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Division III
State of Washington
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No. 36699-5-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

DAVID RAYMOND MULLINS,

Appellant.

BRIEF OF RESPONDENT

Will M. Ferguson, WSBA 40978
Attorney for Respondent
Special Deputy Prosecuting Attorney
Office of the Stevens County Prosecuting Attorney
215 S. Oak Street, Room #114
Colville, WA 99114
(509) 684-7500
wferguson@stevenscountywa.gov
will.ferguson208@gmail.com
trasmussen@stevenscountywa.gov

I. TABLE OF CONTENTS

TABLE OF AUTHORITIES.....ii-iii.

STATEMENT OF THE CASE.....1-4.

STATEMENT OF THE ISSUES.....4.

STANDARDS OF REVIEW.....4-5.

ARGUMENT.....5-23.

 Appellant’s Issue I.....5-12.

 Appellant’s Issue II.....12-19.

 Appellant’s Issue III.....19-22.

 Appellant’s Issue IV.....22-23.

CONCLUSION.....23.

II. TABLE OF AUTHORITIES

Washington State Supreme Court Cases:

<u>State v. Ammons</u> , 136 Wash.2d 453, 963 P.2d 812 (1998).....	7.
<u>State v. Brown</u> , 169 Wash.2d 195, 234 P.3d 212 (2010).....	13-15, 18.
<u>State v. Danforth</u> , 97 Wash.2d 255, 643 P.2d 882 (1982).....	6.
<u>State v. Davis</u> , 119 Wash.2d 657, 835 P.2d 1039 (1992).....	13, 16.
<u>State v. Ford</u> , 137 Wash.2d 472, 973 P.2d 452 (1999).....	5.
<u>State v. Grayson</u> , 154 Wash.2d 333, 111 P.3d 1183 (2005).....	20, 22.
<u>State v. Handley</u> , 115 Wash.2d 275, 796 P.2d 1266 (1990).....	20.
<u>State v. Hopper</u> , 118 Wash.2d 151, 822 P.2d 775 (1992).....	16-17.
<u>State v. Kjorsvik</u> , 117 Wash.2d 92, 812 P.2d 86 (1991).....	5, 12-14.
<u>State v. Mail</u> , 121 Wash.2d 707, 854 P.2d 1042 (1993).....	20.
<u>State v. Mendoza</u> , 165 Wash.2d 913, 205 P.3d 113 (2009).....	5, 19, 22.
<u>State v. Vangerpen</u> , 125 Wash.2d 782, 888 P.2d 1177 (1995).....	19.

Washington State Court of Appeals Cases:

<u>State v. Bacani</u> , 79 Wash.App. 701, 902 P.2d 184 (Div. I, 1995).....	12, 19.
<u>State v. Christian</u> , 44 Wash.App. 764, 723 P.2d 508 (Div. I, 1986).....	4, 6.
<u>State v. Gomez</u> , 152 Wash.App. 751, 217 P.3d 391 (Div. III, 2009)....	9-12.
<u>State v. Harris</u> , 148 Wash.App. 22, 197 P.3d 1206 (Div. II, 2008)....	19-20.

<u>State v. Marcum</u> , 116 Wash.App. 526, 66 P.3d 690 (Div. III, 2003).....	13, 18.
<u>State v. Morreira</u> , 107 Wash. App. 450, 27 P.3d 639 (Div. III, 2001)....	22.
<u>State v. Peters</u> , 35 Wash.App. 427, 667 P.2d 136 (Div. I, 1983).....	10-11.
<u>State v. Ralph</u> , 85 Wash.App. 82, 930 P.2d 1235 (Div. III, 1997)....	12, 19.

Washington State Statutes:

RCW 9.94A.530.....	20, 22.
RCW 9A.08.010.....	15.
RCW 9A.76.010.....	7, 9, 11.
RCW 9A.76.110.....	6, 7, 11.
RCW 9A.76.130.....	9-10.

Secondary Sources:

ESCAPE, Black's Law Dictionary (11th ed. 2019).....	15.
RESTRAINT, Webster's Third New International Dictionary 1937 (1986).....	6-7.

III. STATEMENT OF THE CASE

After absenting himself from trial, in an unrelated case, David Raymond Mullins (hereinafter “Mr. Mullins”) was convicted of one count of Forgery, one count of Resisting Arrest, and one count of Obstructing a Law Enforcement Officer. CP 3-5, 66-68. After a warrant issued in that case, Mr. Mullins was apprehended, committed additional crimes in and out of custody, and was then convicted of the additional crimes. CP 69.

A. Procedural History

The State charged Mr. Mullins with various offenses under two cause numbers. Under 18-1-00331-33, the State charged Mr. Mullins with Bail Jumping. CP 1-2. Under 18-1-00341-33, Mr. Mullins was charged with Theft of a Motor Vehicle, Escape in the First Degree, and Violation of the Uniform Controlled Substances Act- Possession of Methamphetamine- While in Custody. CP 63-64. The State’s Amended Information, in 18-1-00341-33, filed on December 31, 2018, charged Mr. Mullins with Escape in the First Degree, Violation of the Uniform Controlled Substances Act- Possession of Methamphetamine, with the special allegation of coming the crime while in the Stevens County Jail, and Theft in the Third Degree. CP 72-73.

The State moved for joinder of Stevens County Cause Numbers 18-1-00331-33 and 18-1-00341-33. CP 10-13. The two cause numbers were

joined on January 15, 2019. CP 14. Mr. Mullins waived his right to a jury trial in both cause numbers. CP 15, 74. Mr. Mullins also stipulated to the lab results, regarding his possession of methamphetamine. CP 75.

On January 23, 2019, Mr. Mullins was convicted of Escape in the First Degree, Violation of the Uniform Controlled Substances Act— Possession of Methamphetamine, Theft in the Third Degree, and Bail Jumping, in the consolidated cases, by Superior Court Judge Jessica T. Reeves (hereinafter “Superior Court”). RP 4; CP 31-33; CP 76-80.

B. Statement of Facts

After Mr. Mullins absented himself from trial and was convicted of Obstructing a Law Enforcement Officer, Resisting Arrest, and one count of Forgery, by a jury in Stevens County Cause No. 18-1-00142-5, a warrant was issued for his arrest. CP 8-9. Mr. Mullins was apprehended by former Colville Police Officer Michael Welch. CP 4-5, 67. Former Officer Welch transported Mr. Mullins to the Stevens County Jail, where he was held on the Warrant of Arrest issued in 18-1-00142-5. CP 67-68. Upon arriving at the jail, Mr. Mullins was placed in a room in the booking office. RP 23. The room in the booking office locked and unlocked only from the outside. RP 24.

Later that evening, Mullins escaped the locked room and the booking office, as corrections deputies were distributing medications to the

inmates. RP 25-27. The first time Mr. Mullins got out of the locked room and the booking room, Mr. Mullins was found coming down the stairs where he was originally brought in to the jail. RP 27. Once corrections deputies located and apprehended Mr. Mullins, they placed him in the locked room inside the locked booking room again. RP 27. At some point, either during the first or second escape, Mr. Mullins used an eating utensil, called a “spork”, issued with his meal, to pry open the locked doors. RP 28. About five minutes after his first escape, Corrections Deputies again found Mr. Mullins outside of the holding cell. RP 28. The corrections deputies placed Mr. Mullins in cuffs and conducted a strip search, given that Mr. Mullins had wandered around in the corrections office. CP 71; RP 29. During his second time out of his holding cell, Mr. Mullins managed to steal coins, a small key, a handcuff key, a deputy’s smartphone, and four dollars in cash. CP 71. The corrections deputies also found a baggy of white resin/powder. CP 71. The white resin/powder was later determined to be methamphetamine. RP 91-92.

At trial on the consolidated cases, the Superior Court heard testimony from Corrections Deputies Reese and Niegel. The Corrections Deputies testified that Mr. Mullins had managed to get through two locked doors, had made his way to the area where the Corrections Deputies kept their personal items, had stolen several items, including a smart phone, a

handcuff key, and personal keys of one of the Corrections Deputies, and was seen trying to leave through the door where he had entered the building. RP 35, lines 20-22; 42, lines 16-25; 47-48. Mr. Mullins did not testify or present any testimony from witnesses. RP 2. The Superior Court convicted Mr. Mullins of Escape in the First Degree, Theft in the Third Degree, Possession of a Controlled Substance—Methamphetamine, and Bail Jumping. CP 31-32, 76-80.

IV. STATEMENT OF THE ISSUES

- I. There was sufficient evidence for a finder of fact to convict Mr. Mullins of escape.
- II. The information, charging Mr. Mullins with Escape in the First Degree, was not constitutionally deficient.
- III. The sentencing court did not err when it calculated Mr. Mullins' offender score.
- IV. The record is bereft of support that the Superior Court considered improper facts at sentencing.

V. STANDARDS OF REVIEW

Issue I, Mr. Mullins' challenge to the sufficiency of the evidence, is reviewed in the light most favorable to the State to determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. State v. Christian, 44 Wash.App. 764, 770, 723 P.2d 508, 511 (Div. I, 1986).

Issue II, Mr. Mullins' challenge to the constitutional sufficiency of the charging information, is reviewed under a standard of liberal construction to determine whether there is at least some language in the information giving notice of the allegedly missing element. State v. Kjorsvik, 117 Wash.2d 92, 106, 812 P.2d 86 (1991).

Issues III and IV, use of certain facts in properly formulating Mr. Mullins' offender score, appears to be reviewed for abuse of discretion. See State v. Mendoza, 165 Wash.2d 913, 205 P.3d 113 (2009); See also State v. Ford, 137 Wash.2d 472, 973 P.2d 452 (1999).

VI. ARGUMENT

1. **The trial court was presented with sufficient evidence to convict Mr. Mullins of escape.**

Sufficient evidence was presented at trial for the Superior Court to convict Mr. Mullins of Escape in the First Degree. To convict a person of Escape in the First Degree, the State must prove:

...he or she knowingly escape[d] from custody or a detention facility while being detained pursuant to a conviction of a felony or an equivalent juvenile offense.

Wash. Rev. Code Ann. § 9A.76.110(1) (West). "In reviewing the sufficiency of the evidence, the relevant inquiry is whether, after viewing the evidence in the light most favorable to the prosecution, any

rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” State v. Christian, 44 Wash.App. 764, 770, 723 P.2d 508, 511 (Div. I, 1986) (internal citations omitted). “In determining the sufficiency of the evidence, circumstantial evidence is not to be considered any less reliable than direct evidence. Further, specific criminal intent may be inferred from conduct where it is plainly indicated as a matter of logical probability.” Id. at 770 (internal citations omitted).

“In order to convict a defendant of first degree escape under RCW 9A.76.110, the State must demonstrate that the defendant knew his or her actions would result in leaving confinement without permission.” Id. at 771 (citing State v. Danforth, 97 Wash.2d 255, 258-59, 643 P.2d 882 (1982)).

The State was required to show that Mr. Mullins escaped from custody **or** a detention facility. There is sufficient evidence in the record to support the Superior Court’s conclusion that Mr. Mullins escaped from custody **and** that he escaped from a detention facility.

The Superior Court concluded that Mr. Mullins escaped from confinement, not that Mr. Mullins escaped from a “detention facility.” RP 91. Even if custody and detention facility are not listed in RCW 9A.76.110 in the disjunctive and even if the Superior Court had concluded that Mr.

Mullins escaped from a “detention facility”, there is still sufficient evidence in the record.

A. The record supports the Superior Court’s conclusion that Mr. Mullins escaped from custody.

Mr. Mullins claims that he cannot be guilty of escape from custody because he did not leave the larger jail facility. Opening Brief of Appellant at 9. More particularly, Mr. Mullins argues that wandering around freely within the larger facility, as he did, was not out of custody. Opening Brief of Appellant at 11. Such an argument ignores the plain language of RCW 9A.76.010.

RCW 9A.76.010 clearly states that custody is merely restraint. “‘Custody’ means restraint pursuant to a lawful arrest or an order of a court....” RCW 9A.76.010(2). Mr. Mullins was placed in a locked holding cell; he was therefore restrained. By leaving the restraint of the holding cell, Mr. Mullins left custody. “The escape statute does not define the term ‘restraint.’” State v. Ammons, 136 Wash.2d 453, 457, 963 P.2d 812, 814 (1998). “The dictionary defines restraint as 1 a: an act of restraining, hindering, checking, or holding back from some activity or expression ... b: a means, force, or agency that restrains, checks free activity, or otherwise controls.” Id. (quoting Webster's Third New International Dictionary 1937 (1986)) (internal quotation marks omitted).

The Superior Court Judge set forth her reasoning and conclusion quite succinctly:

You had not been booked, you were not an inmate in the jail yet. But you were confined to an interview room -- awaiting your booking process. And you escaped from confinement of that room. You were not an inmate in the jail, you were not free to roam, you did not have permission to leave that room. You were in custody and confined in a room and you escaped from that room. That is escape in the first degree because you were arrested on a warrant post-felony conviction.

RP at 86, lines 4-12 (see also RP 93, lines 6-8). Mr. Mullins asks this Court to reach an absurd result: so long as an individual does not leave the building, he is free to leave his place of restraint and run amok within the building. This invitation from Mr. Mullins ignores that Mr. Mullins was not free to roam about the larger building. In fact, “[Mr. Mullins] made it out of a secure -- yes, the secure booking office from two different locked doors.” RP 36, lines 22-23. Thus, the more rational conclusion is that Mr. Mullins was restrained in a room within the booking room, behind two locked doors that locked and unlocked only from the outside, that Mr. Mullins pried open the doors with a tool, and that he therefore escaped custody for the purposes of the charge of Escape in the First Degree.

B. The record supports a conclusion that Mr. Mullins escaped from a detention facility.

Mr. Mullins noticeably twists the conclusions in State v. Gomez, a Division III case that can only be described as being ‘on all fours’ when deciding what is sufficient for “detention facility” in the context of escape. In Gomez, “[t]he State showed that the booking room is a ‘place used for the confinement of a person.’” State v. Gomez, 152 Wash.App. 751, 754, 217 P.3d 391, 392 (Div. III, 2009) (citing RCW 9A.76.010(2)).

In Gomez, Garfield County Deputy Sheriff Jesse Bianche arrested and transported Mr. Gomez to the county jail. Id. at 752. The jail shared space in the basement of the county courthouse with the sheriff’s office. Id. The Deputy handcuffed Mr. Gomez to a chair that was bolted to the booking room floor. Id. The Deputy then responded to a call for backup on an unrelated incident. Id. The Deputy left Mr. Gomez in the booking room. Id. Mr. Gomez slipped his hands out of his cuffs, walked into the hallway, glanced around, and left the building through the back door. Id. The deputy later saw Mr. Gomez’s activity in the building on surveillance videotapes. Id.

The State charged Mr. Gomez with one count of Escape in the Second Degree and possession of a controlled substance, among other charges. Id. To be guilty of Escape in the Second Degree, a person must knowingly escape from a “detention facility” or “custody.” RCW 9A.76.130(1)(a)-(b).

At Mr. Gomez' trial, the State's witnesses testified about the layout and purposes of the sheriff's office and jail. Id. at 753. The Garfield County Sheriff testified that standard procedure is to first escort any adult inmate into the booking room. Id. The booking room's windows were secured with metal bars. Id. The room contained a chair that is bolted to the floor and had a set of handcuffs attached to the chair's left arm. Id. Deputy Bianche testified that he transported Mr. Gomez to the jail and secured him in the booking room before leaving the facility on the other call. Id. Mr. Gomez was gone when he returned. Id. A jury convicted Mr. Gomez of Escape in the Second Degree. Id.

Unlike what Mr. Mullins claims in his Opening Brief, the Court of Appeals in Gomez did not find that the defendant had escaped the detention facility because he "...slipped out of his cuffs and left the building..." Opening Brief of Appellant at 14. Instead, what was critical to the Court of Appeals in Gomez was not that Mr. Gomez left the building, it was that "Mr. Gomez should have been in the booking room upon the deputy's return." Id. (citing State v. Peters, 35 Wash.App. 427, 431, 667 P.2d 136, 138 (Div. I, 1983) ("A person who, while on work release or furlough, is not within the area where he is authorized to be at a particular time, or a person who has remained in an area where he was authorized to go beyond the time permitted him, has escaped "from a detention facility.""). "We

have broadly interpreted the term ‘place’ as used in the definition of a detention facility. A detention facility is any **place** used for the confinement of a person charged.” Id. at 754 (internal citations omitted) (emphasis added) (citing Peters, 35 Wash.App. at 430-31).

On appeal, Mr. Gomez argued that the State failed to show that the booking room where he was held was a detention facility. Id. at 753. “A ‘detention facility’ is “any place used for the confinement of a person ... arrested for, charged with or convicted of an offense.” Id. at 754 (citing RCW 9A.76.010(2)(a)). “So the place must qualify and the person detained must qualify.” Id.¹

Mr. Mullins was placed in a locked room within the booking office and he eventually pried open both doors. Corrections Deputy Reece testified, “[we] [t]ook him down to the booking office. We put him in a room...it locks from one side, it can only be opened from our side and we secure the door so that it can’t be opened.” RP 23-24. When Mr. Mullins was placed in the booking room, he had not been booked into the jail because the corrections deputies were in the middle of distributing dinner and administering medication to the jail inmates. RP 24, lines 6-13.

¹ Mr. Mullins does not appear to challenge the second aspect of the test, that insufficient evidence was presented to qualify him as a person in custody or detained within the meaning of RCW 9A.76.110(1).

Mr. Mullins contends that no rational trier of fact could find him guilty of escape because he did not leave the larger jail facility. Opening Brief of Appellant at 9. However, Gomez makes it clear that leaving the booking room is sufficient for finding that Mr. Mullins escaped. Mr. Mullins also didn't just wander around and observe. Mr. Mullins pried open the door of his holding cell with a utensil, rummaged through the property of one of the jailers, and stole property belonging to the jailer, all while in the possession of methamphetamine. RP 41-42.

2. Mr. Mullins' conviction for escape should stand because the charging information was constitutionally sufficient.

“All necessary elements of the crime charged must be included in an information such that the accused understands the charges against him and can adequately prepare a defense.” State v. Ralph, 85 Wash.App. 82, 84–85, 930 P.2d 1235, 1236 (Div. III, 1997) (citing State v. Bacani, 79 Wash.App. 701, 703, 902 P.2d 184 (Div. I, 1995), *review denied*, 129 Wash.2d 1001, 914 P.2d 66 (1996)). “The primary goal of the ‘essential elements’ rule is to give notice to an accused of the nature of the crime that he or she must be prepared to defend against.” State v. Kjorsvik, 117 Wash.2d 93, 101, 812 P.2d 86, 90 (1991). Statutorily imposed elements and court-imposed elements are treated the same for purposes of the

essential elements rule. Id. at 101 (see also State v. Davis, 119 Wash.2d 657, 662-63, 835 P.2d 1039, 1041–42 (1992)).

“The manner in which an information is reviewed to determine sufficiency depends upon when the matter is brought before the court. An information which is not challenged until after the verdict is liberally construed in favor of validity. Id. (citing Kjorsvik, 117 Wash.2d at 102). “In order to establish an information's insufficiency after the verdict, a defendant must establish (1) the necessary elements of the offense are not in the information in any form, and (2) how the defendant was prejudiced by the faulty information. Id. (citing Kjorsvik, 117 Wash.2d at 105–06). “The information must nonetheless contain in some form language that can be construed as giving notice of the essential elements.” State v. Marcum, 116 Wash.App. 526, 534, 66 P.3d 690, 694 (Div. III, 2003).

A. A liberal construction of the charging information includes the *mens rea* element of Escape in the First Degree.

At first blush, this issue would appear to have been decided by the decision in State v. Brown, 169 Wash.2d 195, 234 P.3d 212 (2010), a case not cited by Mr. Mullins, but one that contains nearly identical issues. At this point, the State would normally concede the issue, except for the fact that the prosecution made a very different argument in Brown.

In Brown, the defendant was held in the Benton County Jail. Id. at

197. The defendant requested a 72-hour furlough to allow him to attend drug treatment. Id. The defendant failed to attend drug treatment and instead, returned several months later. Id. The State charged the defendant with Escape in the Second Degree. Id. The charging information contained the allegation that the defendant escaped from custody “contrary to the form of the Statute in such cases made and provided.” Id. The charging information did not contain the statutory *mens rea* element of “knowingly.” Id. The case proceeded to a bench trial and the superior court convicted the defendant. Id.

On appeal, the defendant argued for the first time that the charging information was defective. Id. The Court of Appeals agreed that the charging information was defective, but ruled that the defendant had not shown prejudice. Id. The Supreme Court granted review and reversed the Court of Appeals, holding that not only was the charging information defective, the defendant did not need to demonstrate prejudice. Id. at 198. The Supreme Court reversed and required dismissal of the charge, without prejudice. Id.

The prosecution in Brown argued that “the phrase ‘contrary to the form of the Statute ... and against the peace and dignity of the State of Washington’ sufficiently supplied the knowledge element.” State v. Brown, 169 Wash.2d 195, 198, 234 P.3d 212, 214 (2010) (quoting Brown, 2009

WL 3739446, at *1). The Supreme Court outright rejected that argument and stated that “...mere reference to a statute does not sufficiently allege the essential elements.” State v. Brown, 169 Wash.2d 195, 198, 234 P.3d 212, 214 (2010).

What the State did not argue in Brown was the more obvious conclusion, that the very word “escape” implies the *mens rea* element. At the very least, escape is an intentional act.

Escape is defined as:

1. The act or an instance of breaking free from confinement, restraint, or an obligation.
2. An unlawful departure from legal custody without the use of force.

ESCAPE, Black's Law Dictionary (11th ed. 2019). Escape is also defined as “[a] detained person's violent or nonviolent escape from law-enforcement officers or a place of temporary detention.” Id.

“A person acts with intent or intentionally when he or she acts with the objective or purpose to accomplish a result which constitutes a crime.” RCW 9A.08.010(1)(a) (definition of “intent”). “When acting knowingly suffices to establish an element, such element also is established if a person acts intentionally.” RCW 9A.08.010(2). “A requirement that an offense be committed willfully is satisfied if a person acts knowingly with respect to the material elements of the offense, unless a purpose to impose further requirements plainly appears.” RCW 9A.08.010(4).

By analogy, our Supreme Court has ruled that the word “assault” carries with it the *mens rea* element of intent. In State v. Davis, the defendant charged with two counts of second degree assault, but was ultimately convicted of one count of second degree assault and one count of fourth degree assault. State v. Davis, 119 Wash.2d 657, 660-61, 835 P.2d 1039, 1041-42 (1992). On appeal, the defendant argued for the first time that the charging document did not contain the necessary *mens rea* element of intent. Id. at 661. The Supreme Court applied the liberal interpretation of the information and concluded that using the term “assault” in the charging information is sufficient to imply the *mens rea* element of intent. Id. In reaching that conclusion, the Supreme Court reaffirmed its ruling in State v. Hopper, 118 Wash.2d 151, 822 P.2d 775 (1992).

In Hopper, the Supreme Court held that when liberally construing the word “assault” in a charging document, the statutory element of “knowingly” for second degree assault was implied. Davis, 119 Wash.2d at 662 (citing Hopper, 118 Wash.2d at 159). “Our analysis in Hopper indicates assault adequately conveys the notion of intent.” Id. at 663. “In Hopper this court determined that assault is a **willful** act.” Id. (citing Hopper, 118 Wash.2d at 158, 822 P.2d 775). “Additionally, language alleging assault contemplates **knowing, purposeful** conduct.” Id. (citing Hopper, 118 Wash.2d at 158, 822 P.2d 775) (emphasis in original). “Also, assault is **not**

commonly understood as referring to an **unknowing** or **accidental** act.” Id. (citing Hopper, 118 Wash.2d at 158, 822 P.2d 775) (internal quotation marks omitted) (emphasis in original). “Furthermore, assault includes the element of **intent**.” Id. (citing Hopper, 118 Wash.2d at 159, 822 P.2d 775) (internal quotation marks omitted) (emphasis in original). “Therefore, assault conveys the intent element for fourth degree assault, just as it conveys the “knowingly” element of second degree assault. All of the essential elements of fourth degree assault are, therefore, present in the charging document.” Id.

No one unwittingly, unintentionally, or more importantly, unknowingly jimmies open the door of a holding cell. Mr. Mullins used a spork to pry the door latch open. RP 28-29; CP 69, 71. The Superior Court made the following Findings of Fact, regarding Mr. Mullins’ mental state at the time of his escape: “The defendant was aware of his actions. The defendant was sneaking through the jail facility, crouching down to avoid detection. It is clear that he was aware that he did not have permission and intended to escape the custody of the corrections deputies.” CP 77. “And I should -- I should put on the record that the court does find that Mr. Mullins knew that his actions would result in leaving confinement without permission -- as part of the escape...I think that’s -- that’s -- well, evidenced just by the video.” RP 90, lines 15-21. The very idea of escape and indeed

the word implies nothing short of knowing. To conclude that a person accused of escape, in either first or second degree, is not on notice that he knowingly removed himself from confinement attains incredulity.

B. Mr. Mullins fails to show how the missing *mens rea* element prejudiced him.

If this Court concludes that the *mens rea* element is implied from a liberal interpretation of the word “escape”, then Mr. Mullins is required to show how the lack of a stated *mens rea* element prejudiced him. On the other hand, if this Court concludes that the *mens rea* element is not implied from the word “escape”, then Mr. Mullins need not show prejudice. See State v. Brown, 169 Wash.2d 195, 198, 234 P.3d 212, 214 (2010) (citing State v. Marcum, 116 Wash.App. 526, 536, 66 P.3d 690 (Div. III, 2003) (prejudice need not be shown if charge cannot be saved by liberal construction). In his Opening Brief, Mr. Mullins does not make any argument that he was prejudiced.

C. Even if the charging information is fatally deficient, the remedy is dismissal without prejudice.

Even if this Court holds that the charging document is constitutionally deficient, the remedy is dismissal without prejudice. “When a conviction is reversed due to an insufficient charging document, the result is a dismissal of charges without prejudice to the right of the State to recharge and retry the offense for which the defendant was convicted or

for any lesser included offense.” State v. Vangerpen, 125 Wash.2d 782, 791-93, 888 P.2d 1177, 1182 (1995); see also State v. Ralph, 85 Wash.App. 82, 86, 930 P.2d 1235 (Div. III, 1997), State v. Bacani, 79 Wash.App. 701, 705, 902 P.2d 184 (Div. I, 1995).

3. The Superior Court correctly calculated Mr. Mullins’ offender score, because the Deputy Prosecuting Attorney presented a written summary of Mr. Mullins’ convictions and prior convictions need only be proved by a preponderance of the evidence.

“At sentencing, the State bears the burden to prove the existence of prior convictions by a preponderance of the evidence.” State v. Mendoza, 165 Wash.2d 913, 920, 205 P.3d 113, 116 (2009) (disapproved of by State v. Jones, 182 Wash.2d 1, 338 P.3d 278 (2014)) (disapproval on other grounds). The cases reviewed by the Washington Supreme Court in Mendoza “...provide a foundation for considering what suffices as an acknowledgment in the present context. Importantly, we have emphasized the need for an *affirmative* acknowledgment by the defendant of *facts and information* introduced for the purposes of sentencing.” Id. at 928. Clearly, “[t]he best evidence to establish a defendant’s prior conviction is the production of a certified copy of the prior judgment and sentence.” State v. Harris, 148 Wash.App. 22, 30, 197 P.3d 1206, 1210 (Div. II, 2008), as amended (Mar. 10, 2009). “If defendant did not object to information

presented at sentencing, that information is deemed acknowledged.” State v. Handley, 115 Wash.2d 275, 283, 796 P.2d 1266, 1271 (1990). See also State v. Mail, 121 Wash.2d 707, 714, 854 P.2d 1042 (1993) (failure to object at sentencing has the effect of acknowledgment of facts and permits the trial court to use those facts).

While certified copies are best evidence, they are not required. In fact, “[a] criminal history summary relating to the defendant from the prosecuting authority or from a state, federal, or foreign governmental agency shall be *prima facie* evidence of the existence and validity of the convictions listed therein. If the court is satisfied by a preponderance of the evidence that the defendant has a criminal history, the court shall specify the convictions it has found to exist. All of this information shall be part of the record.” RCW 9.94A.500(1). “Under the SRA, a trial judge may rely on facts that are admitted, proved, or acknowledged to determine any sentence....” State v. Grayson, 154 Wash.2d 333, 338–39, 111 P.3d 1183 (2005) (citing RCW 9.94A.530(2)). “‘Acknowledged’” facts include all those facts presented or considered during sentencing that are not objected to by the parties.” Id. at 339 (citing State v. Handley, 115 Wash.2d 275, 282–83, 796 P.2d 1266 (1990)). “Under the SRA, where a defendant raises a timely and specific objection to sentencing facts, the court must either not

consider the fact or hold an evidentiary hearing.” Id. (citing RCW 9.94A.530(2) (requiring defendant to object)).

The State provided a criminal history summary to the Superior Court. CP 20-22. The State also provided a review of how it arrived at Mr. Mullins’ offender score. CP 22-23. Mr. Mullins’ claim that no evidence supports his offender score and that he did not affirm his criminal history, is misplaced. First, the State, prior to sentencing, submitted a several-page summary of Mr. Mullins’ prior convictions. CP 20-22; RP 99, lines 21-23. Second, Mr. Mullins adopted the offender score and record of prior convictions by agreeing to the offender score and criminal history, as recited in the Judgment and Sentence. CP 35-36.

Mr. Mullins made no objection to his offender score at sentencing. Mr. Mullins made no offers of proof. Mr. Mullins made no argument that the State had improperly reached the offender score assigned to Mr. Mullins. Mr. Mullins not only failed to voice an objection, he agreed to the offender score because it was contained in the Judgment and Sentence, which Mr. Mullins signed without objection. CP 40.

At the sentencing hearing the State recited the number of Mr. Mullins’ convictions and how it calculated the offender score. RP 99-102. At no time did Mr. Mullins object and at no time did he offer any explanation or additional facts to challenge the State’s recitation of prior

convictions.

The Sentencing Reform Act does not require recitation of all details surrounding each conviction; such a reading of the Act would fly in face of the plain reading. Had Mr. Mullins objected to the recitation of his prior convictions, he most likely would have been granted a hearing under RCW 9.94A.530 and Grayson. The Deputy Prosecutor's list and discussion of Mr. Mullins' prior convictions should suffice for this Court, as it sufficed for the Superior Court. Nothing in Mendoza or the amendment to the SRA after Mendoza seems to require any information beyond what was offered by the State in Mr. Mullins' case.

4. Mr. Mullins' argument that the Superior Court improperly considered the sentences of other individuals is both misplaced and unsupported.

Not one case cited by Mr. Mullins in this fourth and final Assignment of Error comes even close to the facts of Mr. Mullins' case, nor does the Real Facts Doctrine seem to have any applicability. See State v. Morreira, 107 Wash.App. 450, 458, 27 P.3d 639, 643 (Div. III, 2001) ("A sentencing court may not base an exceptional sentence on an unproved or uncharged crime. And, the sentencing court may not impose a sentence based on the elements of a more serious crime that the State did not charge or prove.").

Mr. Mullins argues that the Superior Court based Mr. Mullins' sentence on improper facts but Mr. Mullins can't point to a scintilla of evidence to conclude that the Superior Court gave any consideration to the arguments of the Deputy Prosecutor. A review of the record shows neither the Superior Court's use or consideration of those facts nor does it show that Mr. Mullins objected to those facts. Without any kind of support in the record for if or how the Superior Court gave any weight to the reference to other similar cases, Mr. Mullins' argument should fail.

VII. CONCLUSION

For the reasons stated above, the State respectfully requests that the convictions and sentencing of Mr. Mullins be affirmed.

DATED this 10th day of February, 2020.



Will Ferguson, WSBA 40978
Special Deputy Prosecuting Attorney
Office of the Stevens County Prosecuting Attorney

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