SUPREME COURT NO. 102813-0

NO. 38868-9-III

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

CHASE HANSEN,

Petitioner.

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

The Honorable Candace Hooper, Judge

CORRECTED PETITION FOR REVIEW

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RULES, STATUTES AND OTHER AUTHORITIES

A. IDENTITY OF PETITIONER

Petitioner Chase Hansen, the appellant below, asks this Court to review the decision referred to in Section B.

B. COURT OF APPEALS DECISION

Mr. Hansen requests review of the Court of Appeal's unpublished decision in State v. Hansen issued January 18, 2024.[1]

C. ISSUE PRESENTED FOR REVIEW

When charging a person with delivery of a controlled substance, must the State allege as an essential element that the accused had knowledge that the substance delivered was a controlled substance rather than mere knowledge he was delivering something that turned out to be a controlled substance?

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[1] A copy of this decision is attached as an appendix.

E. RELEVANT FACTS

On April 10, 2017, the Kittitas County prosecutor charged Mr. Hansen with three counts of delivery of a controlled substance. CP 5-6. The State charged Mr. Hanson in all three counts as follows:

> He, the said, CHASE TRISTAN HANSEN, in the State of Washington, on or about [relevant date], did knowingly manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance, to wit: Methamphetamine; thereby committing the felony crime of DELIVERY OF A CONTROLLED SUBSTANCE, contrary to Revised Code of Washington 69.50.401(1) and (2)(b).

CP 59-60. Mr. Hanson appealed, challenging this language as insufficient. Brief of Appellant (BOA) at 4-12; Reply Brief of Appellant at 2-6. The Court of Appeals affirmed his convictions. Appendix at 4-8.

F. ARGUMENT IN SUPPORT OF REVIEW

THERE IS A SIGNIFICANT CONSTITUTIONAL QUESTION AS TO WHETHER AN INFORMATION CHARGING DELIVERY OF A CONTROLLED SUBSTANCE IS SUFFICIENT IF IT DOES NOT SPECIFICALLY ALLEGE THE DEFENDANT KNOWINGLY DELIVERY A SUBSTANCE AND THAT HE KNEW IT WAS A CONTROLLED SUBSTANCE.

A charging document is constitutionally defective when it fails to include all "essential elements" of the crime. State v. Vangerpen, 125 Wn.2d 782, 787, 888 P.2d 1177 (1995); Hamling v. United States, 418 U.S. 87, 117, 94 S. Ct. 2887, 41 L. Ed. 2d 590 (1974); U.S. Const. Amend. VI; Wash. Const. Art. I, § 22. "'An essential element is one whose specification is necessary to establish the very illegality of the behavior charged.'" State v. Zillyette, 178 Wn.2d 153, 158, 307 P.3d 712 (2013) (internal quotation marks omitted) (citing State v. Ward, 148 Wn.2d 803, 811, 64 P.3d 640 (2003)). It does not matter if the essential element is expressed in the criminal statute or

recognized in caselaw. State v. Johnson, 119 Wn.2d 143, 146, 829 P.2d 1078 (1992). It must be alleged in the information. Id.

"A challenge to the sufficiency of a charging document is of constitutional magnitude and may be raised for the first time on appeal." State v. Gonzalez-Lopez, 132 Wn. App. 622, 626-27, 132 P.3d 1128 (2006). Where a charging document is challenged for the first time on appeal, courts use a liberal standard of review consisting of a two-pronged inquiry: "(1) do the necessary facts appear in any form, or by fair construction can they be found, in the charging document; and, if so, (2) can the defendant show that he or she was nonetheless actually prejudiced by the inartful language which caused a lack of notice?" State v. Kjorsvik, 117 Wn.2d 93, 102, 812 P.2d 86 (1991). Review is de novo. State v. Williams, 162 Wn.2d 177, 182, 170 P.3d 30 (2007). If the document cannot be construed to give notice of or to contain the essential elements of a crime, the most liberal reading cannot cure it. State v. Moavenzadeh,

135 Wn.2d 359, 363, 956 P.2d 1097 (1998); State v. Briggs, 18 Wn. App. 2d 544, 549, 492 P.3d 218 (2021).

Mr. Hanson was charged with delivering a controlled substance. The essential elements of this offense are: (1) delivery of a controlled substance, and (2) knowledge that the substance delivered was a controlled substance. State v. DeVries, 149 Wn.2d 842, 849–50, 72 P.3d 748 (2003). Knowledge of the specific make-up of a substance itself is not enough to satisfy these elements; the State must prove that the defendant knew at the time that the substance delivered was a controlled substance. Id. at 853; Johnson, 119 Wn.2d at 147. This Court has explained the reasoning behind the inclusion of this element.

> [W]ithout the mental element of knowledge, even a postal carrier would be guilty of the crime were he innocently to deliver a package which in fact contained a forbidden narcotic. Such a result is not intended by the legislature. Accordingly, absent express legislative language to the contrary, we find in the context of this statute, its history and language, that guilty knowledge is intrinsic to the definition of the crime itself....

Johnson, 119 Wn.2d at 146 (citing State v. Boyer, 91 Wn.2d 342, 344, 588 P.2d 1151 (1979)).

As the charging language demonstrates, while the State alleged Mr. Hansen knowingly delivered the substance, this only satisfies the first essential element of the offense. CP 59-60. When it comes to mens rea, the State cannot conflate knowledge as alleged to one element (i.e., delivery) with the knowledge requirement for a different element (i.e., illegality of the substance). State v. Simon, 120 Wn.2d 196, 198–99, 840 P.2d 172 (1992) (reversing a conviction of promoting prostitution where the information alleged knowing promotion but did not sufficiently allege knowledge of a person's age).

Nowhere does the information allege Mr. Hanson knew that the substance he delivered was a controlled substance. This is a fatal flaw. See, e.g., Id., State v. Moavenzadeh, 135 Wn.2d 359, 361, 363-64, 956 P.2d 1097 (1998) (conviction reversed because information omitted element that defendant

"knowingly" possessed stolen property); State v. Khlee, 106 Wn. App. 21, 23-25, 22 P.3d 1264 (2001) (reversing where information alleged knowing possession of a stolen gun but did not allege the defendant had knowledge the gun was stolen).

The requirement that the State specifically allege the element of guilty knowledge as to the controlled nature of the delivered substance is not a novel concept. Indeed, one need look no further than the WPICs. The Supreme Court "has specifically referred prosecutors to the criminal pattern instructions for the purpose of identifying, in many cases, the essential elements that must be included in a charging document." State v. Studd, 137 Wn.2d 533, 554, 973 P.2d 1049 (1999) (Madsen, J., concurring). It has explained "[i]mposing the responsibility to include all essential elements of a crime on the prosecution should not prove unduly burdensome since the 'to convict' instructions found in the Washington Pattern Jury Instructions—Criminal (WPIC) delineate the elements of the most common crimes." Kjorsvik, 117 Wn.2d at 102 n.13.

The pattern to-convict instruction for delivery of a controlled substance requires the prosecution to prove the following elements:

> (1) That on or about (date), the defendant delivered (name of controlled substance);
>
> (2) That the defendant knew that the substance delivered was [a controlled substance] [(name of controlled substance)]; and
>
> (3) That this act occurred in the State of Washington.

WPIC 50.06 (emphasis added). This unambiguously notifies the State that it must specifically allege knowledge as it relates to the illegality of the substance delivered. In other words, any modifier as to knowledge must be linked directly to the controlled substance (i.e., the second element), not merely the act of delivery (i.e., the first element). See, Briggs, 18 Wn. App. 2d at 552-53.

The charging language in the information in Mr. Hanson's case fails to properly set forth the knowledge element and cannot be reasonably read to allege Mr. Hanson knew the substance being delivered was a controlled substance. While a

charging document need not include the exact words of a statutory element, this information did not contain any phrases or adverbs that might reasonably be construed as adequately informing Mr. Hanson that the State needed to prove he knew the substance being delivered was a controlled substance.

Specifically, the "to wit: Methamphetamine" language does not help the State because it is nothing more than an allegation that the controlled substance that was delivered was in fact methamphetamine. The phrase "TO WIT" means "That is to say; namely." Black's Law Dictionary (11th ed. 2019). As used here, the State merely charged Mr. Hanson with knowingly delivering a substance that is methamphetamine – however it did not allege that Mr. Hanson knew that the substance he was delivering was either a controlled substance or methamphetamine. Hence, a fair and commonsense reading of the language used in the information does not impart the necessary notice to Mr. Hansen regarding the guilty knowledge

element. See, e.g., Simon, 120 Wn.2d at 198–99; Khlee, 106 Wn. App. at 23-25.

The Court of Appeals concludes that the State merely has to generally allege that one knowingly delivered a controlled substance, and it need not specifically allege that the defendant knew the substance being delivered was a controlled substance. Appendix at 7-8. However, the Court of Appeals' interpretation of the language fails to take into account that the placement of the knowledge modifier is key when determining whether the essential elements of a crime have been properly charged. For example, in State v. Briggs, Division One of this Court reversed where the amended information did not adequately allege the statutory element of knowledge when charging the defendant with willful violation of a court order. Briggs, 18 Wn. App. 2d at 551 In that case, the State alleged:

> That defendant, on or about the 18th day of May, 2019, with knowledge that he was the subject of a ... no contact order pursuant to [chapter 10.99 RCW or other specified statutes] issued by the Superior Court of Snohomish County, under cause

> no. 14-1-00408-1, on August 11, 2014, protecting [F.S.], and said order being valid and in effect, did violate the order and the defendant had at least two prior convictions for violating the provisions of an order issued under [specified statutes]; proscribed by RCW 26.50.110(5), a felony ...

Id. (emphasis added).

The relevant law provides: "Willful violation of a court order issued under this section is punishable under RCW 26.50.110." RCW 10.99.050(2)(a) (emphasis added). RCW 26.50.110(1)(a) provides in relevant part: "Whenever an order is granted under . . . chapter . . . 10.99 . . . and the respondent or person to be restrained knows of the order, a violation of any of the following provisions of the order is a gross misdemeanor, except as provided in subsections (4) and (5) of this section[.]"[2]

In Briggs, Division One explained that under RCW 10.99.050, a person commits the offense of violating a no-

[2] Section 4 elevates the offense to a felony where there is an assault. RCW 26.50.110(4). Section 5 elevates the offense to a felony where "the offender has at least two previous convictions for violating the provisions of an order issued under . . . chapter . . . 10.99." RCW 26.50.110(5).

contact order when he or she willfully has contact with another, knowing that a no-contact order prohibits the contact. State v. Clowes, 104 Wn. App. 935, 943–44, 18 P.3d 596 (2001), disapproved on other grounds, State v. Nonog, 169 Wn.2d 220, 237 P.3d 250 (2010). The offense has three essential elements: "the willful contact with another; the prohibition of such contact by a valid no-contact order; and the defendant's knowledge of the no-contact order." State v. Washington, 135 Wn. App. 42, 49, 143 P.3d 606 (2006) (emphasis added) Proof that a person acted "knowingly" is proof that the person acted "willfully." Clowes, 104 Wn. App. at 944 (citing RCW 9A.08.010(4)). Accidental or inadvertent contact will not sustain a conviction. State v. Sisemore, 114 Wn. App. 75, 78, 55 P.3d 1178 (2002).

The State argued in Briggs that, as stated in the information, the phrase "the defendant ... with knowledge that he was the subject of a protection order ... did violate the order" adequately alleged that Briggs knowingly violated the order. Briggs, 18 Wn.App.2d at 522. Division One disagreed,

explaining, "the State wrongly conflates knowledge of the NCO with knowingly violating the NCO." Id. The problem was that the knowledge modifier, due to its placement, did not convey that one must not only know they are the subject of a protection order, but one also must have knowingly violated the order.

Placement of a modifier is essential when properly alleging mens rea. Unfortunately, here the State alleged that Mr. Hansen knowingly delivered a controlled substance, but the charging language failed to allege that he knew the substance he was delivering was a controlled substance. BOA at 4-12. Given the misplacement of the knowledge modifier under this information in this case, a person could be found guilty of knowingly delivering what they believe is a gummy bear or an aspirin but which in fact turns out to contain a controlled substance. This would penalize the innocent conduct of the accused person who did not know, and had no reason to know, that they were delivering a controlled substance. This is

constitutionally unacceptable. See, State v. Blake, 197 Wn.2d 170, 195, 481 P.3d 521, 534 (2021).

If an information cannot be construed to give notice of or to contain in some manner the essential elements of a crime, the most liberal reading cannot cure it – it is constitutionally defective. State v. Campbell, 125 Wn.2d 797, 802, 888 P.2d 1185 (1995). The question here is whether the State must allege not just that the defendant knowingly delivered a substance that turned out to be methamphetamines, but must it also allege that the defendant knowing delivered a substance that he knew to be methamphetamines. Because this charging language may be used throughout Washington State with regard to a fairly common criminal charge, this is a constitutional question worthy of this Court's review under RAP 13.4(b)(3).

D. CONCLUSION

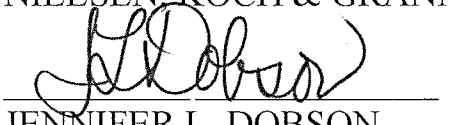
For the reasons stated above, petitioner respectfully asks this Court to grant review.

I certify that this document contains 2290 words excluding the parts exempted by RAP 18.17.

DATED this 19th day of February, 2024.

Respectfully submitted,

NIELSEN, KOCH & GRANNIS



JENNIFER L. DOBSON,
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APPENDIX

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The Court of Appeals
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CASE # 388689
State of Washington v. Chase Tristan Hansen
KITTITAS COUNTY SUPERIOR COURT No. 2010011519

Counsel:

Enclosed please find a copy of the opinion filed by the Court today.

A party need not file a motion for reconsideration as a prerequisite to discretionary review by the Supreme Court. RAP 13.3(b); 13.4(a). If a motion for reconsideration is filed, it should state with particularity the points of law or fact which the moving party contends the court has overlooked or misapprehended, together with a brief argument on the points raised. RAP 12.4(c). Motions for reconsideration which merely reargue the case should not be filed.

Motions for reconsideration, if any, must be filed within twenty (20) days after the filing of the opinion. Please see word count rule change at https://www.courts.wa.gov/wordcount, effective September 1, 2021. Please file the motion electronically through this court's e-filing portal or if in paper format, only the original motion need be filed. If no motion for reconsideration is filed, any petition for review to the Supreme Court must be filed in this court within thirty (30) days after the filing of this opinion. The motion for reconsideration and petition for review must be received (not mailed) on or before the dates they are due. RAP 18.5(c).

Sincerely,

Tristen Worthen
Clerk/Administrator

TLW:jab
Attachment

c: **E-mail**—Hon. L. Candace Hooper

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FILED
JANUARY 18, 2024
In the Office of the Clerk of Court
WA State Court of Appeals Division III

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

STATE OF WASHINGTON, Respondent/Cross Appellant, v. CHASE TRISTAN HANSEN, Appellant/Cross Respondent.	)))))))))	No. 38868-9-III UNPUBLISHED OPINION

COONEY, J. — Chase Hansen was charged by amended information with three counts of delivery of a controlled substance. He was later found guilty by a jury of all three counts. The jury also found beyond a reasonable doubt that the deliveries occurred within 1,000 feet of a school bus route stop and that the crimes constituted a major violation of the Uniform Controlled Substance Act (UCSA), chapter 69.50 RCW. Mr. Hansen was sentenced to 44 months of incarceration on each count and ordered to pay a $500 victim penalty assessment (VPA).

Mr. Hansen appeals arguing that the amended information was defective because it did not sufficiently allege that he knew the substance he delivered was a controlled substance. Mr. Hansen also contends there was insufficient evidence to support the jury's finding of a major violation of the UCSA aggravator. Finally, Mr. Hansen argues that due to a recent change in the law, the VPA should be struck from his judgment and

sentence. We hold the amended information was not defective, Mr. Hansen's challenge to the major violation of the UCSA aggravator finding is moot, and that the VPA be struck from the judgment and sentence.

BACKGROUND

On February 13, 2020, an individual working for the Ellensburg Police Department (EPD) purchased one-sixteenth of an ounce of methamphetamine from Mr. Hansen. The drug transaction was orchestrated by the EPD as a "controlled buy." Rep. of Proc. (RP) at 147-49, 195. A controlled buy is when a confidential informant, working with the police department, purchases drugs under controlled circumstances.

Later that same day, a second controlled buy yielded one-eighth of an ounce of methamphetamine from Mr. Hansen. A few months later, on May 28, the EPD coordinated a third controlled buy. This time, the EPD purchased a "20" of methamphetamine from Mr. Hansen. RP at 158-59. A 20 is an amount of methamphetamine weighing between one-half a gram to a gram.

On June 11, 2020, Mr. Hansen was charged by information with three counts of delivery of a controlled substance. The information was later amended to add school bus route stop enhancements to each count and major violation of the UCSA aggravator. For each count of delivery of a controlled substance, the amended information stated:

> He, the said, CHASE TRISTAN HANSEN, in the State of Washington, on or about February 13, 2020, did knowingly manufacture, deliver, or possess

> with intent to manufacture or deliver, a controlled substance, to wit: Methamphetamine; thereby committing the felony crime of DELIVERY OF A CONTROLLED SUBSTANCE, contrary to Revised Code of Washington 69 50 401(1) and (2)(b)

Clerk's Papers (CP) at 59. The language was the same for each count, aside from the date in count three, which was May 28, 2020. Before the trial court, Mr. Hansen never challenged the sufficiency of the amended information.

The case proceeded to a jury trial on March 15, 2022, and Mr. Hansen was ultimately found guilty of the three counts of delivery of a controlled substance. The jury also found beyond a reasonable doubt that each of the three deliveries occurred within 1,000 feet of a school bus route stop and that the crimes constituted a major violation of the UCSA.

At sentencing, the State requested an exceptional sentence of 84 months on each count. Through his attorney, Mr. Hansen urged the court to only impose the 24-month school bus route stop enhancement on each count. Ultimately, the court sentenced Mr. Hansen to 20 months on each count, the high end of the standard range. The court imposed a 24-month school bus route stop enhancement to each count to be served consecutively to the 20-month sentences. The judgment and sentence is void of any reference to the jury's major violation of the UCSA aggravator. The court also ordered a $500 VPA.

Mr. Hansen appeals.[1]

ANALYSIS

SUFFICIENCY OF THE AMENDED INFORMATION

Mr. Hansen argues the amended information was defective because it failed to allege that he knew the substance he delivered was a controlled substance.

An information is constitutionally defective if it fails to list the essential elements of the crime. *State v. Zillyette*, 178 Wn.2d 153, 158, 307 P.3d 712 (2013). An essential element is one whose specification is necessary to establish the illegality of the behavior charged. *Id.* Requiring the State to list the essential elements in the information protects the defendant's right to notice of the nature of the criminal accusation, guaranteed by the Sixth Amendment to the United States Constitution and article I, section 22 of the Washington State Constitution. *Id.* We review the constitutional adequacy of a charging document de novo. *State v. Goss*, 186 Wn.2d 372, 376, 378 P.3d 154 (2016).

A defendant may raise an objection to the charging document at any time, but there is a presumption in favor of the validity of the charging documents when the challenge is made for the first time on appeal. *State v. Canela*, 199 Wn.2d 321, 329, 505 P.3d 1166 (2022). When, as here, a charging document is challenged for the first time on

[1] The State cross appealed but declined to pursue its cross appeal and devotes no argument to it in its briefing. Resp't's Br. at 8 n.1.

appeal, we construe it liberally. *State v. McCarty*, 140 Wn.2d 420, 425, 998 P.2d 296 (2000). Under the liberal standard, this court has "considerable leeway to imply the necessary allegations from the language of the charging document." *State v. Kjorsvik*, 117 Wn.2d 93, 104, 812 P.2d 86 (1991).

We use a two-pronged test to resolve challenges to the sufficiency of the charging document: "(1) do the necessary facts appear in any form, or by fair construction can they be found, in the charging document; and, if so, (2) can the defendant show that he or she was nonetheless actually prejudiced by the inartful language which caused a lack of notice?" *Id.* at 105-06.

Under the first prong, we look solely to the face of the charging document. *Id.* at 106. "Words in a charging document are read as a whole, construed according to common sense, and include facts which are necessarily implied." *Id.* at 109. A charging document satisfies the first prong if it includes the essential elements of the offense even if it does not contain the exact statutory language. *State v. Hopper*, 118 Wn.2d 151, 156, 822 P.2d 775 (1992). "Even missing elements may be implied if the language supports such a result." *Id.* However, "[i]f the document cannot be construed to give notice of or to contain in some manner the essential elements of a crime, the most liberal reading cannot cure it." *State v. Campbell*, 125 Wn.2d 797, 802, 888 P.2d 1185 (1995).

If the necessary elements are not found or fairly implied, we presume prejudice and reverse without reaching the second prong and the question of prejudice. *Zillyette*, 178 Wn.2d at 163; *State v. Pry*, 194 Wn.2d 745, 753, 452 P.3d 536 (2019). If a court does find all essential elements, the defendant is still entitled to reversal if he or she can show actual prejudice. *Campbell*, 125 Wn.2d at 802.

RCW 69.50.401(1) defines unlawful delivery of a controlled substance as "[e]xcept as authorized by this chapter, it is unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance." Though the statute does not expressly include an intent element, *State v. Boyer* held that guilty knowledge is intrinsic to the definition of the crime of delivery. 91 Wn.2d 342, 344, 588 P.2d 1151 (1979). Thus, the elements of the crime are: "(1) delivery of a controlled substance, and (2) knowledge that the substance delivered was a controlled substance." *State v. DeVries*, 149 Wn.2d 842, 849-50, 72 P.3d 748 (2003).

In *State v. Kitchen*, the defendants were charged with unlawful delivery of a controlled substance. 61 Wn. App. 915, 917, 812 P.2d 888 (1991). In *Kitchen*, we held that the information was constitutionally defective where "[n]othing contained in [the information] implie[d] the defendants knew the identity of the substance delivered." *Id.* at 918. The information at issue stated: "[O]n or about October 8, 1988, in Klickitat County, Washington, you delivered a controlled substance, to-wit: Cocaine to an

undercover agent, contrary to RCW 69.50.401(a)(1)(i)." *Id.* at 917 (internal quotation marks omitted).[2]

Unlike *Kitchen*, here, the amended information alleged that Mr. Hansen "did *knowingly* manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance, to wit: Methamphetamine." CP at 59 (emphasis added) (underlining omitted). Because Mr. Hansen argues for the first time on appeal that the amended information is defective, we have "considerable leeway to imply the necessary allegations from the language of the charging document." *Kjorsvik*, 117 Wn.2d at 104. "[E]ven if there is an apparently missing element, it may be able to be fairly implied from language within the charging document." *Id.*

The amended information adequately implied that Mr. Hansen knew the substance he delivered was a controlled substance. The information stated Mr. Hansen "did knowingly . . . deliver . . . a controlled substance, to wit: Methamphetamine." CP at 59 (underlining omitted). It sufficiently alleges that Mr. Hansen knew the substance he delivered was a controlled substance, evidenced by the term "knowingly" modifying the rest of the sentence. Mr. Hansen would have the amended information read that he "did knowingly . . . deliver . . . a controlled substance, to wit: Methamphetamine that Mr.

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[2] Another information at issue in the case used substantially the same language, save for a different date. *Kitchen*, 61 Wn. App. at 917.

Hansen knew was a controlled substance." However, given our liberal standard of review, the elements of the crime can be fairly implied from the amended information.

Because we find that the necessary elements can be found in the information, we turn to whether Mr. Hansen was prejudiced by the inartful language. Mr. Hansen does not argue that he was prejudiced by the inartful language. Instead, he argues only that the elements of the crime cannot be found or fairly implied in the amended information. Because no prejudice is alleged and the necessary elements can be found in the amended information, we must affirm his convictions.

MAJOR VIOLATION OF THE UCSA AGGRAVATOR

Mr. Hansen argues that there was insufficient evidence to support the jury's finding of a major violation of the UCSA aggravator.

Mootness deters us from reviewing this assignment of error. *See State v. Hunley*, 175 Wn.2d 901, 907, 287 P.3d 584 (2012). "An issue is moot if the matter is 'purely academic' such that the court cannot provide effective relief." *Ctr. for Bio. Diversity v. Dep't of Fish & Wildlife*, 14 Wn. App. 2d 945, 985, 474 P.3d 1107 (2020) (quoting *City of Sequim v. Malkasian*, 157 Wn.2d 251, 258, 138 P.3d 943 (2006)). If, however, the matter is of significant public interest then we may review the matter regardless of its mootness. *Sudar v. Fish & Wildlife Comm'n*, 187 Wn. App. 22, 35, 347 P.3d 1090 (2015). This exception applies where the merits of the controversy are unsettled and a

continuing question of great public importance exists. *Sorenson v. City of Bellingham*, 80 Wn.2d 547, 558, 496 P.2d 512 (1972).

The jury found Mr. Hansen's crime was a major violation of the UCSA. At sentencing, the trial court omitted from the judgment and sentence any reference to the aggravator. Furthermore, the trial court refrained from imposing an enhancement to Mr. Hansen's sentences based on the finding of a major violation of the UCSA aggravator. Consequently, even if we were to review the assignment of error and agreed with Mr. Hansen, we would be unable to provide him any relief. Because Mr. Hansen's assignment of error is specific to the jury's findings in his case, review would not resolve a continuing question of great public importance.

VICTIM PENALTY ASSESSMENT

Mr. Hansen presents numerous arguments urging us to remand for the trial court to strike the VPA from his judgment and sentence.

In April 2023, the legislature passed Engrossed Substitute H.B. 1169 (H.B. 1169), 68th Leg., Reg. Sess. (Wash. 2023), which amends RCW 7.68.035 to prohibit the imposition of the victim penalty assessment on indigent defendants. RCW 7.68.035 (as amended); H.B. 1169, at 2 ("The court shall not impose the penalty assessment under this section if the court finds that the defendant, at the time of sentencing, is indigent as

defined in RCW 10.01.160(3)."). H.B. 1169 took effect on July 1, 2023. Amended RCW 7.68.035 provides:

> (5) Upon motion by a defendant, the court shall waive any crime victim penalty assessment imposed prior to the effective date of this section if:
>
> . . . .
>
> (b) The person does not have the ability to pay the penalty assessment. A person does not have the ability to pay if the person is indigent as defined in RCW 10.01.160(3).

Generally, statutes apply prospectively from their effective date unless the legislature indicates that it intends otherwise. *State v. Humphrey*, 139 Wn.2d 53, 55, 983 P.2d 1118 (1999). However, a newly enacted statute generally applies to all cases pending on direct appeal that are not yet final. *State v. Jefferson*, 192 Wn.2d 225, 246, 429 P.3d 467 (2018); *State v. Pillatos*, 159 Wn.2d 459, 470, 150 P.3d 1130 (2007).

Mr. Hansen's case is pending on direct appeal and not yet final, thus he enjoys the benefit of the amended statute. Presumably, the trial court found Mr. Hansen indigent when it struck from his judgment and sentence the criminal filing fee, the court-appointed attorney fee, the drug enforcement fund, the crime lab fee, the DNA collection fee, and the booking fee. Later, Mr. Hansen was found to be indigent for purposes of filing this appeal. Thus, remand is appropriate to have the VPA struck from the judgment and sentence.

We affirm Mr. Hansen's convictions and sentence and remand for the trial court to strike the VPA from the judgment and sentence.

A majority of the panel has determined 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.

Cooney, J.

WE CONCUR:

Fearing, C.J.

Pennell, J.

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

February 21, 2024 - 11:27 AM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	102,813-0
Appellate Court Case Title:	State of Washington v. Chase Tristan Hansen
Superior Court Case Number:	20-1-00115-4

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