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Supreme Court No. 98331-3
Court of Appeals No. 78653-9-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

DEWAYLON LACY,

Petitioner.

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER AND THE DECISION BELOW

DeWaylon Lacy requests this Court grant review pursuant to RAP 13.4(b) of the decision of the Court of Appeals, Division One, in *State v. DeWaylon Lacy*, No. 78653-9-I, filed February 24, 2020. A copy of the opinion is attached in an appendix.

B. ISSUES PRESENTED FOR REVIEW

1. A charge of bail jumping may be properly joined with an underlying charge only where the alleged offenses are sufficiently connected and trying the charges together would not unduly prejudice the defendant. The only connection between the bail jumping charge and the underlying charges was that Mr. Lacy failed to appear for a proceeding on the underlying charges. In addition, the evidence to be presented at separate trials was not cross-admissible, Mr. Lacy's defense to the bail jumping charge was different than his defense to the underlying charges, and the strength of the State's case on the underlying charges was weak. Should this Court grant review where the charges were not sufficiently connected and the trial court unduly prejudiced Mr. Lacy when it permitted the State to try the bail jumping charge with the underlying charges?

2. Relevant evidence is generally admissible at trial, and the threshold for relevance is extremely low. Evidence is relevant where it has

any tendency to make the existence of any fact of consequence to the determination of the action more or less probable than it would be without the evidence. Should this Court grant review where the trial court prevented Mr. Lacy from presenting evidence of the prior court appearances he made throughout his pretrial proceedings, where this evidence showed when Mr. Lacy attended court when he had knowledge of the hearing?

C. STATEMENT OF THE CASE

After 12 years of marriage, DeWaylon Lacy's wife informed him she was filing for divorce. 6/5/18 RP 180, 182. Mr. Lacy was upset by this news, and got emotional. 6/5/18 RP 300. The Lacys have two children together and he was distraught by the idea of breaking up their family. 6/5/18 RP 300. Ms. Lacy wanted to leave the family home immediately after making her announcement, but Mr. Lacy asked her to stay. 6/5/18 RP 305. He convinced her to talk with him, but their conversation was interrupted by a call from their daughter's school. 6/4/18 RP 191; 6/5/18 RP 305. Their daughter had been injured and needed to be picked up early. 6/5/18 RP 188.

When they arrived at the school, Ms. Lacy ran ahead of Mr. Lacy and told the school not to release their daughter to Mr. Lacy because there was a "domestic violence situation." 6/4/18 RP 200. Ms. Lacy alleged Mr.

Lacy pushed her and prevented her from leaving their home. 6/4/18 RP 186. The State charged Mr. Lacy with fourth degree assault and unlawful imprisonment. CP 126.

Mr. Lacy appeared for all six of his pretrial hearings in superior court but missed his trial call date on March 2, 2018. Ex. 16A; CP 138-143. Over Mr. Lacy's objection, the State amended the information and charged Mr. Lacy with felony bail jumping. CP 100; 5/31/18 RP 33. Mr. Lacy's motion to try the bail jumping separately from the underlying charges was denied. 5/31/18 RP 42. The trial court also prevented Mr. Lacy from introducing evidence about the many court appearances he had made before missing court once. 6/4/18 RP 16.

At trial, the jury acquitted Mr. Lacy of the assault and unlawful imprisonment charges but found him guilty of the bail jumping charge. CP 59-61. With an offender score of zero, he was sentenced to 30 days' incarceration, most of which was converted to community restitution. CP 30. The Court of Appeals affirmed. Slip Op. at 9.

D. ARGUMENT IN FAVOR OF GRANTING REVIEW

1. **This Court should grant review because, under *State v. Bluford*, the bail jumping charge was wrongly tried with the underlying charges.**

- a. A charge of bail jumping may be joined for trial with underlying charges only when the alleged offenses are sufficiently connected and trying the charges together would not unduly prejudice the defendant.

Offenses may be joined for trial only where they “[a]re of the same or similar character” or “[a]re based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan.” CrR 4.3(a)(1), (2). When the charge to be joined is an accusation of bail jumping, the trial court must find the individual’s failure to appear at trial was “sufficiently connected” to the underlying charges in order for joinder to be permissible. *State v. Bryant*, 89 Wn. App. 857, 865, 950 P.2d 1004 (1998). However, even if this standard is satisfied, joining charges carries an inherent risk of prejudice, either from evidentiary spillover or transference of guilt. *State v. Smith*, 74 Wn.2d 744, 754-55, 446 P.2d 571 (1968), *vacated in part*, 408 U.S. 934, 92 S. Ct. 2852, 33 L. Ed. 2d 747 (1972), *overruled on other grounds*, *State v. Gosby*, 85 Wn.2d 758, 539 P.2d 680 (1975).

Severance of charges should be ordered where it “will promote a fair determination of the defendant’s guilt or innocence of each offense.”

CrR 4.4(b). Both when considering whether to join charges for trial and evaluating whether they should be severed, the court must examine whether trying the charges together will prejudice the accused. *State v. Bluford*, 188 Wn.2d 298, 308, 393 P.3d 1219 (2017). The sole justification for joinder is judicial economy, but “no amount of judicial economy can justify requiring a defendant to endure an unfair trial.” *Id.* at 311.

Thus, the court must evaluate first whether the likely prejudice to the defendant will necessarily prevent a fair trial. *Id.* If the court determines it will not necessarily preclude a fair trial, the court must weigh the prejudice to the defendant caused by the joinder against the interest in efficient judicial administration. *Bluford*, 188 Wn.2d at 308.

When properly raised, as they were here, motions for joinder and severance permit the trial court to address the potential for prejudice both pretrial and at the close of evidence. *Id.* at 310; CrR 4.4(a)(2); 5/31/18 RP 33; 6/5/18 RP 288. The trial court’s joining of offenses for trial is reviewed for an abuse of discretion but this exercise of discretion must be “based upon a careful and thoughtful consideration of the issue.” *Bluford*, 188 Wn.2d at 310 (quoting *State v. Smith*, 106 Wn.2d 772, 776, 725 P.2d 951 (1986)). The trial court must balance the likelihood of prejudice to the defendant against any benefits of trying the charges together “in light of

the particular offense and evidence at issue and carefully articulate the reasoning underlying its decision.” *Bluford*, 188 Wn.2d at 310.

On review, this Court considers the actual prejudice to the defendant to determine whether joinder of the charges was appropriate as a matter of law. *Id.* at 308.

- b. The trial court abused its discretion when it failed to properly apply the law to determine whether the bail jumping charge was sufficiently connected to the underlying charges to permit joinder under CrR 4.3(a).

Before examining prejudice, the court must evaluate whether the other requirements of CrR 4.3(a) are satisfied first. When the offense at issue is bail jumping, the Court of Appeals has looked to the federal test for guidance. *Bryant*, 89 Wn. App. at 866. Construing Federal Rule of Criminal Procedure 8, the federal equivalent to CrR 4.3(a), the First Circuit explained:

It is well established that a charge of bail jumping or escape may be deemed sufficiently “connected” with a substantive offense to permit a single trial, at least where the charges are related in time, the motive for flight was avoidance of prosecution, and appellant’s custody stemmed directly from the substantive charges.

United States v. Ritch, 583 F.2d 1179, 1180-81 (1st Cir. 1978).

In *Bryant*, the court rejected a “slavish adherence” to the federal test and found the bail jumping charge properly joined because the first and third requirements were met. 89 Wn. App. at 867. The acts giving rise

to the underlying charge and the bail jumping occurred within a period of only four months, and Mr. Bryant failed to appear at an omnibus hearing that stemmed from the underlying charge. *Id.*

The Court of Appeals affirmed after finding the same requirements were satisfied here. Slip Op. at 5. But this finding is contrary to the State's argument and the trial court's decision below, neither of which relied on the timing element because here the underlying charges occurred almost one year before the bail jumping charge. CP 120.

In response to Mr. Lacy's motion opposing joinder, the State acknowledged the gap in time was greater in Mr. Lacy's case than in *Bryant* and urged the trial court to rest its decision on the other two prongs of the test: that Mr. Lacy's custody stemmed directly from the substantive charges and his failure to appear at the trial call showed "consciousness of guilt" and an attempt to avoid trial. 5/31/18 RP 38; RP 115.

The trial court declined to find Mr. Lacy's failure to appear demonstrated "consciousness of guilt" and later specifically prohibited the State from making this argument at trial. 5/31/18 RP 41; 6/4/18 RP 21. Instead, the court found the counts were properly joined for trial simply because the bail jumping charge "exists only because of the initial information that was filed in this case in which Mr. Lacy was charged [sic] unlawful imprisonment and fourth degree assault." 5/31/18 RP 42.

This reasoning – that any time an individual is charged with bail jumping, that charge may be joined with the underlying charges – did not comply with the court’s holding in *Bryant*, which requires courts to consider whether the charges are also related in time, and whether the defendant was motivated not to appear in order to avoid prosecution. 89 Wn. App. at 867. The Court of Appeals finding that a period of nine months is “sufficiently related in time,” similarly eviscerates this requirement. This Court should accept review.

c. Trying the bail jumping charge with the other charges unduly prejudiced Mr. Lacy in violation of his right to a fair trial.

Even if the charges had been sufficiently connected to permit joinder, joining the charges unduly prejudiced Mr. Lacy. Prejudice is evaluated by the consideration of four factors: “(1) the strength of the State’s evidence on each count; (2) the clarity of defenses as to each count; (3) court instructions to the jury to consider each count separately; and (4) the admissibility of evidence of the other charges even if not joined for trial.” *Bluford*, 188 Wn.2d at 311-12 (quoting *State v. Russell*, 125 Wn.2d 24, 63, 882 P.2d 747 (1994)).

Mr. Lacy moved to sever the charges before trial and at the close of evidence. CP 117; 5/31/18 RP 33; 6/5/18 RP 288. In response to Mr. Lacy’s pretrial motion, the State argued judicial economy should prevail

over any prejudice to Mr. Lacy because “separate trials would require presentation of the same evidence through testimony of the same witnesses.” CP 114. But the State based this claim on its argument it could present evidence of Mr. Lacy’s failure to appear at trial to show “consciousness of guilt” of the underlying charges, which was explicitly rejected by the trial court. CP 113; 5/31/18 RP 41; 6/4/18 RP 21. Given the court’s ruling, the same evidence would not have been admissible at both trials. Indeed, the court acknowledged this fact when it found evidence would be cross admissible only to the extent the underlying charges would be addressed “at some superficial level” at a separate trial on the bail jumping charge. 5/31/18 RP 43.

Instead, the court relied on its general experience that juries “try very hard to ensure that they fulfill their responsibilities with integrity” and found the jury would consider each count against Mr. Lacy separately if so instructed. 5/31/18 RP 43. It refused to consider Mr. Lacy’s concerns about the weakness of the State’s case on the underlying charges, stating simply, “[t]hat is for the jury to decide.” 5/31/18 RP 43. The court acknowledged Mr. Lacy’s defense to the bail jumping charge was different than Mr. Lacy’s defense to the underlying charges, but did not consider how this prejudiced Mr. Lacy. 5/31/18 RP 43. The court’s

analysis fell far short of the “careful and thoughtful consideration” required under *Bluford*. 188 Wn.2d at 310.

After the trial court denied Mr. Lacy’s pretrial motion to sever the bail jumping charge from the underlying charges, Mr. Lacy renewed his motion to sever at the close of evidence as required by CrR 4.4(a)(2). 6/5/18 RP 288. At that point, the trial court was required to reevaluate the prejudice incurred by Mr. Lacy in light of the evidence actually presented at trial. *Bluford*, 188 Wn.2d at 310.

The court failed to perform this analysis. The State’s case against Mr. Lacy at trial as to the underlying charges was based primarily on the testimony of his wife, Chandra Lacy, whom Mr. Lacy was in the process of divorcing. 6/5/18 RP 180, 182. On cross-examination, the defense exposed a number of inconsistencies in Ms. Lacy’s statements. 6/5/18 RP at 212-13. As Mr. Lacy had argued in his pretrial motion, the evidence against him as to the charges of assault and unlawful imprisonment was, indeed, weak. But the court did not consider the prejudice to Mr. Lacy in light of this evidence. Instead, it found the instruction directing the jury to consider each charge separately would address any prejudice to Mr. Lacy. 6/5/18 RP 289.

Once again, the court’s ruling failed to comport with *Bluford*. In *Bluford*, this Court held the court must consider the prejudice to the

defendant in light of the particular offense at issue, and “carefully articulate” its reasoning. 188 Wn.3d at 310. Here, the trial court did not actually consider Mr. Lacy’s motion for severance at the close of evidence. It treated the renewal of the motion to sever as an action required to preserve the issue on appeal, but failed to undertake the analysis necessary to properly resolve the issue raised by the defense.

Indeed, the trial court acknowledged the jury instruction it relied upon to find severance unnecessary in Mr. Lacy’s case is the same instruction it gives in every case. 5/31/18 RP 42 (trial court stating, “the Court will instruct the jury, *as it always does*, they are to consider each count separately and their conclusions as to one count should not influence their conclusions as to any other count” (emphasis added)). The court’s determination that the jury would take its job seriously, as the court believed the jury did in every case, and the court’s reliance on an instruction it gives in every case, was not a careful and thoughtful consideration of the prejudice to Mr. Lacy based on the offenses charged and the testimony presented at his trial. *See Bluford*, 188 Wn.2d at 310.

Thoughtful consideration of the four factors demonstrates the prejudice to Mr. Lacy far outweighed any purported interests in judicial economy. The evidence for the bail jumping charge and underlying charges was not cross-admissible and separate trials would not have been

repetitive. Mr. Lacy's defense to the bail jumping charge was different than his defense to the underlying charges, and the strength of the State's evidence on the underlying charges was based on only the credibility of one witness. Under these circumstances, joinder unduly prejudiced Mr. Lacy in violation of his right to a fair trial. Because the trial court failed to apply the law and engage in the required analysis before denying the motion to sever, the trial court's ruling was an abuse of its discretion. This Court should accept review.

2. This Court should grant review because the trial court erroneously prohibited Mr. Lacy from presenting evidence at trial relevant to the bail jumping charge.

- a. The threshold for whether evidence is relevant is extremely low.

Generally, relevant evidence is admissible at trial. ER 402.

Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." ER 401.

The "threshold for relevance is *extremely* low under ER 401." *City of Kennewick v. Day*, 142 Wn.2d 1, 8, 11 P.3d 304 (2000) (emphasis added).

"Even minimally relevant evidence is admissible." *State v. Darden*, 145 Wn.2d 612, 621, 41 P.3d 1189 (2002).

- b. The trial court wrongly prevented Mr. Lacy from presenting evidence tending to show that when he knew about his court dates, he appeared for them.

In response to a motion in limine filed by the State, Mr. Lacy notified the court of his intention to introduce evidence of the number of times he appeared for court in accordance with court order before missing one court date. 6/4/18 RP 4-5. The State argued this evidence should be excluded because it was not “particularly relevant” and because the relevance was not “particularly high.” 6/4/18 RP 4-5.

The State directed the court’s attention to *State v. Carver*, in which the Court of Appeals held forgetting the court date was not a defense to a charge of bail jumping and the prosecutor therefore did not commit misconduct when he made this argument to the jury. 122 Wn. App. 300, 304-05, 93 P.3d 947 (2004). The State relied on *Carver* to argue Mr. Lacy’s appearance at other court dates should be excluded because forgetting the court date at issue was not a defense to bail jumping. 6/4/18 RP 6-7. The trial court adopted the State’s claim and excluded the evidence under *Carver*. 6/4/18 RP 16.

The court’s ruling was error. Contrary to court’s determination, evidence need not relate to the defendant’s guilt or innocence to be relevant. *State v. Perez-Arellano*, 60 Wn. App. 781, 784, 807 P.2d 898 (1991). In *Perez-Arellano*, the court permitted police officers to testify

they were watching a park from a nearby building because they believed it to be in a “high narcotic area.” 60 Wn. App. at 782-83. Although this evidence was unrelated to the defendant’s guilt or innocence, the Court of Appeals determined it was properly admitted because it helped the jurors gain a fully understanding of the circumstances surrounding the defendant’s arrest. *Id.* at 784.

In addition, rather than simply providing background information, as the admitted evidence did in *Perez-Arellano*, the evidence Mr. Lacy sought to introduce did relate to his guilt or innocence. Indeed, it had a tendency to show that when Mr. Lacy knew about his court dates, he appeared for them. This was relevant because the State was required to prove beyond a reasonable doubt that Mr. Lacy was released by court order or admitted to bail “with knowledge of the requirement of a subsequent personal appearance” before the trial court and failed to appear. RCW 9A.76.170(1); CP 72. To find knowledge, the jury had to find the State satisfied its burden to show Mr. Lacy was “aware of that fact, circumstance or result.” CP 71.

Indeed, when the State argued evidence of Mr. Lacy’s prior appearances was not “particularly relevant” and the relevance was not “particularly high,” it conceded the evidence had cleared the low threshold under the ER 401, under which even minimally relevant evidence is

admissible. 6/4/18 RP 4-5; *Darden*, 145 Wn.2d at 621. The analysis in *Carver* offered no guidance as to whether Mr. Lacy's prior court appearances were relevant evidence under the rules, and the court erred when it relied upon it to preclude Mr. Lacy from presenting this relevant evidence at his trial.

c. The court's error was not harmless.

An error is prejudicial if, "within reasonable probabilities, had the error not occurred, the outcome of the trial would have been materially affected." *State v. Neal*, 144 Wn.2d 600, 611, 30 P.3d 1255 (2001) (citing *Smith*, 106 Wash.2d at 780).

The State's evidence showed Mr. Lacy signed a document informing him he was required to appear on March 2, 2018. Ex. 20; 6/5/18 RP 329. At trial, Mr. Lacy explained, "[a]ll I know is I missed a court date." 6/5/18 RP 311, 329; Ex. 20. Mr. Lacy testified he had "a lot of things going on," at the time, including homelessness and unemployment. 6/5/18 RP 311. Based upon the evidence presented, the State asked the jury to infer Mr. Lacy read the document before he signed it and was actually aware he needed to return to court on March 2, 2018. 6/6/18 RP 25.

Given this limited evidence and the inference the jury was required to draw to find Mr. Lacy guilty, Mr. Lacy was significantly prejudiced by

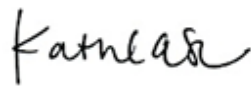
the exclusion of evidence demonstrating he had appeared for all of his other court dates when he was aware of them. This Court should grant review.

E. CONCLUSION

The trial court wrongly joined Mr. Lacy's bail jumping charge with the underlying charges and improperly excluded relevant evidence, prejudicing Mr. Lacy at trial. This Court should grant review.

DATED this 25th day of March, 2020.

Respectfully submitted,



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APPENDIX

COURT OF APPEALS, DIVISION ONE OPINION

February 24, 2020

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,)	No. 78653-9-I
)	
Respondent,)	UNPUBLISHED OPINION
v.)	
)	
DEWAYLON LACY,)	
)	
Appellant.)	FILED: February 24, 2020
)	

ANDRUS, J – DeWaylon Lacy appeals his conviction for bail jumping, arguing that the trial court erred in denying his pretrial motion to sever the bail jumping charge from his underlying domestic violence charges. We conclude that the charges were properly joined and that Lacy was not prejudiced by this joinder or by the trial court’s refusal to later sever to the charges. We thus affirm Lacy’s conviction.

FACTS

DeWaylon and Chandra Lacy, married with two young children, got into an argument on the morning of May 30, 2017. Chandra¹ testified that she told Lacy that morning that she wanted a divorce. She stated that Lacy yelled at her for hours, would not let her leave the home, and pushed her and grabbed her arm

¹ For purposes of this opinion, we refer to Chandra Lacy by her first name to avoid confusion. We mean no disrespect.

every time she tried to leave. Lacy testified that when Chandra asked for a divorce, he became emotional and pleaded for her to stay, but he denied pushing her or preventing her from leaving the room or the home.

During these events, Chandra received a call from their daughter's school to inform her that the child had been injured at school and needed to be picked up. When Chandra and Lacy arrived at the school, Chandra asked school staff to call 911 because she was experiencing a domestic violence situation. School employee Debbie Stratton testified that she called 911 after seeing Chandra and hearing her pleas for help.

The State charged Lacy with one count of unlawful imprisonment, domestic violence, and one count of fourth degree assault, domestic violence. Lacy failed to appear for his March 2, 2018 trial call.

On May 31, 2018, the State moved to amend the charges to add a charge of bail jumping. But in anticipation of this motion, on May 8, 2018, Lacy moved to sever the bail jumping charge from the existing charges of unlawful imprisonment and fourth degree assault.

The trial court denied the severance motion and granted the State's motion to amend. It reasoned that the factual basis for the bail jumping charge only existed because of the initial information charging Lacy with unlawful imprisonment and fourth degree assault. It further noted that Lacy would not be prejudiced because the jury would be instructed to consider each count separately. Lacy renewed his motion to sever at the close of the State's case, and the trial court

denied the motion again, reasoning that the instructions were clear that the jury was to consider each count independently.

On June 6, 2018, the jury found Lacy not guilty of unlawful imprisonment, and fourth degree assault. It found him guilty of bail jumping. Lacy appeals.

ANALYSIS

Lacy contends that the trial court erred in joining the bail jumping charge with the underlying domestic violence charges under CrR 4.3(a) and in failing to sever the charges under CrR 4.4(b). We disagree.

CrR 4.3(a)(2) provides:

Two or more offenses may be joined in one charging document, with each offense stated in a separate count, when the offenses, whether felonies or misdemeanors or both . . . [a]re based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan.

This court reviews a trial court's decision on a pretrial motion for joinder for abuse of discretion. State v. Bluford, 188 Wn.2d 298, 305, 393 P.3d 1219 (2017). Where joinder is proper, the offenses "shall be consolidated for trial." Id. at 306.

But the trial court "shall grant a severance of offenses whenever . . . the court determines that severance will promote a fair determination of the defendant's guilt or innocence of each offense." CrR 4.4(b). Even if the charges are properly joined, a trial court may sever the charges "if doing so will promote a fair determination of the defendant's guilt or innocence of each offense, considering any resulting prejudice to the defendant." State v. Bryant, 89 Wn. App. 857, 864, 950 P.2d 1004 (1998). We review a trial court's refusal to sever for manifest abuse of discretion. Id.

We conclude that the trial court did not abuse its discretion in joining the bail jumping and the domestic violence charges under Bryant. In that case, the defendant Bryant was charged with second degree robbery and posted bond but failed to appear at an omnibus hearing. Bryant, 89 Wn. App. at 863. Bryant claimed he had missed the hearing because he had become confused about his court dates. Id. When the State subsequently sought to amend the information to add a bail jumping charge, the trial court granted the request and joined the two offenses for trial over Bryant's objection. Id. The jury found Bryant guilty of bail jumping, and found him not guilty of second degree robbery, instead finding him guilty of the lesser included crime of theft in the third degree. Id. Bryant appealed his conviction for bail jumping. Id.

On appeal, this court adopted the joinder test set out in United States v. Ritch, 583 F.2d 1179 (1st Cir. 1978):

It is well established that a charge of bail jumping or escape may be deemed sufficiently "connected" with a substantive offense to permit a single trial, at least where the charges are related in time, the motive for flight was avoidance of prosecution, and appellant's custody stemmed directly from the substantive charges.

Id. at 866 (quoting Ritch, 583 F.2d at 1180-81). This court, however, determined that not all of the prongs had to be met in Washington "given Washington's strong policy in favor of conserving judicial and prosecution resources." Id. at 867. It concluded that the trial court had not erred in joining the bail jumping charge with Bryant's robbery charge because the acts were related in time, having occurred within four months of one another and the missed court appearance was a hearing stemming from the robbery charge. Id. It further noted that when a defendant

“fail[s] to appear when required at a hearing related to the underlying charge, the acts giving rise to the two charges are likely to be related in time.” Id.

The present case is analogous. Lacy was initially charged with unlawful imprisonment on August 29, 2017² and failed to appear for his trial call on March 2, 2018. The State amended the charges to include bail jumping on May 31, 2018. Under Bryant, these three charges were sufficiently related in time, and Lacy’s failure to appear stemmed directly from the unlawful imprisonment and assault charges. We conclude that the charged offenses were sufficiently connected to make joinder appropriate.

Alternatively, Lacy asserts that the trial court abused its discretion in denying his motion to sever the charges before and during trial. Our courts look to four factors to determine whether severance is necessary to avoid undue prejudice: “(1) the strength of the State’s evidence on each count; (2) the clarity of defenses as to each count; (3) court instructions to the jury to consider each count separately; and (4) the admissibility of evidence of the other charges even if not joined for trial.” Bluford, 188 Wn.2d at 311-12 (quoting State v. Russell, 125 Wn.2d 24, 63, 882 P.2d 747 (1994)). A defendant seeking severance has the burden of demonstrating that a trial involving both counts would be so manifestly prejudicial as to outweigh the concern for judicial economy. State v. Bythrow, 114 Wn.2d 713, 718, 790 P.2d 154 (1990).

First, as to the strength of the State’s evidence for each charge, the State presented testimony from Chandra, the only witness to the events leading to the

² The State added the fourth degree assault charge in an amended complaint dated February 23, 2018.

underlying charges of unlawful imprisonment and assault. It also presented testimony from the school official who called 911 and who saw Chandra in distress, and from the law enforcement officials who interviewed Chandra at the school and Lacy at their home. The State also presented court records and witness testimony to support the bail jumping charge. Lacy admitted below that he missed his March 2 hearing date. The trial court did not abuse its discretion in determining that the evidence of all three charges was equal in strength.

Second, Lacy's defense to each of the three charges was a general denial. "The likelihood that joinder will cause a jury to be confused as to the accused's defenses is very small where the defense is identical on each charge." Russell, 125 Wn.2d at 64. There was no conflict in Lacy's defenses here.

Third, the court properly instructed the jury to consider each count separately. Jury Instruction 4 stated: "A separate crime is charged in each count. You must decide each count separately. Your verdict on one count should not control your verdict on any other count." Jurors are presumed to follow their instructions. State v. Emery, 174 Wn.2d 741, 754, 278 P.3d 653 (2012).

Finally, the trial court correctly noted that the evidence of Lacy's failure to appear for the March 2 hearing would not be cross admissible if the charges were tried separately. Under the bail jumping pattern jury instruction, the State must prove that the defendant had been charged or convicted of a crime. See 11A WASHINGTON PRACTICE: WASHINGTON PATTERN JURY INSTRUCTIONS: CRIMINAL 120.41, at 570 (4th ed. 2016) (WPIC). The jury here was instructed that the State had to prove that Lacy had been charged with unlawful imprisonment. But

evidence of the details of the domestic violence charges—such as the fight between Lacy and Chandra and the circumstances leading the school official to call 911—would not have been admissible in a separate bail jumping trial. Nor would evidence of the bail jumping be admissible in the domestic violence assault trial. But our Supreme Court has held that severance is not required in every case in which evidence of one count would be inadmissible in a separate trial of the other counts. Bythrow, 114 Wn.2d at 720. The fact that separate counts may not be cross-admissible does not necessarily represent a sufficient ground as a matter of law. Id. at 720. When a trial lasts only a few days and the issues are relatively simple, a jury can be reasonably expected to compartmentalize the evidence. Id. at 721.

Lacy has not demonstrated prejudice from the trial court's failure to sever the charges. The trial lasted only three days, and the issues were relatively simple. And the jury acquitted Lacy of the underlying crimes, despite being exposed to the bail jumping evidence. In Bryant, the jury found Bryant guilty of the lesser offense, despite the evidence of bail jumping. 89 Wn. App. at 868. The Bryant court reasoned that “[i]f anything, the jury’s verdict demonstrates a lack of prejudice.” Id. Here, the discrepancy is even greater—Lacy was *acquitted* of all the underlying charges and only found guilty of bail jumping. And Lacy admitted he missed the March 2 pretrial hearing. As in Bryant, this jury verdict is strong evidence that Lacy was not prejudiced by the trial court's refusal to sever the bail jumping charge from the underlying charges.

Finally, Lacy maintains that the trial court improperly excluded evidence that he had appeared for his other court hearings as a defense to his bail jumping charge. He argues that this evidence was relevant because it demonstrated his compliance with the court ordered appearances when he knew about them. We review a trial court's evaluation of relevance for manifest abuse of discretion. Russell, 125 Wn.2d at 78. "Discretion is abused only when no reasonable person would have decided the issue as the trial court did." Id.

Under RCW 9A.76.170(1), a person is guilty of bail jumping if he has been released by court order with knowledge that he must appear at subsequent court hearings and he fails to appear at any such hearing. There is a statutory defense to the charge: (1) "uncontrollable circumstances prevented the person from appearing;" (2) the person "did not contribute to the creation of such circumstances in reckless disregard of the requirement to appear;" and (3) the person appeared as soon as these circumstances ceased to exist. RCW 9A.76.170(2).

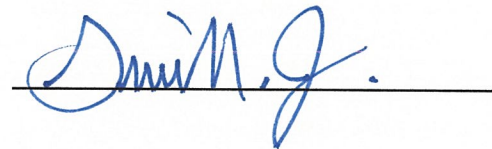
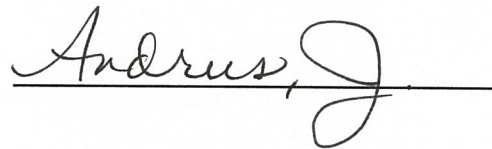
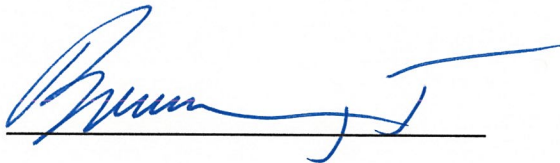
Lacy admitted below that he signed a document informing him that he was required to appear for a hearing on March 2, 2018 at 1:00 PM and that he failed to appear on that date. Lacy did not contend that uncontrollable circumstances prevented him from making it to court that day. Instead, he testified that he had "a lot of things going on," including homelessness and unemployment, as his reasons for missing the court date. Forgetting about a hearing is not a defense to bail jumping. State v. Carver, 122 Wn. App. 300, 302, 93 P.3d 947 (2004).

The fact that Lacy attended several court hearings was not relevant to any element of the charged crime or to his defense to that charge. The Legislature

amended the bail jumping statute in 2001 to alter the *mens rea* requirement from knowingly failing to appear on a specific date to failing to appear after being released with knowledge of the requirement of a subsequent personal appearance before that court. 11A WPIIC 120.41, Comment. "This change eliminates the need to establish that the defendant remembered the date of the hearing at the time he or she failed to appear." 11A WPIIC 120.41, Comment. The fact that Lacy showed up for other court hearings was not probative of Lacy's *mens rea*. The trial court did not abuse its discretion in excluding this evidence.³

Affirmed.

WE CONCUR:



³ Lacy has also submitted a pro se Statement of Additional Grounds for Review under RAP 10.10, in which he asserts a claim of discrimination. Because this argument is not supported by credible evidence in the record, we cannot review it. State v. Alvarado, 164 Wn.2d 556, 569, 192 P.3d 345 (2008); RAP 10.10(c). This issue, however, may be properly raised through a personal restraint petition. Id.

DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original document **Petition for Review to the Supreme Court** to which this declaration is affixed/attached, was filed in the **Court of Appeals** under **Case No. 78653-9-I**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

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Washington Appellate Project

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