SUPERIOR COURT OF WASHINGTON COUNTY OF SKAGIT	
STATE OF WASHINGTON, Plaintiff, vs. HAZEN SHOPBELL Defendants.	NO: 18-1-00621-29 STATE'S RESPONSE TO DEFENDANT'S MOTION FOR BILL OF PARTICULARS

COMES NOW the Plaintiff, State of Washington, by and through its attorney, Rosemary H. Kaholokula, Chief Criminal Deputy Prosecuting Attorney, with the following response to the defendants' requests for a bill of particulars. The State respectfully requests that this Court deny the defendant's request.

An Accused Has a Constitutional Right to be Informed of the Nature and Cause of the Criminal Accusation.

A Defendant has a constitutional right to be informed of the nature and cause of the accusation against him or her to enable the defense to prepare his defense and to avoid a subsequent prosecution for the same crime.[1]

[1] The Sixth Amendment to the United States Constitution provides that "[i]n all criminal prosecutions, the accused shall enjoy the right … to be informed of the nature and cause of the accusation …."
Article 1,§ 22 of the Washington State Constitution, which contains language almost identical to the federal constitution, provides: "[i]n all criminal prosecutions the accused shall have the right … to demand the nature and cause of the accusation against him. …"

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> Our prior cases indicate that an indictment is sufficient if it, first, contains the elements of the offense charged and fairly informs a defendant of the charge against which he must defend, and second, enables him to plead an acquittal or conviction in bar of future prosecutions for the same offense. It is generally sufficient that an indictment set forth the offense in the words of the statute itself, as long as "those words of themselves fully, directly, and expressly, without any uncertainty or ambiguity, set forth all the elements necessary to constitute the offense intended to be punished." Undoubtedly the language of the statute may be used in the general description of an offence, but it must be accompanied with such a statement of the facts and circumstances as will inform the accused of the specific offence, coming under the general description, with which he is charged."

Hamling v. United States, 418 U.S. 87, 41 L.Ed.2d 590, 94 S.Ct. 2887, 2907-08, *rehearing denied,* 419 U.S. 885, 42 L.Ed.2d 129, 95 S.Ct. 157 (1974). (Citations omitted.)

The function of a bill of particulars is to "amplify or clarify particular matters considered essential to the defense."[2]

> The test in passing on a motion for a bill of particulars should be whether it is necessary that defendant have the particulars sought in order to prepare the defense and in order that prejudicial surprise will be avoided. A defendant should be given enough information about the offense charged so that he or she may, by the use of diligence, prepare adequately for the trial. If the needed information is in the indictment or information, then no bill of particulars is required.

1 Charles Alan Wright, Federal Practice and Procedure § 129, at 652-54 (3d ed.1999) (footnotes omitted).

<u>This Right is Ordinarily Satisfied by a Sufficiently Definite Charging Document.</u>

This constitutional right of a criminal defendant to be appraised with reasonable certainty as to the charges against him is ordinarily satisfied by a charging document which charges a crime in the language of the statute, where the crime is defined with certainty within the statute. *State v. Merrill,* 23 Wn.App. 577, 580, 597 P.2d 446, *review denied,* 92 Wn.2d 1036 (Div. 3 1979); *State v. Grant,* 89 Wn.2d 678, 686, 575 P.2d 210 (1978).

[2] *State v. Allen,* 116 Wn.App. 454, 460, 66 P.3d 653 (Div. 3 2003), quoting *State v. Noltie,* 116 Wn.2d 831, 845, 809 P.2d 190 (1991).

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> A charging document is generally constitutionally sufficient if it notifies a criminal defendant of the nature of the accusation with reasonable certainty, thereby permitting the defendant to develop a proper defense and to offer any resulting judgment as a bar to a second prosecution for the same offense. When a statute sets forth alternative means by which a crime can be committed, the charging document may charge none, one, or all of the alternatives, provided the alternatives are not repugnant to one another. If the information alleges only one alternative, however, it is error for the factfinder to consider uncharged alternatives, regardless of the strength of the evidence presented at trial.

State v. Williamson, 84 Wn.App. 37, 924 P.2d 960, 962 (1996). (Citations omitted.)

The omission of any element of the charged crime, statutory or otherwise, renders the charging document constitutionally defective. *State v. Kjorsvik,* 117 Wn.2d 93, 97, 812 P.2d 86 (1991). Charging documents which are not challenged until after the verdict will be more liberally construed in favor of validity than those challenged before or during trial. *Kjorsvik,* 117 Wn.2d at 102.

> In *Kjorsvik* we abandoned the traditional analysis applied under Const. art. I, Sec. 22 (amend. 10) and adopted an analysis consistent with the federal standard of review for sufficiency of information challenges raised for the first time on appeal. That analysis requires us to determine whether the information is sufficient by asking: (1) do the necessary elements appear in any form, or by fair construction can they be found, in the information; and, if so, (2) can the defendant show he or she was nonetheless actually prejudiced by the inartful language which caused a lack of notice.

State v. Tunney, 129 Wn.2d 336, 917 P.2d 95 (1996).

"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 Wn.2d 782, 791, 888 P.2d 1177 (1995).

In judging the sufficiency of a charging document, though, the law is clear that the prosecuting authority need not allege its supporting evidence, theory of the case or whether or not it can prove its case. *United States v. Buckley,* 689 F.2d 893 (1982), *cert. denied,* 460 U.S. 1086, 103 S.Ct. 1778, 76 L.Ed.2d 349 (1983); *State v. Bates,* 52 Wn.2d 207, 324 P.2d 810 (1958).

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A Bill of Particulars May Clarify a Constitutionally Sufficient but Vague Charging Document.

If the charging document states each element, but is vague as to some other matter significant to the defense, a bill of particulars is capable of amplifying or clarifying particular matters that are essential to the defense. *State v. Holt,* 104 Wn.2d 315, 320, 704 P.2d 1189 (1985); CrRLJ 2.4(e).

> A defendant is ordinarily entitled to the specific date and time of the offense, its location, the name of the complainant and victim, and the means by which the defendant allegedly committed the offense if such information is necessary for the defense. This serves to minimize surprise and assists a defendant in his preparation for trial, particularly when the charge is stated in general terms.

Ferguson, Wash.Crim.Prac. and Proc., § 2003, p. 387.

In determining whether to order a bill of particulars in a specific case, a court should consider whether the defense has been advised adequately of the charges through the charging document and all other disclosures made by the government since full discovery obviates the need for a bill of particulars. *United States v. Long,* 706 F.2d 1044 (9th Cir. 1983); *United States v. Giese,* 597 F.2d 1170 (9th Cir.), *cert. denied,* 444 U.S. 979, 100 S.Ct. 480. 62 L.Ed.2d 405 (1979).

The furnishing of a bill of particulars is discretionary with the trial court, whose ruling will not be disturbed on appeal absent a showing of an abuse of discretion. *State v. Noltie,* 116 Wn.2d 831, 844, 809 P.2d 190 (1991); *State v. Devine,* 84 Wn.2d 467, 527 P.2d 72 (1974).

A Bill of Particulars is Unnecessary if the Defense Has Full Discovery.

A bill of particulars is not necessary when the means of obtaining the facts are readily accessible to the defense or the facts are already known to him or her. *See United States v. Kaplan,* 470 F.2d 100 (7th Cir. 1972), *cert. denied,* 410 U.S. 966, 35 L.Ed.2d 701, 93 S.Ct. 1443 (1973).

In *State v. Paschall,* 197 Wash. 582, 85 P.2d 1046 (1939), the court held that it was not prejudicial error to deny a motion for a bill of particulars when the state's attorney had disclosed to

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the defendant's attorney practically all of the facts concerning which evidence the government intended to use at trial.

> Nor was it error to deny the motions for a bill of particulars and to make the information more definite and certain. It was not made to appear that the state had knowledge of any ultimate facts of which appellants themselves were not cognizant. As a matter of fact, it would appear from the record that, prior even to the filing of the information, the state's attorneys disclosed to appellants or their counsel practically all of the facts concerning which evidence was adduced at the trial. Certainly appellants suffered no prejudice by the denial of the motions.

Paschall, 197 Wash. at 588.

See also the following cases–

- *Merrill,* 23 Wn.App. at 580 (court denied motion for bill of particulars where the defendant was made aware through discovery of all the information available to the prosecutor for proving the offense);
- *Grant,* 89 Wn.2d at 686-687 (court denied motion for bill of particulars stating "the officer's report is about as much as the court could compel the prosecutor to furnish (the defendant)");
- *State v. Dictado,* 102 Wn.2d 277, 286, 687 P.2d 172 (1984) (court denied motion for bill of particulars stating "nothing in the record indicates what information, beyond that already provided, the State could have furnished to give additional notice of the charges");
- *State v. Clark,* 21 Wn.2d 774, 778, 153 P.2d 297 (1944), *cert. denied*, 325 U.S. 878, 65 S.Ct. 1554, 89 L.Ed.2d 1994 (1945) (court denied motion for bill of particulars stating case was based on defendant's confession and a bill of particulars could not provide the defendant with any more information that was not already locked up in defendant's own "breast").

Application.

The Defendant is charged with two counts of unlawful fish and shellfish catch accounting and three counts of trafficking. The defense has had notice of counts three through five since the filing of

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the original information in 2018 (three and a half years ago) and of counts one and two since 2019 (two and a half years ago). The defense has had full and complete discovery. There have been several evidentiary hearings in this case where the facts of the case have been discussed.

The "Bill of Particulars" Request Should Be Denied.

A bill of particulars was designed as a mechanism to ensure the prosecution's compliance with the Defendant's constitutional right to be informed of the nature and cause of the accusation against him or her, to enable the defense to prepare a defense, and to avoid a subsequent prosecution for the same crime. If the charging document is sufficiently definite and/or full discovery has been provided to the defense, the prosecution has satisfied this constitutional requirement.

The charging document herein provides all the statutory and non-statutory elements. Full discovery has been provided to the defense. The Prosecution has overwhelmingly met its constitutional duty to the Defendant. The defense request for a Bill of Particulars should be denied.

Respectfully submitted this 13th day of December, 2021,

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