COA 57955-3-II

Case #: 1043988

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

STATE OF WASHINGTON,

Respondent,

v.

JOSHUA JAMES ALLEN

Appellant.

ON APPEAL FROM THE SUPERIOR COURT
OF GRAYS HARBOR COUNTY

PETITION FOR REVIEW

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TABLE OF AUTHORITIES

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STATUTES

A. IDENTITY OF PETITIONER

Joshua Allen was the defendant in Grays Harbor County cause 22-1-00340-14, was the appellant in Court of Appeals No. 57955-3-II, and is the Petitioner herein.

B. COURT OF APPEALS DECISION

Mr. Allen seeks review of the Court of Appeals decision issued by Division Two of the Court, dated July 1, 2025 in COA No. 57955-3-II. See Appendix.

C. ISSUES PRESENTED ON REVIEW

An essential element of rendering criminal assistance is knowledge that the person(s) to whom assistance was rendered committed criminal conduct of the seriousness associated with the respective three degrees of the rendering statute.

Was notice entirely inadequate in this case, even under the liberal construction rule of State v. Kjorsvik, 117 Wn.2d 93, 97, 812 P.2d 86 (1991), where the charging document failed to

include the essential element of knowledge, requiring reversal with no further showing of prejudice required?

D. STATEMENT OF THE CASE

1. Charge and conviction.

Following a bench trial, Joshua Allen was convicted by the court on one count of rendering criminal assistance in the FIRST degree, one count of second degree robbery by accomplice liability, and one misdemeanor count of assault in the fourth degree. CP 22.

According to the affidavit of probable cause, Grays Harbor Sheriff's Deputies were called to a home on 1060 State Route 105 in Montesano. CP 4-5. Tammy Kissner claimed that two men entered the mobile home unit while the family was having coffee and demanded items. She also stated that her father Thomes Ludvigsen had been assaulted. CP 4-5. Allegedly, Mr. Allen "punched her in the face." CP 5.

Ms. Kissner stated that Travis Bartholomew was one of the men at the residence and she believed he had a hand gun on

him, although no gun was wielded or pointed. CP 4-5. The men drove away in a silver Lexus driven by Mr. Allen. CP 4. Ms. Kissner made these same claims to the 911 operator. RP 81-82, 95-96.

2. Trial.

However, at trial, Ms. Kissner admitted that Mr. Allen did not enter the home and merely lingered outside on the grass. RP 98-99. Instead, she said that Mr. Bartholomew and Mr. James Luna had entered the home, without permission, and stated that they were there for Mr. Ludvigsen's drugs and money. CP 98-99.

Ms. Kissner testified that she saw a Ruger firearm in Mr. Bartholomew's front pocket. RP 96. Ms. Kissner stated that Mr. Allen was outside, and she pushed her way past the two entrants, to go outside and confront Mr. Allen who she had a longstanding dispute with. RP 99. It was then that Mr. Allen punched her. RP 99.

Mr. Ludvigsen testified that Mr. Bartholomew and Mr. Luna came into the home and told him that they wanted drugs and money, and said that they would rob him. RP 59-59. Mr. Ludvigsen did not want any sort of commotion to occur inside, so he told the men to come outside with him. RP 59, 62. When Mr. Ludvigsen began exiting the home, he was struck in the back of the head and he fell to the ground. RP 59. According to both Mr. Ludvigsen and Ms. Kissner , the three men then "took off and left" RP 56 (testimony of Mr. Ludvigsen), see RP 57 (testimony of Ms. Kissner).

Deputy Jason Peterson responded, and broadcast a description of the Lexus after he arrived at the home. RP 24. Officers later stopped the silver Lexus on State Route 105, and detained the occupants, Joshua Allen and Mr. Luna. RP 24, RP 26.

Following Miranda warnings, Mr. Allen told Deputy Allen that he knew that Mr. Luna and Mr. Bartholomew were going to demand drugs from Mr. Ludvigsen, a drug dealer, but

he drove them to the scene because he wanted to make sure that no guns were involved, because Mr. Ludvigsen had been like a second father to him. CP 22.

3. Outcome.

Neither James Luna or Travis Bartholomew were charged. However, Mr. Allen was charged and was found guilty by the trial court. CP 22-23. The court found that Mr. Allen rendered criminal assistance in the first degree by driving Luna and Bartholomew away from the crime scene while knowing that the men had committed a Class A felony. CP 22.

The trial court did not specify the felony in the bench trial findings. CP 22. In the court's oral ruling, the court had found that Mr. Allen knew that Luna and Bartholomew had committed first degree burglary, by entering the Ludvigsen home to rob Mr. Ludvigsen, where one of the men did have a gun, and where Mr. Ludvigsen was assaulted. RP 156. The court also found Mr. Allen was an accomplice to attempted

second degree robbery, and was guilty of misdemeanor assault for striking Ms. Kissner. CP 22-23.

Mr. Allen was sentenced to a term of 96 months for the crime of first degree rendering criminal assistance, with the sentences for counts 2 and 3 run concurrent to the rendering conviction. RP 4 (sentencing); CP 24. He appealed. CP 32.

The Court of Appeals ordered the legal financial obligations be struck because of the defendant's indigence, but rejected Mr. Allen's challenge to the inadequacy of the charging document. See Appendix.

E. ARGUMENT

The defendant's conviction for rendering criminal assistance in the first degree must be reversed because the charging document did not include all the essential elements of the offense.

(1). Review is warranted in this case which addresses a significant issue of state and federal constitutional law.

A defendant has a right to constitutionally adequate notice. U.S. Const. amend. VI; Const. art. I, § 22. "Pursuant to

this right, '[t]he accused . . . has a constitutional right to be apprised of the nature and cause of the accusation against him." State v. Gehrke, 193 Wn.2d 1, 6, 434 P.3d 522 (2019) (quoting State v. Ackles, 8 Wn. 462, 464-65, 36 P. 597 (1894)).

An offense is not properly charged unless the information sets forth every essential statutory and nonstatutory element of the crime. State v. Kjorsvik, 117 Wn.2d 93, 97, 812 P.2d 86 (1991); State v. Vangerpen, 125 Wn.2d 782, 787, 888 P.2d 1177 (1995); see 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. 1983)).

In this case, where the Court of Appeals wrongly deemed the information adequate to proved notice, review in this case is warranted under RAP 13.4(b) because it presents a significant constitutional question.

(2). The defendant must be provided with notice in the information.

The State gives notice of charges by filing an 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 offense is not properly charged unless the information sets forth every essential statutory and nonstatutory element of the crime. State v. Kjorsvik, 117 Wn.2d at 97; State v. Vangerpen, 125 Wn.2d at 787.

An "essential element is one whose specification is necessary to establish the very illegality of the behavior" charged. State v. Johnson, 119 Wn.2d at 147; United States v. Cina, 699 F.2d at 859. The primary purpose of the essential elements rule is "to apprise the accused of the charges against him or her and to allow the defendant to prepare a defense." Vangerpen, 125 Wn.2d at 787.

(3).Where an element is not included in the charging document for the offense, even when the information's language is read liberally as it must be in the instance of an appellate challenge, reversal is required with no further showing of prejudice.

Failure to allege each element of the crime means the information is insufficient to charge a crime and the information must be dismissed. Vangerpen, 125 Wn.2d at 788. A charging document is not required to define essential elements, State v. Johnson, 180 Wn.2d 295, 302, 325 P.3d 135 (2014), but the question of what statutes - or set of statutes - set forth the elements depends on the statutory scheme as a whole. State v. Budik, 173 Wn. 2d 727, 734, 272 P.3d 816 (2012)

When, as in this case, a charging document is challenged for the first time on appeal, the Court of Appeals will construe it liberally, and inartful language setting out the element will suffice. State v. McCarty, 140 Wn.2d 420, 425, 998 P.2d 296 (2000).

But if the charging document cannot be construed to give notice of or to contain in some manner the essential elements of a crime, the most liberal reading cannot cure it. McCarty, at 425 (citing State v. Moavenzadeh, 135 Wn.2d 359, 363, 956 P.2d 1097 (1998)).

The Courts apply a two-pronged test to resolve challenges to the sufficiency of the charging document: (1) do the necessary facts appear in any form, or by fair construction can they be found, on the face of the charging document and, if so, (2) can the defendant show that he or she was nonetheless actually prejudiced by the inartful language that caused a lack of notice? Kjorsvik, 117 Wn.2d at 105-06.

If the necessary elements are not found or fairly implied - even after a liberal reading tolerant of inartful language - the Courts presume prejudice and will reverse without any further showing of prejudice required. State v. Zillyette, 178 Wn.2d 153, 163, 307 P.3d 712 (2013); City of Auburn v. Brooke, 119 Wn.2d 623, 636, 836 P.2d 212 (1992); see Wayne R. LaFave et

al., 5 Criminal Procedure § 19.3(b) (4th ed. 2015) ("[l]n most jurisdictions, even where the lack of an element in a pleading was not challenged before the trial court, it can be raised on appeal following a trial conviction, and if the pleading completely fails in this regard, the conviction will be automatically reversed.").

(4). The essential elements set forth for purposes of rendering criminal assistance must be read in conjunction with the broad range of offenses included in each of the three different iterations of rendering as to degree.

The Supreme Court has described the essential elements of rendering: "a person renders criminal assistance if he or she (1) knows that another person (a) 'has committed a crime or juvenile offense' or (b) 'is being sought by law enforcement officials for the commission of a crime or juvenile offense' or (c) 'has escaped from a detention' and (2) intends 'to prevent, hinder, or delay the apprehension or prosecution' of that other

person and (3) undertakes one of the six specified actions." State v. Budik, 173 Wn. 2d 727, 734, 272 P.3d 816 (2012).

Although Budik involved an issue regarding the elements required to be included in the "to-convict" jury instruction, the Court employs the same analysis when assessing the adequacy of the charging document. State v. Pry, 194 Wn. 2d 745, 755, 452 P.3d 536 (2019).

Mr. Allen was found guilty of first degree rendering criminal assistance by the bench trial court because, as finder of fact, the court found that Mr. Allen knew that the men, Mr. Luna and Mr. Bartholomew had committed burglary. CP 22-23.

However, the information did not match the statutes that set out the elements of rendering criminal assistance in the first degree. RCW 9A.76.050, a general statute, putatively definitional, states inclusively that a person renders criminal assistance if the person does any one of the listed acts facilitative of avoidance "with intent to prevent, hinder, or

delay the apprehension or prosecution of another person who he or she knows has committed a crime or juvenile offense[.]" (Emphasis added.) RCW 9A.76.050.

Under this statute, rendering, by its plain language, does not require that a person know the type of crime that the person committed, until paired with a charge of the offense in a given degree. The statutory scheme does require that the person know the characteristics of the person's conduct, which then comes within the ambit of the different categories of offense that distinguish the different degrees of the crime. Those degrees are as follows:

> A person is guilty of rendering criminal assistance in the first degree if he or she renders criminal assistance to a person who has committed or is being sought for murder in the first degree or any class A felony or equivalent juvenile offense. RCW 9A.76.070(1), see (2) (first degree rendering is a Class B felony).
>
> A person is guilty of rendering criminal assistance in the second degree if he or she renders criminal assistance to a person who has committed or is being sought for a class B or class C felony or an equivalent juvenile offense

> or to someone being sought for violation of parole, probation, or community supervision. RCW 9A.76.080(1), see (2) (second degree rendering is a gross misdemeanor).
>
> A person is guilty of rendering criminal assistance in the third degree if he or she renders criminal assistance to a person who has committed a gross misdemeanor or misdemeanor. RCW 9A.76.090(1), see (2) (third degree rendering is a misdemeanor).

RCW 9A.76.090(1). The phrase "crime or juvenile offense" in RCW 9A.76.050 is general statement of rendering that will bring within its ambit the three categories of conduct - beginning with offense or conduct that distinguish rendering assistance in the third, second, and first degrees.

A person does not need to know that the other individual committed conduct that the law labels a "Class A felony." Such a requirement would require the defendant to know the law - but Mr. Allen argues that the defendant must know the characteristics of the conduct the rendered individual engaged in, which in turn, under law, equates to the degree of the offense. See State v. Williams, 158 Wn.2d 904, 909, 148 P.3d

993 (2006) (prosecution for possessing a type of gun prohibited from being possessed) (defendant need not know that the type of firearm in question is classified as illegal because ignorance of the law is no excuse - but he must know that the gun has the physical characteristics it does - those of a short-barreled shotgun, short-barreled rifle, or machine gun).

Alternatively, at a minimum, a defendant allegedly rendering assistance to a first degree burglar must at least know (i.e., be charged with knowing) that the individual has committed burglary. The proper rule is the above, or alternatively, at least the latter.

Of course, here, first and conclusively, the information did not include any element of knowledge of the crime committed at all. Its structure leaves out an essential element of the defendant's knowledge that the person had committed a crime that generally had the characteristics it did (and which, here, one learns *later* upon charging, falls in the category of a Class A felony).

The seriousness or lesser seriousness of the crime committed by the person to whom assistance was rendered is the only thing that distinguishes the first, second, and third degrees of rendering. Yet the information failed further, because it entirely omitted any knowledge element:

> COUNT 1
> On or about August 9, 2022, Joshua James Allen, in Grays Harbor County, Washington with the intent to prevent, hinder, and delay the apprehension of Travis Bartholomew, who had committed or was being sought for a Class A Felony, and knowing that such person had committed a crime, did harbor and conceal such person, and/or provide such person with transportation or other means of avoiding discovery and apprehension;

CP 1. Nowhere in the document does the charging language allege knowledge of even the general range of conduct committed by the individuals(s) to whom assistance was rendered.

Absent this requirement of knowledge, a person who agreed to pick up their friend at a building construction site, and was told by the individual upon him entering the defendant's

car that he had stolen some tools (a "crime" - theft), would be guilty of aggravated murder if that was what the individual actually did inside the building .

If the charging document of this sort were deemed complete, then the defendant who only had knowledge that the individual committed third degree theft - such as by stealing a tape measure or a rubber mallet- would properly be deemed on notice of the charge that he rendered assistance to a killer. See RCW 9A.56.050(1)(a) (third degree theft). See generally, State v. Darcus Allen, 182 Wn. 2d 364, 374, 341 P.3d 268 (2015).

This result is untenable. Washington law does not favor strict liability offenses. State v. Anderson, 141 Wn. 2d 357, 367, 5 P.3d 1247 (2000) (defendant who is prohibited from possessing a firearm must know that the firearm is in his possession or custody and control).

(5).Indeed, the cases of State v. Anderson, along with the principles announced in Cronin and Roberts, show that the charging document was constitutionally defective.

State v. Anderson, a sufficiency appeal, makes steps, albeit incomplete, toward Mr. Allen's argument. There, a defendant drove an individual to a Vancouver-area tavern, but the passenger instead went into the nearby Wild Willie's store. Soon after, he ran back out, told Anderson he had "robbed" the store, and lay down in the back seat. The defendant drove away but police officers soon gave chase and arrested both men. State v. Anderson, 63 Wn. App. 257, 258, 818 P.2d 40 (1991).

The Court of Appeals addressed the defendant's argument that absent evidence that he knew that the robbery - which he did know about - had been committed while the individual displayed a firearm, he could not be convicted under the first degree rendering statute, because basic second degree robbery is not a Class A felony as required by first degree

rendering. Anderson, 63 Wn. App. at 259-60; see RCW 9A.56.200.

The Court disagreed. The Court first looked to what was then thought of as the "definition" of rendering, i.e. RCW 9A.76.050, which provides that a person is guilty of rendering criminal assistance "if he knows that the individual has committed a crime, is being sought by law enforcement for the same, or has escaped from a detention facility." Anderson, at 260 (quoting RCW 9A.76.050).

But the Court did not hold that *first degree* rendering, without regard to what the very serious nature of the other individual's crime might be, can simply be proved by showing that the defendant knew that the individual had committed "a crime." Anderson, at 260.

And the Court did read the statutory scheme as requiring knowledge of the general nature of the offense the individual committed, although not the specific degree of the offense - thus Mr. Anderson was guilty because he knew that the

individual had committed robbery, although he did not know the individual had committed *armed* - ie., first degree robbery.

> We hold that a person can be convicted of rendering criminal assistance in the first degree if he or she knows at the time of rendering the assistance that the one being assisted committed robbery. We further hold that a person can be convicted of rendering criminal assistance in the first degree notwithstanding a lack of knowledge concerning facts that would disclose the degree of the robbery.
>
> * * *
>
> By its plain terms, RCW 9A.76.070 does not require that the person rendering assistance know the degree of crime committed by the principal. It appears then, that the person rendering assistance must have knowledge of the principal's crime, but not of facts disclosing the degree of that crime.

(Emphasis added.) Anderson, at 259-60. The Anderson Court understandably shied away from deciding the question, unnecessary to the case before it, of what exactly a defendant must know to be guilty of each of all of the hierarchical degrees of rendering. Anderson, at 260. The Court stated,

> Because there is ample evidence that Anderson knew that Wilson had committed robbery, we

> need not decide whether knowledge would be sufficient to support conviction if it were mistaken or non-specific. By mistaken knowledge, we mean a belief that the principal committed one crime when in fact he committed a different crime. By non-specific knowledge, we mean knowledge that the principal committed a crime but no knowledge concerning what the crime was.

Anderson, at 260 note 2. But what the rendering statutory scheme does provide by its language, absent meeting the requirements for strict liability statutes, is that knowledge of the crime committed by the individual is required, and must be alleged in the information. In any given case of rendering, it makes sense to charge an accomplice with the foreseeable results of assisting a robbery (that a participant might be armed), but rendering assistance – which occurs *after the fact* - snares persons who have no knowledge whatsoever, according to the charging document here.

In one respect, this is consistent with our accomplice liability law. The statutory scheme for complicity requires "that the putative accomplice must have acted with knowledge

that [their] conduct would promote or facilitate the crime for which [they are] eventually charged." State v. Cronin, 142 Wn.2d 568, 579, 14 P.3d 752 (2000).

In Roberts, the Supreme Court rejected jury instructions allowing a defendant to be found guilty as an accomplice if they were accountable for the conduct of another person " 'in the commission of a crime.' " State v. Roberts, 142 Wn.2d 471, 510, 14 P.3d 713 (2000).

Under these authorities, a defendant may be guilty as an accomplice to a specific crime committed by a principal if they have "general knowledge of that specific crime," but the defendant is not liable "for any and all crimes" that may follow. Id. at 512; see, e.g., State v. Grendahl, 110 Wn. App. 905, 911, 43 P.3d 76 (2002) (reversing where the jury found the defendant guilty of robbery as an accomplice but may have believed the defendant "merely intended that [the principal] commit a theft").

Likewise, the degrees of a crime of great gravity (such as robbery versus first degree robbery in Anderson), are just that - varying iterations of a crime that society classifies within Title and Chapter, deeming them to be equally close to or (in the case of murder) at top of the hierarchy of wrongdoing.

Determining the meaning of a statute requires looking to the statute's language and the statutory scheme as a whole. State v. Budik, 173 Wn.2d at 735.

The principles of Cronin and Roberts are not rigorous *enough* for the statute in question to be fairly charged, on its plain language. Applying by analogy rules of accomplice liability and the notion that one is guilty for a principal's armed robbery even if one only believed he was assisting in a basic robbery, would weaken the requirements of the rendering statutes.

It cannot be gainsaid that the degrees of rendering require a specific knowledge as to the acts of the individual to whom assistance was rendered – such as here, knowledge that the

individual had engaged in certain conduct – the characteristics of which conduct would, in a subsequent legal forum, make it a Class A felony. This is what the stature requires, and if State v. Anderson nullifies or eviscerates the Legislature's actual dictate as set forth in the plain language of the statutory scheme, that case is both incorrect – contrary to the plain language - and harmful, as it incarcerates defendants who did not know that the individual had committed armed robbery, violating the Sixth and Fourteenth Amendments' guarantee of proof of the crime charged. See State v. Otton, 185 Wn. 2d 673, 678, 374 P.3d 1108 (2016)

Looking to the generic elements of rendering in RCW 9A.76.050, and the additional elements in each of the statutes for first, second and third degree rendering, a defendant who rendered assistance to a person he knew had jumped the wall of a youth detention facility - but unbeknownst to the defendant, had just committed a rape - cannot be convicted of first degree rendering criminal assistance absent proof of the concordant

general knowledge, which of course must also be plainly set forth in the information.

Turning then to the charging document in Mr. Allen's case, as noted, the information included no element of knowledge, even general knowledge, as to the conduct of the individual to whom assistance was rendered. Regardless of the precise determinations of what knowledge a first degree rendering defendant must possess, versus what a third degree rendering defendant must possess, the information in this case required absolutely no knowledge as to the crime committed by the other individuals.

Where an essential element is missing from the information, even when the document is construed liberally upon an appellate challenge, the information is constitutionally deficient and reversal is required with no further showing of prejudice required. Vangerpen, 125 Wn.2d at 788; Kjorsvik, 117 Wn.2d at 105-06. This Court should reverse Mr. Allen's conviction for rendering criminal assistance.

F. CONCLUSION

For the above stated reasons, Mr. Allen asks this Court to accept review under RAP 13.4(b)(3), and reverse his conviction for rendering criminal assistance, and remand to the trial court.

This brief is composed in font Times New Roman size 14 contains 4,150 words.

DATED this 18th day of July, 2025.

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. JOSHUA JAMES ALLEN, Appellant.	No. 57955-3-II UNPUBLISHED OPINION

CHE, J. — Joshua James Allen appeals his conviction and sentence for one count each of first degree rendering criminal assistance, attempted second degree robbery, and fourth degree assault.

Allen drove James Luna and Travis Bartholomew to and from a residence which Luna and Bartholomew entered without permission and with the intent to commit a crime therein. Allen punched Tammy Kissner, who was present at the residence. The State charged Allen with attempted second degree robbery, fourth degree assault, and first degree rendering criminal assistance. The charging document alleged, for the crime of first degree rendering criminal assistance, that Allen "with the intent to prevent, hinder, and delay the apprehension of Travis Bartholomew, who had committed or was being sought for a Class A Felony, and knowing that such person had committed a crime, did harbor and conceal such person, and/or provide such person with transportation or other means of avoiding discovery and apprehension." Clerk's Papers (CP) at 1.

The trial court found Allen guilty as charged and imposed a $500 crime victim penalty assessment (VPA) as part of Allen's judgment and sentence.

On appeal, Allen argues that (1) the charging document was constitutionally insufficient as it did not include the essential elements of first degree rendering criminal assistance and (2) the VPA should be stricken from his judgment and sentence. Additionally, in a statement of additional grounds (SAG), Allen challenges his convictions by making several assertions, including assigning error to the trial court's determination that Allen intended to prevent, hinder, and delay the apprehension of Bartholomew.

We hold that the information was constitutionally sufficient and accept the State's concession that the VPA should be stricken from Allen's judgment and sentence. For Allen's SAG claims, we hold that each fails.

Accordingly, we affirm Allen's conviction and remand the matter to the trial court to strike the VPA.

FACTS

BACKGROUND

In August 2022, Allen's cousin, Bartholomew, called Allen and told him he was planning to rob Allen's stepdad, Tom Ludvigsen. When Bartholomew told Allen that he had access to a gun and "wanted to pull the trigger," Allen told Bartholomew that he did not need a gun. Rep. of Proc. (Jan. 26, 2023) (RP) at 123. Allen offered to pick up Bartholomew but stated that he did not want guns in his car.

Allen met Bartholomew and drove him and another person, Luna, to Ludvigsen's residence. When the three arrived, Bartholomew and Luna entered the residence and contacted

Ludvigsen, Ludvigsen's girlfriend, Kissner, and Ludvigsen's daughter. Bartholomew and Luna stated that they were there to rob Ludvigsen. Through the open front door, Allen observed Bartholomew pull out a gun. Ludvigsen suggested they move outside and, as he moved outside of the residence, he and Kissner both noticed Allen outside the residence. According to Kissner and Ludvigsen, Kissner then went around Ludvigsen to confront Allen. As Kissner went outside, Allen punched her in the face. After Allen punched Kissner, someone hit Ludvigsen in the back of his head.

According to Allen, he never had any direct contact with Kissner and believed that Kissner did not like him. Allen stood fifteen to twenty feet away from the residence before Bartholomew came out and Allen told him "let's go." RP at 133. Allen directed the men to leave with him because he noticed Bartholomew with a gun and Allen was scared, believing that, if he left without them while Bartholomew was armed, "something bad [was] going to happen." RP at 134. Allen, Luna, and Bartholomew got in Allen's car and left.

PROCEDURAL HISTORY

The State charged Allen with first degree rendering criminal assistance, attempted second degree robbery, and fourth degree assault. For the charge of rendering criminal assistance, the information stated the following, in full:

COUNT 1

> On or about August 9, 2022, [] Allen, in Grays Harbor County, Washington with the intent to prevent, hinder, and delay the apprehension of [] Bartholomew, who had committed or was being sought for a Class A Felony, and knowing that such person had committed a crime, did harbor and conceal such person, and/or provide such person with transportation or other means of avoiding discovery and apprehension;

> CONTRARY TO RCW 9A.76.070(2)(1) & (a) and against the peace and dignity of the State of Washington.

CP at 1 (boldface omitted).

The information provided the following for Count II, attempted robbery in the second degree:

> a crime based on a series of acts connected together with Count 1, committed as follows:
>
> On or about August 9, 2022 [] Allen, acting as a principal or accomplice to Robbery in the Second Degree, pursuant to RCW 9A.08.020, in Grays Harbor County, Washington, and with the intent to commit that crime: [] Allen did an act which was a substantial step towards the commission of that crime, and that, with intent to commit theft, he, or an accomplice, did attempt to unlawfully take personal property that he did not own from the person or in the presence of [] Ludvigsen, against such person's will, by use or threatened use of immediate force, violence, or fear of injury to said person or the property of said person or the person or property of another.

CP at 2. Lastly, the information charged Allen with attempted second degree robbery and fourth degree assault involving Kissner as the victim, but did not mention Bartholomew nor "a Class A Felony." CP at 1-2.

Allen's case proceeded to a bench trial where multiple witnesses testified consistently with the facts outlined above and the trial court admitted as exhibits an audio recording of Allen's statement to law enforcement and various photographs, including photographs of the scene, Kissner's injuries, a picture of Allen's hand showing an injury.[1] The trial court found Allen guilty of first degree rendering criminal assistance, attempted second degree robbery, and fourth degree assault.

[1] Allen testified that his hands were injured while taking out his car's alternator, days prior to the interaction with Kissner and Ludvigsen.

The court issued written findings of fact and conclusions of law. With regard to first degree rendering criminal assistance, the trial court specifically found that "despite any other stated intention of [Allen] for driving [] Luna and [] Bartholomew away from the crime scene where [Allen] knew that they had just committed a Class a felony, [Allen's] intentions were not a legal defense." CP at 22. Regarding the attempted second degree robbery, the court found that Allen "acted as an accomplice [] in that he drove the principal actors to and from the crime scene, as well as assault[ed] one of the victims by punching them." CP at 22. Regarding fourth degree assault, the trial court found "the combined evidence of the testimony of [] Kissner, as well as the photographic evidence of her injury were sufficient to establish that [Allen] assaulted her." CP at 22.

At sentencing, the trial court made a specific finding that Allen was indigent as defined by RCW 10.101.010(3)(a)-(c). It its judgment, the trial court ordered a total confinement amount of 364 days, ordered the payment of restitution, and imposed a $500 crime VPA.

Allen appeals.

ANALYSIS

I. SUFFICIENCY OF THE CHARGING DOCUMENT

For the first time on appeal, Allen argues that the charging document was constitutionally insufficient as it failed to include all the essential elements for first degree rendering criminal assistance. Allen asserts that the information specifically omitted "any element of knowledge of the crime committed." Br. of Appellant at 14. We disagree.

A. *Legal Principles*

Defendants have a constitutional right to be informed of "the nature and cause of the accusation" against them. U.S. CONST. amend. VI; WASH. CONST. art 1, § 22; *see State v. Hugdahl*, 195 Wn.2d 319, 324, 458 P.3d 760 (2020). Thus, to be constitutionally sufficient, an information must set forth all essential elements of the crime, statutory and nonstatutory, and the particular facts supporting them. *State v. Derri*, 199 Wn.2d 658, 691, 511 P.3d 1267 (2022).

"'Essential elements' are 'the facts that the State must prove beyond a reasonable doubt to establish that the defendant committed the charged crime.'" *Derri*, 199 Wn.2d at 691 (quoting *State v. Recuenco*, 163 Wn.2d 428, 434, 180 P.3d 1276 (2008)). The primary purpose of the essential element requirement is "'to apprise the accused of the charges against him or her and to allow the defendant to prepare a defense.'" *State v. Pry*, 194 Wn.2d 745, 752, 452 P.3d 536 (2019) (quoting *State v. Vangerpen*, 125 Wn.2d 782, 787, 888 P.2d 1177 (1995)). The charging document must do more than simply name the offense and list the essential elements: it must allege the particular facts supporting them. *Id.* In evaluating whether the charging document was sufficient, we may look to other counts charged in the information. *Id.*

When a defendant challenges a charging document for the first time on appeal, we liberally construe the document in favor of validity. *Derri*, 199 Wn.2d at 663 (citing to *State v. Kjorsvik*, 117 Wn.2d 93, 102, 812 P.2d 86 (1991)). In doing so, we first ask "whether the necessary facts appear in any form in the charging document or whether they can be found by fair construction therein." *Id.* at 691. Precise recital of the essential elements of the crime is not required so long as the document can be construed "to give notice of or to contain in some manner" the crime's essential elements. *See State v. McCarty*, 140 Wn.2d 420, 425, 998 P.2d

296 (2000); *see also Pry*, 194 Wn.2d at 752. Additionally, we may examine other charged counts contained within the face of the charging document to assess if the document reasonably apprised the defendant of the charged crime's elements. *State v. Nonog*, 169 Wn.2d 220, 228, 230-31, 237 P.3d 250 (2010); *see also Pry*, 194 Wn.2d at 753.

If the necessary facts are present, we then do not reverse the conviction "unless the defendant can show 'that he or she was nonetheless actually prejudiced by the inartful language which caused a lack of notice.'" *Derri*, 199 Wn.2d at 691 (quoting *Kjorsvik*, 117 Wn.2d at 106). If the necessary facts cannot be found by liberal construction, "prejudice is presumed and reversal is necessary." *State v. Zillyette*, 173 Wn.2d 784, 786, 270 P.3d 589 (2012).

B. *The Information Apprised Allen of the Necessary Facts for First Degree Rending Criminal Assistance*

Allen asserts that the information was constitutionally insufficient because it failed to include the crime's essential element of knowledge.

To determine whether the information sufficiently presented the necessary facts of the alleged crime, we first consider the essential elements of first degree rendering criminal assistance. *See Derri*, 199 Wn.2d at 692.

Chapter 9A.76 RCW sets out three degrees for the crime of rendering criminal assistance. RCW 9A.76.070 (in the first degree), .080 (in the second degree), .090 (in the third degree). A person violates RCW 9A.76.070 if one "renders criminal assistance" to another person "'who has committed or is being sought for murder in the first degree or any class A felony or equivalent juvenile offense.'" *State v. Budik*, 173 Wn.2d 727, 734, 272 P.3d 816 (2012) (quoting the statute). Because to "render[] criminal assistance" is defined in a related statute, our courts

have held that the essential elements for rendering criminal assistance crimes include those contained in the related statute, RCW 9A.76.050. *Pry*, 194 Wn.2d at 755-56; *Budik*, 173 Wn.2d at 734.

RCW 9A.76.050 provides that a defendant renders criminal assistance if the defendant (1) knows that the other person has committed or is being sought by law enforcement for a crime or juvenile offense or has escaped a detention facility, (2) intends to "prevent, hinder, or delay the apprehension or prosecution" of that other person, and (3) either:

> (1) Harbors or conceals such person; or
>
> (2) Warns such person of impending discovery or apprehension; or
>
> (3) Provides such person with money, transportation, disguise, or other means of avoiding discovery or apprehension; or
>
> (4) Prevents or obstructs, by use of force, deception, or threat, anyone from performing an act that might aid in the discovery or apprehension of such person; or
>
> (5) Conceals, alters, or destroys any physical evidence that might aid in the discovery or apprehension of such person; or
>
> (6) Provides such person with a weapon.

See Pry, 194 Wn.2d at 754-55; *Budik*, 173 Wn.2d at 734. In explaining why RCW 9A.76.050 provides essential elements and is not merely definitional, our Supreme Court explained that the statute requires that the defendant has "the intent to prevent, hinder, or delay the apprehension or prosecution of someone that he or she *knows* has committed a crime or is sought by authorities for commission of a crime, and action on behalf of that person." *Pry*, 194 Wn.2d at 756 (some emphasis omitted).

Here, the State's information alleged that:

> [o]n or about August 9, 2022, [] Allen, in Grays Harbor County, Washington with the intent to prevent, hinder, and delay the apprehension of [] Bartholomew, *who had committed or was being sought for a Class A Felony, and knowing that such person had committed a crime*, did harbor and conceal such person, and/or provide such person with transportation or other means of avoiding discovery and apprehension;

CP at 1 (emphasis added).

The information clearly alleged an element of knowledge by stating that Allen "knowing that [Bartholomew] had committed a crime, did harbor and conceal [him]," among other acts. CP at 1. The information additionally alleged particular facts related to the other essential elements by alleging that Allen had "the intent to prevent, hinder, and delay the apprehension of [] Bartholomew" and completed at least one of the acts outlined in RCW 9A.76.050: harbor and conceal or provide transportation or other means of avoiding discovery and apprehension. CP at 1.

Allen asserts that the knowledge element requires a defendant to know the characteristics of the conduct the rendered individual engaged in, which in turn, equated to the degree of the assisted-to offense. In the alternative, Allen argues that a defendant must at least know the general nature of the offense that the assisted individual committed which, in Allen's case, could be burglary or robbery. However, his arguments fail.

Even if we assume without deciding that either of Allen's constructions are correct, a liberal construction of the information in favor of validity includes an allegation that Allen knew

Bartholomew's crime qualified as a Class A felony.[2] *See Derri*, 199 Wn.2d at 691. Although the information inartfully alleged that Allen knew Bartholomew committed "a crime," the information provided some characteristics of the crime in question by stating immediately prior that Bartholomew had committed or was being sought for a Class A felony. In fair construction, the language of Count I placed Allen on notice that the State was alleging that Allen knew Bartholomew committed a Class A felony. *See Derri*, 199 Wn.2d at 691.

Moreover, while the language in Count I provided sufficient notice, the information's Count 2, the attempted second degree robbery, provided additional notice to Allen that the "crime" Allen allegedly had knowledge of involved the facts related to a robbery. Count 2 stated:

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[2] To the extent that Allen argues that case law supports the information being constitutionally defective because knowledge of conduct labeled as a "Class A felony" is not sufficient, his arguments are not persuasive. *See* Br. of Appellant at (1) 13 (citing to *State v. Williams*, 158 Wn.2d 904, 909, 148 P.3d 993 (2006), a prosecution for possession of an unlawful firearm required that the defendant know or should have known the characteristics that made the firearm illegal), (2) 17 (citing to *State v. Anderson*, 63 Wn. App. 257, 818 P.2d 40 (1991), a sufficiency of the evidence case), and (3) 20-21 (citing to multiple accomplice liability cases). None of these cases stand for the proposition that the information must specify the Class A or equivalent juvenile offense or such offense's underlying characteristics. Additionally, Allen's reliance on the relevant Washington's Pattern Jury Instructions (WPIC) is likewise unpersuasive due to the recognized difference between the purpose of charging documents and jury instructions. Wash. Ct. of Appeals oral argument, *State v. Allen*, No. 57955-3-II (Dec. 16, 2024), at 1 min., 40 sec. through 1 min., 47 sec. *video recording by* TVW, Washington State's Public Affairs Network, https://tvw.org/video/division-2-court-of-appeals-2024121019/?eventID=2024121019; Statement of Additional Auth. Following Arg. at 2-3 (citing to WPIC 120.11); *State v. Porter*, 186 Wn.2d 85, 93, 375 P.3d 664 (2016) (rejecting an appellant's argument that charging documents must mirror pattern to-convict jury instructions and, in doing so, noting that the two serve "very different purposes").

> *a crime based on a series of acts connected together with Count 1* . . . Allen, acting as a principal or accomplice to Robbery in the Second Degree, . . . and that, with intent to commit theft, he, or an accomplice, did attempt to unlawfully take personal property that he did not own from the person or in the presence of [] Ludvigsen, against such person's will, by use or threatened use of immediate force, violence, or fear of injury to said person or the property of said person or the person or property of another.

CP at 2 (emphasis added). And so, even with the inartful language, the information can still be constitutionally sufficient with the necessary elements for first degree rendering criminal assistance fairly implied. *See Kjorsvik*, 117 Wn.2d at 111.

Because we construe the information as giving notice of or at least containing in some manner the essential elements of first degree rendering criminal assistance, we next consider whether Allen can show that he was actually prejudiced by the inartful language. *See McCarty*, 140 Wn.2d at 425; *Derri*, 199 Wn.2d at 691. As Allen does not argue any prejudice occurred, his argument that the information caused a lack of notice fails. *See Derri*, 199 Wn.2d at 691.

We hold that the information was constitutionally sufficient and affirm Allen's first degree rendering criminal assistance conviction.

II. VPA

Allen argues that we should strike the VPA from his judgment and sentence because he is entitled to the benefit of the VPA statute's recent amendment. The State concedes that Allen is so entitled. We accept the State's concession.

The State's concession is supported by law because, effective July 1, 2023, the revised statute governing the VPA, RCW 7.68.035(4), prohibits courts from imposing a VPA if the trial court finds, at the time of sentencing, that the defendant is indigent as defined in RCW 10.01.160(3). LAWS OF 2023, ch. 449, § 1; *State v. Ellis*, 27 Wn. App. 2d 1, 16, 530 P.3d 1048

(2023), *review granted*, 4 Wn.3d 1009 (2025). Although not in effect at the time of sentencing, this amendment applies to cases on direct appeal, such as Allen's. *See Ellis*, 27 Wn. App. 2d at 16.

The concession is additionally supported by the facts of the case as the trial court made a specific finding at sentencing that Allen was indigent as defined by RCW 10.01.160(3). And yet, despite this finding, the trial court imposed a VPA on Allen's sentence.

With the State's concession supported by both law and facts, we accept the State's concession and strike the VPA from Allen's judgment and sentence.

III. STATEMENT OF ADDITIONAL GROUNDS

In Allen's SAG, Allen appears to make three sufficiency of the evidence claims relating to each of Allen's convictions.

When a defendant challenges the sufficiency of the evidence following a bench trial, we evaluate whether substantial evidence supports the trial court's finding of fact and, if so, whether the findings support the conclusions of law. *State v. A.X.K.*, 12 Wn. App. 2d 287, 293, 457 P.3d 1222 (2020). If a rational, fair-minded individual would be persuaded by the presented evidence, when viewed in the light most favorable to the State, such evidence is substantial. *Id.* We treat any unchallenged findings of fact as verities. *State v. Homan*, 181 Wn.2d 102, 106, 330 P.3d 182 (2014). Additionally, we evaluate both circumstantial and direct evidence equally. *State v. Smith*, 185 Wn. App. 945, 957, 344 P.3d 1244 (2015); *see also State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). Furthermore, we do not resolve conflicting testimony, disturb credibility determinations, or weigh evidence. *A.X.K.*, 12 Wn. App. 2d at 298.

First, Allen asserts that he did not intend to prevent, hinder, or delay the apprehension of Bartholomew (1) because Bartholomew was neither charged nor went to jail following the incident and (2) because he just wanted Bartholomew and Luna to go with him so "something bad" would not happen. SAG, PDF page 4.

But the language of the first degree rendering criminal assistance statute does not require the State to charge or arrest the assisted person. *See* RCW 9A.76.050, .070. Additionally, Allen's intent to prevent, hinder, or delay the apprehension of Bartholomew was supported by sufficient evidence. Allen did not deny driving Bartholomew away from the residence, even knowing that Bartholomew went to the residence to rob Ludvigsen and having seen Bartholomew pull out a gun while inside talking to Ludvigsen. From Allen's own testimony, a fair-minded, rational trier of fact could have concluded that Allen met the crime's intention element and, therefore, the trial court's determination was supported by substantial evidence. *A.X.K.*, 12 Wn. App. 2d at 293.

Next, regarding attempted second degree robbery, Allen argues again that neither Bartholomew nor Luna faced charges nor went to jail. Allen also asserts that he did not want the robbery to happen, he did not want anything from the residence, and he did not ask for anything.

Under accomplice liability, one way a person is guilty of a crime committed by another person if they "[a]id[] or agree[] to aid such other person in planning or committing" the crime, while knowing "that [their conduct] will promote or facilitate the commission of the crime." RCW 9A.08.020(1), (2)(c), (3)(a); *see State v. Birge*, 16 Wn. App. 2d 16, 31, 478 P.3d 1144 (2021). The State must prove—which it can do through circumstantial evidence—that the defendant actually knew that they were promoting or facilitating the other's commission of the

crime. *State v. Allen*, 182 Wn.2d 364, 374, 341 P.3d 268 (2015). And one has actual knowledge if they "'ha[ve] information which would lead a reasonable person in the same situation to believe' that [they were] promoting or facilitating the crime eventually charged." *Allen*, 183 Wn.2d at 374 (quoting RCW 9A.08.010(1)(b)(ii)).

The trial court found Allen committed attempted second degree robbery as an accomplice.[3] A person commits second degree robbery if they "unlawfully take[] personal property from the person of another or in his [or her] presence against his [or her] will by the use or threatened use of immediate force, violence, or fear of injury to that person or his [or her] property or the person or property of anyone" with the specific intent to steal. RCW 9A.56.190 (definition of a robbery); RCW 9A.56.210 ("A person is guilty of robbery in the second degree if he or she commits robbery."). And one is guilty of attempting to commit a crime when they take a "substantial step toward the commission of that crime" with the intent to commit that specific crime. RCW 9A.28.020. Therefore, for the trial court to find that Allen committed attempted second degree robbery as an accomplice, as charged here, the State had to prove beyond a reasonable doubt that (1) Allen aided Bartholomew or Luna in taking a substantial step towards robbing Ludvigsen or Kissner, and (2) Allen actually knew he was promoting or facilitating their attempt of second degree robbery.

The elements of this crime do not require the State to charge or secure a conviction of the principal, Bartholomew, to prove the crime of attempted second degree robbery under

[3] Because the trial court's oral decision is not inconsistent with the trial court's written findings and conclusions and, merely, clarifies which component of the factor the trial court relied on, we may consider the trial court's oral decision as well. *State v. Kull*, 155 Wn.2d 80, 88, 118 P.3d 307 (2005).

accomplice liability. Nor did the trial court have to find that Allen had the specific intent to rob, want, or ask for something from the victims to find him guilty. *See Birge*, 16 Wn. App. 2d at 32. Sufficient evidence supported the trial court's finding that Allen's conduct met the elements of the crime.

Last, Allen challenges the fourth degree assault conviction by appearing to contend that he was never in the residence when Kissner was injured and that witnesses testified Kissner was punched before Ludvigsen who was the first one out of the residence and was punched on his way out.

To convict Allen of fourth degree assault, the State had to prove beyond a reasonable doubt that Allen assaulted Kissner by intending to touch or strike Kissner in a harmful or offensive way. *See* RCW 9A.36.041; *State v. Jarvis*, 160 Wn. App. 111, 119, 246 P.3d 1280, *review denied* 171 Wn.2d 1029 (2011). It was not disputed that Allen never entered the residence and Kissner was punched before Ludvigsen. However, both Ludvigsen and Kissner testified that Ludvigsen exited the residence first, Allen then punched Kissner when she exited the residence by going around Ludvigsen, and someone hit Ludvigsen thereafter. Admitted exhibits included photographs of Kissner's injuries as well as images of Allen's hands which were also injured. In considering Kissner's testimony and the admitted photograph of her injuries, the trial court found that Allen assaulted Kissner. Viewing the evidence in the light most favorable to the State and declining to engage in weighing the evidence or resolving conflicting testimony, we hold that substantial evidence supported the trial court's determination. *See A.X.K.*, 12 Wn. App. 2d at 293, 298.

We hold that Allen's SAG claims fail.

CONCLUSION

We affirm Allen's convictions, but remand the matter back to the trial court for further proceedings consistent herein.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Che, J.

We concur:

Maxa, P.J.

Price, J.

WASHINGTON APPELLATE PROJECT

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