No. 32559-8-III

IN THE COURT OF APPEALS
OF THE
STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON,

Respondent,

v.

MATTHEW SIMON GAROUTTE,

Appellant.

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

The Honorable Judge John D. Knodell

APPELLANT'S OPENING BRIEF

JILL S. REUTER, Of Counsel
KRISTINA M. NICHOLS
Nichols Law Firm, PLLC
Attorneys for Appellant
P.O. Box 19203
Spokane, WA 99219
(509) 731-3279
Wa.Appeals@gmail.com

TABLE OF CONTENTS

A. SUMMARY OF ARGUMENT……1

B. ASSIGNMENTS OF ERROR……...2

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR…….2

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

E. ARGUMENT.....9

Issue 1: Mr. Garoutte was denied his right to trial by an impartial jury when the trial court denied his motion for a mistrial regarding Juror No. 9, and when the trial court denied his motion to replace Juror No. 8 and Juror No. 9 with alternate jurors……...……9

Issue 2: The trial court abused its discretion in denying Mr. Garoutte's motion to exclude evidence of his January 18, 2014, arrest following his failure to appear……14

Issue 3: The trial erred by failing to enter written findings of fact and conclusions of law on the bench trial on the possession of a controlled substance count……..18

F. CONCLUSION……18

TABLE OF AUTHORITIES

Washington Supreme Court

Diaz v. State, 175 Wn.2d 457, 285 P.3d 873 (2012)……..15

State v. Bourgeois, 133 Wn.2d 389, 945 P.3d 1120 (1997)……...17

State v. Depaz, 165 Wn.2d 842, 204 P.3d 217 (2009)……...10

State v. Fire, 145 Wn.2d 152, P.3d 1218 (2001)…….9

State v. Gamble, 168 Wn.2d 161, 225 P.3d 973 (2010)……10

State v. Halstien, 122 Wn.2d 109, 857 P.2d 270 (1993)……16

State v. Head, 136 Wn.2d 619, 964 P.2d 1187 (1998)……..18

State v. Momah, 167 Wn.2d 140, 217 P.3d 321 (2009)…….9, 11, 12, 13

Washington Courts of Appeal

State v. Aguilar, 153 Wn. App. 265, 223 P.3d 1158 (2009)……14, 16

State v. Ball, 97 Wn. App. 534, 987 P.2d 632 (1999)……..14, 16

State v. Bryant, 89 Wn. App. 857, 950 P.2d 1004 (1998)……...14, 16

State v. Cardwell, 155 Wn. App. 41, 226 P.3d 243 (2010)…….14, 16

State v. Chirinos, 161 Wn. App. 844, 255 P.3d 809 (2011)……9, 11, 13

State v. Downing, 122 Wn. App. 185, 93 P.3d 900 (2004)……..14, 16

State v. Fredrick, 123 Wn. App. 347, 97 P.3d 47 (2004)……14, 16

State v. Gonzales, 111 Wn. App. 276, 45 P.3d 205 (2002)…….10, 13

State v. Jorden, 103 Wn. App. 221, 11 P.3d 866 (2000)……10, 11, 13

Washington State Statutes

RCW 9A.76.170(1)……14

Washington Court Rules

CrR 6.1(d)……..18

CrR 6.5……...10, 11, 13

ER 401…….15, 16

ER 402…….15, 16

ER 403…….15, 16

A. SUMMARY OF ARGUMENT

Matthew Simon Garoutte was charged with one count of possession of a controlled substance and one count of bail jumping. Mr. Garoutte waived a jury trial on the possession of a controlled substance count only. Both counts were heard by the trial court in a unitary jury trial, and the jury was instructed to only consider the bail jumping charge.

After the attorneys completed voir dire, the trial court judge disclosed the fact that Juror No. 9 lives across the street from him, and that they had a long-term personal relationship. The trial court told the attorneys that one of the State's bail jumping witnesses informed the trial court she knows Juror No. 8, and that they have been next door neighbors for years. The trial court denied Mr. Garoutte's subsequent motion for a mistrial regarding Juror No. 9, and also denied his motion to replace Juror No. 8 and Juror No. 9 with alternate jurors. These rulings denied Mr. Garoutte his right to trial by an impartial jury. Therefore, his bail jumping conviction should be reversed.

Mr. Garoutte's bail jumping conviction should also be reversed because the trial court denied his motion to exclude irrelevant and prejudicial evidence of Mr. Garoutte's January 18, 2014, arrest following his failure to appear. The admission of this evidence was not harmless.

B. ASSIGNMENTS OF ERROR

1. Mr. Garoutte was denied his right to trial by an impartial jury when the trial court denied his motion for a mistrial regarding Juror No. 9, and when the trial court denied his motion to replace Juror No. 8 and Juror No. 9 with alternate jurors.

2. The trial court erred in denying Mr. Garoutte's motion to exclude evidence of his January 18, 2014, arrest following his failure to appear.

3. The trial erred by failing to enter written findings of fact and conclusions of law on the bench trial on the possession of a controlled substance count.

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

Issue 1: Mr. Garoutte was denied his right to trial by an impartial jury when the trial court denied his motion for a mistrial regarding Juror No. 9, and when the trial court denied his motion to replace Juror No. 8 and Juror No. 9 with alternate jurors.

Issue 2: The trial court abused its discretion in denying Mr. Garoutte's motion to exclude evidence of his January 18, 2014, arrest following his failure to appear.

Issue 3: The trial erred by failing to enter written findings of fact and conclusions of law on the bench trial on the possession of a controlled substance count.

D. STATEMENT OF THE CASE

On April 3, 2013, Ephrata Police Officer Ryan Harvey arrested Matthew Simon Garoutte on an outstanding Department of Corrections warrant. (RP 92-93, 95)[1]. At the time of his arrest, Mr. Garoutte was

[1] The Report of Proceedings (RP) consists of four volumes. The first volume, transcribed by Kenneth C. Beck, consisting of pretrial

seated in a pick-up truck that did not belong to him. (RP 83, 94-96, 113-114). Following the arrest, Officer Harvey noticed a backpack in the bed of pick-up truck. (RP 97-98). Officer Harvey did not remove the backpack at that time. (RP 98-99). Mr. Garoutte told Officer Harvey he did not have any property with him that he did not want left in the truck. (Beck RP 16).[2]

The owner of the pick-up truck contacted Officer Harvey and informed him the backpack did not belong to him. (RP 100-102, 107-108, 114-115). Officer Harvey then logged the backpack into evidence and searched it. (RP 10-103). Inside the backpack, he found a glass smoking pipe with residue and items with Mr. Garoutte's name on them. (RP 103). The residue in the pipe later tested positive for methamphetamine. (RP 107, 187-189).

A few days later, Mr. Garoutte came to the police department and asked for his backpack. (RP 108). Officer Harvey gave him the backpack back and informed Mr. Garoutte he would not be getting the pipe back because he believed it contained methamphetamine residue and it had

---

hearings and post-trial proceedings, including sentencing, is referred to herein as "Beck RP." The consecutively paginated second through fourth volumes, transcribed by Tom R. Bartunek, containing the trial itself, are referred to herein as "RP."

[2] This statement was suppressed following a CrR 3.5 hearing, and therefore, it was not admitted at trial. (Beck RP 25).

been sent to the State crime lab for testing. (RP 108-109). Mr. Garoutte responded by stating he could not understand why he was not getting the pipe back, "because it was just residue." (RP 109).

The State charged Mr. Garoutte with one count of possession of a controlled substance (methamphetamine). (CP 1-2). After Mr. Garoutte failed to appear for an omnibus hearing scheduled for October 8, 2013, a warrant was issued for his arrest. (Pl.'s Exs. 8, 31; CP 15). The State then amended the information to add one count of bail jumping, alleged to have occurred on October 8, 2013. (CP 14-22).

Mr. Garoutte entered a waiver of a jury trial on the possession of a controlled substance (methamphetamine) count, but not on the bail jumping count. (CP 31-32; Beck RP 38-41). The case proceeded to a unitary jury trial. (Beck RP 38-41; RP 13-14, 24-25, 77-307). While evidence was presented on both counts, the jury was informed it was to consider only the bail jumping charge. (CP 140; Beck RP 38-41; RP 13-14, 24-25, 85, 89-90, 184).

Following jury selection, Mr. Garoutte moved for a mistrial based on the fact that Juror No. 9 lives across the street from the trial court judge. (RP 59-61, 68-70). The trial court judge acknowledged that he disclosed this fact to the attorneys when they were exercising peremptory challenges at a side bar conference. (RP 59). Mr. Garoutte argued he

would be denied a fair trial, because he was unable to, during jury selection, "inquire upon that residence, if there was a friendship relationship, and how that might affect [Juror No. 9]." (RP 59). Mr. Garoutte also argued there was a violation of the appearance of fairness doctrine. (RP 68).

The trial court judge stated he has known Juror No. 9 for 30 years, that they have been friends for a long time, that his first daughter and Juror No. 9's daughter are best friends, and that he has not discussed Mr. Garoutte's case with Juror No. 9. (RP 61, 70, 271). The trial court judge also acknowledged that he might have come to Mr. Kozer's office in support of a job application submitted by Juror No. 9's daughter. (RP 69). The trial court denied Mr. Garoutte's motion for a mistrial. (RP 61, 70).

Also following jury selection, the trial court told the attorneys that one of the State's witnesses, Grant County Clerk's Office Deputy Clerk Marla Webb, informed the trial court that she knows Juror No. 8, and that they have been next door neighbors for a number of years. (RP 70-71). Juror No. 8 did not disclose that she knew Ms. Webb during jury selection. (RP 71).

Mr. Garoutte moved to replace Juror No. 8 and Juror No. 9 with the two alternate jurors, based on the fact that Juror No. 8's relationship with Ms. Webb and Juror No. 9's relationship with the trial court judge

were not disclosed in jury selection, where he could have inquired about the relationships. (RP 38, 68-69, 179, 255, 270-273). The trial court judge offered to bring Juror No. 8 into the courtroom and question her regarding her relationship with Ms. Webb. (RP 272-273). Mr. Garoutte declined this offer, stating "I don't think it would support the record as much as it would highlight if the court doesn't remove her, would highlight, you know, concerns that would be spread through the jury panel during deliberations." (RP 272-273). The trial court denied Mr. Garoutte's motion to replace Juror No. 8 and Juror No. 9 with the two alternate jurors, ruling "I don't think there's a legal basis in either case at this point to substitute the jurors in." (RP 273).

Mr. Garoutte moved to exclude evidence of his January 18, 2014, arrest following his failure to appear on October 8, 2013. (RP 30-37, 219-220, 227-228). Mr. Garoutte argued evidence of this arrest is highly prejudicial and not relevant to the bail jumping charge, because bail jumping is not an on-going crime, but rather, the crime is completed if and when Mr. Garoutte failed to appear on October 8, 2013. (RP 31-32, 35-36, 228, 235-236). He also argued the arrest does not support the knowledge element of bail jumping, because "knowledge is only as to the date when he was supposed to appear in court[.]" (RP 37, 236).

The trial court denied Mr. Garoutte's motion. (RP 35-37, 236). The trial court stated:

> Well, it seems to me if he's gone for four months and he makes no attempt to get back in front of the court, which I think is a rational inference from what happened here, I think that supports the notion that his failure to appear back before the court is not simply because he didn't know what date, because a reasonable person under the circumstances would have made some inquiry within four months, and after the trial date passes, I think that supports that notion.

(RP 236).

Following this ruling, Grant County Sheriff's Office Deputy Sheriff Jacob Fisher testified that he arrested Mr. Garoutte on January 18, 2014, for a warrant for failing to appear. (RP 240-241, 244).

Former Deputy Prosecutor Douglas Mitchell testified that one of the signature lines on the criminal case scheduling order entered on August 20, 2013 "bears letters that look like [Mr.] Garoutte." (Pl.'s Ex. 3; RP 198). The last order entered by the trial court setting release conditions for Mr. Garoutte for his possession of a controlled substance charge was admitted at trial as Plaintiff's Exhibit No. 4. (Pl.'s Ex. 4). This exhibit listed Mr. Garoutte's next court appearance as October 8, 2013, and it was not signed by Mr. Garoutte. (Pl.'s Ex. 4; RP 162, 173-174, 203-204, 212).

Mr. Mitchell testified the trial court judge read the release conditions set forth in Plaintiff's Exhibit No. 4 out loud in court. (RP 204-

205). Mr. Mitchell testified Mr. Garoutte was in the courtroom at this time. (RP 205).

Grant County Sheriff's Office Corrections Corporal Derek Jay testified he believes Mr. Garoutte was given his release conditions order when he was released from jail, but Corporal Jay did not recall giving the order to Mr. Garoutte. (RP 250). Ms. Webb testified that orders setting conditions of release are supposed to be signed in court. (RP 174).

The trial court instructed the jury that in order to find Mr. Garoutte guilty of bail jumping, it had to find the following elements, beyond a reasonable doubt:

> (1) That on or about the [sic] October 8, 2013, the defendant failed to appear before a court;
> (2) That the defendant was charged with possession of methamphetamine;
> (3) That the defendant had been released by court order with knowledge of the requirement of a subsequent personal appearance before that court; and
> (4) That any of these acts occurred in the State of Washington.

(CP 145).

In its closing argument, the State argued that evidence of Mr. Garoutte's January 18, 2014, arrest for failing to appear supports a conviction for bail jumping. (RP 295-297).

The trial court found Mr. Garoutte guilty of possession of a controlled substance (methamphetamine), and the jury found Mr. Garoutte guilty of bail jumping. (CP 148, 160, 164; Beck RP 66-67; RP 327-329).

Mr. Garoutte timely appealed. (CP 182).

E. ARGUMENT

Issue 1: Mr. Garoutte was denied his right to trial by an impartial jury when the trial court denied his motion for a mistrial regarding Juror No. 9, and when the trial court denied his motion to replace Juror No. 8 and Juror No. 9 with alternate jurors.

The Sixth Amendment to the United States Constitution and article I, section 22 of the Washington State Constitution guarantee the right to trial by an impartial jury. *See, e.g., State v. Chirinos*, 161 Wn. App. 844, 848 n.3, 255 P.3d 809 (2011). The state constitutional provision does not provide greater protection than the federal constitutional provision. *State v. Fire*, 145 Wn.2d 152, 163, 34 P.3d 1218 (2001).

The constitutional right to trial by an impartial jury "focuses on the defendant's right to have unbiased jurors, whose prior knowledge of the case or their prejudice does not taint the entire venire and render the defendant's trial unfair." *State v. Momah*, 167 Wn.2d 140, 152, 217 P.3d 321 (2009). "[A]n essential element of a fair trial is an impartial trier of fact - a jury capable of deciding the case based on the evidence before it." *Id*.

A trial court's decision to excuse a juror is reviewed for abuse of discretion. *State v. Jorden*, 103 Wn. App. 221, 226, 11 P.3d 866 (2000). "A trial court abuses its discretion when it bases its decision on untenable grounds or reasons." *State v. Depaz*, 165 Wn.2d 842, 852, 204 P.3d 217 (2009). The remedy for denial of the constitutional right to trial by an impartial jury is reversal. *State v. Gonzales*, 111 Wn. App. 276, 282, 45 P.3d 205 (2002).

CrR 6.5, the criminal court rule governing alternate jurors, also protects the right to an impartial jury. *See Jorden*, 103 Wn. App. at 227 (acknowledging that CrR 6.5 "place[s] a continuous obligation on the trial court to excuse any juror who is unfit and unable to perform the duties of a juror."). The rule provides that "[i]f at any time before submission of the case to the jury a juror is found unable to perform the duties the court shall order the juror discharged and the clerk shall draw the name of an alternate who shall take the juror's place on the jury." CrR 6.5.

In addition, "[a] mistrial should be granted when the defendant has been so prejudiced that nothing short of a new trial can insure that the defendant will be tried fairly." *State v. Gamble*, 168 Wn.2d 161, 177, 225 P.3d 973 (2010). "A denial of a motion for mistrial should be overturned only when there is a substantial likelihood that the prejudice affected the

verdict." *Id.* A trial court's denial of a motion for a mistrial is reviewed under an abuse of discretion standard. *Id.*

Here, after voir dire was conducted and while the attorneys were exercising peremptory challenges, the trial court judge disclosed the fact that Juror No. 9 lives across the street from him. (RP 59). Also following jury selection, the trial court told the attorneys that State's witness Ms. Webb informed the trial court that she knows Juror No. 8, and that they have been next door neighbors for a number of years. (RP 70-71). Mr. Garoutte moved for a mistrial based on the trial court judge's disclosure regarding Juror No. 9, and he also moved for the trial court to replace Juror No. 8 and Juror No. 9 with the two alternate jurors. (RP 38, 59-61, 68-70, 179, 255, 270-273).

Mr. Garoutte was denied his right to an impartial jury when the trial court denied his motion for a mistrial regarding Juror No. 9, and when the trial court denied his motion to replace Juror No. 8 and Juror No. 9 with alternate jurors. *See Chirinos*, 161 Wn. App. at 848 n.3; *Momah*, 167 Wn.2d at 152; CrR 6.5; *Jorden*, 103 Wn. App. at 227. The relationships of Juror No. 8 and Juror No. 9 to individuals involved in the jury trial indicate bias. Juror No. 9 lives across the street from the trial court judge and has been personal friends with him for years. (RP 59-61, 68-70, 271).

Juror No. 8 lives next door to one of the State's key witnesses on the bail jumping charge, Ms. Webb. (RP 70-71).

Because of the timing of the disclosures regarding Juror No. 8's relationship with Ms. Webb and Juror No. 9's relationship with the trial court judge, after voir dire was conducted, there was no opportunity for Mr. Garoutte to ensure these jurors would decide the case based on the evidence, unaffected by bias and without tainting the other jurors. *See Momah*, 167 Wn.2d at 152 (defining impartial jury). While Mr. Garoutte's interest in ensuring both of these jurors were impartial was crucial, it was especially important regarding Juror No. 8, whose relationship with Ms. Webb could affect how she weighed Ms. Webb's credibility. Mr. Garoutte properly declined the trial court's offer to question Juror No. 8 during the trial itself, to avoid the risk of affecting the jury's deliberations. (RP 272-273).

There was no questioning of Juror No. 8 and Juror No. 9 to ensure that these jurors could set aside their relationships with Ms. Webb and the trial court judge and decide the case based upon the evidence presented at trial. Without this assurance, Juror No. 8 and Juror No. 9 were not impartial jurors. *See Momah*, 167 Wn.2d at 152.

The trial court also had an obligation, under CrR 6.5, to ensure that Juror No. 8 and Juror No. 9 could fulfill their duties as jurors. Because

there was no indication that Juror No. 8 and Juror No. 9 were impartial, despite their disclosed relationships with key participants in the trial, the trial court erred in denying Mr. Garoutte's motion to replace Juror No. 8 and Juror No. 9 with alternate jurors. *See* CrR 6.5; *Jorden*, 103 Wn. App. at 227.

The trial court abused its discretion in denying Mr. Garoutte's motion to replace Juror No. 8 and Juror No. 9 with alternate jurors by stating there was not a legal basis to substitute the alternate jurors; both the state and federal constitutions and CrR 6.5 required such substitution. *See Chirinos*, 161 Wn. App. at 848 n.3; *Momah*, 167 Wn.2d at 152; CrR 6.5; *Jorden*, 103 Wn. App. at 227.

Mr. Garoutte was denied his right to trial by an impartial jury. Therefore, his conviction for bail jumping should be reversed. *See Gonzales*, 111 Wn. App. at 282 (setting forth this remedy for a constitutional violation).

Issue 2: The trial court abused its discretion in denying Mr. Garoutte's motion to exclude evidence of his January 18, 2014, arrest following his failure to appear.

The crime of bail jumping is defined as:

> 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, 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.

RCW 9A.76.170(1).

"'The elements of bail jumping are satisfied if the defendant (1) was held for, charged with, or convicted of a particular crime; (2) had knowledge of the requirement of a subsequent personal appearance; and (3) failed to appear as required.'" *State v. Aguilar*, 153 Wn. App. 265, 276, 223 P.3d 1158 (2009) (quoting *State v. Downing*, 122 Wn. App. 185, 192, 93 P.3d 900 (2004)). "In order to meet the knowledge requirement of the [bail jumping] statute, the State is required to prove that a defendant has been given notice of the required court dates." *State v. Cardwell*, 155 Wn. App. 41, 47, 226 P.3d 243 (2010) (citing *State v. Fredrick*, 123 Wn. App. 347, 353, 97 P.3d 47 (2004)); *see also State v. Ball*, 97 Wn. App. 534, 536, 987 P.2d 632 (1999) (quoting *State v. Bryant*, 89 Wn. App. 857, 870, 950 P.2d 1004 (1998)).

Relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." ER 401. Irrelevant evidence is inadmissible. ER 402. Relevant evidence may be excluded if it is more prejudicial than probative. ER 403. A trial court's decision to admit evidence is reviewed for an abuse of discretion. *Diaz v. State*, 175 Wn.2d 457, 462, 285 P.3d 873 (2012).

Here, Mr. Garoutte moved to exclude evidence of his January 18, 2014, arrest following his failure to appear on October 8, 2013. (RP 30-37, 219-220, 227-228). The trial court rejected Mr. Garoutte's arguments that this evidence is not relevant, because it does not support the knowledge element of bail jumping, and that the evidence is highly prejudicial. (RP 35-37, 236). Deputy Fisher then testified that he arrested Mr. Garoutte on January 18, 2014, for a warrant for failing to appear. (RP 240-241, 244). In its closing argument, the State argued this evidence supports a conviction for bail jumping. (RP 295-297).

The trial court abused its discretion in denying Mr. Garoutte's motion to exclude evidence of his January 18, 2014, arrest following his failure to appear. To convict Mr. Garoutte of bail jumping, the State had to prove "[t]hat the defendant had been released by court order with

knowledge of the requirement of a subsequent personal appearance before that court." (CP 145); *see also Aguilar*, 153 Wn. App. at 276 (listing this required element) (quoting *Downing*, 122 Wn. App. at 192). The knowledge requirement of bail jumping requires the State to prove Mr. Garoutte had notice of the October 8, 2013 court date. *See Cardwell*, 155 Wn. App. at 47 (citing *Fredrick*, 123 Wn. App. at 353; *see also Ball*, 97 Wn. App. at 536 (quoting *Bryant*, 89 Wn. App. at 870).

The fact that Mr. Garoutte was arrested over three months after this court date does not establish that he had notice of the October 8, 2013 court date. Instead, it merely proves a warrant was issued for his arrest for failure to appear on this date, and that he was later arrested on this warrant. (RP 240-241, 244). Therefore, evidence of Mr. Garoutte's January 18, 2014, arrest following his failure to appear was not relevant to the charge of bail jumping. *See* ER 401. Because the evidence is irrelevant, it was inadmissible at trial. *See* ER 402. Additionally, the evidence was more prejudicial than probative. *See* ER 403.

An evidentiary error "requires reversal only if the error, within reasonable probability, materially affected the outcome of the trial." *State v. Halstien*, 122 Wn.2d 109, 127, 857 P.2d 270 (1993). "The improper admission of evidence constitutes harmless error if the evidence is of

minor significance in reference to the overall, overwhelming evidence as a whole." *State v. Bourgeois*, 133 Wn.2d 389, 403, 945 P.3d 1120 (1997).

The error in admitting evidence of Mr. Garoutte's January 18, 2014, arrest following his failure to appear was not harmless. The evidence regarding his knowledge of the October 8, 2013 court date was not overwhelming. The last order entered by the trial court setting release conditions for Mr. Garoutte, listing Mr. Garoutte's next court appearance as October 8, 2013, was not signed by Mr. Garoutte. (Pl.'s Ex. 4; RP 162, 173-174, 203-204, 212). Although Mr. Mitchell testified the trial court judge read the release conditions in this order out loud in court, while Mr. Garoutte was present, he did not specifically testify that the trial court judge read the next court appearance date of October 8, 2013 out loud. (RP 204-205). There is also no evidence that Mr. Garoutte was given a copy of this order upon his release from jail. (RP 250). Furthermore, the irrelevant evidence of Mr. Garoutte's January 18, 2014, arrest was not of minor significance, because the State argued in its closing argument that the evidence supported a conviction for bail jumping. (RP 295-297); *Bourgeois*, 133 Wn.2d at 403 (defining harmless error).

The trial court abused its discretion in denying Mr. Garoutte's motion to exclude evidence of his January 18, 2014, arrest following his

failure to appear. The error was not harmless. Therefore, Mr. Garoutte's conviction for bail jumping should be reversed.

Issue 3: The trial erred by failing to enter written findings of fact and conclusions of law on the bench trial on the possession of a controlled substance count.

"In a case tried without a jury, the court shall enter findings of fact and conclusions of law." CrR 6.1(d). "[T]he failure to enter written findings of fact and conclusions of law as required by CrR 6.1(d) requires remand for entry of written findings and conclusions." *State v. Head*, 136 Wn.2d 619, 624, 964 P.2d 1187 (1998).

Here, the trial court failed to enter written findings of fact and conclusions of law on the bench trial on the possession of controlled substances count. (CP 1-183). Therefore, the case should be remanded for entry of such written findings and conclusions. *See Head*, 136 Wn.2d at 624.

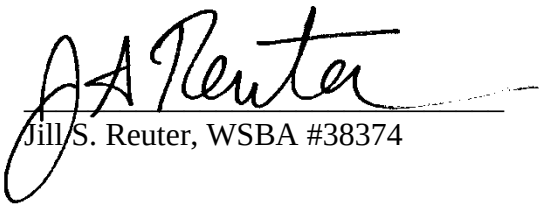
F. CONCLUSION

Mr. Garoutte's conviction for bail jumping should be reversed, for two reasons. First, Mr. Garoutte was denied his right to an impartial jury when the trial court denied his motion for a mistrial regarding Juror No. 9, and when the trial court denied his motion to replace Juror No. 8 and Juror No. 9 with alternate jurors. Juror No. 8 and Juror No. 9 were not impartial jurors. Second, the trial court abused its discretion in denying Mr.

Garoutte's motion to exclude irrelevant and prejudicial evidence of his January 18, 2014, arrest following his failure to appear. This error was not harmless.

The case should also be remanded for entry of findings of fact and conclusions of law on the bench trial on the possession of a controlled substances count.

Respectfully submitted this 5th day of January, 2015.



Jill S. Reuter, WSBA #38374

/s/ Kristina M. Nichols
Kristina M. Nichols, WSBA #35918
Attorney for Appellant