IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. ARNETTE E. AULIS, Appellant.	No. 40936-4-II UNPUBLISHED OPINION

Armstrong, J. — Arnette Aulis appeals her bench trial conviction of first degree trafficking in stolen property, arguing that (1) the information provided insufficient notice of the charged crime, and (2) the record does not establish that she knowingly and voluntarily waived her jury trial right. We hold that the information provided constitutionally sufficient notice to Aulis and that she validly waived her jury trial right. We also decline Aulis's invitation to reconsider our *State v. Pierce*[1] decision that we need not apply the *Gunwall*[2] factors to find a jury trial waiver valid. We affirm.

FACTS

On September 4, 2010, Brandon Perrott phoned Aulis and asked her to meet him at the Twin Cities Trading Post, a pawn shop in Chehalis. Perrott asked Aulis to sign for a sale to the pawn shop because the pawn shop would not accept his identification. Perrott owed Aulis for back rent, and he agreed to pay part of it if she would sign for the sale. On September 8, 2009, Aulis and her husband, Vance, signed for a second sale by Vance to the same pawn shop. All of the items sold to the pawn shop were stolen from Janet Plumb's home.

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[1] *State v. Pierce*, 134 Wn. App. 763, 142 P.3d 610 (2006).

[2] *State v. Gunwall*, 106 Wn.2d 54, 720 P.2d 808 (1986).

The State charged Aulis with first degree trafficking in stolen property.[3] At trial, Aulis testified that she never stole any items from Plumb's home, and she did not know any of the items sold to the pawn shop were stolen. Perrott testified that Aulis and Vance visited him at least twice at his mobile home on Plumb's property. During one visit, Aulis, Vance, and Perrott entered Plumb's home and took items from the house.

The State's information charged Aulis with:

> TRAFFICKING IN STOLEN PROPERTY IN THE FIRST DEGREE
> On or about and between the 24th day of August, 2009 and the 23rd day of September, 2009, in the County of Lewis, State of Washington, the above-named defendant [Aulis] did knowingly initiate, organize, plan, finance, direct, manage or supervise the theft of stolen property for sale to others, or did knowingly traffic in stolen property; contrary to the Revised Code of Washington 9A.82.050(1).

Clerk's Papers (CP) at 2.

Additionally, the State filed an affidavit of probable cause stating the facts on which the State based the trafficking charge.

Aulis signed a jury trial waiver, which stated (1) Aulis has a right to a jury trial, (2) she has been informed of the right, (3) she has "fully discussed this waiver" with her attorney, and (4) by signing the document she waives the right. CP at 39. Aulis's attorney also signed the waiver. And he stated on the record that he had talked with Aulis about her jury trial right and that Aulis intended to waive the right. Aulis, on appeal, claims there was no colloquy because the original verbatim report failed to transcribe this part of the colloquy.[4] A corrected transcript, however,

[3] The State also charged Aulis with residential burglary, but dropped that count just before trial. Also, Vance Aulis, Arnette Aulis's husband, pleaded guilty to first degree trafficking of stolen property for actions arising from the same time frame.

[4] Nothing in the record explains why the reporter failed to transcribe part of the pre-trial proceeding originally. A footnote in the State's response brief notified Aulis of the forthcoming corrected record.

contains the following colloquy:

> MR. UNDERWOOD: Your Honor, if you could recall, my client will waive jury. I've explained to her that she has a right to a jury trial, that she has a right to have 12 people convict her, if she waives that, then, it's one person, the judge, and she says that's fine with her. I think that will guarantee a one day [trial].
>
> We are presenting to the Court a Waiver of Jury Trial signed by myself and my client.
>
> THE COURT: Ms. Aulis, you are set for trial next week, before the Court sitting with a 12 person jury. That is your right. I understand that you are asking that the Court allow you to waive jury and have the matter heard just by a judge. You understand that if you waive jury that there's just one person to convince, and that's the judge, as opposed to 12 with a jury.
>
> Do you understand that?
>
> THE DEFENDANT: Yes, sir.
>
> THE COURT: Is it your request that the matter be tried by this Court sitting without a jury?
>
> THE DEFENDANT: Yes.
>
> THE COURT: Do you have any question about your right to a jury trial?
>
> THE DEFENDANT: No.
>
> THE COURT: I'll accept it, subject to approval by the trial judge . . . .

Report of Proceedings (May 20, 2010) at 2-3. At the beginning of trial, Aulis's counsel repeated that Aulis had waived a jury trial.

ANALYSIS

I. Charging Documents and Notice

Aulis asserts for the first time on appeal that the information is flawed because it reports none of the underlying facts. The State responds that because the charging document states the dates, county, and criminal conduct supporting the crime charged, Aulis received sufficient notice. Furthermore, the State contends that Aulis shows no prejudice from the charging language.

To provide sufficient notice to the accused, the State must allege "[*a*]*ll* essential elements

of a crime . . . in a charging document." *State v. Kjorsvik*, 117 Wn.2d 93, 97, 812 P.2d 86 (1991); *see* U.S. Const. amend. VI (In all criminal prosecutions, the accused shall . . . be informed of the nature and cause of the accusation; . . . .); Wash. Const. art. I, § 22 (amend. 10) (In criminal prosecutions the accused shall have the right . . . to demand the nature and cause of the accusation against him . . . .). To satisfy the essential elements rule, the information must contain both the elements of the crime charged and the "*facts supporting every element of the offense.*" *State v. Leach*, 113 Wn.2d 679, 689, 782 P.2d 552 (1989). The rule is intended to give the defendant sufficient notice to adequately prepare a defense. *State v. Tandecki*, 153 Wn.2d 842, 846, 109 P.3d 398 (2005) (citing *Kjorsvik*, 117 Wn.2d at 101).

When considering a challenge to the charging document for the first time on appeal, we liberally construe its language. *Kjorsvik*, 117 Wn.2d at 105. We ask the following questions: "(1) do the necessary facts appear in any form, or by fair construction can they be found, in the charging document; and, if so, (2) can the defendant show that he or she was nonetheless actually prejudiced by the inartful language which caused a lack of notice?" *Kjorsvik*, 117 Wn.2d at 105-06. The first prong of the test rests solely on the language on the face of the charging document. *Kjorsvik*, 117 Wn.2d at 106. We read the charging document "as a whole, according to common sense and including facts that are implied." *State v. Nonog*, 169 Wn.2d 220, 227, 237 P.3d 250 (2010). The second prong allows us to consider whether the defendant received actual notice. *Kjorsvik*, 117 Wn.2d at 106. In evaluating the prejudice issue, we can consider the certificate of probable cause. *See Kjorsvik*, 117 Wn.2d at 111; *see also State v. Phillips*, 98 Wn. App. 936, 943-44, 991 P.2d 1195 (2000).

The State charged Aulis with first degree trafficking in stolen property in violation of RCW 9A.82.050(1), which provides:

> (1) A person who knowingly initiates, organizes, plans, finances, directs, manages, or supervises the theft of property for sale to others, or who knowingly traffics in stolen property, is guilty of trafficking in stolen property in the first degree.

Aulis does not contend that the information failed to include all the statutory elements for the crime. Instead, she asserts that the "absence of any details" regarding her alleged conduct violates the essential elements rule. Br. of Appellant at 6.

In *State v. Winings*, 126 Wn. App. 75, 84-85, 107 P.3d 141 (2005), the State charged second degree assault while armed with a deadly weapon but failed to state the victim, the weapon used, or the manner in which Winings used the weapon. Winings argued the information was factually deficient. *Winings*, 126 Wn. App. at 85. We held that the information, although vague, was constitutionally sufficient because it alleged assault of another with a deadly weapon in violation of RCW 9A.36.021, and included the date and location. *Winings*, 126 Wn. App. at 86. Similarly, here the information alleges that Aulis knowingly trafficked in stolen property, in violation of RCW 9A.82.050(1), and alleges the applicable dates and county of the crime. Great specificity is not required, only sufficient facts for each element. *Winings*, 126 Wn. App. at 85. We hold that the information, read liberally and in a common sense manner, is constitutionally sufficient.

Ordinarily, we would next consider whether the defendant was, nonetheless, prejudiced by the "inartful language" of the information. *See Kjorsvik*, 117 Wn.2d at 106. Aulis does not, however, argue prejudice. Since she has the burden of demonstrating prejudice, we decline to

further consider the issue. *See generally Kjorsvik*, 117 Wn.2d at 106.

We conclude that the information was constitutionally sufficient to provide Aulis notice of the charges against her.

II. Jury Trial

Aulis urges us to reconsider our decision in *State v. Pierce*, 134 Wn. App. 763, 142 P.3d 610 (2006), that a *Gunwall* analysis is not necessary in reviewing a jury waiver issue. Aulis asserts that by refusing to apply *Gunwall*, we failed to provide "*any* test for determining the requisites of a valid waiver under the state constitution." Br. of Appellant at 18 fn.6.

Aulis reasons that under a *Gunwall* analysis, the record would have to show that she understood the extent of her jury trial right. And this would include the right to participate in jury selection, the right to a 12-person jury, the right to impartial and fair jurors, the right to have the jury presume her innocence, and the right to a unanimous verdict.

A. *Gunwall*

We have repeatedly rejected the invitation to reconsider *Pierce*. *See State v. Hayter*, 162 Wn. App. 1049, ___ P.3d ___ (2011); *State v. Rotchford*, 163 Wn. App. 1021, ___ P.3d ___ (2011); *State v. Howe*, 154 Wn. App. 1060, ___ P.3d ___ (2011). Washington law allows a defendant to waive a jury trial. *State v. Stegall*, 124 Wn.2d 719, 723, 881 P.2d 979 (1994); *see also State v. Forza*, 70 Wn.2d 69, 70-71, 422 P.2d 475 (1966) (right to a jury trial is subject to a knowing, intentional, and voluntary waiver). In *Pierce* we explained, "Although Washington's constitutional right to a jury trial is more expansive than the federal right, it does not automatically follow that additional safeguards are required before a more expansive right may be

waived." *Pierce*, 134 Wn. App. at 773. Moreover, Washington courts apply *Gunwall* to determine the extent of the right, not whether and how the right may be waived. *Pierce*, 134 Wn. App. at 773. Aulis provides no other basis for reconsidering the *Pierce* reasoning.

Furthermore, we reject Aulis's argument that by not applying *Gunwall* we have failed to provide any test for assessing waiver. As we said in *Pierce*, "Washington already has rules governing a defendant's waiver of the jury trial right." *Pierce*, 134 Wn. App. at 771. The defendant must act knowingly, intelligently, voluntarily, and without improper influence when waiving his right to a jury trial. *Pierce*, 134 Wn. App. at 771. The *Pierce* decision further sets forth several factors for the court to consider, which are discussed below. *See Pierce*, 134 Wn. App. at 771-72. We are satisfied that *Pierce* sets forth a sufficient test for determining the validity of a waiver.

B. Waiver

We review the validity of a jury trial waiver de novo. *State v. Ramirez-Dominguez*, 140 Wn. App. 233, 239, 165 P.3d 391 (2007). A criminal defendant has the right to be tried by a jury of 12 persons. Wash. Const. art. I, § 21. The defendant has a corresponding right to waive a jury. *Stegall*, 124 Wn.2d at 724 (citing *State v. Lane*, 40 Wn.2d 734, 737, 246 P.2d 474 (1952)). A defendant may waive the right to a jury if she does so knowingly, intelligently, voluntarily, and without improper influences. *Stegall*, 124 Wn.2d at 725. We do not presume a valid waiver; the record must show one. *Pierce*, 134 Wn. App. at 771.

Washington requires a personal expression of waiver from the defendant. *Stegall*, 124 Wn.2d at 725. Although not determinative, we may consider several factors in deciding whether

a defendant validly waived a jury trial: (1) whether the trial court informed the defendant of the right to a jury trial; (2) whether the defendant signed a written waiver; and (3) whether defense counsel affirmatively stated that the defendant waived the right. *Pierce*, 134 Wn. App. at 771 (citing *State v. Woo Won Choi*, 55 Wn. App. 895, 903-04, 781 P.2d 505 (1989)). Also relevant is whether any colloquy between the court and the defendant occurred, although the court is not required to conduct an extended colloquy with the defendant. *Pierce*, 134 Wn. App. at 771 (citing *Stegall*, 124 Wn.2d at 725).

Here, Aulis signed a written waiver of jury trial form, which states that she understands her right to a jury trial and waives that right. The corrected transcript shows that Aulis's trial counsel affirmatively represented that Aulis knew of her right to a jury and chose to waive it. Finally, the corrected transcript contains a colloquy between the judge and Aulis regarding the right to a jury trial, and her waiver of that right.

We conclude that Aulis validly waived her right to a jury trial.

III. Sufficiency of the Evidence

Aulis assigns error to finding of fact 3, which reads as follows:

> The Defendant knew these items were stolen because she had been informed of that fact by Brandon Perrot[t], who had given these items to her and to her husband, Vance Aulis. The Defendant also knew of [*sic*] the items were stolen from other circumstances, including the fact that her husband was not a wood worker, they had been a[t] the premises where the items were stolen from, and Brandon Perrott had no visible means of purchasing these items himself.

CP at 4-5.

Aulis does not address this assignment of error in her briefing. We need not consider it. RAP 10.3(a)(6); *State v. Thomas*, 150 Wn.2d 821, 868-69, 83 P.3d 970 (2004). Nonetheless, we

are satisfied from reviewing the record that sufficient evidence supports the conviction.

Affirmed.

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.

Armstrong, P.J.

We concur:

Hunt, J.

Quinn-Brintnall, J.