NO. 45498-0-II

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

STATE OF WASHINGTON,

Respondent,

v.

LANCE WILLIAM LARSON,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF
KITSAP COUNTY, STATE OF WASHINGTON
Superior Court No. 13-1-00288-2

BRIEF OF RESPONDENT

RUSSELL D. HAUGE
Prosecuting Attorney

JEREMY A. MORRIS
Deputy Prosecuting Attorney

614 Division Street
Port Orchard, WA 98366
(360) 337-7174

SERVICE		
	Jodi R. Backlund, Manek R. Mistry, Skylar T. Brett Po Box 6490 Olympia, WA 98507-6490 Email: backlundmistry@gmail.com	This brief was served, as stated below, via U.S. Mail or the recognized system of interoffice communications, *or, if an email address appears to the left, electronically.* I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. DATED June 2, 2014, Port Orchard, WA **Original e-filed at the Court of Appeals; Copy to counsel listed at left.**

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II. STATEMENT OF THE CASE

A. PROCEDURAL HISTORY

The Defendant, Lance William Larson, was charged by a second amended information filed in Kitsap County Superior Court with one count of possession of a controlled substance (methamphetamine) and one count of bail jumping. CP 1-2. A jury found the Defendant guilty of both charges, and the trial court imposed a standard range sentence on both counts. CP 6-17. This appeal followed.

B. FACTS

On January 7, 2013 detectives from the Kitsap County Sheriff's Office served a search warrant on a property located on Pioneer Way in Poulsbo, Washington. RP 129-31; 212. There were several buildings on the property and deputies entered and "cleared" the buildings and detained several people, including the Defendant. RP 132. The Defendant was then placed in a patrol vehicle at the scene. RP 132-34.

The Defendant was advised of his rights and several detectives then spoke to the Defendant. RP 135; 215. The Defendant was asked where he lived and he responded that he lived with his girlfriend in the double-wide trailer at the front of the property. RP 135; 215. The

detectives asked the Defendant when the last time that he had used methamphetamine was. RP 136; 216. The Defendant said that he had last used methamphetamine on New Year's Eve and the Defendant also told the detectives that he was on DOC supervision and that his use had resulted in his going to jail for several days after he had a urinalysis that tested positive for methamphetamine. RP 135-36; 185; 216. The Defendant also indicated he had only been out of jail for about 3 days. RP 217. When he was asked if there were any drugs or drug paraphernalia in the residence the Defendant said that there might still be a methamphetamine pipe in his bedroom. RP 135-36; 185; 217.

Detective Menge entered the Defendant's bedroom and located a "glass methamphetamine smoking pipe" in a box next to the bed. RP 140-41.[1] The box also contained a number of documents such as pay stubs, social security stuns, and other personal documents that were associated with the Defendant. RP 172. The pipe was later tested and was found to contain a small amount of methamphetamine. RP 234-35.

The Defendant also testified at trial and explained that in December of 2012 and January of 2013 he was on supervision with the Department of Corrections and that as part of his supervision he was

[1] Detective Menge testified that, based on her training and experience, methamphetamine is often smoked in a glass pipe and that these types of pipes are usually kept and reused over and over. RP 137-39.

required to submit to random urinalysis tests. RP 306-07. The Defendant also testified that he smoked methamphetamine on New Year's Eve of 2012 and that he subsequently tested positive for methamphetamine at a urinalysis test on January 2. RP 309-12; 351.[2] On account of this test the Defendant was taken to jail on January 2 and later released on January 5th. RP 312-13.

The Defendant was initially charged by information on March 20 and was arraigned on March 26. RP 250. At the March 26th hearing a further court date was scheduled for May 14, 2013 at 10:30. RP 265. The court specifically advised the Defendant that his "next mandatory court appearance is May 14," and the Defendant responded, "Okay. Thank You." RP 304. The Defendant, however, did not appear at the May 14th court date, and a bench warrant was issued. RP 267-68.

After the testimony at trial had concluded, defense counsel raised a "corpus delicti" argument and claimed that there was no evidence other than the Defendant's own words that he had possessed methamphetamine prior to January 7. RP 375. The trial court disagreed and explained that the corpus delicti rule only applies to extrajudicial statements and that in the present case the Defendant had testified in court that he had used

[2] Dave Payne, a community corrections officer from the Department of Corrections, also testified that the Defendant tested positive for methamphetamine on January 2. RP 354-55.

methamphetamine on New Year's Eve. RP 400. In addition, the court noted that even without this in court testimony there was corroborating evidence (such as the positive urinalysis test) that would have precluded a corpus argument. RP 400-01.

The defense also requested that the jury be given a *Petrich* instruction, as there were two instances of possession at issue: the New Year's Eve incident and the pipe found on January 7th. RP 404-08. The trial court ultimately agreed that a *Petrich* instruction was proper, and the court gave the jury an instruction on this issue. RP 410; CP 50. The jury ultimately found that the Defendant had possessed methamphetamine on or between December 31, 2012 and January 1, 2013, but did not find that the Defendant had possessed methamphetamine on January 7th. CP 60.

III. ARGUMENT

A. THE DEFENDANT'S CLAIM OF INSUFFICIENT EVIDENCE MUST FAIL BECAUSE, VIEWING THE EVIDENCE IN A LIGHT MOST FAVORABLE TO THE STATE, A RATIONAL TRIER OF FACT COULD HAVE FOUND THAT THE STATE PROVED THE ELEMENTS OF THE CHARGED OFFENSE BEYOND A REASONABLE DOUBT.

Larson argues that the State presented insufficient evidence to support the charge of possession of a controlled substance. App.'s Br. at 8. This claim is without merit because, viewing the evidence in a light

most favorable to the State, a rational juror could have found that the State proved all of the elements of the charged offense beyond a reasonable doubt.

A challenge to the sufficiency of the evidence admits the truth of the State's evidence and all inferences that can reasonably be drawn from the evidence. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Circumstantial evidence and direct evidence are considered equally reliable when weighing the sufficiency of the evidence. *State v. Thomas*, 150 Wn.2d 821, 874, 83 P.3d 970 (2004); *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). Additionally, credibility determinations are for the trier of fact and are not subject to review. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). Accordingly, a reviewing court defers to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. *State v. Walton*, 64 Wn. App. 410, 415-16, 824 P.2d 533 (1992). The relevant inquiry, therefore, is "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *State v. Scoby*, 117 Wn.2d 55, 61, 810 P.2d 1358, 1362 (1991), *citing State v. Baeza*, 100 Wn.2d 487, 490, 670 P.2d 646 (1983).

The Defendant's claim in the present case is that evidence of ingestion or the presence of contraband in a person's system is not sufficient to prove that a person possessed the contraband. App.'s Br. at 9, In support of this claim, the Defendant cites *State v. A.T.P.-R.*, 132 Wn.App. 181, 185, 130 P.3d 877 (2006) which is one of several Washington cases that have addressed possession in relation to the crime of minor in possession of alcohol. Those cases, however, are distinguishable from the present case.

The line of cases dealing with possession in MIP cases began with *State v. Hornaday*, 105 Wn.2d 120, 713 P.2d 71 (1986), where police officers observed the minor defendant who appeared to be under the influence of alcohol. While a minor in possession of alcohol is guilty of a misdemeanor, under the statute in effect at the time, a police officer could only arrest someone for a misdemeanor crime if the crime was committed *in the presence* of the officer. *Hornaday*, 105 Wn.2d at 122–23 (citing RCW 9A.76.040 and former 10.31.100 (1981)). The relevant issue in *Hornaday*, therefore, was whether the defendant was in actual possession of alcohol at the time he had contact with the officer. The Supreme Court held that the arrest was unlawful because the alcohol in the defendant's bloodstream did not constitute possession in the presence of the officer. *Id* at 130–31. It is important to note that the *Hornaday* court did not decide

the issue of whether alcohol in the defendant's bloodstream was evidence of an earlier possession.

Other courts have, however, addressed the issue of whether evidence of drugs or alcohol in a defendant's system constitutes evidence of an earlier possession. For instance, in *State v. Dalton*, 72 Wn.App. 674, 865 P.2d 575 (1994), an officer observed the minor defendant who appeared to be intoxicated. The officer, however, did not see the defendant consume any alcohol, nor did he see any actual alcohol in minor's possession. *Dalton*, 72 Wn.App. at 675. The Court of Appeals noted that presence of alcohol in one's system "does not constitute possession per se" because the person's power to control or possess the alcohol ends upon assimilation. *Id* at 676. The court went to explain that,

> However, evidence of assimilation is circumstantial evidence of prior possession. Although insufficient by itself to support a conviction, when combined with other corroborating evidence of sufficient probative value, evidence of assimilation can be sufficient to prove possession beyond a reasonable doubt. *See Flinchpaugh, 659 P.2d at 212. Cf. Franklin v. State*, 8 Md.App. 134, 258 A.2d 767, 769 (1969) (evidence of drug use is circumstantial evidence of prior possession and sufficient to support conviction); *United States v. Blackston*, 940 F.2d 877, 888-91 (3d Cir.1991) (positive urine samples can be considered as circumstantial evidence of possession of a controlled substance for purposes of 18 U.S.C. § 3583(g)). As the State contends, the issue in *Hornaday* was whether the defendant committed a misdemeanor (possession of alcohol) in the presence of the arresting officer, not what evidence was sufficient to convict at trial.

Dalton, 72 Wn.App. at 676. The Court then ultimately held that the evidence in *Dalton* was sufficient, as the officer had observed that the defendant smelled of alcohol and appeared intoxicated and the defendant was seen near a beer keg and plastic cups. *Id* at 676-77.

In *State v. A.T.P.-R.* (the case cited by the Defendant in the present case), the defendant did not have actual possession of any alcohol but only stood near someone else who was holding a bottle of beer. *A.T.P.-R.*, 132 Wn.App. at 185. Although an officer detected an odor of alcohol coming from the defendant's person, the officer did not state that the defendant appeared intoxicated, nor was there any evidence that the defendant had alcohol in his system. *Id* at 185-86. The Court of Appeals acknowledged that the when combined with other corroborating evidence "assimilation of alcohol can be sufficient to prove possession," but the court ultimately found the evidence in *A.T.P.-R.* to be insufficient as there was no evidence of assimilation. *Id* at 186. Rather, the only evidence was the defendant's proximity to another person holding a beer. *Id.*

The present case is clearly distinguishable from these above cited cases as there was ample evidence that the Defendant had possessed methamphetamine of New Year's Eve. First, the Defendant himself admitted to the detective (and later admitted on the stand) that he had

smoked methamphetamine. This fact, of course, was strong evidence of possession and the exercise of dominion and control over the methamphetamine immediately prior to ingestion. Furthermore, there was uncontested evidence from both the community corrections officer and the Defendant that the urinalysis test given to the Defendant on January 2 came back positive for methamphetamine. The Court of Appeals in *Dalton* specifically mentioned that a positive urine sample can be considered as circumstantial evidence of possession of a controlled substance. *Dalton*, 72 Wn.App. at 676, *citing United States v. Blackston*, 940 F.2d 877, 888-91 (3d Cir.1991). Finally, the fact that a methamphetamine pipe was found in the Defendant's bedroom a few days later was evidence that corroborated the Defendant's admission that he had previously smoked methamphetamine a week earlier.

In short, viewing all of the evidence in a light most favorable to the State, a rational juror could have found that the State proved that the Defendant had possessed methamphetamine immediately prior to the moment when he smoked the substance on New Year's Eve. The Defendant's claim that the evidence was insufficient, therefore, must fail.

B. THE DEFENDANT'S CLAIM THAT HIS TRIAL COUNSEL WAS INEFFECTIVE MUST FAIL BECAUSE THE DEFENDANT HAS SHOWN NEITHER DEFICIENT PERFORMANCE NOR PREJUDICE.

The Defendant next claims that he received ineffective assistance of counsel. App.'s Br. at 10. This claim is without merit because the Defendant can show neither deficient performance nor prejudice.

To demonstrate ineffective assistance of counsel, a defendant must show: (1) that his counsel's performance was deficient, defined as falling below an objective standard of reasonableness, and (2) that counsel's deficient performance prejudiced the defendant, i.e., there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different. *Strickland v. Washington*, 466 U.S. 668, 687–88, 694, 104 S.Ct. 2052, 2068, 80 L.Ed.2d 674 (1984). Courts engage in a strong presumption that counsel's representation was effective. *State v. McFarland*, 127 Wn.2d 322, 335-36, 899 P.2d 1251 (1995); *State v. Brett*, 126 Wn.2d 136, 198, 892 P.2d 29 (1995). Furthermore, if defense counsel's trial conduct can be characterized as legitimate trial strategy or tactics, then it cannot constitute ineffective assistance. *Strickland*, 466 U.S. at 687; *State v. Mak*, 105 Wn.2d 692, 731, 718 P.2d 407 (1986).

More specifically, where the defendant claims ineffective assistance based on counsel's failure to challenge the admission of evidence, the defendant must show (1) an absence of legitimate strategic or tactical reasons supporting the challenged conduct; (2) that an objection to the evidence would likely have been sustained; and (3) that the result of the trial would have been different had the evidence not been admitted. *State v. McFarland*, 127 Wn.2d 322, 336-37, 899 P.2d 1251 (1995); *State v. Hendrickson*, 129 Wn.2d 61, 77–80, 917 P.2d 563 (1996); *State v. Saunders*, 91 Wn.App. 575, 578, 958 P.2d 364 (1998).

In the present case the Defendant claims that his counsel was ineffective for failing to raise the corpus issue pre-trial. App.'s Br. at 11. As the Defendant notes, the corpus rule only applies to extrajudicial statements, and thus the trial court correctly noted that it could consider the Defendant's testimony at trial when it decided the corpus motion below. App.'s Br. at 11. The result, however, would not have been different even if trial counsel had raise a corpus motion prior to trial, as there was sufficient corroborating evidence available to overcome the corpus challenge.

The State acknowledges that the corpus rule requires that there be some independent evidence to corroborate a defendant's incriminating statement. *State v. Brockob*, 159 Wn.2d 311, 328, 150 P.3d 59 (2006).

The independent evidence needed, however, is viewed in a light most favorable to the State and "the independent evidence need not be sufficient to support a conviction." *Id* at 328. The independent evidence may be either direct or circumstantial and need not be of such character as would establish the corpus delicti beyond a reasonable doubt or even by a preponderance of the evidence. *Aten*, 130 Wn.2d at 656; *Hummel*, 165 Wn.App. at 759; *Rooks*, 130 Wn.App. at 802. It is sufficient if it prima facie establishes the corpus delicti. *Aten*, 130 Wn.2d at 656; *Rooks*, 130 Wn.App. at 802. "Prima facie" in the context of the corpus delicti rule means "'evidence of sufficient circumstances which would support a logical and reasonable inference' of the facts sought to be proved." *Aten*, 130 Wn.2d at 656 (quoting *State v. Vangerpen*, 125 Wn.2d 782, 796, 888 P.2d 1177 (1995)); *Rooks*, 130 Wn.App. at 802. In analyzing whether there is sufficient evidence to support the corpus delicti of the crime, this court "assumes the truth of the State's evidence and all reasonable inferences from it in a light most favorable to the State." *Aten*, 130 Wn.2d at 658; *Hummel*, 165 Wn.App. at 759; *Rooks*, 130 Wn.App. at 802-03.

In the present case the independent evidence showed that the urinalysis test administered on January 2 came back positive for methamphetamine. In addition, a methamphetamine pipe was found in the Defendant's room a few days later. Viewing this evidence in a light most

favorable to the State, this evidence corroborated the Defendant's admission that he had smoked methamphetamine on or about New Year's Eve. Thus even if the Defendant had raised the corpus motion prior to trial, the result would have been the same, and the trial court below explained that it would have reached the same conclusion even if the Defendant's trial testimony did not factor into the analysis. See RP 400-1.

The Defendant, therefore, has failed to show that a corpus motion would have been granted if his counsel had raised the motion at an earlier point. The Defendant thus cannot show either deficient performance or prejudice, and his claim of ineffective assistance of counsel must fail.

C. THE DEFENDANT'S CLAIM THAT THE TRIAL COURT'S INSTRUCTIONS REGARDING BAIL JUMPING WERE IMPROPER IS WITHOUT MERIT AS THE COURT'S INSTRUCTIONS (WHICH MIRRORED THE WPIC INSTRUCTIONS) WERE SUFFICIENT TO INFORM THE JURY OF THE ELEMENTS OF THE CRIME AND TO ALLOW EACH PARTY TO ARGUE THEIR THEORY OF THE CASE.

The Defendant next claims that the "to-convict" instruction regarding the charge of bail jumping was improper. App.'s Br. at 15. This claim is without merit because the trial court used the WPIC instructions which were sufficient to inform the jury of the elements of the crime and to allow each party to argue their theory of the case.

A trial court has considerable discretion in selecting the wording of a jury instruction so long as it correctly states the law and allows each party to argue its theory of the case. *State v. Rosul*, 95 Wn.App. 175, 187, 974 P.2d 916 (1999) (*citing State v. Brown*, 132 Wn.2d 529, 618, 940, 940 P.2d 546P.2d 546 (1997), *cert. denied*, 118 S.Ct. 1192 (1998)). An appellate court is to consider "the context of the instructions as a whole," rather than viewing each instruction as an isolated mandate. *State v. Benn*, 120 Wn.2d 631, 654–55, 845 P.2d 289 (1993). In order for jury instructions to be sufficient, they must be readily understood and not misleading to the ordinary mind." *State v. Dana*, 73 Wn.2d 533, 537, 439 P.2d 403 (1968).

The crime of bail jumping is found in RCW 9A.76.170, which provides as follows:

> (1) Any person having been released by court order or admitted to bail with knowledge of the requirement of a subsequent personal appearance before any court of this state, or of the requirement to report to a correctional facility for service of sentence, and who fails to appear or who fails to surrender for service of sentence as required is guilty of bail jumping.

The pattern "to convict" instruction for bail jumping, WPIC 120.41, provides as follows:

> To convict the defendant of the crime of bail jumping, each of the following elements of the crime must be proved

beyond a reasonable doubt:

(1) That on or about the (date), the defendant failed [to appear before a court][or][to surrender for service of sentence];

(2) That the defendant [was being held for][or][was charged with][or][had been convicted of](fill in crime);

(3) That the defendant had been released by court order [or admitted to bail] with knowledge of [the requirement of a subsequent personal appearance before that court][or][the requirement to report to a correctional facility for service of sentence]; and

(4) That any of these acts occurred in the [State of Washington][City of _____][County of _____].

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 of 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.

WPIC 120.41.

In the preset case the trial court gave the jury several instruction on the crime of bail jumping including WPIC 120.40 (which defined the crime) and WPIC 120.41 (the "to convict" instruction). CP 53, 54. Those instructions provided as follows:

INSTRUCTION NO. 12

A person commits the crime of Bail Jumping when he or she fails to appear as required after having been released by court order with knowledge of the requirement of a subsequent personal appearance before a court in which the person was charged with a class B or class C felony.

INSTRUCTION NO. 13

To convict the defendant of the crime of Bail Jumping as charged in Count II, each of the following elements of the crime must be proved beyond a reasonable doubt–

(1) That on or about May 14, 2013, the defendant failed to appear before a court;

(2) That the defendant was charged with a class B or class C felony;

(3) That the defendant had been released by court order with knowledge of the requirement of a subsequent personal appearance before that court; and

(4) That the acts occurred in the State of Washington.

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 of 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 53; 54. These instructions mirrored the WPIC instructions (with the inclusion of the relevant bracketed portions and the omission of the irrelevant portions) and the defense did not object to these instructions.

On appeal the Defendant claims that the trial court's to convict instruction was flawed because it did not require the jury to find that the Defendant failed to appear "as required." App.'s Br. at 17. This claim is clearly without merit.

The trial court's instruction number 12 clearly provides that a person only commits the crime of bail jumping when he or she "fails to appear *as required* after having been released by court order with knowledge of the requirement of a subsequent personal appearance." CP 53. Similarly, instruction 13 (which followed the pattern instruction) provides that the State must prove that the Defendant failed to appear and that he "had been released by court order with *knowledge of the requirement of a subsequent personal appearance* before that court." CP 54. These instructions were sufficient to inform the jury of the elements of the crime and to allow each party to argue their theory of the case.

Although the Defendant cites several cases in his brief, none of those cases hold that the pattern instructions used in the present case are defective for the reasons cited by the Defendant. Furthermore, the State is aware of no Washington cases that have ever held that the pattern bail jumping instructions are flawed for the reasons claimed by the Defendant.

In any event, it is clear that instructions 12 and 13 clearly were sufficient to inform the jury of the elements of the crime and to allow each party to argue their theory of the case. The Defendant's claim to the contrary, therefore, must fail.

D. THE DEFENDANT'S CLAIM THAT THE CHARGING LANGAUGE REGARDING THE BAIL JUMPING CHARGE WAS INSUFFICIENT IS WITHOUT MERIT BECAUSE THE INFORMATION CONTAINED ALL OF THE ESSENTIAL ELEMENTS OF THE CHARGED OFFENSE.

The Defendant next claims that the charging language regarding the bail jumping charge was insufficient. App.'s Br. at 18. This claim is without merit because the information contained all of the essential elements of the charged offense.

Under the Sixth Amendment to the United States Constitution and article I, section 22 of the Washington Constitution, a charging document must include all essential elements of a crime to inform a defendant of the charges against him and to allow preparation for the defense. *State v. Phillips*, 98 Wn.App. 936, 939, 991 P.2d 1195 (2000) (*citing State v. Kjorsvik*, 117 Wn.2d 93, 101–02, 812 P.2d 86 (1991)). A charging document is constitutionally sufficient if the information states each statutory element of the crime, even if it is vague as to some other matter significant to the defense. *State v. Holt*, 104 Wn.2d 315, 320, 704 P.2d 1189 (1985).

When a defendant challenges the sufficiency of a charging document, the standard of review depends on the timing of the challenge. *State v. Ralph*, 85 Wn.App. 82, 84, 930 P.2d 1235 (1997). If a defendant

challenges the sufficiency of the information "at or before trial," the court is to construe the information strictly. *Phillips*, 98 Wn.App. at 940 (*quoting State v. Vangerpen*, 125 Wn.2d 782, 788, 888 P.2d 1177 (1995)). Under this strict construction standard, if a defendant challenges the sufficiency of the information before the State rests and the information omits an essential element of the crime, the court must dismiss the case "without prejudice to the State's ability to re-file the charges." *Phillips*, 98 Wn.App. at 940 (*quoting Ralph*, 85 Wn.App. at 86, 930 P.2d 1235).

If, however, a defendant moves to dismiss an allegedly insufficient charging document after a point when the State can no longer amend the information, such as when the State has rested its case, the court is to construe the information liberally in favor of validity. *Phillips*, 98 Wn. App. at 942–43. As this Court has recently noted, these differing standards illustrate the balance between giving defendants sufficient notice to prepare a defense and "discouraging defendants' 'sandbagging,' the potential practice of remaining silent in the face of a constitutionally defective charging document (in lieu of a timely challenge or request for a bill of particulars, which could result in the State's amending the information to cure the defect such that the trial could proceed)." *State v. Kiliona-Garramone*, 166 Wn.App. 16, 23 n.7, 267 P.3d 426 (2011), *citing Kjorsvik*, 117 Wn.2d at 103; *Phillips*, 98 Wn.App. at 940 (citing 2 Wayne

R. LaFave & Jerold H. Israel, Criminal Procedure § 19.2, at 442 n. 36 (1984)).

In the present case, the Defendant did not challenge the sufficiency of the charging document below. Rather, the Defendant has raised this issue for the first time on appeal. Because the Defendant did not object to the information's sufficiency below, this Court is to apply the liberal standard set forth in *Kjorsvik* and construe the information in favor of its validity. *Kiliona-Garramone*, 166 Wn.App. at 24; *Phillips*, 98 Wn.App. at 942–43. Under this liberal standard of review, the court must decide whether (1) the necessary facts appear in any form, or by fair construction are found, in the charging document; and if so, (2) whether the defendant can show that he or she was nonetheless actually prejudiced by the inartful or vague language that he alleges caused a lack of notice. *Phillips*, 98 Wn.App. at 940 (*citing Kjorsvik*, 117 Wn.2d at 105–06).

As mentioned previously, the crime of bail jumping is found in RCW 9A.76.170, which provides as follows:

> (1) Any person having been released by court order or admitted to bail with knowledge of the requirement of a subsequent personal appearance before any court of this state, or of the requirement to report to a correctional facility for service of sentence, and who fails to appear or who fails to surrender for service of sentence as required is guilty of bail jumping.

The Second Amended Information in the present case utilized the following charging language regarding the charge of bail jumping:

> **Count II**
>
> **Bail Jumping**
>
> On or about May 14, 2013, in the County of Kitsap, State of Washington, the above-named Defendant, having been released by court order or admitted to bail with knowledge of the requirement of a subsequent personal appearance before a court of this state or of the requirement to report to a correctional facility for service of sentence, did fail to appear or did fail to surrender for service of sentence in which a Class B or Class C felony has been filed, to-wit: Kitsap County Superior Court Cause No. 13-1-00288-2; contrary to Revised Code of Washington 9A.76.170.
>
> (MAXIMUM PENALTY (Failure to appear in Class B or Class C felony case)–Five (5) years imprisonment and/or a $10,000 fine pursuant to RCW 9A.76.170 and RCW 9A.20.021(1)(c), plus restitution and assessments.)

CP 2.

As with the Defendant's previous claim regarding the jury instructions, the Defendant argues in the present appeal that the charging language was insufficient because it did state that the Defendant failed to appear "as required." App.'s Br. at 20. The charging language in the present case, however, clearly provides that the Defendant failed to appear "having been released by court order or admitted to bail with knowledge of the requirement of a subsequent personal appearance before a court of this state." CP 2. Because the Defendant did not object to the

information's sufficiency below, this Court is to apply the liberal standard set forth in *Kjorsvik* and construe the information in favor of its validity. *Kiliona-Garramone*, 166 Wn.App. at 24; *Phillips*, 98 Wn.App. at 942–43. Under this liberal standard of review, it is clear that the charging language outlined the necessary facts. In addition, even if could be argued that the language was vague or inartful the Defendant has shown absolutely no prejudice (especially in light of the fact that the failure to appear occurred in the present case and cause number). In short, the Defendant's claim is clearly without merit.

E. THE DEFENDANT'S CLAIM THAT THE TRIAL COURT ERRED IN IMPOSING LEGAL FINANCIAL OBLIGATIONS IS WITHOUT MERIT BECAUSE THE TRIAL COURT'S ORDER WAS CONSISTENT WITH WASHINGTON LAW. IN ADDITION, THE DEFENDANT WAIVED THE RIGHT TO RAISE THIS ISSUE ON APPEAL BY FAILING TO RAISE AN OBJECTION TO IN THE TRIAL COURT.

The Defendant next claims that the trial court erred in imposing legal financial obligations. App.'s Br. at 21. Specifically, the Defendant claims that the trial court erred when it ordered him to pay the cost of his court-appointed attorney. App.'s Br. at 26-27. This claim is without merit because the Defendant failed to preserve this issue for appeal.

In the present case the trial court's Judgment and Sentence contains a finding that "the Defendant has the ability or likely future ability to pay legal financial obligations." CP 12. The Defendant did not object to the entry of this finding. The trial court then went on to impose a $1135 fee for Defendant's court appointed counsel and imposed a payment schedule of $100 a month. CP 12. Again, the Defendant did not object.

This Court has recently held that a reviewing court need not address (or allow a defendant to raise) a claim regarding his ability to pay his legal financial obligations for the first time on appeal. *State v. Blazina*, 174 Wn.App. 906, 301 P.3d 492 (2013) *review granted*, 178 Wn.2d 1010, 311 P.3d 27 (2013); *citing* RAP 2.5. *See also, State v. Kuster*, 175 Wn.App. 420, 425, 306 P.3d 1022 (2013); *State v. Duncan*, __ Wn.App. ___, 2014 WL 1225910 (Div. 3, March 25, 2014) This court, therefore, should similarly reject the Appellant's argument concerning his legal financial obligations regarding the attorney's fees in the present case, as the Defendant failed to raise this issue below.[3]

[3] Although the Defendant attempts to characterize the issue regarding his future ability to pay as a constitutional issue, Washington courts have repeatedly held that this is not a constitutional issue. *See, e.g., State v. Duncan*, __ Wn.App. ___, 2014 WL 1225910 (Div. 3, March 25, 2014)("If a trial court fails to consider ability to pay or enters an unsupported finding, it is not constitutional error."); *State v. Calvin*, ___ Wn.App. ___,

The Defendant also argues that the trial court exceeded its authority in imposing a $500 drug fund contribution, and argues that this fine is not "authorized by statute." App.'s Br. at 28. RCW 9.94A.145(1), however, provides that whenever a person is convicted of a felony, the court may order the payment of a "legal financial obligation" as part of the sentence. RCW 9.94A.030(30) further provides that,

> (30) "Legal financial obligation" means a sum of money that is ordered by a superior court of the state of Washington for legal financial obligations which may include restitution to the victim, statutorily imposed crime victims' compensation fees as assessed pursuant to RCW 7.68.035, court costs, ***county or interlocal drug funds***, court-appointed attorneys' fees, and costs of defense, fines, and any other financial obligation that is assessed to the offender as a result of a felony conviction. Upon conviction for vehicular assault while under the influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial obligations may also include payment to a public agency of the expense of an emergency response to the incident resulting in the conviction, subject to RCW 38.52.430.

RCW 9.94A.030(30) (emphasis added).

The Court of Appeals has previously held that this language demonstrates that the legislature "clearly contemplated the payment of drug fund contributions" and that a trial court is therefore authorized to

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316 P.3d 496, 507; *State v. Blank*, 131 Wn.2d 230, 241–42, 930 P.2d 1213 (1997) ("The Constitution does not require an inquiry into ability to pay at the time of sentencing").

impose such a contribution. *State v. Hunter*, 102 Wn.App. 630, 634-35, 641, 9 P.3d 872 (2000) ("We find that the trial court's imposition of a drug fund contribution is authorized by statute and does not violate the separation of powers doctrine or the due process clause."). Thus, the Defendant has failed to show any error with regard to the $500 drug fund contribution ordered in the present case, and the Defendant's claim that the drug fund contribution is not authorized by statute is simply incorrect.

Finally, the Defendant challenges the trial court's imposition of a $100 contribution to an expert witness fund and a $1439.74 jury demand fee. App.'s Br. at 27-28. The Defendant did specifically object to the jury demand fee below, and the State concedes that the fee is limited to $250 by statute. *See, State v. Bunch*, 168 Wn.App. 631, 279 P.3d 432 (2012) (Holding that a jury demand fee of is limited to $250 for a 12–person jury); citing, RCW 10.01.160 (authorizing costs in criminal cases including "jury fees under RCW 10.46.190), RCW 10.46.190 (authorizing a jury fee "as provided for in civil cases"), and RCW 36.18.016(3)(b) (authorizing a jury fee of $250 when the jury is comprised of 12 members). The State concedes that the jury demand fee should be reduced to $250 and that the expert witness fund contribution should be stricken (as there is no evidence the State had to pay an expert to appear at trial).

IV. CONCLUSION

For the foregoing reasons, the Defendant's conviction and sentence should be affirmed, with the one exception that the jury demand fee should be reduced to $250 and the expert witness fee should be stricken.

DATED June 2, 2014.

Respectfully submitted,
RUSSELL D. HAUGE
Prosecuting Attorney

JEREMY A. MORRIS
WSBA No. 28722
Deputy Prosecuting Attorney

KITSAP COUNTY PROSECUTOR

June 02, 2014 - 1:40 PM

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