

No. 62957-3-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

CYNTHIA NELSON,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

The Honorable Michael Heavey

BRIEF OF APPELLANT

FILED
COURT OF APPEALS
DIVISION ONE
2009 APR 13 PM 4:03

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A. ASSIGNMENTS OF ERROR

1. The State did not prove beyond a reasonable doubt that Ms. Nelson committed the crime of bail jumping, as charged in Count 2.

2. The State did not prove beyond a reasonable doubt that Ms. Nelson committed the crime of bail jumping, as charged in Count 3.

3. The trial court erred by omitting an element of bail jumping from the “to convict” jury instruction for Count 2.

4. The trial court erred by omitting an element of bail jumping from the “to convict” jury instruction for Count 3.

5. Count 2 of the amended information was constitutionally deficient because it did not include every element of the crime of bail jumping.

6. Count 3 of the amended information was constitutionally deficient because it did not include every element of the crime of bail jumping.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. A defendant may not be convicted of a crime unless the State proves every element of the crime beyond a reasonable doubt, including the identity of the defendant. The State produced

certified copies of court documents showing that someone signed notices setting forth dates for court appearances, but did not prove Cynthia Nelson was the person who signed the forms and therefore failed to appear. Viewing the evidence in the light most favorable to the State, must Ms. Nelson's two conviction for bail jumping be dismissed in the absence of proof of her identity as the person who signed the court documents? (Assignments of Error 1-2)

2. The accused has the constitutional right to be informed of the charges against her, and all essential elements of a crime must therefore be set forth in the information. The name of the underlying offense for which the defendant failed to appear is an essential element of the offense of bail jumping. The amended information charging Ms. Nelson with two counts of bail jumping did not specify the underlying crime for which she failed to appear, stating only it was a Class C felony. Where the name of the underlying crime cannot be found in the information even after a liberal construction, must Ms. Nelson's bail jumping convictions be reversed and dismissed because the information was constitutionally deficient? (Assignments of Error 2-3).

3. The defendant has a constitutional right to be convicted only after a jury finding of every element of the crime beyond a

reasonable doubt. The “to convict” instruction tells the jury what elements it is required to convict, and every essential element of the crime must therefore be listed in the “to convict” instruction. The “to convict” instruction in Ms. Nelson’s case did not require the jury to find beyond a reasonable doubt she was charged with possession of methamphetamine, but merely required a finding she was charged with a Class C felony. Must Ms. Nelson’s convictions be reversed and remanded for a new trial because the jury was permitted to convict her without finding beyond a reasonable doubt she was charged with possession of a controlled substance?

(Assignments of Error 5-6)

C. STATEMENT OF THE CASE

Cynthia Nelson was the passenger in a car that was stopped by a Black Diamond police officer because the license tabs were expired. 9/16/08RP 57, 59, 79. When the driver was arrested on an outstanding warrant, Ms. Nelson was permitted to leave on foot. Id. at 61-62, 79-80. The police officer later searched the car and found a backpack that he believed contained methamphetamine. Id. at 62-64, 82.

The King County Prosecutor later charged Ms. Nelson with possession of methamphetamine. CP 1-3. During the first day of

trial, the prosecutor amended the information to add two counts of bail jumping.¹ CP 4-5; 9/16/08RP 29, 36; 1/9/09RP 5. The jury acquitted Ms. Nelson of possession of methamphetamine, but found her guilty of the two counts of bail jumping. CP 10-12. She later received a 9-month standard range sentence. CP 50-56.

As proof of the bail jumping charges, the State called Laurie Ball, a supervisor in the King County Superior Court Clerk's Office at the Regional Justice Center. 9/17/08RP 5. Through Ms. Ball, the State introduced certified copies of court documents showing that Ms. Nelson failed to appear for omnibus hearings on February 1 and May 27, and each time the court issued a warrant for her arrest. Ex. 20, 26. Each warrant was later quashed when she appeared in court. Ex. 23, 27. The exhibits were:

- Ex. 16 - First page of the Information charging Ms. Nelson with a Violation of the Uniform Controlled Substances Act, filed September 18, 2007
- Ex. 17 - Notice of Case Scheduling Hearing Date, filed October 1, 2007 (case scheduling hearing set for October 15, 2007; signature in space marked "Defendant,")
- Ex. 18 - Scheduling Order – Trial and Other Hearings, filed November 26, 2008 (setting omnibus hearing for February 1, 2008; signature in space marked "Defendant")

¹ Ms. Nelson's motion to sever the bail jumping counts from the trial on the VUCSA charge on the basis that her attorney was a potential witness was denied. 9/16/08RP 34-38, 42-44.

- Ex. 19 - Court minutes for February 1, 2008, Judge Brian Gain (indicating no bail warrant issued and order striking trial date signed)
- Ex. 20 - Motion, Certification and Order for Bench Warrant, filed February 1, 2008
- Ex. 21 - Order Striking Trial Date, filed February 1, 2008 (striking February 20, 2008, trial date)
- Ex. 22 - Scheduling Order – Trial and Other Hearings, filed February 11, 2008 (setting Case Setting Hearing for March 3, 2008, with signature in space marked “Defendant”)
- Ex. 23 - Order Quashing Bench Warrant and Setting Hearing Date, filed February 12, 2008 (case scheduling hearing set for March 3, 2008, indicating defendant is present in court and signed in space marked “Defendant”)
- Ex. 24 - Scheduling Order – Trial and Other Hearing, filed March 3, 2008 (setting omnibus hearing for May 9, 2008, with signature in space for defendant)
- Ex. 25 - Order Striking Trial Date, filed May 9, 2008 (indicating defendant failed to appear for omnibus hearing)
- Ex. 26 - Motion, Certification and Order for Bench Warrant filed May 9, 2008
- Ex. 27 - Order Quashing Bench Warrant and Setting Hearing Date, filed June 20, 2008 (setting case scheduling hearing for June 25, 2008, noting defendant is present in court and containing signature in space for defendant)

Four of the exhibits setting court dates contain language indicating attendance is mandatory. Ex. 17, 18, 22, 24. No other proof of the bail jumping charge was offered.

After the State rested, the court denied Ms. Nelson's motion to dismiss the bail jumping charges for lack of evidence of identity. 9/22/08RP 10-12. Ms. Nelson did not present any evidence. Id. at 10, 13. In closing, her attorney argued the State did not prove the bail jumping charges beyond a reasonable doubt because it offered no evidence the signatures on the documents were Ms. Nelson's and thus did not establish she knowingly failed to appear. Id. at 28-30. This appeal follows. CP 57.

D. ARGUMENT

1. THE STATE DID NOT PROVE BEYOND A REASONABLE DOUBT THAT MS. NELSON COMMITTED BAIL JUMPING BECAUSE IT FAILED TO PROVE SHE WAS THE PERSON WHO SIGNED THE COURT ORDERS SETTING THE COURT HEARINGS

a. The State was required to prove beyond a reasonable doubt that Ms. Nelson was released from custody by court order and required to appear for court . The due process clauses of the federal and state constitutions require the State prove every element of a crime beyond a reasonable doubt.² Apprendi v. New

² The Fourteenth Amendment states in part, "nor shall any State deprive any person of life, liberty, or property, without due process of law."

The Sixth Amendment provides in part, "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed."

Jersey, 530 U.S. 466, 476-77, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000); State v. Williams, 162 Wn.2d 177, 187, 170 P.3d 30 (2007); U.S. Const. amends. VI, XIV; Const. art. I, §§ 3, 22. The critical inquiry on appellate review is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the elements of the crime beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 334, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); State v. Brown, 162 Wn.2d 422, 428, 173 Pd 245 (2007). The appellate court draws all reasonable inferences in favor of the State. Brown, 162 Wn.2d at 428.

Ms. Nelson was convicted of two counts of bail jumping. CP 4-5, 11-12. The bail jumping statute reads, in relevant part:

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 the 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.

Article I, Section 3 of the Washington Constitution states, "No person shall be deprived of life, liberty, or property, without due process of law."

Article I, Section 22 provides specific rights in criminal cases. "In all criminal prosecutions the accused shall have the right to appear and defend in person, or by counsel . . . to testify in his own behalf, to meet the witnesses against him face to face, to have compulsory process to compel the attendance of witnesses in his own behalf, to have a speedy public trial by an impartial jury . . ."

RCW 9A.76.170(1). The elements of the crime thus are that the defendant (1) is held for, charged with, or convicted of a particular crime, (2) was released by court order or admitted to bail with the requirement of subsequent personal appearance, and (3) knowingly failed to appear as required. RCW 9A.76.170(1); Williams, 162 Wn.2d at 183-84 (quoting State v. Pope, 100 Wn.App. 624, 627, 999 P.2d 51, rev. denied, 141 Wn.2d 1018 (2000)). The classification of the crime for purposes of sentencing depends upon the classification of the underlying offense. RCW 9A.76.170(3).

b. The State did not prove beyond a reasonable doubt that Ms. Nelson was the person who was charged and failed to appear. The State introduced certified copies of various pleadings from the court file and called a superior court clerk to explain what the various documents meant. 9/17/09RP 4-23; Ex. 16-27. No witness identified Ms. Nelson as the person who signed the documents setting the court dates.

“It is axiomatic in criminal trials that the prosecution bears the burden of establishing beyond a reasonable doubt the identity of the accused as the person who committed the offense.” State v. Huber, 129 Wn.App. 499, 501, 119 P.3d 388 (2005) (quoting State v. Hill, 83 Wn.2d 558, 560, 520 P.2d 618 (1974)). Identity is an

issue for the jury to decide, and it may be based upon direct or circumstantial evidence. Id.

In Huber, this Court reversed a bail jumping conviction for insufficient evidence where the facts were similar to in Ms. Nelson's case. There, the State produced certified copies of (1) the information charging the defendant with violation of a protection order and witness tampering, (2) a written court order requiring the defendant to appear on a specific date, (3) the clerk's minutes showing the defendant did not appear on that date, and (4) a bench warrant for the defendant's arrest. Huber, 129 Wn.App. at 500-01. The State did not call any witness or otherwise show that the exhibits related to the Huber who was present in court. Id. at 501. The defendant did not present any evidence and argued in closing that the State had not proved he was the person who had jumped bail. Id.

This Court reversed the bail jumping conviction because the State did not prove the defendant present at trial was the same person who failed to appear. Huber, 129 Wn.App. at 503. The Huber Court noted that to sustain its burden of proof of identity, the State must do more than provide documentary evidence; it must

also prove the person named in the documents is the person on trial. Id. at 502.

To sustain this burden [of identity] when criminal liability depends on the accused's being the person to whom a document pertains – as, for example, in most if not all prosecutions for first degree escape, being a felon in possession of an item that a felony may not have, lying under oath on a written application, and being an habitual criminal – the State must do more than authenticate and admit the documents; it also must show beyond a reasonable doubt “that the person named therein is the same person on trial.”

Id. (quoting State v. Kelly, 52 Wn.2d 676, 678, 328 P.2d 362 (1958)) (internal citations omitted). Thus, the State must admit some evidence independent of the court records to show the defendant is the same person mentioned in the documents; “identity of names alone” is not sufficient to prove identity. Id.

c. Ms. Nelson's convictions must be reversed and dismissed. As in Huber, Ms. Nelson's bail jumping convictions must be reversed because the State did not establish her identity as the person who signed the notices of hearing dates and failed to appear. While the State provided certified copies of court records, it failed to produce any independent evidence that Ms. Nelson was the person charged. Similarly, it did not prove that Ms. Nelson was the person who received the notices to appear in court and then

failed to appear, as it presented no evidence that the signature on the documents was Ms. Nelson's signature. Ms. Nelson's two bail jumping convictions must be reversed and dismissed. Huber, 129 Wn.App. at 504 (no proof of identity); State v. Dixon, 150 Wn.App. 46, 50, 53, 207 P.3d 459 (2009) (no proof of notice).

2. THE INFORMATION DID NOT ADEQUATELY NOTIFY MS. NELSON OF THE ESSENTIAL ELEMENTS OF THE CRIME OF BAIL JUMPING IN VIOLATION OF HER CONSTITUTIONAL RIGHTS

a. The accused has the constitutional right to notice of the charges she faces at trial. A defendant has the constitutional right to be informed of the nature and cause of the charges against her.³ U.S. Const. amends. VI, XIV; Const. art. I § 22. Accordingly, the charging document must set forth the essential elements of the alleged crime in order to permit the accused to prepare her defense. State v. McCarty, 140 Wn.2d 420, 424-25, 998 P.2d 296 (2000); State v. Green, 101 Wn.App. 885, 889, 6 P.3d 53 (2000), rev. denied, 142 Wn.2d 1018 (2001). In order to satisfy this constitutional requirement, Washington's "essential elements rule" requires the charging document to clearly set forth every material

³ The Sixth Amendment provides in part, "In all criminal prosecutions, the accused shall . . . be informed of the nature and cause of the accusation." Article I, section 22 similarly provides in part, "In criminal prosecutions the accused shall have the right . . . to demand the nature and cause of the accusation against him."

element of the crime along with essential supporting facts.

McCarty, 140 Wn.2d at 425; State v. Leach, 113 Wn.2d 679, 686-89, 782 P.2d 552 (1989); CrR 2.1(a)(1). The information must state all essential elements of the crime, both statutory and non-statutory. State v. Kjorsvik, 117 Wn.2d 93, 101-02, 812 P.2d 86 (1991).

Although Ms. Nelson did not challenge the information in the trial court, a challenge to the constitutional sufficiency of a charging document may be raised for the first time on appeal. Leach, 113 Wn.2d at 690-91, 697; RAP 2.5(a). In that case, however, the charging document is construed liberally in favor of validity. Kjorsvik, 117 Wn.2d at 105. The two-part Kjorsvik test requires this Court to determine (1) if the necessary facts appear in any form or if they can be found by fair construction on the face of the document, and, if so, (2) if the defendant can demonstrate she was actually prejudiced by the inartful language. Id. at 105-06. If, however, the information does not include all the essential elements of the offense, the insufficiency alone is enough to warrant dismissal; the defendant need not show prejudice. Auburn v. Brooke, 119 Wn.2d 623, 636, 836 P.2d 212 (1992).

b. The amended information is constitutionally deficient because it did specify the essential element of the underlying offense on the bail jumping charges. The underlying offense of a bail jumping charge is an essential element of the crime. RCW 9A.76.170; Williams, 162 Wn.2d at 185; Pope, 100 Wn.App. at 627. In Green, supra, the information alleged that the defendant failed to appear in Mason County Superior Court, and also gave the superior court cause number for the underlying offense, but failed to name the underlying offense:

That said defendant, CHRISTOPHER B. GREEN, in the County of Mason, State of Washington, on or about the 16th day of July, 1998, and/or on or about the 24th day of July, 1998, did commit BAIL JUMPING, in that said defendant did knowingly fail to appear as required after having been released by court order or admitted to bail with the requirement of a subsequent personal appearance before a court of this state, TO WIT: failed to appear for omnibus hearing and/or pretrial after being released on bail in Mason County Superior Court Cause No. 98-1-00123-2, contrary to RCW 9A.76.170, and against the peace and dignity of the State of Washington.

Green, 101 Wn.App. at 887-88. The court held that the information, even when liberally construed, did not contain all of the essential elements of the crime of bail jumping because it did not specify the underlying offense. Id. at 891. Similarly, an information charging bail jumping that did not mention what crime the defendant was

admitted to bail on failed to include the essential elements. State v. Ibsen, 98 Wn.App. 214, 989 P.2d 1184 (1999), abrogated on other grounds, Williams, 162 Wn.2d at 184.

In the case at hand, the counts of the information charging Ms. Nelson with bail jumping are virtually identical to the information in Green. The amended information, filed on the first day of trial, informed Ms. Nelson she was charged in Count 2 as follows:

And I, Daniel T. Satterberg, Prosecuting Attorney aforesaid further do accuse CYNTHIA MARIE NELSON of the crime of **Bail Jumping**, based on a series of acts connected with another crime herein, committed as follows:

That the defendant CYNTHIA MARIE NELSON in King County, on or about May 9, 2008, being charged with a Class C felony and with knowledge of the requirement of a subsequent personal appearance before the court of this state, did fail to appear;

Contrary to RCW 9A.76.170, and against the peace and dignity of the State of Washington.

CP 4 (emphasis in original). The information uses similar language for Count 3 but uses a different date and adds language explaining why the count is included with the others. CP 5.

To charge bail jumping, the information must allege the name of the crime the defendant was charged with when she failed

to appear. It is not sufficient to simply list the cause number, Green, 101 Wn.App. at 888, or identify the underlying crime as a felony, Pope, 100 Wn.App. at 629-30. Here, the information thus informed Ms. Nelson she was charged with a Class C felony, but does not tell her the name of the underlying charge – possession of a controlled substance. The information is constitutionally deficient.

The State may argue that Count 1 of the amended information told Ms. Nelson she was charged with possession of a controlled substance. Each count of the information, however, charges a separate crime and must inform the defendant of the crime charged in that count by including the essential elements. State v. Unosawa, 29 Wn.2d 578, 588, 188 P.2d 104 (1948). If one count of an information references or incorporates another count, it must do so explicitly; it is not sufficient to say the counts are connected. Unosawa, 29 Wn.2d at 588-89. Thus, the reviewing court may not look to separate counts of an information to supply a missing essential element. State v. Gill, 103 Wn.App. 435, 442, 13 P.3d 646 (2000) (elements may not be “plucked out of one count in a charging document and dropped into another”); accord State v. Franks, 105 Wn.App. 950, 958-59, 22 P.3d 269 (2001) (information

insufficient where defendant's name omitted, even though name found in caption).

c. The proper remedy is reversal of the bail jumping conviction and dismissal of the charge without prejudice. The information in Ms. Nelson's case does not contain the essential elements of bail jumping because it does not include the name of the underlying charged crime. Thus, even under a liberal construction, the information fails the first part of the Kjorsvik test. Ms. Nelson's convictions must therefore be reversal and dismissal of the charge without prejudice to the State's ability to re-file the charge. McCarty, 140 Wn.2d at 428; Green, 101 Wn.App. at 891.

3. MS. NELSON'S CONSTITUTIONAL RIGHT TO DUE PROCESS WAS VIOLATED BECAUSE THE JURY INSTRUCTIONS OMMITTED AN ESSENTIAL ELEMENT OF BAIL JUMPING

a. The "to convict" instruction must contain all essential elements of the charged crime. A fundamental component of due process is that the jury find every element of the crime beyond a reasonable doubt; this cannot happen unless the jury is properly instructed on every element. U.S. Const. amends. VI, XIV; Const. art. I § 3, 21, 22; Apprendi, 530 U.S. at 478; Williams, 162 Wn.2d at 186-87. In Washington, every essential element of the crime must

be included in the “to convict” jury instruction. Williams, 162 Wn.2d at 186-87; State v. Mills, 154 Wn.2d 1, 7, 109 P.3d 415 (2005). Because the “to convict” instruction purports to be a complete statement of every element of the crime and therefore serves as the jury’s “yardstick,” the jury thus cannot be expected to hunt for essential elements in other instructions. State v. Smith, 131 Wn.2d 258, 262-63, 930 P.2d 917 (1997); State v. Emmanuel, 42 Wn.2d 799, 819, 820-21, 259 P.2d 845 (1953). “It cannot be said a defendant has had a fair trial if the jury must guess at the meaning of an essential element of the crime or if the jury might assume that an essential element need not be proved.” Smith, 131 Wn.2d at 263.

The failure to include an essential element of the crime in the jury instructions is a constitutional issue that may be raised for the first time on appeal. RAP 2.5(a); Mills, 154 Wn.2d at 6; Pope, 100 Wn.App. at 628-30. This Court reviews jury instructions de novo. Mills, 154 Wn.2d at 7. While the reviewing court generally looks at the jury instructions as a whole, it may not rely upon other instructions to supply an element missing from the “to convict” instruction. Id.

b. The “to convict” instructions did not inform Ms. Nelson’s jury it was required to find she was charged with possession of a controlled substance, an essential element of the crime of bail jumping. A jury may not convict a defendant of bail jumping unless it finds beyond a reasonable doubt she (1) was held for, charged with, or convicted of a particular crime, (2) was released by court order or admitted to bail with the requirement of subsequent personal appearance, and (3) knowingly failed to appear as required. RCW 9A.76.170(1); Williams, 162 Wn.2d at 183-84; Pope, 100 Wn.App. at 627. It is clear that the particular underlying crime is an essential element of bail jumping. Williams, 162 Wn.2d at 183-85; State v. Marin, 150 Wn.App. 434, 443-44, 208 P.3d 1184 (2009).

In Williams, the “to convict” instruction in a bail jumping prosecution informed the jury it was required to find beyond a reasonable doubt, “That the defendant was charged with Possession of a Controlled Substance,” but Williams argued the jury was also required to find the crime’s classification as a Class C felony. Williams, 162 Wn.2d at 187, 182. The Court held the name of the crime was sufficient, as its classification was not an essential element of bail jumping. Id. at 187-88. The “to convict” instruction

in a bail jumping case must therefore include the name of the underlying crime; “a simple identification of the crime is sufficient.” Id. at 188.

Here, the “to convict” instruction informed the jury that it was required to find Ms. Nelson was charged with “a class C felony,” the offense classification, rather than possession of a controlled substance, the offense name. CP 29-30. The “to convict” instruction for Count 2 required the jury to find the following elements beyond a reasonable doubt:

- (1) That on or about the 9th day of May, 2008, the defendant knowingly failed to appear before a court;
- (2) That the defendant was charged with a Class C felony;
- (3) That the defendant had been released by court order or admitted to bail with the requirement of a subsequent personal appearance before that court and
- (4) That the acts occurred in the State of Washington.

CP 29 (emphasis added). The “to convict” instruction for Count 3 is identical except for the date. CP 30. This instruction is thus the opposite of that found sufficient in Williams, which informed the jury an element of the crime was that the defendant was charged with possession of a controlled substance. Williams, 162 Wn.2d 187.

The instruction additionally does not comport with the pattern instruction for bail jumping, WPIC 120.41, which provides a blank in which the user is directed to “fill in crime.”⁴ 11A Washington Practice: Washington Pattern Jury Instructions: Criminal 120.41 (2008).

A separate instruction informed the jury that possession of methamphetamine is a Class C felony. CP 31. This does not cure the defect in the “to convict” instructions for bail jumping, as the essential elements must be included in the “to convict” instruction “because it is the touchstone that a jury must use to determine guilt or innocence.” Williams, 162 Wn.2d at 186-87. This Court may not look to the instructions as a whole to clarify or add to the essential elements listed in the “to convict” instruction. Smith, 131 Wn.2d at 263.

c. Ms. Nelson’s convictions must be reversed. In Pope, the “to convict” instruction in a bail jumping case informed the jury it had to find the defendant had been released or admitted to bail with the requirement of a personal appearance “for a felony matter.” Pope, 100 Wn.App. at 629. The conviction was reversed because

⁴ Ironically, the deputy prosecuting attorney who proposed the instruction excepted to the giving of any defense instruction that was not found in the pattern instructions. 9/22/08RP 3.

the instruction relieved the State of its burden of proving every essential element of the crime. Id. at 630.

As in Pope, the instruction here did not inform the jury of an essential element of the crime of bail jumping – “that the defendant was held for, charged with, or convicted of a particular crime.” Pope, 100 Wn.App at 629-30 (emphasis added). Thus, Ms. Nelson’s two bail jumping convictions must be reversed and remanded for a new trial. Id. at 631.

E. CONCLUSION

Cynthia Nelson’s two convictions for bail jumping must be reversed and dismissed because the State did not prove Ms. Nelson’s identity beyond a reasonable doubt. In the alternative, the convictions must be reversed and dismissed without prejudice because the charging document does not include the essential elements of bail jumping or reversed and remanded for a new trial because the “to convict” instructions omitted the same essential element – the name of the underlying charge.

Respectfully submitted this 13th day of August 2009.



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Washington Appellate Project
Attorneys for Appellant

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

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	NO. 62957-3-I
v.)	
)	
CYNTHIA NELSON,)	
)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, SIMON ADRIANE ELLIS, STATE THAT ON THE 13^H DAY OF AUGUST, 2009, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

<input checked="" type="checkbox"/> KING COUNTY PROSECUTING ATTORNEY APPELLATE UNIT KING COUNTY COURTHOUSE 516 THIRD AVENUE, W-554 SEATTLE, WA 98104	(X) () ()	U.S. MAIL HAND DELIVERY _____
<input checked="" type="checkbox"/> CYNTHIA NELSON 25246 106 TH AVE SE, APT A-102 KENT, WA 98030	(X) () ()	U.S. MAIL HAND DELIVERY _____

SIGNED IN SEATTLE, WASHINGTON THIS 13^H DAY OF AUGUST, 2009.

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