

09766-8

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NO. 69766-8-1

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

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STATE OF WASHINGTON,

Respondent,

v.

RYAN P. MOORE,

Appellant.

2013 SEP -8 PM 1:34  
COURT OF APPEALS DIV I  
STATE OF WASHINGTON

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BRIEF OF RESPONDENT

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## I. ISSUES

Did the trial court correctly instruct the jurors that they had a “duty to return a verdict of guilty” if they found the elements of the crime proved beyond a reasonable doubt?<sup>1</sup>

## II. STATEMENT OF THE CASE

The defendant, Ryan Moore, was charged with bail jumping. CP 36. The evidence at trial showed that the defendant had been charged with possession of a stolen vehicle. 1 RP 26. At arraignment, the court entered an order releasing him. An omnibus hearing was originally set for June 15. 1 RP 29. The hearing was later continued to August 10. The defendant was given written notice of the requirement that he appear on that date. He did not appear as required. 1 RP 32-34.

The defendant testified that on August 10, he had been at a law office scheduling a court date to get a warrant quashed in another case. He didn’t want to go to court with a warrant, because he’d be taken into custody and would have “a hard time presenting my case from – in jail.” 1 RP 42-43. He was inconsistent about how long this meeting took. On direct examination, he testified that it

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<sup>1</sup> Identical issues are pending in State v. Critchell, no. 69247-0-I; State v. Hubbard, no. 69801-0-I; and State v. Johnson, no. 70016-2-I.

took “all day.” 1 RP 43. On cross-examination, he said that it “caused me to miss my bus and all this stuff.” 1 RP 49.

The court instructed the jury on the elements of bail jumping.

The instruction contained the following language:

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

CP 32, inst no. 5. No objection was raised to this or any other instruction. 1 RP 56.

### III. ARGUMENT

#### **ALL THREE DIVISIONS OF THIS COURT HAVE APPROVED THE “DUTY TO CONVICT” LANGUAGE IN THE STANDARD JURY INSTRUCTIONS.**

For the first time on appeal, the defendant argues that the “duty to convict” language in the jury instructions violates his constitutional right to a jury trial. Identical arguments have been rejected by all three divisions of this court. State v. Meggyesy, 90 Wn. App. 693, 958 P.2d 319, review denied, 136 Wn.2d 1098 (1998) (Division One); State v. Brown, 130 Wn. App. 767, 124 P.3d 663 (2005) (Division Two); State v. Wilson, 2013 WL 4176077

(8/15/13) (Division Three). The Meggyesy opinion includes a detailed analysis of the factors set out in State v. Gunwall, 106 Wn.2d 54, 720 P.2d 808 (1986). Meggyesy, 90 Wn. App. at 701-04.

The result of these cases is consistent with Article 4, §16 of the Washington Constitution Under that section, judges have the duty to “declare the law” to juries. By statute, a person who commits certain acts “is guilty of bail jumping.” RCW 9A.76.170(1). The statute does not say “may be guilty.” If a judge were to instruct a jury explicitly or implicitly that it “may” convict on proof of the necessary facts, it would not be carrying out its duty to “declare the law.”

The defendant relies on the *power* of a jury to disregard its instructions in return a verdict of acquittal. This power exists equally for other kinds of verdicts. In both civil and criminal cases, the court is precluded from probing the jurors’ thought processes State v. Crowell, 92 Wn.2d 143, 146, 594 P.2d 905 (1979); Gardner v. Malone, 60 Wn.2d 840, 841, 376 P.2d 651 (1962). This means, among other things, that the court will not consider whether the jury actually made the findings required by the instructions.

In one criminal case, for example, the defendant was charged with conspiracy to deliver marijuana. The jurors were

instructed that to convict, they had to find that the defendant intended to deliver marijuana. The jury found the defendant guilty. After trial, the defendant presented affidavits from several jurors. They said that they had never found that the defendant intended to deliver marijuana. The trial court refused to consider these affidavits and denied a new trial. This court affirmed. The affidavits could not be considered because they involved matters that inhered in the verdict. State v. Hughes, 14 Wn. App. 186, 189-90, 540 P.3d 439 (1975).

A similar result occurred in a civil case. The plaintiff was injured when a cable attached to a tree pulled the tree down onto him. The jury was instructed that the only question of negligence was whether the tree was of a sufficient size and strength to withstand the pull of the cable. The jury returned a verdict for the plaintiff. After trial, the defendant presented affidavits from five jurors. They said that the jury had not considered the size of the tree. Instead, the verdict was based on failure to warn. Under the instructions, this was not a proper basis for finding the defendant negligent. Nonetheless, the trial court denied a new trial, and the Supreme Court affirmed. Again, the affidavits could not be

considered because they inhered in the verdict. Ralton v. Sherwood Logging Co., 54 Wash. 254, 103 P 28 (1909).

These cases demonstrate that in *any* case that is properly submitted to a jury, the jurors have the *power* to ignore their instructions. So long as the evidence would *support* the necessary findings, courts will not inquire whether the jurors actually *made* those findings. The duty to convict ultimately rests within the jurors' consciences. But the same is true of the duty to acquit, or the duty to render a verdict for plaintiff or defendant in a civil case. In all such cases, the jurors can ignore their instructions and reach a verdict contrary to their findings, with no fear of adverse consequences.

In short, the State constitution imposes on judges the duty to "declare the law." Judges fulfill that duty by informing jurors of what facts must be proved to justify a particular verdict. The judges then tell jurors that they have a duty to reach an appropriate verdict in light of their determinations concerning those facts. These instructions properly reflect both the judge's duty to declare the law and the jury's duty to determine the facts. As all three Divisions of this court have recognized, such instructions are proper.

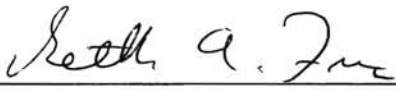


**IV. CONCLUSION**

The judgment and sentence should be affirmed.

Respectfully submitted on August 29, 2013.

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