

APPELLANT'S
COURT REPORTERS
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Nº. 33734-7-II
IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON
Respondent,

v.

CHARLES KEITH MAYFIELD,
Appellant.

OPENING BRIEF OF APPELLANT

Appeal from the Superior Court of Pierce County,
Cause No. 04-1-01851-1
The Honorable Kathryn Nelson, Presiding Judge

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ORIGINAL

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A. ASSIGNMENT OF ERROR

Mr. Mayfield's right to be free from double jeopardy was violated when he was convicted of bail jumping based on his failure to appear in court on September 9, 2004, and November 3, 2004.

B. ISSUE PRESENTED

Does it violate a defendant's right to be free from double jeopardy to convict him of bail jumping based on his failure to appear for a hearing when he has already been convicted for bail jumping for failure to appear for another hearing held on the same date and time and at the same place as the hearing in the instant case? (Assignment of Error No. 1)

C. STATEMENT OF THE CASE

Factual and Procedural Background

On February 3, 2005, Mr. Mayfield was charged with one count of possessing stolen property in the first degree, one count of bail jumping based on his failure to appear in court on June 2, 2004, one count of bail jumping based on his failure to appear on September 9, 2004, and one count of bail jumping based on his failure to appear on November 3, 2004. CP 7-9.

On August 12, 2005, Mr. Mayfield entered a plea of guilty to all bail jumping charges and entered an Alford plea as to the possession of stolen property charge. CP 43-47. Mr. Mayfield also stipulated as to his prior record and offender score, including two counts of bail jumping in Pierce County Superior Court cause number 04-1-02556-9. CP 48-50. In

cause number 04-1-02556-9, Mr. Mayfield was also charged with two counts of bail jumping based on his failure to appear in court on September 9, 2004, and November 3, 2004. RP 9-10, 3-4-05.¹

D. ARGUMENT

Convicting Mr. Mayfield for bail jumping based on his failure to appear in court on September 9, 2004 and November 3, 2004, where Mr. Mayfield had already been charged and tried for bail jumping based on his failure to appear on those same dates violated Mr. Mayfield's right to be free from double jeopardy

The double jeopardy clauses of the United States and the Washington Constitutions guarantee that no person shall be twice put in jeopardy, i.e., subject to multiple prosecutions or punishments for the same offense. State v. Baldwin, 150 Wn.2d 448, 453-454, 78 P.3d 1005 (2003).

Jeopardy attaches after jury is selected and sworn; it is not necessary that argument or testimony be presented. State v. Juarez, 115 Wn.App. 881, 883, 3d 83 (2003).

Jeopardy attaches in a guilty plea proceeding when court accepts the plea. State v. Higley, 78 Wn.App. 172, 179, 902 P.2d 659 (1995), review denied, 128 Wn.2d 1003, 907 P.2d 296.

¹ The transcript was not numbered consecutively between volumes. Reference to the record will be made by citing the page of the volume followed by the date the hearing was held.

At the time the trial court entered Mr. Mayfield's plea of guilty to the two counts of bail jumping in this case, a jury was currently empanelled and deliberating regarding Mr. Mayfield's guilt on the two charges of bail jumping in Superior Court cause no. 04-1-02556-9. RP 3-5, 5-3-05. In fact, Mr. Mayfield's guilty plea was entered in this case at the same hearing where he was sentenced for the other. RP 2-20, 8-12-05.

When, as here, a defendant is charged with more than one crime under the same statutory provision, the proper inquiry is what unit of prosecution (i.e., scope of the punishable act) was intended by the legislature within the particular criminal statute. State v. Adel, 136 Wn.2d 629, 634, 965 P.2d 1072 (1998).

If the Legislature fails to designate the unit of prosecution within the criminal statute, any resulting ambiguity must be construed in favor of lenity. Id. At 635 (citing Bell v. United States, 349 U.S. 81, 84, 75 S.Ct. 620, 99 L.Ed. 905 (1955) (doubt will be resolved against turning a single transaction into multiple offenses)).

The bail jumping statute addressed the Legislature's concern with punishing a defendant who fails to appear at subsequent court hearings, as required by court order. The statute does not address the situation where, as here, a defendant was required to appear in the same court on the same date and at the same time on different charges. Because the statute is

ambiguous regarding the unit of prosecution intended by the Legislature, this court must resolve the issue in Mr. Mayfield's favor and rule that his right to be free from double jeopardy was violated.

The remedy for a violation of double jeopardy is vacation of one of the convictions at issue. Adel, 136 Wn.2d at 637, 965 P.2d 1072.

Mr. Mayfield was convicted for bail jumping based on his failure to appear in court on September 9, 2004, and November 3, 2004, in both this case and Superior Court cause no. 04-1-02556-9. Because Mr. Mayfield was twice convicted of two equal counts of bail jumping, this court must vacate both of Mr. Mayfield's convictions on the bail jumping counts in this case.

E. CONCLUSION

For the reasons stated above, this court should vacate Mr. Mayfield's convictions for bail jumping in this case and dismiss the charges against him.

DATED this 14th day of July, 2006.

Respectfully submitted,



Reed Speir, WSBA No. 36270
Attorney for Appellant

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05 JUL 2006 AM 11:35

STATE OF WASHINGTON

BY Reed Speir

CERTIFICATE OF SERVICE

Reed Speir hereby certifies under penalty of perjury under the laws of the State of Washington that on the 13th day of July, 2006, I delivered a true and correct copy of the Brief of Appellant to which this certificate is attached by United States Mail, to the following:

Mr. Charles Mayfield, DOC# 268840
Washington Corrections Center
P.O. Box 900
Shelton, WA. 98584

And, I mailed a true and correct copy of the Brief of Appellant and the Verbatim Report of Proceedings to which this certificate is attached, to

Pierce County Prosecuting Attorney's Office
930 Tacoma Avenue South
Tacoma, WA 98402

Signed at Tacoma, Washington this 13th day of July, 2006.



Reed Speir, WSBA No. 36270