

NO. 45509-9-II

**COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

JAYLIN JEROME IRISH, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Kathryn Nelson

No. 12-1-02894-1

BRIEF OF RESPONDENT

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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Whether the trial court properly denied defense counsel's motion to withdraw when there was nothing to suggest an actual conflict of interest existed?

2. Under the liberal standard of review, was the charging document sufficient on the rendering criminal assistance charge when it contained all the essential elements of the crime and defendant is unable to show he was prejudiced by the language?

3. Has defendant failed to show that his plea was not knowing, intelligent, or voluntary?

B. STATEMENT OF THE CASE.

1. Relevant Facts and Procedure

On August 1, 2012, the Pierce County Prosecutor's Office charged JAYLIN JEROME IRISH, hereinafter "defendant," with three counts of assault in the first degree with deadly weapon enhancements and one count of drive-by shooting. CP 1-3. On September 10, 2013, the State filed a second amended information charging defendant with one count of assault in the first degree with a deadly weapon enhancement and one

count of rendering criminal assistance in the first degree to which defendant pleaded guilty on the same day. CP 12-13, 14-23; RP 69-75.

On October 18, 2013, during the scheduled sentencing hearing, defendant's attorney asked to be allowed to withdraw from defendant's case because defendant had expressed a desire to withdraw his guilty plea and the attorney felt there was now a conflict of interest as he was a potential witness if such a motion were ever filed. RP 84-86. The court denied the motion and defendant was sentenced to 120 months on the assault conviction and 15 months on the rendering criminal assistance conviction, to be served concurrently. CP 24-37; RP 85-86, 92-93.

Defendant filed a timely notice of appeal. CP 40-56.

C. ARGUMENT.

1. THE TRIAL COURT PROPERLY DENIED DEFENSE COUNSEL'S MOTION TO WITHDRAW WHEN THERE WAS NOTHING TO SUGGEST AN ACTUAL CONFLICT OF INTEREST EXISTED.

CrR 3.1(e) holds that "[w]hen a criminal cause has been set for trial, no lawyer shall be allowed to withdraw from said cause, except upon written consent of the court, for good and sufficient reason shown." Such a decision about whether to allow counsel to withdraw rests within the sound discretion of the trial court. *State v. Lytle*, 71 Wn.2d 83, 84, 426 P.2d 502 (1967); *State v. Shelton*, 71 Wn.2d 838, 840, 431 P.2d 201

(1967); *State v. Sinclair*, 46 Wn. App. 433, 436, 730 P.2d 742 (1986).

Good cause to warrant substitution of counsel includes situations involving a conflict of interest, an irreconcilable conflict, or a complete breakdown in communication. *In re Personal Restraint of Stenson*, 142 Wn.2d 710, 723, 16 P.3d 1 (2001). The factors for a court to consider in deciding whether to grant a motion to substitute counsel are (1) the reasons given for the dissatisfaction, (2) the court's own evaluation of counsel, and (3) the effect of any substitution upon the scheduled proceedings. *Id.* (citing *State v. Stark*, 48 Wn. App. 245, 253, 738 P.2d 684 (1987)).

In the present case, defendant argues the trial court abused its discretion in denying defense counsel's motion to withdraw at the sentencing hearing because "an actual conflict of interest occurred in this case." Appellant's Opening Brief, at 12. Defendant's argument rests on the premise that a conflict of interest had arisen wherein defense counsel had become a witness to defendant's motion to withdraw his guilty plea. There are two errors in this argument. First, no motion to withdraw defendant's guilty plea was ever filed and second, the conflict was merely a potential future conflict at that point.

Rather, what occurred during the sentencing hearing a little over a month after defendant pleaded guilty was that defense counsel told the

court that shortly after pleading guilty defendant had expressed to him a desire to withdraw his plea. But, during the sentencing hearing, defense counsel never made a formal motion on behalf of defendant to withdraw his plea. RP 84-93. Defendant himself was present and actually spoke later in the hearing, but also never mentioned wishing to withdraw his plea at any point or feeling that a conflict existed with his attorney. RP 84-93. Instead, during the hearing, defense counsel explained to the court that he was concerned that there could be a *potential* conflict if such a motion was ever filed. But at the time, no motion to withdraw the guilty plea was ever made by defense counsel or defendant himself.

As a result, because there was no motion to withdraw ever filed, there was no actual conflict that existed at the time. Again, defense counsel was merely informing the court of his concern about representing defendant during the sentencing hearing if in the future such a conflict were to arise. Defense counsel stated:

based on Mr. Irish's allegations, that I -- that I think he should be appointed new counsel because I think I have another conflict because I'm a witness one way or the other in this case *if, indeed, it comes to a hearing* or if any other information about the proceedings leading up to the plea is at issue.

...
my feeling is that, if I have a conflict or if the Court determines I have a conflict, I can't represent him for any purpose. I mean, he -- *whether the conflict exists is really the issue*, and if it does, then I don't believe that I can

represent him further, and I think that could create issues down the road.

RP 85 (emphasis added). In response, the court stated:

Well, at this point, the Court does not have anything firm that causes the Court to understand that there is a conflict that would prevent us from going ahead with sentencing today. So that is the Court's intention, and with respect to that, I'd hear from the State first.

RP 85-86. Given that there was no actual conflict of interest that existed at that point, the trial court properly denied the motion to withdraw.

Looking to those factors the court is to consider in evaluating a motion to withdraw as cited in *State v. Stark, supra*, it is apparent in this case that the trial court properly exercised its discretion. First, the reason for the motion to withdraw was brought by defense counsel out of concern for the potential of a future conflict. Defendant himself never expresses any form of dissatisfaction with counsel or his representation. Second, there was nothing indicated in the record that would should have caused the court to be concerned about defense counsel's ability to represent defendant at that time. Defendant never made any motion or requested new counsel at any point during the hearing and even when he was later given the opportunity to speak, he never mentioned anything about wanting new counsel or feeling like he was pressured into his plea. Finally, the case was scheduled for sentencing and had been scheduled for

sentencing for a little over a month. Defense counsel indicated defendant had expressed reservations about feeling pressured into pleading guilty shortly after the plea, but during the month pending the hearing and even during the hearing itself no motion to withdraw the plea was ever filed. From the court's perspective, there was no reason to delay the proceedings for the substitution of counsel when no legitimate reason for such a substitution existed. It would be unproductive to allow counsel to withdraw every time the potential for a future conflict arose, hence why an evaluation by the court under CrR 3.1(e) is required prior to any action on these issues. Given the record before the court and considering the factors as outlined above, it is apparent the trial court did not abuse its discretion in denying defense counsel's motion to withdraw.

Defendant's reliance upon *State v. Regan*, 143 Wn. App. 419, 177 P.3d 783 (2008), is misplaced. In *Regan*, the defendant arrived late to trial and his original charge was amended to include bail jumping. *Regan*, 143 Wn. App. at 428. There were two defense attorneys assigned to the case and the State wanted to call one of them in its case in chief as a witness to the bail jumping charge. *Id.* The defendant was detained pending trial and on the day of trial, the defense attorney who was to be a witness for the State was on vacation. *Id.* Defendant's other counsel explained to the court her dilemma wherein she wanted to agree to the

continuance so as not to subject her co-counsel to a material witness warrant while on vacation, but that doing so would conflict with her client's right to go to trial which he was requesting. *Id.* at 428-429. She ultimately agreed to the continuance to the detriment of her client. *Id.* The court described how "[T]his is a classic example of a choice between alternative courses of action that was helpful to defense counsel's own interests and harmful to Mr. Regan. And it shows an actual conflict of interest." *Id.*

In evaluating this issue, the *Regan* court explained that "[A]n 'actual conflict' is a 'conflict that affected counsel's performance -- as opposed to a mere theoretical division of loyalties." *Regan*, 143 Wn. App. at 427-428 (*quoting Mickens v. Taylor*, 535 U.S. 162, 171, 122 S. Ct. 1237, 152 L. Ed. 2d 291 (2002)). The court also referenced that "an attorney has an actual, as opposed to a potential conflict of interest when, during the course of the representation, the attorney's and the defendant's interests diverge with respect to a material factual or legal issue or to a course of action." *Regan*, 143 Wn. App. at 428 (*United States v. Baker*, 256 F.3d 855, 860 (9th Cir. 2001), *quoting United States v. Levy*, 25 F.3d 146, 155 (2d Cir. 1994)). It elaborated further, "'We will not find an actual conflict unless appellants can point to 'specific instances in the record to suggest an actual conflict or impairment of their interests.'"

Regan, 143 Wn. App. at 428 (*United States v. Mers*, 701 F.2d 1321, 1328 (11th Cir.1983), quoting *United States v. Fox*, 613 F.2d 99, 102 (5th Cir.1980)) (see also *State v. James*, 48 Wn. App. 353, 366, 739 P.2d 1161 (1987), quoting same).

In the present case, there is nothing specific in the record to suggest that defense counsel's situation evolved into a situation where the client's interests were pitted against his own. There was no explicit dilemma or conflict of interest as there was in *Regan*. Rather, defense counsel merely said that if at some point defendant filed a motion to withdraw his plea and if based on that motion defense counsel were to become a potential witness, that might create a conflict and wanted the court to be aware. However, the potential for a conflict is not the same as an actual conflict requiring a substitution of counsel. A defendant expressing some regret to his attorney after pleading guilty does not create a conflict of interest that affects a defense counsel's performance from that point forward, especially when no motion to withdraw the plea is ever even filed.

Defendant also argues that the supposed conflict of interest caused a lapse in representation because as a result of the conflict "counsel apparently concluded he could not file a motion to withdraw the guilty plea on Mr. Irish's behalf." Appellant's Opening Brief, at 13. There is

nothing in the record to support this assertion. Defense counsel never says he could not file such a motion or that he did not file such a motion because of such a belief. Defense attorneys routinely file similar motions on behalf of their clients all the time. If defendant had wanted a motion to withdraw his plea filed, not only could he have filed one himself, he could have told the court that at the hearing. The fact that there is no record of any of that occurring tends to suggest that defendant changed his mind and did not want to follow through with the motion to withdraw his plea. There is nothing in the record to support the claim that a conflict of interest existed, let alone that such a conflict caused a lapse in representation by defense counsel.

Defendant's claim that the trial court failed to investigate a potential attorney-client conflict of interest in this case is simply incorrect. The trial court listened to defense counsel's concerns, evaluated them, and did not see a conflict at that point that would necessitate defense counsel's withdrawal. The trial court did not abuse its discretion when it properly denied defense counsel's motion to withdraw.

2. THE CHARGING DOCUMENT CONTAINED ALL THE NECESSARY ELEMENTS OF RENDERING CRIMINAL ASSISTANCE IN THE FIRST DEGREE.

All essential elements of a crime, statutory or otherwise, must be included in the charging document for the information to be considered constitutionally adequate. *State v. Kjorsvik*, 117 Wn.2d 93, 101-02, 812 P.2d 86 (1991). The charging document must also allege facts supporting every element of the offense. *State v. Nonog*, 145 Wn. App. 802, 806, 187 P.3d 335 (2008). The purpose is to notify the accused of the nature of the allegations against them so they may properly prepare a defense. *Id.* (citing *State v. Leach*, 113 Wn.2d 679, 688, 782 P.2d 552 (1989)).

Ordinarily a plea of guilty precludes an appeal. One exception to the rule exists however in cases where a question is raised as to the sufficiency of the information. *State v. Armstead*, 13 Wn. App. 59, 62, 533 P.2d 147 (1975); *State v. Saylor*, 70 Wn.2d 7, 9, 422 P.2d 477 (1996). The standard of review for evaluating the sufficiency of a charging document is determined by the timing of the motion challenging the sufficiency. *State v. Borrero*, 147 Wn.2d 353, 360, 58 P.3d 245 (2002).

Where an information is challenged for the first time on appeal, it will be liberally construed in favor of validity. *State v. Nonog*, 145 Wn.

App. 802, 806, 187 P.3d 335 (2008). The two part test in such a situation was adopted from the federal standard in the leading case of *Hagner v. United States*, 285 U.S. 427, 433, 52 S. Ct. 417, 420, 76 L. Ed. 861 (1932), and asks (1) whether the necessary facts appear in any form, or by fair construction can be found, in the charging document; and, if so, (2) whether the defendant can 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, 105-106, 812 P.2d 86 (1991)). The first prong of the test looks to the face of the charging document itself. *Id.* at 106. The second, or "prejudice" prong, may look beyond the face of the charging document to determine if the accused actually received notice of the charges he or she must have been prepared to defend against. *Id.*

- a. The Charging Document was Sufficient to Notify Defendant that he was Alleged to have Knowingly Rendered Criminal Assistance in the First Degree.

For the first time on appeal, defendant alleges that the portion of the second amended information charging him with rendering criminal assistance in the first degree was deficient. The relevant portion of the information read as follows:

That JAYLIN JEROME IRISH, in the State of Washington, on or about the 24th day of March 2012, did unlawfully and feloniously render criminal assistance to Demarcus Pate, a

person who committed or was being sought for First Degree Assault, a Class A felony, by providing such person with money, transportation, disguise, or other means of avoiding discovery or apprehension, contrary to RCW 9A.76.050(3) and 9A.76.070(2)(a), and against the peace and dignity of the State of Washington.

CP 12-13. Defendant alleges the information was deficient because it did not explicitly contain the word "knowingly" in reference to rendering criminal assistance. However, courts have held that it is not necessary to use the exact words of a statute in a charging document. It is sufficient if words conveying the same meaning and import are used. *Kjorsvik*, 117 Wn.2d at 109 (citing *State v. Leach*, 113 Wn.2d 679, 689, 782 P.2d 552 (1989); *State v. Jeske*, 87 Wn.2d 760, 765, 558 P.2d 162 (1976); *State v. Moser*, 41 Wn.2d 29, 31, 246 P.2d 1101 (1952)). The question in such a situation is "whether all the words used would reasonably apprise an accused of the elements of the crime charged. Words in a charging document are read as a whole, construed according to common sense and include facts which are necessarily implied." *Kjorsvik*, 117 Wn.2d at 109.

In *State v. Nieblas-Duarte*, the court held that the phrase "unlawfully and feloniously" adequately conveyed the "guilty knowledge" element to the defendant in the information. *State v. Krajewski*, 104 Wn. App. 377, 386, 16 P.3d 69 (2001) (citing *State v. Nieblas-Duarte*, 55 Wn. App. 376, 378, 380-382, 777 P.2d 583 (1989)). After surveying federal

and state cases and commentators, the court concluded that the "weight of authority" favors the rule that:

[a]n indictment which charges that a person "unlawfully and feloniously" performed an act is equivalent to alleging that he knowingly did so, and thus supplies the element of knowledge where the element is necessary for averment in the indictment.

Krajeski, 104 Wn. App. at 386 (quoting *Nieblas-Duarte*, 55 Wn. App. 380). Several appellate court cases have followed this premise and held that the words "unlawfully and feloniously" used in the charging document sufficiently communicate to the defendant that the State is charging them with knowingly committing a crime. See *State v. Krajeski*, 104 Wn. App. 377, 386, 16 P.3d 69 (2001); *State v. Cuble*, 109 Wn. App. 362, 368, 35 P.3d 404 (2001); *State v. Summers*, 107 Wn. App. 373, 380, 28 P.3d 780 (2001). Given this and the liberal standard of construction, it should follow that the phrase "unlawfully and feloniously" used in the information in the present case adequately conveyed to defendant that he was being charged with knowingly rendering criminal assistance.

Further, the reading of the "unlawfully and feloniously" words taken in context with the rest of the information's description reasonably apprise defendant of the elements of the crime he is being charged with. The information describes defendant's actions as unlawful and felonious, it describes the action of rendering criminal assistance to a co-defendant, it

outlines the crimes for which the co-defendant was being sought, and it describes the actions defendant is alleged to have taken to assist his co-defendant. When the terms "unlawfully and feloniously" are read in context with the description of the alleged crime, a common sense understanding conveys that defendant is being charged with knowingly assisting another criminal in some way. In this case, the information adequately apprised defendant of the nature of the charges against him, including the element of knowledge.

Defendant's reliance upon three cases where the courts found the informations to be deficient are each distinguishable from the present case. In *State v. Moavenzadeh*, 135 Wn.2d 359, 956 P.2d 1097 (1998), the court held the information describing a possession of stolen property charge was deficient because it contained no language from which knowledge or intent could be fairly implied from the manner in which the offenses were described or even from commonly understood terms. *Moavenzadeh*, 135 Wn.2d at 363. In *Moavenzadeh*, the information alleged that *Moavenzadeh* "did possess stolen property exceeding One Thousand Five Hundred Dollars" in value, and then described the property relating to that count. *Id.* at 361. Nothing in the language suggests that defendant would need to know the property was stolen; rather, the language implies that regardless of whether defendant knew it was stolen or not is not, it is the

possession that makes the act unlawful. In contrast, reading the information in present case with the words "unlawfully and feloniously" convey to defendant that his actions were intentional criminal actions, that he knowingly rendered criminal assistance. The situations in these two cases are not comparable as an analysis of the information and what the informations impliedly convey to the defendants differ.

Similarly, in *State v. Simon*, 120 Wn.2d 196, 840 P.2d 172 (1992), the court held that the information in a promoting prostitution case was deficient because even when liberally construed, it did not sufficiently convey that knowledge of the victim's age was an element of the crime. The information in that case read that Simon "did knowingly advance and profit by compelling Bobbie J. Bartol by threat and force to engage in prostitution; and did advance and profit from the prostitution of Bobbie Bartol, a person who was less than 18 years old." *Simon*, 120 Wn.2d at 197-198. Again, a reading of the information expressly conveys to the defendant that he must knowingly compel the victim to engage in prostitution and the lack of knowingly in describing the victim's age impliedly suggests to the defendant that such knowledge is not an element of the offense. As described previously, in contrast, the information in the present case accurately conveys to defendant that knowledge is an element of the crime and thus, the two cases are distinguishable.

Finally, in *State v. Sutherland*, 104 Wn. App. 122, 15 P.3d 1051 (2001), the court found the information charging a felony hit and run was deficient for failing to convey to defendant that knowledge of the accident is an element of the crime. The court reasoned that the information failed to imply that knowledge was an element and specifically focused on the use of the term accident which means "an unintended and unforeseen injurious occurrence." *Sutherland*, 104 Wn. App. at 132. As in *Maoavenzadeh* and *Simon*, the inclusion of the term accident actually tends to imply that knowledge is not an element of the crime. Again, the present case is distinguishable as the information in the present case adequately conveyed the nature of the charge to defendant.

b. Defendant is Unable to Show he was Prejudiced by the Language in the Information.

The second part of the *Kjorsvik* test requires the court to ask "whether the defendant can show that he or she was nonetheless actually prejudiced by the inartful language which caused a lack of notice." *Kjorsvik*, 117 Wn.2d at 105-106. In the present case, defendant fails to make any argument or show how he was prejudiced by the language in the information.

The primary concern for the court when reviewing whether the information contained the essential elements of the crime "is to give notice to an accused of the nature of the crime that he or she must be prepared to defend against." *Kjorsvik*, 117 Wn.2d at 101 (citing 2 W. Laface & J. Israel, *Criminal Procedure* § 19.2, at 446 (1984); 1 C. Wright, *Federal Practice* § 125, at 365 (2d ed. 1982)). Defendant in the present case was originally charged with three counts of assault in the first degree and one count of drive by shooting on August 1, 2012. CP 1-3. Pursuant to a plea deal, the State filed a second amended information charging defendant with one count of assault in the first degree and one count of rendering criminal assistance on September 10, 2013. CP 12-13. The rendering criminal assistance charge defendant is challenging not only came a year after the original charges were filed, but it was the result of a plea agreement. Defendant's original charges did not include rendering criminal assistance. His charges were reduced to one count of assault and the rendering criminal assistance in exchange for him agreeing to plead guilty. Thus, the concern about whether defendant had adequate notice and time to prepare his defense is not implicated in this situation. As such, defendant is unable to show any prejudice.

Furthermore, defendant's own statement on plea of guilty admits that he knowingly rendered criminal assistance to his co-defendant. It reads:

On March 24, 2012, in the City of Tacoma, I drove my car, a white Honda Accord with license plate 368XKL to the area of South 45th Street bordered by South Lawrence and South Alder Street. I went there because I heard there was going to be a fight in that location. When I arrived I saw several people fighting. I then saw one person pull out a gun and fire one shot towards some of the people he had been fighting with. The shooter got into my car and I drove him north on South Alder Street to get him away from the scene so he could avoid apprehension by law enforcement. As we reached the intersection of South Alder Street and South 43rd Street, the shooter told me to stop and let him out of the car so that he could fire another round at the people he had previously shot at. I agreed and let him out. When I drove off I heard a gunshot.

CP 14-23. Defendant made this statement on the same day the State filed the second amended information charging him with rendering criminal assistance. It is difficult to see how defendant can show actual prejudice when his own statement admits he understood the crime involved him knowingly rendering such criminal assistance. Given this, even if the court were to find the language included in the information was vague or inartful, defendant is nonetheless unable to show he was prejudiced by such language.

3. DEFENDANT'S PLEA WAS KNOWING,
INTELLIGENT AND VOLUNTARY.

Due process requires that a defendant's guilty plea be knowing, voluntary, and intelligent. U.S. Const. amend. XIV; *Boykin v. Alabama*, 395 U.S. 238, 242, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969); *In re Personal Restraint of Stoudmire*, 145 Wn.2d 258, 266, 36 P.3d 1005 (2001); *Wood v. Morris*, 87 Wn.2d 501, 505, 554 P.2d 1032 (1976). Whether a plea is knowing, voluntary, and intelligent is determined from a totality of the circumstances. *Wood*, 87 Wn.2d at 506; *State v. Branch*, 129 Wn.2d 635, 919 P.2d 1228 (1996). If a defendant has received the information and pleads guilty pursuant to a plea agreement, there is a presumption that the plea is knowing, voluntary, and intelligent. *In re Personal Restraint of Ness*, 70 Wn. App. 817, 821, 855 P.2d 1191, review denied, 123 Wn.2d 1009, 869 P.2d 1085 (1994). "A defendant's signature on the plea form is strong evidence of a plea's voluntariness." *State v. Branch*, 129 Wn.2d at 642; *State v. Stephan*, 35 Wn. App. 889, 893, 671 P.2d 780 (1983) (quoting *State v. Perez*, 33 Wn. App. 258, 261-262, 654 P.2d 708 (1982) (citing *In re Personal Restraint of Keene*, 95 Wn.2d 203, 206-207, 622 P.2d 13 (1981))). If the trial court orally inquires into a matter that is on that plea form, the presumption that the defendant understands this matter becomes "well nigh irrefutable." *Branch*, 129

Wn.2d at 642 n.2; *State v. Stephan*, 35 Wn. App. at 893. After a defendant has orally confirmed statements in this written plea form, that defendant “will not now be heard to deny these facts.” *In re Keene*, 95 Wn.2d 203, 207, 622 P.2d 13 (1981).

For a court to conclude that a guilty plea is made knowingly, voluntarily, and intelligently, it must have facts sufficient to satisfy three tests. First, the defendant must understand “the direct consequences of [the] guilty plea,” and the record of the plea hearing “must show on its face that the plea was entered voluntarily and intelligently.” *Wood v. Morris*, 87 Wn.2d 501; *State v. Ross*, 129 Wn.2d 279, 284, 916 P.2d 405 (1996) (citing *State v. Barton*, 93 Wn.2d 301, 305, 609 P.2d 1353 (1980)). The defendant must “understand the sentencing consequences” of his plea. *State v. Miller*, 110 Wn.2d 528, 531, 756 P.2d 122 (1988); *State v. Turley*, 149 Wn.2d 395, 398-99, 69 P.3d 338 (2003). He must also understand that he is waiving certain constitutional rights, including the privilege against compulsory self-incrimination, the right to trial by jury, and the right to confront one’s accusers. *Boykin v. Alabama*, 395 U.S. at 243.

Second, a defendant must “be informed of the requisite elements of the crime charged, [and]... understand that his conduct satisfies those elements.” *In re Personal Restraint of Hews*, 99 Wn.2d 80, 87, 88, 660 P.2d 263 (1983); *McCarthy v. United States*, 394 U.S. 459, 466, 89 S. Ct.

1166, 22 L. Ed. 2d 418 (1969); *See also United States v. Johnson*, 612 F.2d 305, 309 (7th Cir. 1980). Third, the court must be “satisfied that there is a factual basis for the plea.” CrR 4.2(d).

For a plea to be voluntary the defendant must be advised of the nature of the charge. *Henderson v. Morgan*, 426 U.S. 637, 645 n.18, 96 S. Ct. 2253, 49 L. Ed. 2d 108 (1976). But the court in that same case indicates that advising the defendant of the offense does not mean going through every element of the offense. *Keene*, supra, at 207 (*citing Henderson*, at 647). The minimum would be that the defendant needs to be made aware of the acts and state of mind required to constitute the crime. *State v. Holsworth*, 93 Wn.2d 148, 153 n.3, 607 P.2d 845 (1980).

In *Keene*, the defendant signed a plea agreement that indicated, among other things, that he had received a copy of the information. *Keene*, at 205. The court found that the defendant had notice of the elements of the crime he was pleading to since he plead to the crime as charged in the information and acknowledged receiving a copy. *Id.* at 208-9.

Similarly, in *State v. Smith*, 74 Wn. App. 844, 848, 875 P.2d 1249 (1994), the defendant claimed his plea was involuntary because he did not understand the nature of his charge. However, the court determined the

defendant was made aware by the amended information as well as his own statement on plea of guilty. *Id.* at 849.

In the instant case, defendant alleges that his plea was not knowing because he was never informed of the "knowledge" element with regard to rendering first degree criminal assistance. *See* Appellant's Opening Brief, 29-30. However, as described in the analysis above, the information not only sufficiently apprised defendant of the nature of the charges against him, a review of the record shows defendant's plea was knowingly, voluntarily, and intelligently made.

The written documents show defendant was informed of the charge against him. The State indicated that after lengthy negotiations, it had filed a second amended information charging defendant with assault in the first degree and rendering criminal assistance in the first degree. CP 12-13; RP 69-70. Defendant's attorney indicated that he had gone over the second amended information with defendant, that he understood the nature of the charges and he waived a formal reading. RP 70. Defendant also acknowledged receiving the second amended information in the statement of defendant on plea of guilty. CP 21, No. 7. The statement also indicated that defendant was pleading guilty to both counts as charged in the second amended information and was doing so freely and voluntarily. CP 21, Nos. 7-8. Defendant was certainly informed of the charges against him.

Defendant himself makes several statements indicating his plea was knowing, intelligent, and voluntary. On the second to last page, defendant's statement reads:

On March 24, 2012, in the City of Tacoma, I drove my car, a white Honda Accord with license plate 368XKL to the area of South 45th Street bordered by South Lawrence and South Alder Street. I went there because I heard there was going to be a fight in that location. When I arrived I saw several people fighting. I then saw one person pull out a gun and fire one shot towards some of the people he had been fighting with. The shooter got into my car and I drove him north on South Alder Street to get him away from the scene so he could avoid apprehension by law enforcement. As we reached the intersection of South Alder Street and South 43rd Street, the shooter told me to stop and let him out of the car so that he could fire another round at the people he had previously shot at. I agreed and let him out. When I drove off I heard a gunshot.

CP 22.

Just below that there is a sentence that reads:

My lawyer has explained to me, and we have fully discussed, all of the above paragraphs and the "Offender Registration" Attachment, if applicable. I understand them all. I have been given a copy of this 'Statement of Defendant or Plea of Guilty.' I have no further questions to ask the judge.

CP 22. Defendant's signature appears on this page just below this sentence. Directly below defendant's signature there is a sentence that reads, "I have read and discussed this statement with the defendant and believe that the defendant is competent and fully understands the

statement.” CP 22. The defense attorney’s signature appears directly below this statement. CP 22. The court also signed a statement on the last page which read "I find the defendant's plea of guilty to be knowingly, intelligently, and voluntarily made. Defendant understands the charges and the consequences of the plea. There is a factual basis for the plea. The defendant is guilty as charged." CP 23. The written plea agreement supports a knowing, intelligent and voluntary entry into a plea of guilty.

The court not only accepted the written documents, but also engaged in a colloquy with defendant and defense counsel on the record. RP 69-75. After the State indicated its reasons for filing the second amended information, the defense attorney discussed going over the second amended information as well as the statement on plea of guilty. RP 69-70. In discussing the statement of defendant on plea of guilty, defense counsel told the court:

I've discussed this document with Mr. Irish on -- for quite a period of time this morning. He's read it and read it and read it, and he indicates to me that he understands the document, the rights he's giving up, the consequences of entering into a plea agreement, the fact that he will be found guilty if the Court accepts the plea of the charges identified in the Second Amended Information. And due to the protracted discussions and negotiations, I have -- I'm confident he's entering this plea knowingly and voluntarily.

RP 71. Defendant told the court he understood the new charges and the elements of those offenses. RP 72. The court also verbally read

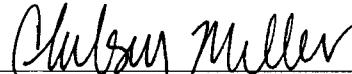
defendant's statement into the record and defendant confirmed that was his statement. RP 74. Defendant never indicated any confusion. His answers are in accordance with his written plea and defendant received assistance from his counsel both in his written plea and in his colloquy with the court. CP 14-23; RP 69-75. It is clear from the oral record as well as defendant's signed statement that defendant went over the plea with his attorney. In looking at defendant's statements both in the written plea document and in court, it is clear that the requirements of CrR 4.2(d) were met. Based on the preceding analysis showing the second amended information notified defendant of the nature of the charges against him and the subsequent review of the written statement of defendant on plea of guilty and oral record of the colloquy, defendant is unable to show that his plea was anything other than voluntary.

D. CONCLUSION.

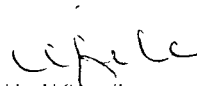
For the foregoing reasons, the State respectfully requests this Court to affirm defendant's convictions.

DATED: JULY 9, 2014

MARK LINDQUIST
Pierce County
Prosecuting Attorney



CHELSEY MILLER
Deputy Prosecuting Attorney
WSB # 42892



Certificate of Service

The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

7/9/14 
Date Signature

PIERCE COUNTY PROSECUTOR

July 09, 2014 - 12:01 PM

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