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OCTOBER 13, 2014

Court of Appeals
Division III
State of Washington

No. 32477-0-III

IN THE COURT OF APPEALS
OF THE
STATE OF WASHINGTON

DIVISION THREE

STATE OF WASHINGTON,

Respondent,

v.

LAREN A. JACKSON,

Appellant.

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

The Honorable Judge Ruth E. Reukauf

APPELLANT'S OPENING BRIEF

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TABLE OF CONTENTS

A. SUMMARY OF ARGUMENT1

B. ASSIGNMENTS OF ERROR1

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR2

D. STATEMENT OF THE CASE.....2

E. ARGUMENT.....5

Issue 1: Whether there was insufficient evidence to prove
Mr. Jackson’s identity on the bail jumping charge or to prove
the knowledge elements on either the failure to register or bail
jumping charges.....5

a. Mr. Jackson’s identity was not proven at trial.....5

b. The State cannot rely on un-authenticated signatures to
prove either count in this case.....10

F. CONCLUSION.....15

TABLE OF AUTHORITIES

Washington Supreme Court

State v. Bixby, 27 Wn.2d 144, 177 P.2d 689 (1947).....7

State v. Green, 94 Wn.2d 216, 616 P.2d 628 (1980).....5

State v. Hill, 83 Wn.2d 558, 520 P.2d 618 (1974).....6

State v. Joy, 121 Wn.2d 333, 851 P.2d 654 (1993).....5

State v. Kelly, 52 Wn.2d 676, 328 P.2d 362 (1958).....6, 7

State v. Salinas, 119 Wn.2d 192, 829 P.2d 1068 (1992).....6

State v. McGuff, 104 Wash. 501, 177 P. 316 (1918).....12, 13

State v. Powell, 161 Wash. 514, 297 P. 160 (1931).....7

Washington Courts of Appeals

State v. Bradford, 175 Wn. App. 912, 308 P.3d 736 (2013).....11

State v. Carver, 122 Wn. App. 300, 93 P.3d 947 (2004).....6

State v. Downing, 122 Wn. App. 185, 93 P.3d 900 (2004).....6

State v. Fernandez, 28 Wn. App. 944, 628 P.2d 818 (1981).....13

State v. Frederick, 123 Wn. App. 347, 97 P.3d 47 (2004).....5, 6

State v. Huber, 129 Wn. App. 499, 119 P.3d 388 (2005).....6-8

State v. Hunter, 29 Wn. App. 218, 627 P.2d 1339 (1981).....9, 10

Washington Statutes & Court Rules

ER 901(b)(3).....12

ER 902.....12

RCW 5.45.020.....	12
RCW 9A.44.132	14
RCW 9A.76.170.....	6, 14

A. SUMMARY OF ARGUMENT

Laren Jackson was convicted by a jury of (count 1) failing to fulfill sex offender registration requirements and (count 2) bail jumping. A second count of bail jumping was vacated and dismissed by the court after the jury verdict.

Mr. Jackson's remaining convictions should now also be reversed and dismissed. There was insufficient evidence to establish Mr. Jackson's identity as the same person who received notice of a requirement to appear and subsequently did fail to appear at a hearing on 5/16/2013. In addition, the State relied on signatures that were attributed to Mr. Jackson but were never authenticated to prove the defendant had the requisite knowledge for both charged counts. These un-authenticated signatures should have been excluded, without which there is insufficient evidence to affirm the convictions in this case.

Accordingly, Mr. Jackson respectfully requests that count one and count two be reversed and remanded for dismissal with prejudice.

B. ASSIGNMENTS OF ERROR

1. The court erred by convicting Mr. Jackson of failing to register under RCW 9A.44.132 without sufficient evidence. (Count 1)
2. The court erred by convicting Mr. Jackson of bail jumping without sufficient evidence. (Count 2)
3. The court erred by admitting unauthenticated signatures as proof of the required elements.

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

Issue 1: Whether there was insufficient evidence to prove Mr. Jackson's identity on the bail jumping charge or to prove the knowledge elements on either the failure to register or bail jumping charges.

- a. Mr. Jackson's identity was not proven at trial.
- b. The State cannot rely on un-authenticated signatures to prove either count in this case.

D. STATEMENT OF THE CASE

In November 2012, Laren Jackson had a duty to register based on a previous felony sex offense, and he had two prior convictions for failing to register. (RP 180; Exhibit 1: Defendant's Stipulation of Fact)

On November 27, 2012, Chief Stew Graham with the Yakima County Sheriff's Office went to the Red Apple Motel in Yakima to verify that Mr. Jackson was living at this registered address. (RP 96-97) Chief Graham looked in the window of the registered motel room, number 213, and did not see any personal effects. (RP 99) He testified that the room appeared unoccupied. (*Id.*) The manager for the motel testified that Mr. Jackson's room, number 214, was paid for through October 4, 2012, and that Mr. Jackson checked out of that room on October 15, 2012. (RP 164-65, 167-68)

Tiffani Gabbard testified that she is a records custodian with the Yakima County Sheriff's Office, and her records showed that a person

named Laren Jackson had last registered an address of 416 N. 1st Street in Yakima, Washington, Room 213 (the address of the Red Apple Motel). (RP 115) The registration form was signed on August 6, 2012, though Ms. Gabbard was not present when this document was filled out and was unable to personally verify the identity or signature of the person registering. (*See id.*; Exhibit 16) This registration form was admitted over defendant's objection that, without authentication of the signature and proof that the defendant was the same person identified on the form, the document was not relevant. (RP 116-24, 127-29; Exhibit 16)

In March 2014, Mr. Jackson was tried before a jury for failing to register. (CP 33-34) He was also tried on two counts of bail jumping for allegedly failing to appear on 5/16/2013 and 11/1/2013, though the court dismissed the latter count after verdict for insufficient evidence. (*Id.*; 4/15/14 RP 7)

In support of the 5/16/2013 bail jumping charge, the State presented testimony of prosecutor Gary Hintze. Mr. Hintze testified to general court processes, including that a defendant is usually arraigned, omnibus is set, and other case-setting hearings are held. (RP 160-62) He testified that when a defendant does not appear after he has been released on bail, the usual process is for the court to find that a defendant failed to appear and to issue a bench warrant. (RP 161) Then, when a defendant

reappears, a new bail order may issue and new hearing dates are set. (See RP 161)

Mr. Hintze reviewed two certified copies of court orders that both contained a caption with Laren Jackson's name. (Exhibits 4 and 5A) Mr. Hintze testified that the first order on arraignment directed a Mr. Jackson to appear on 5/16/2013 and contained a signature above the defendant's signature line (Exhibit 4), and the second order was for a bench warrant (Exhibit 5A). (RP 160-61) Mr. Hintze did not testify to any independent knowledge that the defendant in this case, Mr. Jackson, was the same person who was named in the previous orders, had signed the arraignment order, or had failed to appear on 5/16/2013. (See RP 160-62) Mr. Hintze merely reviewed the orders and explained that the court had made a finding that Laren Jackson failed to appear on 5/16/2013 and issued a bench warrant. (RP 161) Both orders were admitted over defendant's objection as to authenticity of the defendant's signature and relevance. (*Id.*; CP 69-70)

Mr. Jackson was subsequently convicted of failing to register (a third offense) and one count of bail jumping. (RP 235; CP 119-28) He was sentenced within the standard range to 60 months incarceration. (CP 121) This appeal timely followed. (CP 133)

E. ARGUMENT

Issue 1: Whether there was insufficient evidence to prove Mr. Jackson's identity on the bail jumping charge or to prove the knowledge elements on either the failure to register or bail jumping charges.

The State failed to provide independent evidence identifying Mr. Jackson as the person who failed to appear on 5/16/2013 and had a bench warrant issued as a result. The State also failed to identify Mr. Jackson as the same person who received notice of a duty to appear on 5/16/2013. Finally, the State relied on two documents that were purportedly signed by your Appellant, Mr. Jackson, to prove that he knew his registration requirements and knew that he had a duty to appear on 5/16/2013. But since Mr. Jackson's signatures were never authenticated, and no other evidence established the knowledge elements for these counts, the convictions should be reversed and remanded for dismissal with prejudice.

a. Mr. Jackson's identity was not proven at trial.

“In reviewing a sufficiency of the evidence challenge, this court must determine after viewing the evidence in the light most favorable to the State, whether any rational trier of fact could have convicted the defendant beyond a reasonable doubt.” *State v. Frederick*, 123 Wn. App. 347, 354, 97 P.3d 47 (2004) (quoting *State v. Joy*, 121 Wn.2d 333, 338, 851 P.2d 654 (1993) (citing *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980)). A claim of insufficiency of the evidence “admits the truth of

the State's evidence and all inferences that can reasonably be drawn from it." *Id.* (citing *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992)).

"A person commits the crime of Bail Jumping when he fails to appear as required after having been released by court order or admitted to bail with knowledge of the requirement of a subsequent personal appearance before a court." CP 85; RCW 9A.76.170(1); *State v. Downing*, 122 Wn. App. 185, 192, 93 P.3d 900 (2004). The "knowledge requirement is met when the State proves that the defendant has been given notice of the required court dates." *Frederick*, 123 Wn. App. at 353 (citing *State v. Carver*, 122 Wn. App. 300, 306, 93 P.3d 947 (2004)).

The State "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)). "To sustain this burden when criminal liability depends on the accused's being the person to whom a document pertains...-- the State must do more than authenticate and admit the document; it also must show beyond a reasonable doubt 'that the person named therein is the same person on trial.'" *Id.* at 502 (quoting *State v. Kelly*, 52 Wn.2d 676, 678, 328 P.2d 362 (1958)). To wit:

Because, ‘in many instances men bear identical names,’ the State cannot [establish a defendant’s identity] by showing ‘identity of names alone.’ Rather, it must show ‘by evidence independent of the record,’ that the person named therein is the defendant in the present action.”

Huber, 129 Wn. App. at 502. *Id.* (internal quotations omitted). *Id.*; see e.g., *State v. Bixby*, 27 Wn.2d 144, 166, 177 P.2d 689 (1947) (judge in prior proceeding called to testify at current perjury trial); *State v. Powell*, 161 Wash. 514, 517, 297 P. 160 (1931) (defense attorney who is not also defending current prosecution could be called to identify the person now on trial).

This case is akin to the bail jumping case of *State v. Huber, supra*, where the issue was “whether the evidence is sufficient to show that the person on trial was the same person who earlier failed to appear in court.” 129 Wn. App. at 500. There, the State introduced certified copies of a charging document, an order requiring Huber to appear in court on a certain date, clerk’s minutes indicating that Huber failed to appear on that date, and a bench warrant commanding Huber’s arrest. *Huber*, 129 Wn. App. at 500-01. The State did not introduce any other evidence to show that these exhibits related to the same Wayne Huber who was then before the court. *Id.* In other words, there was “no evidence to show ‘that the person named therein is the same person on trial.’” *Id.* at 503 (quoting *Kelly*, 52 Wn.2d at 678). The Court concluded that the evidence was

“insufficient to support a finding that the person on trial is the person named in the State’s exhibits...” *Id.* at 504. The matter was reversed and remanded to dismiss the bail jumping charge with prejudice. *Id.*

Here, too, there was no independence evidence showing that Laren Jackson – the person named in the caption of the arraignment order and bench warrant (Exhibits 4 and 5A)– was the same person on trial in this underlying case. The State did call Mr. Hintze to presumably fill this gap in the evidence, but Mr. Hintze did not independently verify Mr. Jackson’s identity.

Mr. Hintze only testified to the general court processes of setting court dates and what happens when someone does not appear. (See RP 160-62) He acknowledged that an arraignment order and bench warrant had been entered with a caption including the name of Laren Jackson. But, importantly, Mr. Hintze’s testimony did not include a personal identification of the defendant in this case as the same person who received notice of the 5/16/2013 hearing (Exhibit 4) or failed to appear and thus had a bench warrant issued (Exhibit 5A). Without such evidence, the State did not prove beyond a reasonable doubt that your Appellant, Mr. Jackson, had knowledge of the hearing on 5/16/2013 or was the same person who failed to appear on that date and had a bench warrant issue.

The conviction must fail, therefore, for insufficient evidence of two key elements – knowledge and failing to appear.

This case is unlike that of *State v. Hunter*, which illustrates when identity evidence may be sufficient. *State v. Hunter*, 29 Wn. App. 218, 627 P.2d 1339 (1981). In *Hunter*, the State charged the defendant with attempted escape from incarceration on a felony conviction. *Id.* To prove the underlying felony conviction element, the State offered copies of two felony judgments and sentences bearing the same name as the defendant. *Id.* The Court noted that the certified court orders bearing the defendant’s name were not alone sufficient to prove the defendant’s identity:

[I]dentity of names alone is not sufficient proof of the identity of a person to warrant the court in submitting to the jury a prior judgment of conviction. It must be shown by independent evidence that the person whose former conviction is proved is the defendant in the present action.

Hunter, 29 Wn. App. at 221 (internal citations omitted).

In *Hunter*, the State closed the evidence gap by presenting testimony from a Department of Corrections probation officer who was able to identify Hunter as the same person who was incarcerated on the felony convictions in the previously offered court orders. 29 Wn. App. 221-22. The court found this additional testimony “sufficient independent evidence to establish a prima facie case that defendant was the same Dallas E. Hunter as named in the certified judgments and sentences.” *Id.*

Under our facts, however, the State did not offer any additional, independent evidence to identify your appellant as the same Mr. Jackson noted in the caption of the arraignment order and bench warrant (Exhibits 4 and 5A). Again, unlike in *Hunter* where the DOC officer personally identified that defendant as the same one listed in the pertinent court orders, no independent evidence verified Mr. Jackson's identity. At most, Mr. Hintze verified that court orders were indeed entered with a defendant's signature and a caption listing a Laren Jackson as the defendant. But Mr. Hintze did not testify to any personal knowledge that your Appellant was the same person listed on those court documents. Nor did Mr. Hintze offer independent evidence that he personally notified Mr. Jackson of the upcoming hearing on 5/16/2013 or knew that the Appellant was the same Mr. Jackson who failed to appear on 5/16/2013.

The bail jumping conviction should be reversed and remanded for dismissal with prejudice due to insufficient evidence.

b. The State cannot rely on un-authenticated signatures to prove either count in this case.

The State argued (over repeated objections throughout this trial) that the jury could compare the defendant's signature on the arraignment order with the signature on the sex offender registration form to find that Mr. Jackson was the same person who knew of his registration requirements and received notice of the hearing scheduled for 5/16/2013

(see Exhibits 4 and 16; RP 227, 231-32). First, even if this theory were correct, this would not cure the insufficient evidence on the other key element argued above for the bail jumping count – identity of the defendant as the same person who failed to appear on 5/16/2013.

Regardless, the court erred by admitting and allowing the State to rely on a comparison of un-authenticated signatures to identify Mr. Jackson as the same person who had received notice of his registration requirements and notice of the hearing scheduled for 5/16/2013.

“Pursuant to ER 901(a), ‘the requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.’” *State v. Bradford*, 175 Wn. App. 912, 928, 308 P.3d 736 (2013). “This requirement is met ‘if sufficient proof is introduced to permit a reasonable trier of fact to find in favor of authentication or identification.’” *Id.* (internal quotations omitted). For example, authentication of a signature could be established by a witness with knowledge that the signature is what it is claimed to be, by non-expert opinion testimony from one who is familiar with the handwriting, or by comparing a signature with another specimen signature that has already been authenticated. See ER 901(b)(1)-(4).

As a threshold matter, Mr. Jackson does not contest the admissibility of the registration form itself as a business record under RCW 5.45.020 (Exhibit 16) or the certified court record that is self-authenticating under ER 902(d) (Exhibit 4). On the other hand, because the State relied on the signatures within both documents to prove the knowledge elements in the charged crimes, those signatures must have been authenticated as belonging to your Appellant prior to their submission to the jury for comparison and review.

It is a long-standing rule that a person's signature cannot be authenticated by comparing one signature to another similar, yet likewise un-authenticated, signature. See ER 901(b)(3); *State v. McGuff*, 104 Wash. 501, 504-06, 177 P. 316 (1918). In *State v. McGuff*, a cashier of a bank was permitted to identify the signature of the appellant, even though he had never seen the appellant write his name, by comparing a signature that was on a card bearing McGuff's name with a signature on a check that was alleged to have been forged by McGuff. *McGuff*, 104 Wash. at 505. The Court reversed, holding that the cashier could not compare the signature at hand with another un-authenticated signature to prove that it belonged to McGuff. *Id.* The Court explained, "[i]t has come to be a rule of quite universal application that an opinion as to handwriting may not be expressed where the opinion is based on a comparison, unless the standard

of comparison is proven by direct and positive evidence.” *McGuff*, 104 Wash. at 505. The signature “must be admitted or proved.” *Id.*

The un-authenticated signature in *McGuff* is distinguishable from a signature that is authenticated by comparing to a notarized document. *See e.g., State v. Fernandez*, 28 Wn. App. 944, 954-55, 628 P.2d 818 (1981). In *State v. Fernandez*, a witness testified that his identification of a signature was based on a comparison with a previously authenticated signature on a notarized document. *Id.* In other words, the signature was proven. *Id.*

Here, Mr. Jackson’s signature was never proven. Exhibit 16, the sex offender registration form, bore a signature purported to belong to the defendant. Yet, the custodian of that record never saw Mr. Jackson sign that form. Ms. Gabbard did not have personal knowledge that the signature in question belonged to the defendant.

Similarly, there was no evidence at trial from anyone who may have seen the defendant sign the documents in question. Mr. Hintze testified that a document with Laren Jackson’s name in the caption also bore a signature on the defendant’s signature line. But there was no testimony that Mr. Hintze ever saw your Appellant Mr. Jackson sign the document in question. The signature was not authenticated by a witness with personal knowledge that it belonged to the Appellant in this case.

Finally, since no particular signature was ever authenticated as belonging to Mr. Jackson in this case, it was improper to rely on a comparison of one un-authenticated signature to prove another. Yet multiple, un-authenticated signatures were offered to the jury to prove that Mr. Jackson had knowledge of a particular registration requirement due to supposedly signing Exhibit 16, and that he had knowledge of a duty to appear on 5/16/2013 due to supposedly signing Exhibit 4.

The State had to prove that Mr. Jackson (count 1) knowingly failed to comply with the sex offender registration requirement to send written notice of an address change (CP 79; RCW 9A.44.132(1)(b)), and that he (count 2) knowingly failed to appear when required (RCW 9A.76.170(1)). To prove these respective charging elements, the State relied on the “signed” registration form that informed the registrant to provide notice of an address change within three days of moving (Exhibit 16), and the “signed” notice advising one Laren Jackson to appear on 5/16/2013 (Exhibit 4). Essentially, the State argued that Mr. Jackson had knowingly failed to comply with registration requirements, because he signed the notice informing him of the particular registration requirements. And the State argued that Mr. Jackson knew of his requirement to appear in court on 5/16/2013, because he signed the court order setting that next appearance date. But, since neither of these documents contained

authenticated signatures – i.e., since there was no proof that the signatures on these documents belonged to your Appellant – both counts should now be reversed for insufficient, admissible evidence to establish the knowledge elements.

F. **CONCLUSION**

The State did not prove the defendant’s identity beyond a reasonable doubt; i.e., there was insufficient identity evidence that your Appellant, Mr. Jackson, was the same person who received notice of a duty to appear on 5/16/2013 and subsequently failed to appear. There was also insufficient evidence to establish that Mr. Jackson knowingly failed to fulfill his registration requirements and knowingly failed to appear as required. The State relied on unauthenticated signatures, purportedly belonging to the defendant without proof of the same, to prove these respective knowledge elements. There was insufficient, properly admitted evidence to sustain either conviction. Both counts should be reversed and remanded for dismissal with prejudice.

Respectfully submitted this 13th day of October, 2014.

/s/ Kristina M. Nichols
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COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON)
Plaintiff/Respondent) COA No. 32477-0-III
vs.) No. 13-1-00085-2
)
LAREN ALAN JACKSON) PROOF OF SERVICE
)
Defendant/Appellant)
_____)

I, Kristina M. Nichols, assigned counsel for the Appellant herein, do hereby certify under penalty of perjury that on October 13, 2014, I mailed by U.S. Postal Service first class mail, postage prepaid, a true and correct copy of the Appellant's opening brief to:

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Having obtained prior permission from the Yakima County Prosecutor's Office, I also served the foregoing by email at appeals@co.yakima.wa.us using Division III's e-service feature.

Dated this 13th day of October, 2014.

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