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Court of Appeals  
Division II  
State of Washington  
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NO. 50953-9-II

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

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STATE OF WASHINGTON,

Respondent,

v.

PAMELA WOODALL,  
Appellant.

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

Kitsap County Cause No. 17-1-00715-1

The Honorable Leila Mills, Judge

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BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. Woodall's three separate guilty pleas were not knowing, voluntary and intelligent, where the trial court failed to inform her of the essential elements of the crimes charged.

2. The charging document charging possession of stolen mail was constitutionally deficient for failing to include the element of "knowledge".

3. The trial court abused its discretion by imposing three (3) separate \$100 DNA fees for each of the three sentences imposed.

Issues Presented on Appeal

1. Were Woodall's three separate guilty pleas, knowing, voluntary and intelligent, where the trial court failed to inform her of the essential elements of the crimes charged?

2. Was the charging document charging possession of stolen mail constitutionally deficient for failing to include the element of "knowledge"?

3. Did the trial court abuse its discretion by imposing three (3) separate \$100 DNA fees for each of the three sentences imposed, when only one DNA sample will be processed?

B. STATEMENT OF THE CASE

On August 3, 2017, Pamela Woodall pleaded guilty under three separate cause numbers as follows. Woodall pleaded guilty to possession of methamphetamine under superior court cause no. 16-1-01557-1. RP 2-3; Statement of Defendant, Plea Guilty, Supplemental Clerk's Papers. The trial court did not explain the elements of this charge, but rather proceeded by way of reading the statement on probable cause to find that Woodall's plea was "voluntary" and supported by a "factual basis". RP 2-3.

Woodall pleaded guilty to possession of stolen mail in the second degree and to possession of stolen property in the second degree under superior court cause no. 17-1-00715-1. CP 14-23; RP 4-5. The court did not inform Woodall of the elements of these crimes, but rather proceeded to accept the plea by reviewing the probable cause statement. RP 5 "I've read the report. There are facts sufficient to find you guilty." RP 5.

The statement of defendant on plea of guilty did not contain

the elements of the crimes and did not refer to the probable cause statement but referred to the “Criminal Information” CP 14. The criminal information did not contain the element of “knowing” for the charge of possession of stolen mail. CP 1-6.

Woodall pleaded guilty to identity theft in the second degree and to possession of stolen property in the second degree under superior court cause no. 17-1-00937-5. RP 5; Statement of Defendant, Plea Guilty, Supplemental Clerk’s Papers. The court did not inform Woodall of the elements of these crimes but stated she “read that statement as well”. RP 7. “All right. I’ve read the report. There are facts sufficient for findings of guilt.” RP 7. The court did not identify what form she read and the only forms referred to under this cause number were the “plea agreement, guilty plea form”. RP 5. There was no reference to a probable cause form under this cause number.

The court entered standard ranges sentences and this timely appeal follows. CP 27-37.

## C. ARGUMENTS

### 1. THE INFORMATION FAILED TO ALLEGE THE ESSENTIAL ELEMENT OF KNOWLEDGE IN THE CHARGE OF POSSESSION OF STOLEN MAIL.

Knowledge is an essential element of possession of a stolen mail is that the mail was stolen. RCW 9A.56.380. Because the charging document omitted this essential element, Woodall's conviction for possession of stolen mail must be reversed.

A charging document must include all essential elements of a crime. U.S. Const. Amend. VI; Wash. Const. art. I, § 22 (amend. 10);<sup>14</sup> *State v. Kjorsvik*, 117 Wn.2d 93, 108, 812 P.2d 86 (1991). An "essential element 14 U.S. CONST. amend. VI provides that "[i]n all criminal prosecutions, the accused shall . . . be informed of the nature and cause of the accusation . . ." Art. I, § 22 provides in part that "[i]n criminal prosecutions, the accused shall have the right to . . . demand the nature and cause of the accusation." is one whose specification is necessary to establish the very illegality of the behavior[.]" *State v. Johnson*, 119 Wn.2d 143, 147, 829 P.2d 1078 (1992) (citing *United States v. Cina*, 699 F.2d 853, 859 (7th Cir.), cert. denied, 64 U.S. 991 (1983)). Essential elements may

derive from statutes, common law, or the constitution. *State v. McCarty*, 140 Wn.2d 420, 425, 998 P.2d 296 (2000).

Where, as here, the adequacy of an information is challenged for the first time on appeal, this Court engages in 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?” *Kjorsvik*, 117 Wn.2d at 105-06; accord *State v. Zillyette*, 173 Wn.2d 784, 786, 270 P.3d 589 (2012) (more recent case applying standard).

If the necessary elements are neither found nor fairly implied in the charging document, this Court presumes prejudice and reverses without further inquiry as to prejudice. *McCarty*, 140 Wn.2d at 425, 428. Woodall was charged with unlawful possession of a stolen mail under RCW 9A.56.380. RCW 9A.56.380 provides:

(1) A person is guilty of possession of stolen mail if he or she: (a) Possesses stolen mail addressed to three or more different mailboxes; and (b) possesses a minimum of ten separate pieces of stolen mail.

(2) “Possesses stolen mail” means to knowingly receive, retain, possess, conceal, or dispose of stolen mail knowing that it has been stolen, and to withhold or appropriate to the use of any person other than the

true owner, or the person to whom the mail is addressed.

Id. The information however charged Woodall as follows without providing the essential element of “knowingly”:

On or about April 25, 2017, in the County of Kitsap, State of Washington, the above named Defendant did (a) possess stolen mail addressed to three or more different mailboxes; and (b) possess a minimum of ten separate piece [sic] of stolen mail, and did withhold, or appropriate the same to the use of any person other than the true owner or person entitled thereto...

CP 1.

In *Porter*, the defendant was charged with unlawful possession of a stolen motor vehicle and unlawful possession of stolen property. *State v. Porter*, 186 Wn.2d 85, 88-92, 375 P.3d 664 (2016). For the first time on appeal, Porter challenged the information on grounds that it did not allege “withheld or appropriated.” Id. The charging document did allege “unlawfully and feloniously knowingly possess...” *Porter*, 186 Wn.2d at 88, 90-93.

The Court held that “the knowledge element of possession of stolen property is an essential element.” *Porter*, 186 Wn.2d at 93 (citing *State v. Moavenzadeh*, 135 Wn.2d 359, 363-64, 956 P.2d 1097 (1990)), whereas, “withheld or appropriated”, were definitional

and therefore not required to be alleged in the charging document like “knowingly”. *Porter*, 186 Wn.2d at 91 “If the State fails to allege every essential element, then the information is insufficient and the charge must be dismissed without prejudice.” *Porter*, 186 Wn.2d at 89-90.

Knowledge is an essential element of possession of stolen property, possession of a stolen vehicle and possession of stolen mail. *Porter*, 186 Wn.2d at 90-93. For example, in *State v. Jackman*, 2018 WL 286809 (unpublished case, not cited as precedential value but for factual similarity) the state conceded reversible error and the Court of Appeals dismissed without prejudice, where the charging document alleging two counts of possession of a stolen motor vehicle lacked the essential element of knowledge that the vehicle was stolen.

In Woodall’s case, the state failed to allege in the information the essential element of knowledge in the possession of stolen mail charge. Under a liberal construction, this necessary element could not be found nor fairly implied in the charging document. Accordingly, this Court presumes prejudice and must reverse without further inquiry as to prejudice because the charging

document was constitutionally deficient. *McCarty*, 140 Wn.2d at 428.

2. WOODALL'S PLEAS WERE NOT KNOWING, VOLUNTARY AND INTELLIGENT WHERE THE COURT DID NOT ADVISE WOODALL OF THE ELEMENTS OF THE CRIMES TO WHICH SHE PLEADED.

Due process requires that a guilty plea be made intelligently, voluntarily and with knowledge that certain rights will be waived. *In re Personal Restraint of Fuamaila*, 131 Wn.2d 908, 921, 131 P.3d 318 (2006). "To be made sufficiently aware of the nature of the offense, the defendant must be advised of the essential elements of the offense; he must be given "notice of what he is being asked to admit." *State v. Holsworth*, 93 Wn.2d 148, 153, 607 P.2d 845 (1980) (quoting *Henderson v. Morgan*, 426 U.S. 637, 647, 96 S.Ct. 2253, 49 L.Ed.2d 108 (1976)). This means that "[a]t a minimum ... [an accused] would need to be aware of the acts and the requisite state of mind in which they must be performed to constitute a crime." *Holsworth*, 93 Wn.2d 148, 153 n 3.

In *Henderson*, the petitioner pleaded guilty to murder in the second degree, however "[t]here was no discussion of the elements

of the offense of second-degree murder, no indication that the nature of the offense had ever been discussed with respondent, and no reference of any kind to the requirement of intent to cause the death of the victim.” *Id.* The trial court did acknowledge that Henderson was pleading guilty on the advice of counsel and understood the name of the crime and the constitutional rights he was waiving. *Henderson*, 426 U.S. at 642-43.

During the sentencing hearing, counsel for Henderson stated that Henderson did not intend to “harm” the victim. *Henderson*, 426 U.S. at 643. During a later evidentiary hearing, Henderson testified that he would not have pleaded guilty if he had understood that “intent” was an element of the crime. *Henderson*, 426 U.S. at 644.

The Supreme Court affirmed the finding in a habeas corpus proceeding that the defendant's guilty plea to second degree murder was involuntary and reversed the conviction because “clearly the plea could not be voluntary in the sense that it constituted an intelligent admission that he committed the offense unless the defendant received ‘real notice of the true nature of the charge against him, the first and most universally recognized requirement of due process.’” *Henderson*, 426 U.S. at 645 (*quoting*

*Smith v. O'Grady*, 312 U.S. 329, 334, 61 S.Ct. 572, 85 L.Ed. 859 (1941)).

Failure to disclose to the defendant, the state of mind of the crime charged, renders the plea invalid. *Holsworth*, 93 Wn.2d at 153 n. 3 (*citing Henderson*, 426 U.S. at 647 n. 18). These cases control the outcome of this case. Here, the trial court did not advise Woodall of any of the elements of the crimes charged, but rather simply asked Woodall to permit a review of the probable cause statement or other unknown documents to find the plea "voluntary" and supported by a "factual" basis. RP 2-3, 5, 7.

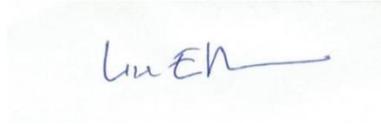
Under the due process clause and the cases cited herein, Woodall's pleas were not knowing, voluntary and intelligent. Accordingly, the pleas must be vacated.

#### D. CONCLUSION

Pamela Woodall, respectfully requests this Court vacate her pleas on grounds that they were not knowing, voluntary and intelligent and find that the charging document for the possession of stolen mail was constitutionally deficient and dismiss that charge without prejudice.

DATED this 22<sup>nd</sup> day of February 2018.

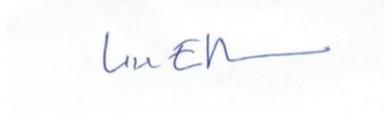
Respectfully submitted,

A rectangular box containing a handwritten signature in blue ink that reads "Lise Ellner".

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LISE ELLNER  
WSBA No. 20955  
Attorney for Appellant

I, Lise Ellner, a person over the age of 18 years of age, served the Kitsap County Prosecutor's Office [kcpa@co.kitsap.wa.us](mailto:kcpa@co.kitsap.wa.us) and Pamela Woodall/DOC#791137, Washington Corrections Center for Women, 9601 Bujacich Rd. NW, Gig Harbor, WA 98332 a true copy of the document to which this certificate is affixed on February 22, 2018. Service was made by electronically to the prosecutor and Pamela Woodall by depositing in the mails of the United States of America, properly stamped and addressed.

A rectangular box containing a handwritten signature in blue ink that reads "Lise Ellner".

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Signature

**LAW OFFICES OF LISE ELLNER**

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**Transmittal Information**

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