64-65).

ASSIGNMENTS OF ERROR

The defendant has assigned the following errors:

I. THE COURT OF APPEALS ERRED IN RULING THE TRIAL COURT WAS NOT CLEARLY ERRONEOUS IN FINDING THE EVIDENCE SUFFICIENT TO PROVE WHITEHEAD RECEIVED THE STOLEN PROPERTY.

II. THE COURT OF APPEALS ERRED IN RULING THE TRIAL COURT WAS NOT CLEARLY ERRONEOUS IN FINDING THE EVIDENCE SUFFICIENT TO PROVE

WHITEHEAD AIDED IN CONCEALING STOLEN PROPERTY.

III. THE COURT OF APPEALS ERRED IN RULING THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN FINDING REASONABLE CAUSE TO VIOLATE.

QUESTIONS PRESENTED

I. DID THE COURT OF APPEALS ERR IN RULING THE TRIAL COURT HAD NOT CLEARLY ERRED IN FINDING THE EVIDENCE SUFFICIENT TO PROVE WHITEHEAD RECEIVED THE STOLEN PROPERTY? (Assignment of Error I)

II. DID THE COURT OF APPEALS ERR IN RULING THE TRIAL COURT WAS NOT CLEARLY ERRONEOUS IN FINDING THE EVIDENCE SUFFICIENT TO PROVE WHITEHEAD AIDED IN CONCEALING THE STOLEN PROPERTY? (Assignment of Error II)

III. DID THE COURT OF APPEALS ERR IN RULING THAT THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN FINDING REASONABLE CAUSE THAT WHITEHEAD VIOLATED HER PROBATION? (Assignment of Error III)

STATEMENT OF FACTS

A. RECEIVING STOLEN PROPERTY

Whitehead was released from jail on May 9, 2005, on her sentence for her previous convictions of receiving stolen property. (Commonwealth's Exhibit 3, page 1, App. 234). Thereafter, Whitehead and Walden lived from place to place before moving into Walden's mother's residence in June, 2005. (Id.).

After the utilities were turned off at that residence in August, 2005, Whitehead and Walden decided they needed to move. (Id.). On October 12, 2005, Walden signed a weekly room rental agreement ("the agreement") for Apartment C, 730 Patton[2] Street, in the City of Danville. (App. 146-147; see also Commonwealth's Exhibit 5, App. 258). The agreement stated the room was being rented to both Whitehead and Walden. (See Commonwealth's Exhibit 5, App. 258). Indeed, Mack Eaton, Sr., the maintenance man for the apartment complex, testified that he had seen Whitehead at the apartment "off and on everyday" prior to her arrest in December, 2005. (App. 148). In addition, Eaton stated that his job duties

[2] Patton Street is sometimes referred to as "Paxton" Street in the record.

included collecting rent and that he had collected the $100 weekly rent directly from Whitehead "one or two times" during the couple's brief tenancy. (App. 147, 150-151).

On December 22, 2005, Danville Police officers went to Apartment C, to serve warrants on Whitehead and Walden. (App. 123, 132). The officers also had information that there was property in the apartment that had been reported stolen from vehicles in Danville. (App. 132). After eventually gaining entry by force,[3] the officers found Walden coming out of a bathroom where a stolen checkbook was on fire. (App. 123, 124, 133, 137, 139). The officers subsequently found Whitehead hiding in an alcove on a ledge over the den. (App. 124-25).

Danville Police Detectives Pace and Austin testified that when they entered the apartment, numerous CDs and cell phones were in plain view on chairs and the couch, and on top of the dressers. A laptop computer was in plain view in the living room. (App. 126, 133, 136-37, 140-41, 143). They also found plastic bags, gym bags and

[3]Whitehead's counsel referred to a motion to suppress hearing for co-defendant Walden regarding the search warrant. While that hearing is not a part of the record in this case, presumably the motion was overruled since the parties stipulated that evidence introduced at that hearing could be used in this case. (App. 123).

four or five book bags, all full of stolen items, in a closet. In addition, they found charge cards, checks, binoculars, cell phones, CDs, and pocketbooks in the dresser drawers. (App. 140, 144). There was no evidence that any stolen property was recovered from outside of the apartment.

Photographs of the stolen items as well as photographs of some of the victims holding their recovered property were admitted into evidence. (App. 134-138; see also Commonwealth's Exhibits 3 and 4, App. 234-57).

At trial, Whitehead stipulated that there were 40 separate offenses of breaking and entering in which property was stolen from vehicles that accounted for the 40 separate indictments against her for receiving stolen property. In lieu of calling all 40 victims to testify, Whitehead stipulated that their testimony would be that their property was stolen from their respective vehicles. She also stipulated to the dates of the thefts and the victims' subsequent identifications of their property at the police station. (App. 141-42, 152-53).

On December 27, 2005, Danville Police Corporal Steve Richardson interviewed Whitehead at the police station about a murder case he was investigating. (App. 77, 128). After discussing

the murder investigation, Whitehead voluntarily gave a statement[4] to Richardson about Walden's activities. (App. 80). She identified various items depicted in the police photographs as property Walden had stolen out of vehicles and brought back to the apartment. Whitehead was able to specify when some of the stolen items were brought into their residence. (App. 81, 128-30; see also Commonwealth's Exhibit 3, App. 234-41).

In her statement to Richardson,[5] Whitehead admitted that she knew Walden was stealing from cars; she recalled the first night Walden went out to steal after they had gotten out of jail; she knew Walden was breaking into cars with a person named "Squeeky" and how often they did it; she knew Walden was bringing stolen property, including money, into their apartment; and she was aware that the money stolen and the money gained from the stolen property was

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[4] At a pre-trial hearing on the motion to suppress Whitehead's statement, Whitehead's counsel conceded that the statement was admissible. (App. 108-09).

[5] Richardson testified that Whitehead sat beside him and watched him type her statement to ensure it was accurate. Whitehead read the completed statement, and Richardson also read it aloud to her. Richardson witnessed Whitehead initial pages one through three of the statement and sign her name at the bottom on page four. (App. 81-82; see also Commonwealth' Exhibit 3, App. 234-37).

being used to support her and their daughter. (See Commonwealth's Exhibit 3, App. 234-37).

Whitehead told Detective Richardson that she knew Walden was stealing property from cars because he told her he was doing it; he simply never told her from which cars he had stolen the property. (Commonwealth's Exhibit 3, App. 235). Whitehead said that up until the time they were arrested, Walden and Squeeky "went out going in cars a few times a week . . . ." (Id.).

Further, Whitehead stated,

> I knew that Jamil stealing was wrong. I used to fuss and yell at Jamil about stealing and bringing the stuff into the house, but it seemed like the only way we could get by. My only concern is taking care of and being with my daughter, and that's the only reason I allowed this to go on in my house.

Id. Finally, Whitehead concluded by telling Detective Richardson,

> I only became involved in this and allowed this to happen to make sure my daughter was taken care of. I sincerely regret that my personal situation got to the point I had to allow these things to happen.

(Commonwealth's Exhibit 3, App. 237).

At trial, however, Whitehead recanted her statement to Richardson, which was given a mere five days after her arrest, and testified on direct examination that she did not know Walden was

going into cars to steal items. (App. 175). Rather, Whitehead claimed that all she knew was that Walden came back to their apartment "with a bunch of stuff. Sometimes he come (sic) back with money." (App. 175). However, Whitehead conceded on cross-examination that she knew the property did not belong to Walden. (App. 177-78).

Whitehead also maintained that the police officers had lied when they testified there was stolen property in plain sight throughout the apartment when they entered it on December 22, 2005. (App. 179).

Walden, a convicted felon, testified on Whitehead's behalf and stated he and Whitehead never discussed the fact that he was breaking into cars for nearly six months; they never talked about the stolen property he brought into the apartment during that time; and they never discussed the fact that he was stealing to pay rent and bills to support them and their child. (App. 162-68).

Travis Whitehead, the defendant's brother, testified he had known Walden for several years. Mr. Whitehead recalled an occasion when he was visiting the couple at their apartment one evening, during which Walden left for 35 or 40 minutes and came

home with a book bag "full of stuff." (App. 171). Walden said he was going back out and asked Mr. Whitehead to join him, but Mr. Whitehead declined. Id. On another occasion when he was at the couple's residence, Mr. Whitehead heard his sister arguing with Walden and telling Walden that if the police showed up, she would tell the police that it was Walden's "stuff." (App. 172).

B. REVOCATION OF PROBATION

For her previous 13 convictions for receiving stolen property, Whitehead had been sentenced to 18 years, all suspended with credit for approximately seven months served while awaiting trial, conditioned on three years supervised probation, making restitution and five years good behavior from the date of release from probation.

At the revocation hearing held on June 26, 2006, Whitehead pled guilty to the charge that she had violated the terms of her probation. (App. 212-13, 217). The court revoked the remainder of Whitehead's suspended sentence, and then re-suspended all but five years of it. (App. 48-51, 224-25).

ARGUMENT

I. THE COURT OF APPEALS CORRECTLY FOUND THE EVIDENCE WAS SUFFICIENT TO PROVE WHITEHEAD WAS GUILTY OF 32 COUNTS OF RECEIVING STOLEN PROPERTY, FOURTEENTH OR SUBSEQUENT OFFENSE, IN VIOLATION OF CODE §§ 18.2-108 AND 18.2-104.

STANDARD OF REVIEW

Where the sufficiency of the evidence is challenged on appeal, this Court considers all the evidence and any reasonable inferences fairly deducible therefrom in the light most favorable to the Commonwealth, the prevailing party below. Molina v. Commonwealth, 272 Va. 666, 671, 636 S.E.2d 470, 473 (2006) (citations omitted). Consequently, "this court must 'discard the evidence of the accused in conflict with that of the Commonwealth, and regard as true all the credible evidence favorable to the Commonwealth and *all fair inferences to be drawn therefrom*.'" Parks v. Commonwealth, 221 Va. 492, 498, 270 S.E.2d 755, 759 (1980) (quoting Wright v. Commonwealth, 196 Va. 132, 137, 82 S.E.2d 603, 606 (1954) (emphasis added by Parks)). This Court must affirm the conviction "unless it is plainly wrong or without evidence to support it."

Shackleford v. Commonwealth, 262 Va. 196, 209, 547 S.E.2d 899, 906 (2001).

This standard "gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." Jackson v. Virginia, 443 U.S. 307, 319 (1979). Thus, this Court does not "ask itself whether *it* believes that the evidence at the trial established guilt beyond a reasonable doubt." Id. at 318-19 (emphasis in original and citation omitted). Rather, this Court ask only whether "*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Maxwell v. Commonwealth, 275 Va. 437, 442, 657 S.E.2d 499, 502 (2008) (quoting Jackson, 443 U.S. at 319) (emphasis in original). Recognizing these principles, an appellate court is "not permitted to reweigh the evidence" Nusbaum v. Berlin, 273 Va. 385, 408, 641 S.E.2d 494, 507 (2007), since an appellate court does not have the authority "to preside *de novo* over a second trial." Haskins v. Commonwealth, 44 Va. App. 1, 11, 602 S.E.2d 402, 407 (2004).

So viewed, the record establishes that the Court of Appeals correctly found the evidence was sufficient to support the trial court's

finding that Whitehead was guilty of 32 counts of receiving stolen property.

ANALYSIS

To convict Whitehead of receiving stolen property in violation of Code § 18.2-108, the Commonwealth had to prove the property was previously stolen by another person and then received by Whitehead with knowledge of the theft and a dishonest intent. See, e.g., Shaver v. Commonwealth, 30 Va. App. 789, 800-01, 520 S.E.2d 393, 399 (1999). "The statute defines the offense of larceny in the disjunctive. Any person who buys *or* receives *or* aids in concealing property knowing that it was the fruit of a theft is guilty of constructive larceny." Spitzer v. Commonwealth, 233 Va. 7, 9, 353 S.E.2d 711, 713 (1987) (emphasis in original). Thus, where "the evidence shows concealment of stolen property, the Commonwealth is not required to prove that the accused was the thief or that he received that property from either the thief or 'another person.'" Id. (citing Parish v. Commonwealth, 206 Va. 627, 145 S.E.2d 192 (1965) (*cert. denied*, 384 U.S. 942 (1966)).

"Knowledge that the goods received were stolen property is an essential element of the crime." Lewis v. Commonwealth, 225 Va.

497, 503, 303 S.E.2d 890, 893 (1983). In the absence of an admission of guilty knowledge, it "necessarily must be shown by circumstantial evidence." Id. Moreover, guilty knowledge "is sufficiently shown if the circumstances proven are such as must have made or caused the recipient of stolen goods to believe they were stolen." Reaves v. Commonwealth, 192 Va. 443, 451, 65 S.E.2d 559, 564 (1951).

Here, the Court of Appeals correctly held that the evidence was sufficient and supported the trial court's finding that Whitehead knew that Walden brought stolen property into their apartment and that she either received the stolen property from Walden or aided in concealing it. (App. 62).

As Whitehead stipulated and Walden testified, there is no question that the property in question was stolen by Walden. (App. 142, 162). Likewise, the evidence clearly established, as the trial court found, that Whitehead "knew, as her written statement [to the police] indicates, what Mr. Walden was doing . . . ." and that "she did allow herself to receive the benefits of those actions knowing the providence of these items was other people's property." (App. 188-89). This finding is clearly supported by the evidence admitted at

trial, including the photographs of the apartment and the stolen property, Travis Whitehead's testimony and Whitehead's statement to the police stating what she knew and when she knew it.

The photographs of the stolen property illustrate the extent of Walden's crime spree. As illustrated, Officers Pace and Austin recovered bags and backpacks that they stated were full of stolen property. The closet was stuffed full of these bags. In addition, the dresser drawers were full of stolen credit cards, checks, phones, etc. As the trial court found, anyone living in the same abode could not be oblivious to all of the stolen property found within the apartment, particularly since some of the property had the name of the victim on it (i.e., stolen credit cards, checkbooks, driver's license, etc.). (App. 188-89). Cf. Wilson v. Commonwealth, 272 Va. 19, 27-28, 630 S.E.2d 326, 330-31 (2006) (reasonable for the trier of fact to infer that the defendant was aware of the character and presence of the drugs found in the living room, which he had to walk through to get to the kitchen where the police found him, such that the evidence was sufficient to prove constructive possession).

The number of cell phones alone that the police found as depicted in the photographs spoke for itself. The photographs also

showed numerous CD players. Officers Pace and Austin testified that these items were lying in plain view on the sofa, chairs, and the tops of dressers. There was also a laptop computer in plain view in the living room. Although Whitehead and Walden testified that there was not any stolen property in plain view when the officers entered, the trial court, as the fact finder, was free to reject their testimony and find the testimony of the officers credible. Commonwealth v. Presley, 256 Va. 465, 470, 507 S.E.2d 72, 75 (1998). Moreover, the trial court could conclude that both were lying, which could be considered as evidence of guilt. See Speight v. Commonwealth, 4 Va. App. 83, 89, 354 S.E.2d 95, 99 (1987) (*en banc*); see also Covil v. Commonwealth, 268 Va. 692, 696, 604 S.E.2d 79, 82 (2004) (a false account is a circumstance that may be considered as evidence of guilty knowledge).

The trial court properly weighed Whitehead's prior statement to the police (Commonwealth's Exhibit 3) and her testimony at trial and found that Whitehead knew, beyond any reasonable doubt, that Walden was bringing the property described above into the apartment that had been taken from cars that he (and Squeaky) were breaking into. Further, the defendant's statement to the police supports the

trial court's finding that she was in receipt of the stolen property and was in fact relying on it with dishonest intent to support her and their child.

In her statement, Whitehead said the couple needed money to move out of Walden's mother's apartment, and she recalled the first time that Walden left on his bicycle in an attempt to get money. Walden was not working, and Whitehead "figured Jamil was going to do something wrong to get money." (App. 234). Walden did in fact return with money. Id. Thereafter, the couple moved to their own apartment, and they "were struggling to pay the bills." Id. "That was when . . . Jamil and Squeeky started talking about going out and hitting cars to get money." (App. 234-35). Whitehead said Walden and Squeeky were going out "hitting" cars a few times a week up until she and Walden were arrested in December, 2005. Whitehead said she knew it was wrong, but she justified it because it was "the only way [they] could get by." (App. 235). Whitehead said, "[T]hat's the only reason ***I allowed this to go on in my house***." Id. (emphasis added). "I only ***became involved in this and allowed this to happen*** to make sure my daughter was taken care of. I sincerely

regret that my personal situation got to the point ***I had to allow these things to happen***." (App. 237) (emphasis added).

Thus, contrary to her assertion on brief that at best the evidence showed only that at some point in time she became suspicious that Walden was stealing, her statement, which the trial court found credible, showed otherwise. Indeed, not only did it prove that Whitehead knew the property was stolen, but it also proved that she knew when the thefts had begun and the rate at which they continued.

In light of her detailed statement to the police, Whitehead's testimony at trial that she did not have specific knowledge of what Walden was doing rang hollow, and the trial court properly rejected it. Indeed, the trial court was entitled to find Whitehead's testimony false, and that she lied in order to conceal her guilt. See Dowden v. Commonwealth, 260 Va. 459, 469, 536 S.E.2d 437, 442 (2000) ; see also Covil, 268 Va. at 696, 604 S.E.2d at 82 ("[A] fact-finder, having rejected a defendant's attempted explanation as untrue, may draw the reasonable inference that his explanation was made falsely in an effort to conceal his guilt."). In fact, upon finding that Whitehead gave

false testimony, the court could infer the requisite guilty knowledge. Speight, 4 Va. App. at 89, 354 S.E.2d at 99.

Having rejected Whitehead's testimony that she had no direct knowledge that Walden was bringing stolen property home, the trial court found that it simply defied credulity to believe that someone could live in that apartment and be unaware that he or she was surrounded by stolen property. Cf. Wilson, 272 Va. at 27-28, 630 S.E.2d at 330-31. This point is underscored by the fact that Whitehead told Detective Richardson that neither she nor Walden was employed, and they had no money and were struggling to pay the bills. (App. 234). In other words, knowing that they did not have any money to purchase the property that Walden was bringing home, circumstances were such that, even if Whitehead had not admitted that she knew Walden was bringing stolen property home, the trier of fact could have reasonably found that Whitehead must have known or believed the property was stolen. Reaves, 192 Va. at 451, 65 S.E.2d at 564. Indeed, even Whitehead's brother knew that Walden was bringing stolen property into the home.

Nevertheless, Whitehead challenges the Commonwealth's proof, because she only identified 13 items from the pictures attached

to Commonwealth's Exhibit 3 as being stolen. Not only does the Commonwealth dispute that contention (Whitehead accounted for items in the singular that were identified in the plural), but it is clear that the pictures attached to Commonwealth's Exhibit 3 from which Whitehead identified some of the property as stolen, when compared to the photographs in Commonwealth's Exhibit 4, were not a complete representation of all of the stolen property. For example, it is clear that Detective Richardson and the defendant did not discuss the stolen property that bore the victims' names on it which is displayed in the pictures in Commonwealth's Exhibit 4.

In any event, Whitehead stipulated that all of the property listed in the indictments against her, which was recovered from inside the apartment, had been stolen. Moreover, there is no question that Walden had stolen it. Having admittedly identified at least 13 items as stolen, Whitehead cannot now say she had no knowledge that those particular items were in fact stolen. With regard to the remaining items, the record shows that even if Whitehead did not specifically point out to Richardson that those items were stolen, circumstantial evidence established that she knew or must have believed they were stolen as the trial court correctly found.

Whitehead also argues that she did not agree with Walden's actions and did not want any involvement in what he was doing. However, the fact that Whitehead may have disapproved of Walden's actions only accentuates the fact that she knew he was bringing stolen property into their home. She may not have been happy with the situation, but she allowed it to continue because in her own words, "it seemed like the only way [they] could get by." (Commonwealth's Exhibit 3, p. 2, App. 235).

Moreover, the trial court properly rejected as incredible Walden's testimony that he never told Whitehead anything about what he was doing. Indeed, Walden's testimony directly contradicted what Whitehead herself said about what she knew and the discussions she and Walden had had about Walden's activities. Whitehead's statements of fact are binding on her, and she cannot rise above her own testimony. Massie v. Firmstone, 134 Va. 450, 462, 114 S.E. 652, 656 (1922).

Not only does the evidence support the trial court's finding that Whitehead knew the property was stolen, but it also supports the finding that she received it with dishonest intent.

This is not a situation wherein Whitehead was just an innocent roommate or "guest" in the apartment, as she contends on appeal. Rather, Whitehead was actively participating in receiving stolen property in order to pay her way. She admitted as much no less than three times in her signed, voluntary statement to Officer Richardson. (See Commonwealth's Exhibit 3, App. 234-41).

Moreover, Whitehead's name was listed as a tenant entitled to a room, and, therefore, she had a possessory interest in the apartment she and Walden were living in together as boyfriend and girlfriend with their baby daughter. Indeed, in her statement to Richardson, Whitehead referred to the residence as "my house" several times. The testimony of Mr. Eaton also established that, unlike a guest, Whitehead was living at the apartment every day up until the time of her arrest. Mr. Eaton even collected the weekly rent directly from Whitehead on at least one occasion that he could recall, possibly two. In other words, Whitehead paid Mr. Eaton for the weekly rent with money she knew was not lawfully hers or Walden's money.

Thus, not only did the evidence prove that Whitehead knew the property Walden brought into their apartment was stolen, but it also

proved that she was in receipt of the stolen property with the dishonest intent of using it to support herself. See People ex rel. Briggs v. Hanley, 226 N.Y. 453, 123 N.E. 663 (1919) (although the defendant did not physically receive the very property that was stolen, she was guilty of receiving stolen property where she received monetary proceeds she knew her boyfriend had obtained by using stolen stock certificates as collateral to obtain several loans).

At trial, Whitehead said she did not remove herself from the situation because she had nowhere to go (again evidencing her knowledge that the property was stolen), except her sister's house in North Carolina. Her probation officer though, told her she could not go. However, on cross-examination, Whitehead admitted that she never explained to the probation officer the dire circumstances she was allegedly in and that she was worried because Walden was bringing stolen property into their home. (App. 177). Likewise, in her statement to Officer Richardson, Whitehead never mentioned that she wanted to leave and remove herself from the situation. Instead, she stated that Walden's stealing was the only way the couple could keep a roof over their heads, which was necessary so that social services would not take her child. As the trier of fact, the trial court

correctly resolved the conflicting evidence in favor of the Commonwealth and found that Whitehead did nothing to remove herself from the situation. Rather, she affirmed it and knowingly received stolen property with dishonest intent by continuing to allow the fruits of Walden's crimes to be used to support her.

II. THE COURT OF APPEALS CORRECTLY FOUND THE EVIDENCE WAS SUFFICIENT TO PROVE WHITEHEAD AIDED IN CONCEALING STOLEN PROPERTY.

Whitehead contends the Court of Appeals erred by finding the evidence was sufficient to prove that she aided in concealing the property stolen by Walden.[6] Her argument is without merit.

As discussed above, the trial court properly found that Whitehead knew the property Walden was bringing into their home was stolen. The credible evidence established that some of it was in plain view while some was stored in bags placed in the closet. Other

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[6] The Commonwealth assigned as cross-error the Court of Appeals' failure to dismiss under Rule 5A:18 Whitehead's claim that the evidence was insufficient to prove she aided in concealing stolen property. This Court rejected the assignment of cross-error. However, this Court should nevertheless apply Rule 5:25 and find that the defendant has failed to preserve this argument since it was not raised at trial. See Floyd v. Commonwealth, 219 Va. 575, 584, 249 S.E.2d 171, 176 (1978) (A sufficiency argument at trial does not preserve a related but distinct sufficiency claim on appeal.).

items were simply stored in drawers. Regardless of whether it was in plain sight or in bags or drawers, the evidence established that Whitehead knew Walden had brought the stolen property into their home, and she knowingly aided in concealing it.

Whitehead argues that she was not guilty of aiding in concealing the stolen items because there was no evidence that she physically touched the items or hid them.

While there may not have been evidence that Whitehead physically touched the property and actively hid it, the evidence was that she knew it was there and aided in concealing it. Indeed, at the very least, Whitehead, knowing that Walden had stolen of all the property concealed throughout the apartment she shared with him, made no attempt to return the items to the rightful owners (some property had names, e.g., credit cards, check books, etc.) or call the police. Rather, by her own admission, she "became involved in this and allowed this to happen" in order to keep a roof over her head so that social services would not take her child away. (App. 237). Regardless of her reason for aiding in concealing the stolen property, it does not alter the fact that she knowingly aided in concealing

property belonging to another with the dishonest intent of using it to support her and her family.

III. THE COURT OF APPEALS DID NOT ERR BY FINDING THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN FINDING REASONABLE CAUSE TO FIND WHITEHEAD VIOLATED PROBATION.

Whitehead argues that the Court of Appeals erred in ruling that the trial court did not abuse its discretion in finding reasonable cause to violate. However, the Court of Appeals never reached the issue of abuse of discretion. (App. 63).

At the revocation proceeding, Whitehead pled guilty to the charge that she violated her probation. (App. 212-13, 217). On appeal in the Court of Appeals, Whitehead argued that if the court affirmed all 32 convictions, then the trial court's consideration of those convictions was proper. (App. 63).

Accordingly, since the Court of Appeals affirmed Whitehead's 32 convictions, it did not reach the issue of whether the trial court abused its discretion in revoking her probation. (App. 63). Thus, contrary to Whitehead's assignment of error, the Court of Appeals could not have

erred as alleged since it did not reach the issue of whether the trial court abused its discretion in finding reasonable cause to revoke and impose an active sentence.

Given the posture of the appeal as stated by Whitehead, the Court of Appeals correctly affirmed the revocation of Whitehead's probation since it affirmed the 32 convictions for receiving stolen property. In any event, the trial court did not abuse its discretion.

First, Whitehead admitted that she was guilty of violating her probation. In addition, her attorney explained to the trial court that one reason[7] the police went to the couple's apartment on December 22, 2005, was to serve a capias on Whitehead,[8] to show cause for failure to pay restitution for the March 29, 2005 convictions for which she was on probation. (App. 219-20). At trial, Whitehead testified that she was also wanted for failure to pay fines, failure to appear, and assault and battery.[9] (App. 175). Whitehead also lost contact with her probation officer, failed to report that she moved, and failed to report her arrest on December 22, 2005, within three days as

[7] The police also had information that stolen property was in the apartment.
[8] The police were also serving a capias on Walden.
[9] Whitehead knew she was wanted for these offenses after seeing coverage about them on the "Wanted Channel" on T.V. (App. 175-76).

required. (App. 212, 214-16; see also Commonwealth's Exhibit B, App. 261-62).

In other words, for numerous reasons, Whitehead plainly was in violation of her probation and her probation could be revoked for any of those reasons. See Holden v. Commonwealth, 27 Va. App. 38, 41, 44, 497 S.E.2d 492, 493, 495 (1998) (court has wide discretion under Virginia Code § 19.2-306 in determining sufficiency of the cause for revoking the suspension, and a suspended sentence may be revoked for "substantial misconduct not involving violation of law."); see also Keselica v. Commonwealth, 34 Va. App. 31, 35, 537 S.E.2d 611, 613 (2000) (a trial court has broad discretion to revoke a suspended sentence and probation, and its findings of fact and judgment will not be disturbed on appeal unless there is a clear showing of abuse and discretion) (citations omitted).

Unquestionably, Whitehead violated several terms of her probation, and she did not present any mitigating factors. Thus, taking into account Whitehead's guilty plea and the facts presented at the revocation hearing, the record establishes abundant cause to revoke the suspended sentence.

CONCLUSION

The Court of Appeals correctly held that evidence supported the trial court's finding that Whitehead knew the property Walden brought into their apartment was stolen and that "a rational trier of fact could conclude that appellant either received stolen property from Walden *or* aided in concealing property he stole." (App. 62) (emphasis in original). Therefore, this Court should affirm the Court of Appeals' judgment affirming Whitehead's 32 convictions for receiving stolen property.

In addition, the record demonstrates that the trial court did not abuse its discretion in revoking Whitehead's probation. Accordingly, this Court should affirm the judgment of the Court of Appeals upholding the revocation of the defendant's suspended sentences.

Respectfully submitted,

COMMONWEALTH OF VIRGINIA
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CERTIFICATE OF TRANSMISSION AND SERVICE

On March 16, 2009, the required copies of this Brief were hand-filed with this Court, and three copies were mailed to Patricia P. Nagal, Assistant Public Defender, Office of the Appellate Defender, 701 East Franklin Street, Suite 1001, Richmond, Virginia 23219, counsel for the appellant. An electronic copy of this brief has also been filed.

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