IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. GILBERTO FLORES-GARCIA, Appellant.	No. 42862-8-II UNPUBLISHED OPINION

Penoyar, J. — Gilberto Flores-Garcia appeals his conviction on the ground that the State's information failed to notify him of the crime charged. Because the information's use of the term "theft" sufficiently described the crime, we affirm.[1]

FACTS

The State charged Flores-Garcia with first degree theft related to Flores-Garcia harvesting cedar from another person's property. The amended information charged that Flores-Garcia "did commit theft as defined in RCW 9A.56.020(1)(a) of property, . . . such property, . . . being in excess of five thousand dollars ($5,000.00) in value." Clerk's Papers (CP) at 9.

Flores-Garcia challenges the sufficiency of the information for the first time on appeal. At trial, the jury convicted Flores-Garcia on the lesser included second degree theft charge. He appeals. The State filed a motion on the merits to affirm. RAP 18.14.

[1] A commissioner of this court initially considered this appeal as a motion on the merits under RAP 18.14 and then referred it to a panel of judges.

ANALYSIS

Flores-Garcia's sole argument on appeal is that the information failed to notify him of the crime charged. He argues that that the information omitted the first two elements of theft: that Flores-Garcia wrongfully obtained the property of another and that he intended to deprive the person of the property. He asserts that the remedy is for us to reverse the conviction and dismiss his charges without prejudice.

A criminal defendant has a constitutional right to be fully informed of the charges against him and can raise a challenge to the constitutional sufficiency of the charging document at any time. *State v. Kjorsvik*, 117 Wn.2d 93, 97-98, 812 P.2d 86 (1991).

Merely 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. *City of Auburn v. Brooke*, 119 Wn.2d 623, 635, 836 P.2d 212 (1992). When a challenge to the charging document occurs after the verdict, we construe the language liberally "in favor of validity." *State v. Borrero*, 147 Wn.2d 353, 360, 58 P.3d 245 (2002) (quoting *Kjorsvik*, 117 Wn.2d at 102).

The liberal standard is two-pronged. We first look to the face of the charging document to determine whether the necessary facts appear in any form. *Kjorsvik*, 117 Wn.2d at 105-06. We read the charging language as a whole, construe it according to common sense, and include those facts that are necessarily implied. *Kjorsvik*, 117 Wn.2d at 109. The exact words of the statute are not mandatory, as long as the elements of the crime appear in some form. *State v. Moavenzadeh*, 135 Wn.2d 359, 362, 956 P.2d 1097 (1998).

If we can neither find nor imply the necessary elements, we must presume prejudice. *State v. McCarty*, 140 Wn.2d 420, 425, 998 P.2d 296 (2000). But, if the necessary facts appear in some form, we proceed to the second prong of the test to determine whether "inartful or vague language" caused a lack of notice and actually prejudiced the defendant. *Kjorsvik*, 117 Wn.2d at 106. To determine prejudice, we may look outside the confines of the charging document. *Kjorsvik*, 117 Wn.2d at 106.

The State cites *State v. Tresenriter* in support of its motion on the merits to affirm. 101 Wn. App. 486, 4 P.3d 145 (2000). In *Tresenriter*, we found that under the liberal, post-conviction standard, the following language was sufficient to charge the defendant with theft of a firearm:

> [The defendant], as a principal or as an accomplice pursuant to RCW 9A.08.020, did commit a theft of or possess, sell, or deliver a stolen firearm regardless of value, to-wit: (name of specific firearm).

101 Wn. App. at 494. This language resembles the language used to charge Flores-Garcia.

Flores-Garcia responds that *Brooke*, 119 Wn.2d 623, and *State v. Greathouse*, 113 Wn. App. 889, 56 P.3d 569 (2002), require reversal. In *Brooke*, our Supreme Court rejected the argument that a mere statutory citation is sufficient to validate the charging document. 113 Wn.2d at 635-36. The court, however, recognized the concept "that it is sufficient to charge in the *language* of the statute if the statute defines the offense with certainty." *Brooke*, 113 Wn.2d at 635 (emphasis in original).

Tresenriter simply applied *Brooke*'s reasoning to the language of a theft charge:

> The Supreme Court has said "the term 'theft' is arguably adequate to convey an intentional, wrongful taking of the property of another." *Moavenzadeh*, 135 Wn.2d at 364. Although dicta, we agree. *The term "theft" is commonly understood to include taking property of another with the intent to deprive*. We conclude that, liberally construed, the missing elements can be inferred from the allegation of theft.

101 Wn. App. at 494 (emphasis added). Accordingly, *Brooke* does not mandate reversal of Garcia-Flores's conviction.

In *Greathouse*, we addressed whether the charging language for theft counts was inadequate because the charges named neither the "victim of the thefts or allege the true owner of the [stolen] fuel." 113 Wn. App. at 900. We rejected the argument, reasoning that although naming a victim would have been beneficial, it was not fatal to the information because:

> in that each count specified the date and place of the crime, the number of gallons of fuel alleged to have been converted on that date, the value of the fuel, the allegation that the fuel belonged to another, and the allegation that Greathouse exerted unauthorized control over the fuel with intent to deprive another of that value.

Greathouse, 113 Wn. App. at 905. Flores-Garcia argues that because *Greathouse* ruled the information sufficient because it included the "intent to deprive" language, the fact that this phrase is missing in his information requires it to be set aside. Appellant's Answer to Motion at 4. However, because *Greathouse* concerned the issue whether a victim needs to be named in an indictment, its comment on the contents of the remainder of the information is of limited value here. We, instead, follow the on-point reasoning in *Tresenriter* that the indictment's use of the term "theft" is sufficient to "convey an intentional, wrongful taking of the property of another." 101 Wn. App. at 494 (quoting *Moavenzadeh*, 135 Wn.2d at 364).

We affirm.

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.

Penoyar, J.

We concur:

Hunt, J.

Van Deren, J.