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State of Washington

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

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STATE OF WASHINGTON,

Respondent,

v.

PAMELA JEAN WOODALL,

Appellant.

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ON APPEAL FROM THE SUPERIOR COURT OF  
KITSAP COUNTY, STATE OF WASHINGTON  
Superior Court No. 17-1-00715-1

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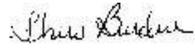
BRIEF OF RESPONDENT

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<b>SERVICE</b>	<p>Lise Ellner Po Box 2711 Vashon, WA 98070-2711 Email: liseellnerlaw@comcast.net</p>	<p>This brief was served, as stated below, via U.S. Mail or the recognized system of interoffice communications, <i>or, if an email address appears to the left, electronically</i>. I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.</p> <p>DATED April 9, 2018, Port Orchard, WA  <b>Original e-filed at the Court of Appeals; Copy to counsel listed at left.</b> <b>Office ID #91103 kcpa@co.kitsap.wa.us</b></p>
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## **I. COUNTERSTATEMENT OF THE ISSUES**

1. Whether the charging language was constitutionally adequate to apprise Woodall of the elements of possession of stolen mail where there is no requirement that language from definitional statutes be included?

2. Whether Woodall fails to show that her claim that her plea was involuntary, raised for the first time on appeal, has merit?

3. Whether this Court should decline to consider Woodall's claims regarding her pleas in cases that she has not appealed?

## **II. STATEMENT OF THE CASE**

Pamela Jean Woodall was charged by information filed in Kitsap County Superior Court, cause number 17-1-00715-1, with possession of stolen mail and second-degree possession of stolen property. CP 1. She subsequently pled guilty. CP 8, 14. On September 7, 2017, she was sentenced within the standard range, to run concurrent with her sentences in cause numbers 17-1-00937-5 and 16-1-01557-1. CP 28-29. On September 20, 2017, she appealed, but only in cause number 17-1-00715-1.

### III. ARGUMENT

#### A. THE CHARGING LANGUAGE WAS CONSTITUTIONALLY ADEQUATE TO APPRISE WOODALL OF THE ELEMENTS OF POSSESSION OF STOLEN MAIL; THERE IS NO REQUIREMENT THAT LANGUAGE FROM DEFINITIONAL STATUTES BE INCLUDED.

Woodall argues that the charging document for possession of stolen mail was inadequate because it did not include language from the definitional statute. However, this claim is without merit because definitional terms are not required to be included for an information to be constitutionally adequate.

Individuals charged with crimes have the constitutional right to know the charges against them. U.S. Const. amend. VI; Const. Art. I, § 22. The State formally gives notice of the charges by information, which “shall be a plain, concise and definite written statement of the essential facts constituting the offense charged.” CrR 2.1(a)(1).

An information is constitutionally sufficient “if all essential elements of a crime, statutory and nonstatutory, are included in the document.” *State v. Vangerpen*, 125 Wn.2d 782, 787, 888 P.2d 1177 (1995). “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) (*quoting*

*State v. Ward*, 148 Wn.2d 803, 811, 64 P.3d 640 (2003)). “Words in a charging document are read as a whole, construed according to common sense, and include facts which are necessarily implied.” *State v. Kjorsvik*, 117 Wn.2d 93, 109, 812 P.2d 86 (1991).

When reviewing the sufficiency of an information that is challenged for the first time on appeal, this court engages in a two-pronged analysis. *Kjorsvik*, 117 Wn.2d at 105-06. First, if the information does not state all elements of the crime, the court determines whether it contains any language, or reasonable inferences, that would give the accused notice of the missing element or elements, *Kjorsvik*, 117 Wn.2d at 106. If there is some language, but it is vague, the court then considers whether the defendant has shown actual prejudice from the defect. *Kjorsvik*, 117 Wn.2d at 106.

When, as here, the information is challenged for the first time on appeal, the charging document will be construed “quite liberally.”<sup>1</sup> *State v. Hopper*, 118 Wn.2d 151, 156, 822 P.2d 775 (1992); *see also State v. McCarty*, 140 Wn.2d 420, 435, 998 P.2d 296 (2000).

The primary purpose of the essential element rule is “to apprise the

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<sup>1</sup> Although Woodall pled guilty, a guilty plea does not waive the defendant's right to appeal the sufficiency of the State's charging document. *State v. Peltier*, 181 Wn.2d 290, 294-95, 332 P.3d 457 (2014).

accused of the charges against him or her and to allow the defendant to prepare a defense.” *Vangerpen*, 125 Wn.2d at 787. A secondary purpose for the essential element rule is to bar any subsequent prosecution for the same offense. *State v. Nonog*, 169 Wn.2d 220, 226, 237 P.3d 250 (2010). If the State fails to allege every essential element, then the information is insufficient and the charge must be dismissed without prejudice. *Nonog*, 169 Wn.2d at 226 n.3.

It does not appear that Woodall and the State have any difference of opinion regarding the foregoing standards. What is in dispute, however, is what constitutes the essential elements of possession of stolen mail. That crime is set forth in RCW 9A.56.380(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.

Woodall, however, asserts that additional elements of possession of stolen mail are set forth in a separate definitional subsection, RCW 9A.56.380(2), which provides:

“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.

Woodall’s argument is contrary to existing recent Supreme Court precedent.

In *State v. Porter*, 186 Wn.2d 85, 90, 375 P.3d 664 (2016), the

defendant was charged with unlawful possession of a stolen motor vehicle. That statute, much like the statute under which Woodall was charged, read:

A person is guilty of possession of a stolen vehicle if he or she possess [possesses] a stolen motor vehicle.

RCW 9A.56.068(1) (alteration in original). Porter argued that the information was deficient because it did not contain the statutory definition of “possess.” Similar to the scheme of the rendering statutes, RCW ch. 9A.56 contained a separate statute, RCW 9A.56.140, which was titled “Possessing stolen property--Definition—Presumption.”

At issue was whether RCW 9A.56.140 “merely define[d] the essential element of ‘possession’ or instead provide[d] an additional essential element the State must allege when charging a criminal defendant with possession of a stolen motor vehicle.” *Porter*, 186 Wn.2d at 90. The Court ruled that the latter statute merely defined an element and therefore did not need to be included in the information. *Id.*

The Court looked to its decision in *State v. Johnson*, 180 Wn.2d 295, 302, 325 P.3d 135 (2014), in which it had clarified the difference between an essential element and a definition of an element, holding that the “State need not include definitions of elements in the information.” *Johnson* had been charged with unlawful imprisonment. *Johnson*, 180 Wn.2d at 301. The information read:

And I, Daniel T. Satterberg, Prosecuting Attorney aforesaid

further do accuse J.C. JOHNSON of the crime of Unlawful Imprisonment—Domestic Violence, based on a series of acts connected together with another crime charged herein, committed as follows:

“That the defendant J.C. JOHNSON in King County, Washington, during a period of time intervening between May 4, 2009 through May 6, 2009, did knowingly restrain [J.J.], a human being;

“Contrary to RCW 9A.40.040, and against the peace and dignity of the State of Washington.

*Id.* (alteration in original). Johnson argued the information was constitutionally insufficient for not including the definition of “restrain.” *Johnson*, 180 Wn.2d at 301-02. The Supreme Court rejected the claim, holding that the State was not required to include definitions of elements and that it was enough for the State to allege all of the essential elements found in the statute. *Id.*

In *Porter*, a unanimous Supreme Court reached the same conclusion with regard to the unlawful possession of a stolen vehicle statute:

Contrary to Porter’s argument, the State was not required to include the definition of “possess.” Like the definition of “restrain,” the definition of “possess” defines and limits the scope of the essential elements of the crime of unlawful possession of a stolen motor vehicle.

*Porter*, 186 Wn.2d at 91 (also citing *State v. Allen*, 176 Wn.2d 611, 626-30, 294 P.3d 679 (2013) (upholding an information charging felony harassment as constitutional when it did not articulate the constitutional limitation that only true threats may be charged because the “true threat” concept merely

defines and limits the scope of the essential threat element in the harassment statute)).

Although the definitional provisions in *Porter* and *Johnson* were contained in separate statutes rather than separate subsections as here, an examination of the structure of the current statute shows the result should be the same. In addition to the elements subsection, RCW 9A.56.380(1), and the definitional subsection, RCW 9A.56.380(2), RCW 9A.56.380 contains three additional subsections that limit the available defenses, specify the unit of prosecution, and set the class of the crime:

- (3) The fact that the person who stole the mail has not been convicted, apprehended, or identified is not a defense to the charge of possessing stolen mail.
- (4) Each set of ten separate pieces of stolen mail addressed to three or more different mailboxes constitutes a separate and distinct crime and may be punished accordingly.
- (5) Possession of stolen mail is a class C felony.

Notably, Woodall does not contend that these subsections add elements to the offense. Moreover, RCW 9A.56.380(1) begins, “A person is guilty of possession of stolen mail if...” and ends with a period. Similarly, RCW 9A.56.380(2) begins “‘Possesses stolen mail’ means to...” The phrasing clearly indicates an intent in the first subsection to set forth the complete elements of the crime, and in the second an intent to define one of those elements. As such *Porter* and *Johnson* should control.

The *Porter* Court concluded that when liberally construed as

required under *Kjorsvik*, the charging document “clearly put Porter on notice that possessing a stolen vehicle was illegal, which is the primary purpose of the essential element rule.” *Porter*, 186 Wn.2d at 92 (citing *Vangerpen*, 125 Wn.2d at 787). The court further noted that although “[m]erely citing to the proper statute and naming the offense is insufficient to charge a crime unless the name of the offense apprises the defendant of all of the essential elements of the crime,” the information sufficiently articulated the essential elements of the crime for which Porter was charged, making further elaboration of what it means to unlawfully possess stolen property unnecessary. *Porter*, 186 Wn.2d at 92 (citing *Vangerpen*, 125 Wn.2d at 787).<sup>2</sup>

Here, tracking the language of the possession of stolen mail statute, the information alleged:

### **Count I**

#### **Possession of Stolen Mail**

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 of stolen mail, and, did withhold or

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<sup>2</sup> The information in *Porter* alleged:

That CLIFFORD MELVIN PORTER, JR., in the State of Washington, on or about the 27th day of August, 2011, did unlawfully and feloniously knowingly possess a stolen motor vehicle, knowing that it had been stolen, contrary to RCW 9A.56.068 and 9A.56.140, and against the peace and dignity of the State of Washington.

*Porter*, 186 Wn.2d at 88.

appropriate the same to the use of any person other than the true owner or person entitled thereto; contrary to the Revised Code of Washington 9A.56.380(1) and (2) and 9A.56.140.

CP 1. Under *Porter, Johnson, and Allen*, this language passes constitutional muster.

As in *Porter*, the charging document here clearly put Woodall on notice that he was being charged for “(a) Possess[ing] stolen mail addressed to three or more different mailboxes, and (b) possess[ing] a minimum of ten separate pieces of stolen mail” RCW 9A.56.380(1). Further elaboration of what “possesses stolen mail” means was unnecessary. *Porter*, 186 Wn.2d at 93. As such the first prong of the *Kjorsvik* test is satisfied.

Even if the elements set forth in Woodall’s information were somehow considered vague, the second prong of the *Kjorsvik* test allows the court to look outside the information to determine whether the defendant suffered actual prejudice. *Kjorsvik*, 117 Wn.2d at 106. The court noted that “[i]t is possible that other circumstances of the charging process can reasonably inform the defendant in a timely manner of the nature of the charges.” *Id.* In the instant case, the information was accompanied by a statement of probable cause, CP 5, which may be considered. *Kjorsvik*, 117 Wn.2d at 111.

The probable cause statement set forth an extensive factual basis for

the crime:

On 04/25/2017 Suquamish Tribal Police and Kitsap County Sheriff Deputies conducted a traffic stop on Suquamish Way on a vehicle registered to Pamela Woodall, Woodall was driving the vehicle and police knew the passenger had an arrest warrant. A search warrant related to controlled substances and stolen mail was obtained for the vehicle, Upon service of the search warrant, 48 pieces of mail addressed to 19 different addresses in Kitsap County was recovered from the vehicle, Additionally, two stolen credit cards were recovered from the vehicle, The credit cards had been used after they were stolen with charges in the amount of \$777. The credit cards were located above the passenger side sun visor. The mailing insert on which one of the cards would have been affixed was over the driver sun visor. Mail belonging to owners of the credit cards was found on the passenger side floorboard The owners of the stolen credit cards, Thomas and Jane Reyes, were contacted and provided statements that neither Woodall nor her passenger, Sherei [sic] Butler, should be in possession of the stolen credit cards or mail. On the driver's side floorboard was additional mail which was determined to have been stolen. The mail on the passenger floorboard totaled 14 pieces addressed to 12 different addresses. The stolen mail had been predominately postmarked on 04/21/2017 and would have been delivered between April 21st and April 24th. Over the driver sun visor was personal paperwork belonging to Woodall. At the time of the traffic stop Woodall acknowledged she was the owner of the vehicle.

A search warrant was also obtained for Woodall's cell phone, In one of the text conversations on the phone, Woodall discusses giving a pair of pants taken from a mailbox to another person.

The passenger, Sherei Butler was arrested on a felony warrant and later interviewed. Butler stated she had no knowledge of the stolen mail.

Probable cause exists to arrest Pamela Woodall for Possession of Stolen Mail and Possessing Stolen Property 2nd Degree.

CP 5-6. Given this extensive factual account there can be no plausible claim that that Woodall was not apprised of the charges against her. This claim should be rejected.

**B. WOODALL FAILS TO SHOW THAT HER CLAIM THAT HER PLEA WAS INVOLUNTARY, RAISED FOR THE FIRST TIME ON APPEAL, HAS MERIT.**

Woodall next claims that her plea was involuntary because of the alleged deficiency of the charging document. As discussed in the previous point, however, the information was constitutionally sufficient. As such this claim lacks merit. Moreover, if the Court accepts Woodall's first argument, the present issue is moot since the charges will be dismissed without prejudice. In any event, the record<sup>3</sup> fails to show that Woodall's plea was not voluntary.

Due process requires that a defendant's guilty plea must be knowing, intelligent, and voluntary. *State v. Mendoza*, 157 Wash.2d 582, 587, 141 P.3d 49 (2006). The criminal rules reflect this principle by dictating that a court must not accept a plea of guilty "without first determining that it is made voluntarily, competently and with an understanding of the nature of the charge and the consequences of the plea." CrR 4.2(d). The defendant is

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<sup>3</sup> Where, as here, the claim is brought on direct appeal, the reviewing court will not consider matters outside the trial record. *State v. McFarland*, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995).

sufficiently informed of the nature of the offense if he is advised of the offense's essential elements. *State v. Holsworth*, 93 Wn.2d 148, 153, 607 P.3d 845 (1980).

Woodall criticizes the trial court because it “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.” Brief of Appellant, at 10. But in a plea hearing, the trial court is not required to orally recite the elements of each crime or the facts that satisfy those elements, and is not required to orally question the defendant to ascertain whether he or she understands the nature of the defense. *See State v. Codiga*, 162 Wn.2d 912, 924, 175 P.3d 1082 (2008). Instead, the trial court can rely on the written plea agreement if the defendant confirms that he or she read the agreement and that its statements were true. *Codiga*, 162 Wn.2d at 923-24; *also In re Keene*, 95 Wn.2d 203, 206-07, 622 P.2d 360 (1980). Here, Woodall specifically so attested. RP (8/3) 4. In *Keene*, the Court found no due process requirement that the court orally question the defendant to ascertain whether he or she understands the consequences of the plea and the nature of the offense. *Keene*, 95 Wn.2d at 207. The Court emphasized that neither CrR 4.2 nor prior case law explicitly required oral inquiries. *Keene*, 95 Wn.2d at 206.

Although the defendant must understand the facts of his or her case in relation to the elements of the crime charged, so long as the documents relied upon are made part of the record, the trial court can rely on any reliable source to establish that there is a factual basis for the plea.<sup>4</sup> *Keene*, 95 Wn.2d at 209, 210 n.2. The incorporation of a probable cause statement can satisfy this requirement. *Codiga*, 162 Wn.2d at 924.

As discussed above, the probable cause statement that Woodall adopted, CP 23, showed that she was swimming in a sea of stolen mail when she was arrested and her own papers were intermixed with the victims' mail. Also present were stolen credit cards that he been used since they were stolen. The mailing insert from one of the cards was also located with Woodall's personal documents. A search of her phone revealed conversations regarding the stolen items. The factual basis requirement was clearly met. This claim should be rejected.

**C. WOODALL HAS NOT APPEALED HER CONVICTIONS IN CAUSE NUMBERS 17-1-00937-5 AND 16-1-01557-1 AND THE COURT SHOULD DECLINE TO REVIEW HER PLEAS IN THOSE CASES.**

Woodall also appears to argue the validity of her pleas in cause

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<sup>4</sup> Although not specifically raised in the argument portion of her brief, Woodall also appears to criticize the trial court for not finding a factual basis in her statement of the case. *See* Brief of Appellant, at 2.

numbers 17-1-00937-5 and 16-1-01557-1. However, she has only appealed from the judgment under cause number 17-1-00715-1. CP 39. As such her arguments regarding her other convictions are not properly before the court. *See* RAP 5.1; *Mackey v. Champlin*, 68 Wn.2d 398, 399, 413 P.2d 340 (1966) (timely filed notice of appeal is jurisdictional); *State v. Carter*, 138 Wn. App. 350, 368, 157 P.3d 420 (2007) (same).

#### IV. CONCLUSION

For the foregoing reasons, Woodall's conviction and sentence should be affirmed.

DATED April 9, 2018.

Respectfully submitted,

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Prosecuting Attorney

A handwritten signature in black ink, appearing to read 'RS', with a long horizontal line extending to the right.

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**KITSAP COUNTY PROSECUTOR'S OFFICE - CRIMINAL DIVISION**

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