

NO. 34330-4-II

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COURT OF APPEALS
DIVISION II

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

STATE OF WASHINGTON
BY  DEPUTY

STATE OF WASHINGTON,

Respondent,

v.

MATTHEW MEENTS

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR LEWIS COUNTY

The Honorable H. John Hall, Judge
Cause No. 05-1-00477-5

BRIEF OF RESPONDENT

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I. ISSUES PRESENTED

- A. A charging document challenged for the first time after the verdict is liberally construed in favor of validity." The information charging bail jumping alleged that Meents "knowingly failed to appear...having been released by court order...with a requirement of a subsequent appearance." Was Meents adequately apprised that he was accused of failing to appear with knowledge of a subsequent court appearance?
- B. Jury instructions must properly inform the trier of fact of the applicable law. The jury instruction which defined "knowledge" conformed to the WPIC. Did the lower court err in including language in that instruction which stated that acting intentionally establishes that a person acted with knowledge?
- C. Trial counsel's performance is deficient if it falls below an objective standard of reasonableness and affects the outcome of the proceedings. Meents' trial counsel did not object to the "knowledge" instruction. Was his performance deficient?
- D. Statutes are presumed constitutional. RCW 9A.36 does not define the term "assault," but rather, courts rely on the common law definition of assault. Meents committed the "battery" form of assault on two police officers. Do his assault convictions violate the separation of powers doctrine?

II. STATEMENT OF THE CASE

Respondent accepts as adequate, for purposes of this Response, the "Statement of Facts and Prior Proceedings" appearing in the Opening Brief of Appellant, with the following additions and/or clarifications:

Meents testified that he knew the person with the flashlight chasing him “had to be the cops,” and acknowledged that they were contacting him on police business.¹

III. ARGUMENT

- A. A CHARGING DOCUMENT CHALLENGED FOR THE FIRST TIME AFTER THE VERDICT IS LIBERALLY CONSTRUED IN FAVOR OF VALIDITY." THE INFORMATION CHARGING BAIL JUMPING ALLEGED THAT MEENTS “KNOWINGLY FAILED TO APPEAR...HAVING BEEN RELEASED BY COURT ORDER...WITH A REQUIREMENT OF A SUBSEQUENT APPEARANCE." WAS MEENTS ADEQUATELY APPRISED THAT HE WAS ACCUSED OF FAILING TO APPEAR WITH KNOWLEDGE OF A SUBSEQUENT COURT APPEARANCE?

Meents first asserts that the information charging him with Bail Jumping was insufficient to apprise him of the essential elements.

"[A]ll essential elements of a crime ... must be included in the charging document so as to apprise the defendant of the charges against him and to allow him to prepare his defense."² "When a conviction is reversed due to an insufficient charging document, the result is a dismissal of charges without prejudice to the right of the State to recharge and retry the offense for which the defendant was convicted or for any lesser

¹ 12/20/05 RP at 27, 33 & 34.

² *State v. Hopper*, 118 Wn.2d 151, 155, 822 P.2d 775 (1992).

included offense."³ "The standard of review for evaluating the sufficiency of a charging document is determined by the time at which the motion challenging its sufficiency is made."⁴ When a charging document is challenged for the first time after the verdict, it is to be "liberally construed in favor of validity."⁵ "The two distinct standards of review encourage prosecuting attorneys to file sufficient complaints, and also encourage defendants to make timely challenges to defective charging documents to discourage 'sandbagging.'"⁶ "The charging document need not state the statutory elements of the offense in the precise language employed in the statute, but may 'use words conveying the same meaning and import as the statutory language.'"⁷ When an information is challenged after the verdict, the court asks whether the necessary facts appear in any form in the charging document. If so, the defendant must show actual prejudice to obtain dismissal.⁸

The question, then, is whether the phrase, "knowingly fail[s] to appear...having been released by court order...with a requirement of a subsequent appearance"—liberally construed in favor of validity—

³ *State v. Vangerpen*, 125 Wn.2d 782, 791, 888 P.2d 1177 (1995).

⁴ *State v. Taylor*, 140 Wn.2d 229, 237, 996 P.2d 571 (2000).

⁵ *State v. Kjorsvik*, 117 Wn.2d 93, 102, 812 P.2d 86 (1991).

⁶ *Taylor*, 140 Wn.2d at 237 n. 32.

⁷ *Id.* at 235-36. (quoting *State v. Leach*, 113 Wn.2d 679, 689, 782 P.2d 552 (1989)).

⁸ *State v. Ibsen*, 98 Wn.App. 214, 216, 989 P.2d 1184 (1999) (citing *Kjorsvik*, 117 Wn.2d at 105-06).

conveys the same meaning and import as the statutory language—i.e., “with knowledge of the requirement of a subsequent personal appearance...fails to appear.” Liberally construed, the phrase “knowingly fails to appear” conveys the same meaning as “with knowledge of a subsequent personal appearance...fails to appear.” Although the phrase in the charging document does not track word-for-word with that of the statute, it cannot be seriously asserted that “knowledge” pertains to anything but the subsequent required court appearance. The two phrases have the same meaning, especially applying the “liberally construed in favor of validity” standard.

Nor can Meents establish prejudice as a result of the alternative phraseology. Indeed, his defense to the bail jumping charge focused—albeit unsuccessfully—on his lack of knowledge of when he was required to be in court. This demonstrates that he was apprised by the charging document that knowledge of the subsequent court date was an element of the offense, as he specifically attempted to create reasonable doubt as to his knowledge of the missed court date. Clearly, he knew of the knowledge requirement, so even if the information was technically deficient, he did not suffer any prejudice thereby, and his challenge should be rejected.

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B. JURY INSTRUCTIONS MUST PROPERLY INFORM THE TRIER OF FACT OF THE APPLICABLE LAW. THE JURY INSTRUCTION WHICH DEFINED “KNOWLEDGE” CONFORMED TO THE WPIC. DID THE LOWER COURT ERR IN INCLUDING LANGUAGE IN THAT INSTRUCTION WHICH STATED THAT ACTING INTENTIONALLY ESTABLISHES THAT A PERSON ACTED WITH KNOWLEDGE?

Meents next asserts that lower court erred in instructing the jury, inter alia, that “acting knowingly or with knowledge ...is established if a person acts intentionally.”⁹ Relying on *State v. Goble*,¹⁰ Meents asserts that the last sentence of Instruction No. 20 is a misstatement of the law and its inclusion creates a mandatory presumption.

In *Goble*, the “to convict” instruction contained an unnecessary element—that the defendant knew the victim of the assault was a law enforcement officer performing his official duties—which, based on the law of the case doctrine, the State was required to prove.¹¹ Goble testified that he did not realize the person he assaulted was a police officer, and several of his witnesses supported this theory. A few days after the incident, Goble told the deputy that he was sorry and did not realize he was a police officer at the time.¹² During deliberations, the jury sent out a

⁹ Supp. CP

¹⁰ 131 Wn.App. 194, 126 P.3d 821 (2005),

¹¹ *Id.* at 201.

¹² *Id.* at 197-199.

note indicating that they did not understand the “knowledge” instruction, which contained the language Meents challenges in this appeal. This Court, in a 2 to 1 decision, found that the instruction was confusing to the jury, and that it relieved the State of the burden of proving that Goble knew the deputy’s status as a law-enforcement officer.¹³ The *Goble* decision is of little assistance in the present case. Because the State, by including in the “to convict” instruction an unnecessary element—i.e., that Goble had to know that Deputy Riordan was a law enforcement officer and that he was on duty—the State took on the burden of proving that Goble knew Riordan was a police officer when he assaulted him. Because there was credible evidence that Goble’s acted *intentionally* in assaulting the person approaching his grandson, but did not have *knowledge* that person was an on-duty police officer when he acted, the instruction allowed the jury to find that in acting intentionally, he had to know the person he assaulted was an officer. That the jury sent out a question indicating that it was confused by the instruction underscored the impropriety of including the last sentence of the instruction in that particular case.

As illustrated above, the decision in *Goble* was very fact-specific. The facts that justified the Court’s decision in *Goble* are not present in the

¹³ *Id.* at 203.

instant case. Here, there was no evidence that Meents assaulted the two police officers *without* knowledge that they were officers on duty. Indeed, Meents' defense was that he committed no assault whatsoever. The defense did not involve knowledge or intent at all, and thus, the potential for juror confusion was non-existent. The jury did not indicate any confusion with the instruction as given.

The *Goble* decision does not state that the language at issue is *per se* a misstatement of the law, or that it *per se* violates due process by relieving the State of its burden. The facts in *Goble* were unusual, and its application is similarly limited. Certainly, it does not control in the present case, and Meents' challenge is without merit.

C. TRIAL COUNSEL'S PERFORMANCE IS DEFICIENT IF IT FALLS BELOW AN OBJECTIVE STANDARD OF REASONABLENESS AND AFFECTS THE OUTCOME OF THE PROCEEDINGS. MEENTS' TRIAL COUNSEL DID NOT OBJECT TO THE "KNOWLEDGE" INSTRUCTION. WAS HIS PERFORMANCE DEFICIENT?

Continuing in his theme, Meents next asserts that his trial counsel's performance was deficient in that he failed to object to the "knowledge" instruction discussed above. The law regarding ineffective assistance of counsel is well established. To prevail on a claim of

ineffective assistance of counsel, a defendant must show both ineffective representation and resulting prejudice.¹⁴ To satisfy the first prong, a defendant must show that counsel's performance fell below an objective standard of reasonableness.¹⁵ To satisfy the second prong, a defendant must establish that counsel's performance was so inadequate that there exists a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different."¹⁶ A reasonable probability is a probability sufficient to undermine confidence in the outcome.¹⁷

There is a strong presumption that counsel's performance was adequate, and exceptional deference must be given when evaluating counsel's strategic decisions.¹⁸ Furthermore, a reviewing court is not required to address both prongs of the test if the defendant makes an insufficient showing on one prong.¹⁹

As argued above, the knowledge instruction in this case was proper. Thus, Meents cannot prevail on the first *Strickland* prong, and his challenge must fail. Even assuming *arguendo* that failure to object to this

¹⁴ *State v. Early*, 70 Wn.App. 452, 460, 853 P.2d 964 (1993), *review denied*, 123 Wn.2d 1004 (1994); *State v. Graham*, 78 Wn.App. 44, 56, 896 P.2d 704 (1995).

¹⁵ *Strickland v. Washington*, 466 U.S. 668, 693, 80 L.Ed 2d 674, 104 S.Ct 2052 (1984); *State v. Sardinia*, 42 Wn.App. 533, 540, 713 P.2d 1302 (1978).

¹⁶ *Strickland*, 466 U.S. at 694.

¹⁷ *State v. Thomas*, 109 Wn.2d 222, 226, 743 P.2d 816 (1987).

¹⁸ *Strickland*, 466 U.S. at 689.

¹⁹ *State v. Tarica*, 59 Wn. App. 368, 374, 798 P.2d 296 (1990).

standard WPIC instruction was error, Meents fails to demonstrate that in this case, it deprived him of due process. The witnesses who observed his conduct testified to very purposeful acts. Meents' claim must be rejected.

D. STATUTES ARE PRESUMED CONSTITUTIONAL. RCW 9A.36 DOES NOT DEFINE THE TERM "ASSAULT," BUT RATHER, COURTS RELY ON THE COMMON LAW DEFINITION OF ASSAULT. MEENTS COMMITTED THE "BATTERY" FORM OF ASSAULT ON TWO POLICE OFFICERS. DO HIS ASSAULT CONVICTIONS VIOLATE THE SEPARATION OF POWERS DOCTRINE?

Finally, Meents asserts that the statutory and judicial scheme under which he was convicted is unconstitutional. He argues that the statutes violate the separation of powers doctrine because the definition of assault is derived from common law, not the assault statute.

This Court recently disposed of this issue in *State v. Chavez*,²⁰ holding that Chavez failed to establish beyond a reasonable doubt that the legislative and judicial branches' cooperation in defining the offense of assault is unconstitutional beyond a reasonable doubt. Based on the application of *Chavez* to the instant case, Meents claim must be rejected.

IV. CONCLUSION

The language in the charging document, liberally construed, sufficiently apprised Meents of the essential elements of Bail Jumping. The “knowledge” instruction, as given, was proper in this case. Thus, Meents’ trial counsel’s failure to object to it did not render his performance deficient. Further, Meents fails to establish beyond a reasonable doubt that the statutory scheme under which he was convicted violates the separation of powers doctrine.

V. REQUEST FOR COSTS

Should this Court determine that the State substantially prevails in this matter, the State requests that Meents be required to pay all taxable costs of this appeal, pursuant to RAP Title 14.

Respectfully submitted this 26 day of August, 2006.

JEREMY RANDOLPH

Lewis County Prosecuting Attorney

By:


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²⁰ WL 2411528, Wn.App. Div. 2, Aug 22, 2006; (33240-0-II).

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DEPUTY

CERTIFICATE

I certify that on 8/28/06, I mailed a copy of the foregoing

supplemental response by depositing same in the United States Mail,

postage pre-paid, to the following parties at the addresses indicated:

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