

NO. 63416-0-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

CHARLES ALAN CHAPPELLE JR.,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE JUDGE CHRIS WASHINGTON

BRIEF OF RESPONDENT

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A. ISSUES PRESENTED

1. Did the trial court correctly find that officers had probable cause to arrest the defendant for violation of the uniform controlled substances act after watching him conduct what they believed were two separate drug transactions?

2. In count IV, the defendant was charged with bail jumping for actions said to have been committed "on or about" January 23, 2008. Was there sufficient evidence for a reasonable trier of fact to have found the defendant guilty of bail jumping "on or about" that date?

3. Did the "to convict" instructions for counts III and IV, both bail jumping charges, contain all the essential elements of the crimes?

4. Did the charging document for counts III and IV contain all the essential elements of the crimes?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

On April 27, 2007, the defendant was charged with two counts of violation of a controlled substances act. CP 1-5. After the defendant failed to appear in court on two different dates, two

counts of bail jumping were added. CP 41-42. A jury found the defendant guilty as charged. CP 76-79. With multiple prior and current felony convictions, the defendant received a standard range sentence of 22 months. CP 80-88.

2. FACTS OF CrR 3.6 HEARING

The defendant moved to suppress evidence obtained as a result of a search of his person incident to his arrest for violation of the uniform controlled substances act. He claimed that the officers who observed him conduct what they believed were two separate drug transactions did not have probable cause to arrest him and thus the cash and drugs found on his person during the search incident to his arrest should have been suppressed. The following facts are from the CrR 3.6 hearing.

King County Sheriff's Deputy Patrick McCurdy¹ has more than 20 years experience in law enforcement. 2RP² 9. He is a former member of the California Narcotics Officers Association and

¹ Deputy McCurdy is not related to respondent attorney King County Senior Deputy Dennis McCurdy.

² The verbatim report of proceedings is cited as follows: 1RP--2/23/09, 2RP--2/24/09, 3RP--2/25/09, 4RP--2/26/09, 5RP--3/2/09, and 6RP--3/3/09.

has previously testified as an expert witness in the areas of gang activity and narcotics sales. 2RP 10-11.

On April 24, 2007, he was assigned to the Bicycle Emphasis and Enforcement Team of the Metro Transit Division Police Unit. 2RP 9-10. He was working the area around Pine Street and Third Avenue in downtown Seattle, an area known as a high narcotics sale area. 2RP 11. Deputy McCurdy and his team were working out of a substation located within the Macy's department store building. 2RP 15. Both Macy's and the substation are equipped with high quality video surveillance cameras and equipment. 2RP 15, 22.

At approximately 5:00 p.m., Deputy McCurdy and his team observed video surveillance of the defendant and another man meet up on Pine Street between Third and Fourth Avenues. 2RP 17. The second man was referred to by the jacket he was wearing--the Mountain Dew man. 2RP 18. The two men walked together and then entered the first set of doors leading into Macy's. 2RP 17. However, the two did not proceed through the second set of doors into the store. Id. Instead, the two remained in the vestibule area between the two sets of doors. Id.

Both men began looking over their shoulders to see if anyone else was around. 2RP 18. The Mountain Dew man then reached into the sleeve of his jacket and exchanged something with the defendant. 2RP 18. The two then looked over their shoulders again, exited the vestibule and proceeded to walk off in different directions. 2RP 18-19. Deputy McCurdy described the two as appearing anxious and trying to conceal their actions. 2RP 19.

Deputy McCurdy did not believe he had observed an ordinary drug deal. 2RP 19. Rather, based on his experience and observations, he believed he had just witnessed a "re-up." 2RP 19-21. Deputy McCurdy described a "re-up" as a situation where one main person holds a large amount of narcotics and then resupplies other persons working the area--"the smaller dealers." 2RP 19. All the deputies watching the video feed--Deputies McCurdy, Tighe, Smithmeyer, Kavan and Black, agreed that they had just witnessed a drug transaction. 2RP 14, 23.

After watching this transaction via Macy's department store surveillance equipment, the deputies returned to their storefront location and began surveying the area. 2RP 43. Within 20 minutes, the defendant was observed reentering the area. 2RP 43. The defendant was seen contacting another man in front of Macy's,

a man later identified as Stormy Jackson. 2RP 43, 47, 69. The two spoke for a brief moment, looked up and down the block to check out the area, whereupon Jackson then pulled out his wallet. 2RP 43-44, 62. Jackson took some money out of his wallet and handed it to the defendant. 2RP 44, 62-63. The defendant then handed Jackson what appeared to be a small plastic bag. 2RP 44, 62-63. Jackson quickly put the item into his pocket. 2RP 63.

As Deputy McCurdy testified, "[i]t was, as we have seen hundreds of times, a drug deal." 2RP 46. Deputy Smithmeyer testified he had witnessed over 100 drug transactions from the Macy's cameras alone and he was 100% certain what he had just observed was a drug transaction. 2RP 63.

After observing this second transaction, the officers arrested Jackson and the defendant.³ 2RP 44. The defendant did not testify at the CrR 3.6 hearing and did not present any evidence or testimony at the hearing. 2RP 67-68. He simply argued that the

³ In a search incident to arrest, deputies recovered a small bag of marijuana from Stormy Jackson's pant's pocket. 3RP 44, 51; 4RP 23. In a search incident to arrest, deputies recovered \$35 from the defendant's left-front pant's pocket and \$158 from his right-front pant's pocket. 4RP 16. From the defendant's jacket deputies recovered a number of small empty plastic baggies--black with a gold skull on each one--commonly used to package drugs. 4RP 21-22. From the interior of the defendant's jacket--accessible through a hole where his pocket was torn open, deputies recovered a larger plastic baggie full of 15 smaller baggies with each smaller bag containing marijuana. 3RP 24; 4RP 22-23, 42.

deputies did not have probable cause to arrest him. 2RP 69-71. The court disagreed. The court found, by oral and written ruling, that the deputies had probable cause to arrest the defendant for violation of the uniform controlled substances act. 2RP 74-75; CP 99-102. The court factored in its decision the deputies' extensive experience, the fact that they had observed this type of transaction in the same location many times before, and the fact that the area was known as a high level narcotics activity area. Id.

3. FACTS PERTAINING TO THE BAIL JUMPING CHARGES.

The defendant was convicted of two counts of bail jumping for crimes committed "on or about October 5, 2007" (count III) and "on or about January 23, 2008" (count IV). CP 41-42, 67-68. The evidence supporting the counts is as follows:

On April 27, 2007, the defendant was charged with delivery of marijuana and possession with intent to deliver marijuana. 4RP 69-71; Exhibit 6. He was arraigned on May 7, 2007. Exhibit 8. He was out-of-custody at the time and a case scheduling hearing was set for May 22, 2007. 4RP 72-74; Exhibit 8.

After multiple continuances and speedy trial waivers instigated by the defendant (4RP 76, 82; Exhibit 10), on August 13, 2007, he signed an order informing him that if he did not appear for any required court hearings he could be charged with bail jumping. 4RP 83-85; Exhibit 16. More continuances were executed, each with written notice of the next scheduled hearing and each signed by the defendant. See 4RP 85-86, 88; Exhibit 17 & 18.

Then on September 14, 2007, the defendant appeared in court and signed an order continuing his omnibus hearing to October 5, 2007, and continuing his trial date to October 15, 2007. 4RP 88-90; Exhibit 19. On October 5, 2007, a bench warrant was issued for the defendant's arrest after he failed to appear for his scheduled omnibus hearing. 4RP 90-91; Exhibit 20 & 21. This failure to appear formed the basis for count III.

The defendant was subsequently taken into custody, returned to court, and more continuances were executed. 4RP 94-97; Exhibit 22 & 23. On October 30, 2007, the defendant was released from custody on his personal recognizance. 4RP 97-98; Exhibit 24.

On November 27, 2007, the defendant appeared in court and signed an order continuing his trial date until January 22, 2008.

4RP 100-01; Exhibit 26. On January 23, 2008, the court entered an order directing the issuance for a bench warrant for the defendant's failure to appear for trial. 4RP 102-03; Exhibit 28. Trial had been held over from the 22nd to the 23rd. 4RP 103. A new trial date is set by the judge with the defendant present. 4RP 110-11. Trial would not have been held over without the defendant having appeared. 4RP 118. These facts formed the basis for count IV.

Additional facts are contained in the sections they pertain.

C. ARGUMENT

1. THE TRIAL COURT PROPERLY FOUND THAT SHERIFF'S DEPUTIES HAD PROBABLE CAUSE TO ARREST THE DEFENDANT FOR VIOLATION OF THE UNIFORM CONTROLLED SUBSTANCES ACT.

The defendant contends that deputies did not have probable cause to arrest him for violation of the uniform controlled substances act and thus the drugs and money recovered during the search of his person incident to his arrest should have been suppressed. The defendant's claim should be rejected. The facts within the knowledge of the deputies at the time of the arrest were sufficient for a reasonable person to believe that the defendant had just engaged in two drug transactions.

Police have the right incident to a lawful arrest to search the person arrested. State v. Bullock, 71 Wn.2d 886, 889, 431 P.2d 195 (1967). A lawful arrest is one based on probable cause.

"Probable cause exists where the facts and circumstances within the knowledge and of which the officer has reasonable trustworthy information are sufficient to warrant a person of reasonable caution in a belief that an offense has been committed." State v. Terrovona, 105 Wn.2d 632, 643, 716 P.2d 295 (1986).

The standard of reasonableness to be applied takes into consideration the special experience and expertise of the arresting officer. State v. Rodriguez, 53 Wn. App. 571, 578, 769 P.2d 309 (1989). The determination involves application of an objective standard, taking into consideration "the fact and circumstances within the officer's knowledge" at the time of arrest. State v. Graham, 130 Wn.2d 711, 725, 927 P.2d 227 (1996). The trial court's legal conclusions are reviewed *de novo*. State v. Johnson, 128 Wn.2d 431, 443, 909 P.2d 293 (1996).

Here, the court had to find that it was reasonable for the deputies to conclude that the defendant had just engaged in at least one drug transaction. The judge did not have to find there existed "evidence sufficient to establish guilt beyond a reasonable

doubt." State v. Bellows, 72 Wn.2d 264, 266, 432 P.2d 654 (1967). In short, "probable cause boils down, in criminal situations, to a simple determination of whether the relevant official, police or judicial, could reasonably believe that the person to be arrested has committed the crime." State v. Fisher, 145 Wn.2d 209, 220 n.47, 35 P.3d 366 (2001) (citations omitted).

Here, you had multiple deputies, experienced in identifying drug activity, observe the defendant in a high narcotics activity area engage in two separate transactions with two different people he just met on the street and in a manner entirely consistent with the commission of a drug transaction. As Deputy McCurdy testified, "[i]t was, as we have seen hundreds of times, a drug deal." 2RP 46. Deputy Smithmeyer, who had witnessed over 100 drug transactions in the exact same location, added that he was 100% certain what he had just observed was a drug transaction. 2RP 63.

The defendant's argument to the contrary is unpersuasive. He cites to four cases that are not on point and clearly distinguishable. In all four cases, officers did not observe any transaction. Instead, the officers in each case assumed that a crime had occurred due to certain circumstances, but they had not actually observed the crime take place. See State v. Chavez, 138

Wn. App. 29, 156 P.3d 246 (2007) (a constructive possession case based on an officer discovering three men together in a bathroom stall with one of the men, not Chavez, holding a dollar bill with white powder on it--Chavez's proximity to the dollar bill did not give rise to probable cause to arrest him); State v. Biegel, 57 Wn. App. 192, 787 P.2d 577 (1990) (in a high narcotics area, officers observed Biegel park his car, talk to a person on the street, go into an apartment and come back out three or four minutes later--officers did not know Biegel or the person on the street and did not observe any transaction thus they had no probable cause to arrest him); State v. Glover, 116 Wn.2d 509, 806 P.2d 760 (1991) (officers observed Glover exit an apartment complex, they do not recognize him as a resident and he is holding a clear plastic bag in his hand--no probable cause for his arrest); State v. Doughty, ___ Wn.2d ___, 239 P.3d 573 (2010) (officers were watching a house based on neighbor complaints that it might be a drug house. The officers observed Doughty drive up and "approach" the house and then leave. Doughty was not observed entering the house, interacting with anyone at the house or engaged in any transaction. The court found there was no probable cause to arrest him).

Instead of these cases, this Court should consider cases directly applicable, where the officers actually observed what they believed to be drug transactions. In State v. Rodriguez-Torres, 77 Wn. App. 687, 693-94, 893 P.2d 650 (1995), the court found probable cause based on substantially similar facts to the case at bar, with the exception that the officers observed only one transaction, not two. In the Pike Place Market area of Seattle, officers observed Rodriguez-Torres and another man standing together. The other man handed Rodriguez-Torres some money and Rodriguez-Torres handed the other man an unknown item he kept in a cupped hand. When the two men realized officers were approaching they walked away. This Court held that the officers' observations, along with the officers' experience, supported a finding of probable cause to arrest Rodriguez-Torres.

A similar situation occurred in State v. White, 76 Wn. App. 801, 888 P.2d 169 (1995). White and another man, Murray, were observed in a high narcotics activity area in downtown Seattle walking on the sidewalk. A third man approached White, whereupon White was observed pointing to Murray. The officer then observed what he believed was a drug transaction between this third man and Murray--although no drugs were observed.

White then approached Murray and the officer observed "hand movements," "but could not tell what, if anything, had passed between White and Murray." White, 76 Wn. App. at 803. "Based on his narcotics training and experience," the officer testified that White's actions were consistent with the actions of a lookout or setup person in a drug transaction. Id. This Court held that "[t]hese observations were sufficient to give Magee [the officer] probable cause to believe that White had committed a crime." Id. at 804-05.

In State v. Alvarado, 56 Wn. App. 454, 783 P.2d 1106 (1989), officers observed Alvarado in downtown Seattle standing on the sidewalk. He was then observed exchanging a small paper bindle with another man for money. Another man with Alvarado was observed doing the same. This Court held that the officers had probable cause to arrest Alvarado.

In each of these cases, like here, the officers actually observed what they believed were drug transactions. In each case, like here, the facts and circumstances within the officers' knowledge were sufficient to cause a person of reasonable caution to believe the defendants had committed a drug transaction. The trial court did not err.

2. THERE WAS SUFFICIENT EVIDENCE FOR THE JURY TO FIND THE DEFENDANT GUILTY OF BAIL JUMPING FOR FAILING TO APPEAR FOR TRIAL "ON OR ABOUT JANUARY 23, 2007."

The defendant contends that the evidence presented at trial was insufficient for any rational trier of fact to have found that he committed the crime of bail jumping as charged in count IV. Specifically, as to count IV, the defendant contends that there was no evidence presented that he knowingly failed to appear for trial on the specific date of January 23, 2007. The defendant's claim is misguided. He testified and admitted that he did not appear for trial on the 22nd or 23rd and the charge merely requires proof that he knowingly failed to appear for trial "on or about" January 23, 2007. The fact that the last written notice required the defendant to appear for trial on January 22nd is of no moment.

Evidence is sufficient to support a conviction if, when viewed in the light most favorable to the State, it permits a rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. State v. Tilton, 149 Wn.2d 775, 786, 72 P.3d 735 (2003). A reviewing court will draw all reasonable inferences from the evidence in favor of the State and interpret the evidence most strongly against the defendant. State v. Salinas, 119 Wn.2d 192,

201, 829 P.2d 1068 (1992). A factual sufficiency review "does not require the reviewing court to determine whether it believes the evidence at trial established guilt beyond a reasonable doubt but rather only whether any rational trier of fact could be so convinced."

State v. Smith, 31 Wn. App. 226, 640 P.2d 25 (1982).

Circumstantial evidence is equally as reliable as direct evidence.

State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

In pertinent part, a person is guilty of bail jumping if they have "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" and then the person "knowingly fails to appear." RCW 9A.76.170(1). These are the elements of the crime. As to count IV, the State was required to prove that "**on or about** January 23, 2008, being charged with a Class C felony and having been released by court order and with knowledge of the requirement of a subsequent personal appearance before the court" the defendant knowingly failed to appear. CP 42 (emphasis added).

The defendant's sole argument is that he had written notice to appear on January 22, 2007, not January 23, 2007, and thus he could not be convicted on count IV because the charging document

alleges he failed to appear on January 23, 2007. But the defendant's argument fails for two reasons.

First, the date of a crime is not an element of the crime, it is a factual assertion.⁴ If the defendant was confused about the facts alleged or relied upon, his remedy was to ask for a bill of particulars.⁵

Second, the elements of the charge are that the defendant had knowledge he was required to appear for trial and knowingly failed to do so. There is no question that he had written notice to appear for trial on January 22, 2007. See Exhibit 26. The defendant also would have had notice to appear on the 23rd when his trial was held over, because the court only sets a trial over if the defendant is present. 4RP 103, 110-11, 118. Either way, the charging document and "to convict" jury instruction state that the

⁴ State v. Fischer, 40 Wn. App. 506, 511, 699 P.2d 249 (1985) (The date an offense occurred is generally not a material element of an offense); United States v. Johnson, 576 F.2d 1331, 1332 (8th Cir. 1978) (variance between date of allegation in pleading and in proof was not fatal; proof showed that acts charged were committed within the statute of limitation; date is not a material element).

⁵ See State v. Eaton, 164 Wn.2d 461, 470 n.5, 191 P.3d 1270 (2008) (Johnson concurring) (a defendant can always ask for a bill of particulars); State v. Noltie, 116 Wn.2d 831, 809 P.2d 190 (1991) (the purpose of a bill of particulars is to amplify or clarify particular matters considered essential to the defense). The defendant also could have raised a motion to dismiss if he believed the charge was not supported by the facts. See State v. Knapstad, 107 Wn.2d 346, 729 P.2d 48 (1986).

defendant failed to appear for trial "**on or about** January 23, 2007." See CP 42, 68 (emphasis added). Whether by written notice to appear on the 22nd or verbal notice to appear on the 23rd, this Court should be satisfied that a rational trier of fact could have found that the defendant had notice that he was to appear for trial **on or about** January 23, 2007 and that he failed to appear for trial as required.

3. THE "TO CONVICT" BAIL JUMPING JURY INSTRUCTIONS ACCURATELY CONVEYED ALL THE ESSENTIAL ELEMENTS OF THE CRIME.

The defendant contends that the "to convict" jury instructions for each count of bail jumping were fatally flawed, that they did not contain what he claims is an essential element, "receipt of notice of the court date." This argument should be rejected. The language used in the "to convict" instructions accurately, succinctly and directly encompasses all the elements of the crime.

a. The Standard Of Review.

Jury instructions are sufficient if they are supported by substantial evidence, allow the parties to argue their theories of the case, and when read as a whole, properly inform the jury of the

applicable law. State v. Mills, 154 Wn.2d 1, 7, 109 P.3d 415 (2005). Generally, the "to convict" instruction must contain all elements essential to the conviction. Mills, 154 Wn.2d at 7. This Court reviews the adequacy of a challenged "to convict" instruction *de novo*. State v. DeRyke, 149 Wn.2d 906, 910, 73 P.3d 1000 (2003).

Still, in determining whether a "to convict" instruction contains all of the essential elements, appellate courts are mindful that there are no "magic words" that must be used. Rather, trial courts are given discretion to determine the specific language to include in the instructions. See e.g., State v. Coe, 101 Wn.2d 772, 787, 684 P.2d 668 (1984). A reviewing court will "review the [challenged] instruction in the same manner as [would] a reasonable juror." State v. Hanna, 123 Wn.2d 704, 719, 871 P.2d 135 (1994); Mills, at 7.

b. The Bail Jumping Statute.

In pertinent part, the bail jumping statute reads as follows:

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...and who fails to appear or who fails to

surrender for service of sentence as required is guilty of bail jumping.

RCW 9A.76.170(1). The crime of bail jumping is a Class A, B, C felony or a misdemeanor depending on the level of the underlying crime for which the defendant jumped bail. RCW 9A.76.170(3).

c. The Jury Instructions.

The trial court gave the following "to convict" instruction for Bail Jumping as charged in count III:

To convict the defendant of the crime of bail jumping, as charged in count III, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about October 5, 2007, the defendant knowingly failed to appear before a court;
- (2) That the defendant was charged with Violation of the Uniform Controlled Substances Act: Delivery of Marijuana and Violation of the Uniform Controlled Substances Act: Possession with Intent to Manufacture or Deliver Marijuana;
- (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 67.⁶

⁶ The "to convict" instruction for count IV reads the same as for count III, with the exception of the date of violation. See CP 68.

The jury was further instructed on the *mens rea* element of the offense.

A person knows or acts knowingly or with knowledge when he or she is aware of a fact, circumstance or result which is described by law as being a crime, whether or not the person is aware that the fact, circumstance or result is a crime.

If a person has information which would lead a reasonable person in the same situation to believe that facts exist which are described by law as being a crime, the jury is permitted but not required to find that he or she acted with knowledge.

Acting knowingly or with knowledge also is established if a person acts intentionally.

CP 58; WPIC 10.02; RCW 9A.08.010(b).

d. The "To Convict" Instructions Properly Informed The Jury That The Defendant Had To Have Had Notice In Order For Him To Knowingly Fail To Appeal.

In order to find the defendant guilty, the jury was required to find that there was a "requirement of a subsequent personal appearance before [the] court" and that the defendant "knowingly failed to appear" for court. This satisfies the requirements of the statute.

The defendant seems to assert that there is an additional element, not contained in the statute, that must be contained in the

"to convict" instruction. Citing State v. Fredrick, 123 Wn. App. 347, 97 P.3d 47 (2004), the defendant claims that "[t]he defendant's receipt of notice of the particular date on which he is to appear is an essential element of the crime of bail jumping." See Def. br. at 14. If the defendant is indeed asserting that there is a new implied element to the crime of bail jumping, he is incorrect.

The statute requires that the State prove a defendant knows he is to appear for court and that he fails to do so, otherwise one cannot knowingly fail to appear. But there is no requirement of some formal "receipt of notice" provision in the statute. The statute merely requires that the State prove knowledge as that is defined by statute. See RCW 9A.08.010(1)(b). The specificity of language that the defendant seems to claim is an implied essential element of the bail jumping statute emanating from the Fredrick case is not contained in the statute, nor did the Fredrick case add a new element of the crime.

Indeed, the court in Fredrick would have had no authority to imply a new element. A court may imply a new element only to avoid constitutional infirmity. See Tacoma v. Luvene, 118 Wn.2d 826, 827 P.2d 1374 (1992) (the court may imply an element to save a statute from vagueness or overbreadth challenges); City of

Seattle v. Ivan, 71 Wn. App. 145, 155-57, 856 P.2d 1116 (1993) (an element may be implied in certain circumstances in order to distinguish statutes which may otherwise punish innocent conduct) (citing State v. Stroh, 91 Wn.2d 580, 584, 588 P.2d 1182 (1979)). No infirmity to the statute was found in the Fredrick case, and none was alleged. Fredrick was nothing more than a sufficiency of the evidence case and the language used by the court was merely language used to describe the elements and the evidence.

The defendant's argument seems to be one of semantics and a desire to have different wording or more specificity in the language used. However, the Supreme Court has repeatedly held that a criminal defendant who believes a jury instruction is unconstitutionally vague or unclear has a ready remedy -- proposal of a clarifying instruction -- and that the failure to propose further definitions precludes review of this claim of error. See State v. Fowler, 114 Wn.2d 59, 69, 785 P.2d 808 (1990), overruled on other grounds by State v. Blair, 117 Wn.2d 479, 486-87, 816 P.2d 718 (1991); State v. Scott, 110 Wn.2d 682, 689, 757 P.2d 492 (1988).

In short, a person cannot knowingly fail to appear without having knowledge of the requirement to appear. While the defendant may not like the language of the instructions, the

instructions are not missing an element. This court will review the instructions as a reasonable juror would and determine if, read as a whole, the jury was properly informed of the applicable law. Hanna, 123 Wn.2d at 719; Mills, 154 Wn.2d at 7. The "to convict" instructions here contained all the essential elements of the crime.

4. THE INFORMATION CONTAINED ALL THE ESSENTIAL ELEMENTS OF THE CRIME OF BAIL JUMPING.

In conjunction with his jury instruction argument, the defendant contends that the charging document was deficient for failing to contain all the essential elements of the crime of bail jumping. Like his argument regarding the "to convict" jury instructions, this argument relies on the faulty premise that there is some other implied essential element not contained in the statute.

Once the legislature defines a crime, in charging a defendant, all essential elements of the crime must be included in the Information. State v. Kjorsvik, 117 Wn.2d 93, 97, 812 P.2d 86 (1991). This rule is known as the essential elements rule. Id. at 98.

When the sufficiency of an Information is first challenged on appeal, the court applies the two-prong test: (1) do the necessary elements appear in any form, or by fair construction can they be found, in the Information, and if so (2) can the defendant show he or she was actually prejudiced by the inartful language. Kjorsvik, 117 Wn.2d at 105-06.

The defendant admits that the Information here alleged that he "had knowledge of a requirement of a subsequent personal appearance." Def. br. at 22. This mirrors the language of the statute. But the defendant, once again, claims there is another additional implied element that must be included in the Information. He claims the Information was insufficient because it did not include the essential element that "he had notice he was supposed to appear on the specific date in question." Def. br. at 22. This claim has no merit because, as discussed above, there is no additional element beyond those listed in the statute. A defendant must have knowledge he is to appear in court--that is what the statute requires and what was contained in the Information.

D. **CONCLUSION**

For the reasons cited above, this Court should affirm the defendant's conviction.

DATED this 6 day of December, 2010.

Respectfully submitted,

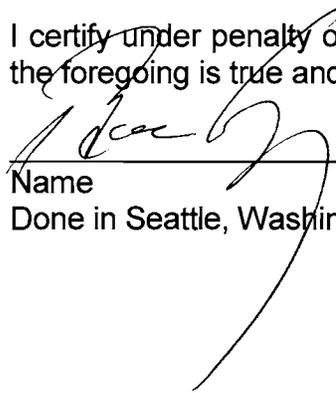
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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Lila Silverstein, the attorney for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the Brief of Respondent, in STATE V. CHAPPELLE, Cause No. 63416-0-I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.



Name
Done in Seattle, Washington

12-06-10

Date

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