

NO. 63416-0-I

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

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STATE OF WASHINGTON,

Respondent,

v.

CHARLES CHAPPELLE,

Appellant.

2010 SEP 30 PM 4:59

COURT OF APPEALS  
STATE OF WASHINGTON  
FILED  
*[Signature]*

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

The Honorable Chris Washington, Judge

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BRIEF OF APPELLANT

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**A. ASSIGNMENTS OF ERROR**

1. The arrest of Mr. Chappelle was unconstitutional because not based on probable cause to believe Mr. Chappelle committed a crime.

2. The trial court erred in denying Mr. Chappelle's motion to suppress the evidence obtained as a result of the unlawful arrest.

3. The State failed to prove Mr. Chappelle committed bail jumping as charged in count four.

4. The amended information was constitutionally deficient as to the bail jumping counts.

5. The trial court violated Mr. Chappelle's right to due process by omitting an element from the to-convict instructions for the bail jumping counts.

**B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

1. Probable cause to arrest exists only when the arresting officer is aware of facts and circumstances sufficient to cause a reasonable officer to believe a crime has been committed. Here, officers arrested Mr. Chappelle after observing him exchange a small object for money. In cases with similar facts, courts have held that this type of information is sufficient for a Terry stop, but insufficient to create probable cause to support an arrest. Was the

arrest of Mr. Chappelle unconstitutional, requiring reversal of his drug convictions and suppression of the evidence obtained during the search incident to arrest?

2. The State must prove every element of a crime charged beyond a reasonable doubt in order to support a conviction. To convict a defendant of bail jumping, the State must prove the defendant received notice of the court date in question. Here, the State presented evidence that Mr. Chappelle received notice he was to appear for trial on January 22, 2008, but he was convicted of bail jumping for failing to appear on January 23, 2008. Must the conviction for bail jumping be reversed and the charge dismissed with prejudice?

3. A defendant's right to due process is violated if the "to convict" instruction does not contain every element of the crime charged. The "to convict" instructions for the bail jumping counts in this case omitted the element that Mr. Chappelle had received notice of his court dates. Did the omissions violate Mr. Chappelle's right to due process?

4. An information is constitutionally deficient if it fails to set forth every element of the crime charged. One element of bail jumping is that the defendant had notice of the actual date on which

he was to appear in court. Mr. Chappelle was charged with two counts of bail jumping for failing to appear in court on October 5, 2007, and January 23, 2008. Was the information constitutionally deficient because it alleged only that Mr. Chappelle had “knowledge of the requirement of a subsequent personal appearance” rather than knowledge of the requirement of an appearance on October 5, 2007, and January 23, 2008?

C. STATEMENT OF THE CASE

On April 24, 2007, Charles Chappelle was downtown near the Macy’s store at Third Avenue and Pine Street. At around 5:00 p.m., Macy’s staff members called King County Sheriff’s Office deputies to their surveillance office to view security camera footage they had just recorded. CP 99 (Findings of Fact, ¶ 2). The video showed Mr. Chappelle and another man walking into the Macy’s vestibule. CP 100 (Findings of Fact, ¶ 2). The two had a conversation, then “Deputy McCurdy watched as the individuals reached inside their clothing as if transferring items to each other.” Id. According to Deputy McCurdy, although they “could see that something was handed between” Mr. Chappelle and his companion, they could not see “what, if

anything, was being exchanged.” 2/24/09 RP 49. Mr. Chappelle and his companion then left Macy’s. CP 100 (Findings of Fact, ¶ 2). The officers continued to monitor the area on their surveillance cameras. CP 100 (Findings of Fact, ¶ 3).

Twenty minutes later, the deputies saw Mr. Chappelle on the corner of Fourth Avenue and Pine Street with his friend, Stormy Jackson. CP 100 (Findings of Fact, ¶ 3). They saw Mr. Jackson take out his wallet and give Mr. Chappelle money. CP 100 (Findings of Fact, ¶ 4). Mr. Chappelle then handed a small object to Mr. Jackson. Id.

The officers immediately arrested both Mr. Chappelle and Mr. Jackson. CP 101 (Findings of Fact, ¶ 5). During a search incident to arrest, the deputies found money and several baggies of suspected marijuana. Id.

The State charged Mr. Chappelle with one count of delivery of a controlled substance and one count of possession with intent to deliver a controlled substance. CP 1-2. After Mr. Chappelle missed court dates on October 5,

2007, and January 23, 2008, the Stated amended the information to add two counts of bail jumping for those dates.

CP 13.

Mr. Chappelle moved to suppress the baggies of marijuana and money because they were found during a search incident to arrest for which the deputies lacked probable cause. CP 6-11; 2/24/09 RP 4-75. The court denied the motion, concluding that the deputies had probable cause to arrest Mr. Chappelle for controlled substance violations.

CP 101.

Mr. Chappelle was convicted on all counts as charged. CP 80. He appeals. CP 89-98.

#### D. ARGUMENT

##### 1. THE EVIDENCE SHOULD HAVE BEEN SUPPRESSED BECAUSE IT WAS OBTAINED AS A RESULT OF AN UNLAWFUL ARREST.

a. Probable cause to arrest exists only when the arresting officer is aware of facts and circumstances sufficient to cause a reasonable officer to believe a crime has been committed . A warrantless search is unreasonable under both the federal and state constitutions unless an exception applies. State v. Loewen, 97

Wn.2d 562, 565, 647 P.2d 489 (1982); State v. Lennon, 94 Wn. App. 573, 579, 976 P.2d 121 (1999); U.S. Const. amend. IV; Const. art. I, § 7. “The right to search incident to an arrest is an exception to the warrant requirement and as such must be jealously and carefully drawn, and must be confined to situations involving special circumstances.” State v. Boyce, 52 Wn. App. 274, 279, 758 P.2d 1017 (1988).

It is axiomatic that a search incident to arrest is not proper unless the arrest itself is valid and precedes the search. State v. O’Neill, 148 Wn.2d 564, 585, 62 P.3d 489 (2003). A warrantless arrest is valid only if the officers have probable cause to believe that a crime is being committed and that the person seized committed the crime. State v. Mance, 82 Wn. App. 539, 541, 918 P.2d 527 (1996). “Probable cause to arrest must be judged on the facts known to the arresting officer before or at the time of arrest.” State v. Gillenwater, 96 Wn. App. 667, 670, 980 P.2d 318 (1999). Probable cause to arrest exists only when the arresting officer is aware of facts and circumstances, based on reasonably trustworthy information, sufficient to cause a reasonable officer to believe a crime has been or is being committed. State v. Graham, 130

Wn.2d 711, 724, 927 P.2d 227 (1996); State v. Greene, 97 Wn. App. 473, 478, 983 P.2d 1190 (1999).

The burden is on the State to show that a warrantless search or seizure is constitutional. Seattle v. Mesiani, 110 Wn.2d 454, 457, 755 P.2d 775 (1988). “The rationale for placing the burden on the prosecution is particularly compelling where the issue is the existence of probable cause.” Mance, 82 Wn. App. at 544.

Although a trial court’s findings of fact following a suppression hearing are entitled to deference, “the constitutional rights at issue require an appellate court to make an independent evaluation of the record.” State v. Walker, 66 Wn. App. 622, 625-26, 834 P.2d 41 (1992). This Court reviews a trial court’s conclusions of law de novo. State v. Thorn, 129 Wn.2d 347, 351, 917 P.2d 108 (1996).

b. Although the officers here may have had reasonable suspicion to support a Terry stop, they lacked probable cause to arrest Mr. Chappelle because they only saw Mr. Chappelle give someone a small object and receive money. The facts known to the officers here were insufficient to support a finding of probable cause to arrest. Although the officers saw Mr. Jackson give Mr. Chappelle money, and saw Mr. Chappelle give Mr. Jackson a small

object, these observations do not create probable cause to believe a crime has been committed. At best, they create reasonable suspicion to support a Terry<sup>1</sup> stop to investigate further. “But mere suspicion is not enough to support probable cause.” State v. Chavez, 138 Wn. App. 29, 36, 156 P.3d 246 (2007).

Several Washington cases show that the arrest in this case was unconstitutional. In Chavez, for example, police officers entered a nightclub restroom and heard a loud snorting sound coming from a bathroom stall. Id. at 32. When an officer walked around the partition, he saw three men standing together in an open stall. One man fled. Mr. Chavez and Mr. Ramirez remained, and Mr. Ramirez was holding a dollar bill with a white powdery substance on it. Id. The officer believed the substance was cocaine, and arrested the men. Id. The trial court denied a motion to suppress, ruling there was probable cause to believe the two men were involved in a drug transaction. Id. at 33. This Court reversed, holding that while the officer may have had enough information to form reasonable suspicion for a Terry stop, his observations were insufficient to support a finding of probable cause to arrest. Id. at 35-36.

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<sup>1</sup> Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).

Similarly, this Court held there was an insufficient showing of probable cause in State v. Biegel, 57 Wn. App. 192, 787 P.2d 577 (1990). There, police were patrolling a high-crime area when they saw the defendant get out of his car, converse for about 30 seconds with one of several persons standing on the corner, and follow the person into an apartment building. The officers who witnessed the events knew that “this was the normal mode of conduct for a drug transaction.” Id. at 193. When the officers saw the defendant come out of the apartment, they asked him if he lived or worked in the area, and he said that he did not but was looking for a party which his sister was attending. Id. at 194. The officers arrested him and found cocaine during their search incident to arrest. The State argued the officers had probable cause to arrest the defendant because based on their experience with drug transactions generally and with that area in particular, the circumstances leading to the defendant’s entering and leaving the building indicated he was there to purchase drugs and would have some in his possession. Id. This Court held that while the officers possessed reasonable suspicion to support a Terry stop, they did not have probable cause to arrest. Id.

The Supreme Court's decision in State v. Glover is also instructive. State v. Glover, 116 Wn.2d 509, 806 P.2d 760 (1991). There, the defendant was trespassing at an apartment complex with a high incidence of gang and drug activity. Id. at 511. When he walked out of an apartment, he saw police officers and turned and walked in the opposite direction. Id. at 512. The officers stopped him and asked if he lived in the apartments, and the defendant lied and said that he did. Id. The officers noticed the defendant had a clear plastic bag protruding from his closed right hand. Id. at 513. The officers knew that plastic baggies are commonly used to transport narcotics. Id. at 514. The Supreme Court held that this combination of facts created reasonable suspicion for a Terry stop, but not probable cause to arrest. Id. at 515; id. at 516 (Guy, J., concurring).

In another case, the Supreme Court held that similar facts were insufficient to support even a Terry stop. State v. Doughty (No. 82852-1, Filed 9/23/10). In Doughty, the defendant drove to a suspected drug house at 3:20 a.m., went inside for about two minutes, and drove away. Slip op. at 2. The officers suspected the house was a drug house because of numerous complaints of similar "short stay traffic" at unusually late hours. Id. Officers

stopped the defendant for suspicion of drug activity. Id. The defendant was convicted of drug possession, but the Supreme Court reversed, holding the officers did not have reasonable suspicion to support a Terry stop. Slip op. at 5.

Here, as in Chavez, Biegel, and Glover, the officers lacked probable cause to arrest Mr. Chappelle. The officers saw Mr. Chappelle give Mr. Jackson a small item and saw Mr. Jackson give Mr. Chappelle money. This may have been enough to support a Terry stop – although even that is unclear after Doughty – but it is insufficient to support probable cause to arrest.

State v. Fore is instructive with respect to the quantum of information necessary to create probable cause to arrest for drug crimes. State v. Fore, 56 Wn. App. 339, 783 P.2d 626 (1989). There, officers were conducting surveillance in a park where there had been numerous complaints regarding drug transactions. Id. at 340. The officers were experienced in narcotics investigation. Id. at 342. They saw the defendant walk up to the passenger side of a car, hand the passenger a small plastic bag, and receive money in exchange. Id. at 341. Shortly thereafter, the officers saw the defendant do the same thing with a passenger in another car: he gave the passenger a small baggie in exchange for money. Id.

The officers then observed the defendant return to his own car, where he removed a large freezer bag that contained a number of smaller packets with green vegetable matter in it. He took out several of the smaller packets and replaced the larger bag in the car. Id. This Court held there was probable cause to arrest because the officers witnessed three transactions in which the defendant gave others small plastic bags containing brownish or greenish matter, and they saw the defendant take out a large plastic bag and remove smaller packets containing green matter. Id. at 343-44.

Here, in contrast, the officers did not see what was being exchanged, and they did not see that Mr. Chappelle had multiple packets containing what appeared to be green matter until after they arrested him and searched him. Thus, while they may have had reasonable suspicion to support a Terry stop, they lacked probable cause to support a full-blown arrest. See id. at 345 (citing People v. Oden, 36 N.Y.2d 382, 368 N.Y.S.2d 508, 329 N.E.2d 188 (1975) (mere passing of glassine envelope between unknown persons in high-crime area does not constitute probable cause)). The evidence obtained during the search incident to arrest therefore should have been suppressed.

c. The remedy is reversal and suppression. All “evidence obtained as a result of an unlawful seizure is inadmissible.” State v. Reichenbach, 153 Wn.2d 126, 135, 101 P.3d 80 (2004). “[T]he right of privacy shall not be diminished by the judicial gloss of a selectively applied exclusionary remedy. . . . [W]henever the right is unreasonably violated, the remedy must follow.” State v. White, 97 Wn.2d 92, 110, 640 P.2d 1061 (1982).

The law enforcement officers here discovered the drugs as a result of the unconstitutional arrest. Accordingly, the evidence should have been suppressed. The conviction on counts one and two should be reversed and the case remanded with instructions to suppress the evidence obtained as a result of the illegal seizure. State v. Parker, 139 Wn.2d 486, 505, 987 P.2d 73 (1999).

2. THE STATE FAILED TO PRESENT SUFFICIENT EVIDENCE TO PROVE COUNT FOUR BEYOND A REASONABLE DOUBT.

a. Due Process requires the State to prove each element of the offense charged beyond a reasonable doubt. The State bears the burden of proving each element of the crime charged beyond a reasonable doubt. Apprendi v. New Jersey, 530 U.S. 466, 490, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000); In re Winship, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970). A criminal defendant’s

fundamental right to due process is violated when a conviction is based upon insufficient evidence. Id.; U.S. Const. amend. XIV; Const. art. I, § 3; City of Seattle v. Slack, 113 Wn.2d 850, 859, 784 P.2d 494 (1989). On appellate review, evidence is sufficient to support a conviction only if, “after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” Jackson v. Virginia, 443 U.S. 307, 318, 99 S.Ct. 628, 61 L.Ed.2d 560 (1970); State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980).

b. The State produced insufficient evidence to prove beyond a reasonable doubt that Mr. Chappelle received notice of the requirement to appear in court on January 23, 2008. The bail jumping statute provides:

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 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. State v. Fredrick, 123 Wn. App. 347,

353, 97 P.3d 47 (2004); State v. Carver, 122 Wn. App. 300, 306, 93 P.3d 947 (2004).

Here, the State did not prove Mr. Chappelle knew he was supposed to appear in court on January 23, 2008, which was the date he is alleged to have missed court on count four. CP 42, 68. The State presented an exhibit showing that Mr. Chappelle was told to be in court on January 22, 2008. Ex. 26. It also presented an exhibit showing that the trial date of January 23, 2008 was stricken due to Mr. Chappelle's failure to appear. Ex. 27. The State called a supervisor of clerks to testify, but not the clerk who was actually in court on any of the dates in question for this case. 2/26/09 RP 109-10. The supervisor surmised that Mr. Chappelle failed to appear on the 22<sup>nd</sup>, that the case was held over for a day, and that Mr. Chappelle then again failed to appear on January 23. 2/26/09 RP 103-04. The supervisor acknowledged that no documents or other evidence showed Mr. Chappelle was notified of a requirement to appear on January 23, 2008. 2/26/09 RP 118-19.

In essence, the State should have charged Mr. Chappelle with failure to appear on January 22, 2008, but instead charged him with failure to appear on January 23, 2008. The State failed to prove Mr. Chappelle had any idea he was supposed to appear on

the latter date. Accordingly, the conviction for count four must be reversed.

c. The remedy is reversal of the conviction on count four and dismissal of the charge. In the absence of evidence from which a rational trier of fact could find beyond a reasonable doubt Mr. Chappelle committed bail jumping, the judgment may not stand. State v. Spruell, 57 Wn. App. 383, 389, 788 P.2d 21 (1990). The Double Jeopardy Clause of the Fifth Amendment to the United States Constitution prohibits a second prosecution for the same offense after a reversal for lack of sufficient evidence. State v. Hardesty, 129 Wn.2d 303, 309, 915 P.2d 1080 (1996) (citing North Carolina v. Pearce, 395 U.S. 711, 717, 89 S.Ct. 2072, 2076, 23 L.Ed.2d 656 (1969)). The appropriate remedy for the error in this case is reversal of the conviction on count four and dismissal of the charge with prejudice. Green, 94 Wn.2d at 234-35.

3. THE TO-CONVICT INSTRUCTIONS FOR THE BAIL JUMPING COUNTS OMITTED AN ESSENTIAL ELEMENT OF THE CRIME.

a. A to-convict instruction violates due process if it omits an element of the crime charged. The “to convict” instruction must contain all of the elements of the crime because it serves as the yardstick by which the jury measures the evidence to determine

guilt or innocence. State v. Smith, 131 Wn.2d 258, 263, 930 P.2d 917 (1997). The failure to instruct the jury as to every element of the crime charged is constitutional error, because it relieves the State of its burden under the due process clause to prove each element beyond a reasonable doubt. State v. Aumick, 126 Wn.2d 422, 429, 894 P.2d 1325 (1995); see Winship, 397 U.S. at 364. Jurors must not be required to supply an element omitted from the to-convict instruction by referring to other jury instructions. Smith, 131 Wn.2d at 262-63. "It cannot be said that a defendant has had a fair trial if the jury must guess at the meaning of an essential element of a crime or if the jury might assume that an essential element need not be proved." Smith, 131 Wn.2d at 263.

Because the failure to instruct the jury on every element of the crime charged is an error of constitutional magnitude, it may be raised for the first time on appeal. State v. Mills, 154 Wn.2d 1, 6, 109 P.3d 415 (2005). Omission of an element from the to-convict instruction "obviously affect[s] a defendant's constitutional rights by violating an explicit constitutional provision or denying the defendant a fair trial through a complete verdict." State v. O'Hara, 167 Wn.2d 91, 103, 217 P.3d 756 (2009). This Court reviews a

challenged jury instruction de novo. State v. DeRyke, 149 Wn.2d 906, 910, 73 P.3d 1000 (2003).

b. The to-convict instructions on the bail jumping counts violated Mr. Chappelle's right to due process because they omitted the element of notice of the court date. The defendant's receipt of notice of the court date is an essential element of the crime of bail jumping. Fredrick, 123 Wn. App. at 353; Carver, 122 Wn. App. at 306. This essential element was not in the "to convict" instructions for the bail-jumping counts in this case. Instruction 19 provided:

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 to the jury 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. The "to convict" instructions omitted the element that Mr. Thompson knew of the requirement to appear before the court on October 5, 2007. Instruction 20 was similarly worded and omitted

the element that Mr. Thompson knew of the requirement to appear before the court on January 23, 2008. Accordingly, the “to convict” instructions for both counts were constitutionally deficient.

c. The omission prejudiced Mr. Chappelle, requiring reversal of the bail jumping convictions. A constitutional error requires reversal unless the State can prove beyond a reasonable doubt that the error did not affect the verdict obtained. Neder v. United States, 527 U.S. 1, 15, 119 S.Ct. 1827, 144 L.Ed.2d 35 (1999); Chapman v. California, 386 U.S. 18, 24, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967). This Court should reverse the bail jumping convictions because the omission of the element of notice of the court date from the to-convict instruction prejudiced Mr. Chappelle.

As explained above, the State presented insufficient evidence to prove Mr. Chappelle knew he was to appear in court on January 23, 2008. If the jury had been instructed that it had to find this element, it would have acquitted. At the very least, the State cannot show beyond a reasonable doubt that the jury would have convicted Mr. Chappelle on count four if it had been aware of the element of notice of the court date.

As to count three, although Mr. Chappelle signed the “Order Continuing Trial” entered September 14, 2007, and that order

stated that the omnibus hearing date was October 5, the main section of the order stated that the trial date was October 15. Ex. 19. Mr. Chappelle testified that he thought he was supposed to be in court October 15, not October 5. 3/2/09 RP 40. Thus, the State cannot prove beyond a reasonable doubt that a properly instructed jury would have convicted Mr. Chappelle on count three. This Court should reverse both bail jumping convictions and remand for a new trial.

4. THE BAIL JUMPING CONVICTIONS SHOULD BE REVERSED AND THE CHARGES DISMISSED WITHOUT PREJUDICE TO THE STATE'S ABILITY TO REFILE BECAUSE THE AMDENDED INFORMATION WAS CONSTITUTIONALLY DEFICIENT.

a. An information is constitutionally deficient if it fails to set forth every element of the crime charged. Article I, section 22 of our state constitution<sup>2</sup> and the Sixth Amendment to the federal constitution<sup>3</sup> require the State to provide an accused person with notice of the offense(s) charged. State v. Pelkey, 109 Wn.2d 484, 487, 745 P.2d 854 (1987). An offense is not properly charged unless the information sets forth every essential element of the

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<sup>2</sup> "In criminal prosecutions the accused shall have the right ... to demand the nature and cause of the accusation against him ...."

<sup>3</sup> "In all criminal prosecutions, the accused shall ... be informed of the nature and cause of the accusation ...."

crime, both statutory and nonstatutory. State v. Kjorsvik, 117 Wn.2d 93, 97, 812 P.2d 86 (1991). The charging document must contain: (1) the elements of the crime charged, and (2) a description of the specific conduct of the defendant which allegedly constituted that crime. Auburn v. Brooke, 119 Wn.2d 623, 630, 836 P.2d 212 (1992). “This doctrine is elementary and of universal application, and is founded on the plainest principle of justice.” Pelkey, 109 Wn.2d at 488 (quoting State v. Ackles, 8 Wash. 462, 464-65, 36 P. 597 (1894)).

A challenge to the sufficiency of the charging document is of constitutional magnitude and may be raised for the first time on appeal. State v. Leach, 113 Wn.2d 679, 691, 782 P.2d 552 (1989)). Where, as here, the issue is raised for the first time on appeal, the standard of review set forth in Kjorsvik applies. This Court asks: (1) do the necessary facts appear in any form, or by fair construction can they be found, in the charging document; and, if so, (2) can the defendant show that he or she was nonetheless actually prejudiced by the inartful language which caused a lack of notice? Kjorsvik, 117 Wn.2d at 105-06. If the answer to the first question is “no,” reversal is required without reaching the second

question. State v. McCarty, 140 Wn.2d 420, 425-28, 998 P.2d 296 (2000) .

b. The information in this case is constitutionally deficient because it omits the element of notice of the dates on which Mr. Chappelle was to appear in court. Here, the answer to the first question above is “no,” i.e., a necessary element of the crime is neither explicitly stated nor fairly implied. See id. at 428. Accordingly, the convictions on counts three and four should be reversed. Id.

The amended information added two charges of bail jumping. Count three alleged:

That the defendant, Charles Alan Chappelle, in King County, Washington, on or about October 5, 2007, being charged with a Class C felony, having been admitted to bail, and with knowledge of the requirement of a subsequent personal appearance before the court, did fail to appear.

CP 42 (emphasis added). The information alleged that Mr. Chappelle had knowledge of a requirement of a subsequent personal appearance, but did not allege he had notice he was supposed to appear on the specific date in question (October 5, 2007). Similarly on count four, the information alleged that Mr. Chappelle had knowledge of a requirement of a subsequent

personal appearance, but did not allege he had notice he was supposed to appear on the specific date in question (January 23, 2008). CP 42. This is insufficient.

As explained above, the defendant's receipt of notice of the court date is an essential element of the crime of bail jumping. Fredrick, 123 Wn. App. at 353; Carver, 122 Wn. App. at 306. The amended information did not include this element. It was, therefore, constitutionally deficient and reversal is required. McCarty, 140 Wn.2d at 428.

c. The remedy is reversal and dismissal without prejudice. Washington courts "have repeatedly and recently held that the remedy for an insufficient charging document is reversal and dismissal of charges without prejudice to the State's ability to refile charges." State v. Quismundo, 164 Wn.2d 499, 504, 192 P.3d 342 (2008). This Court should reverse Mr. Chappelle's convictions on counts three and four, and remand for dismissal of the charges without prejudice. Id.

#### E. CONCLUSION

For the reasons set forth above Mr. Chappelle respectfully requests that this Court reverse his convictions on counts one and two and remand with instructions to suppress the evidence. He

further requests that this Court reverse the conviction on count four for insufficient evidence. Whether or not count four is reversed for insufficient evidence, the convictions on counts three and four should be reversed for failure to include all elements in the information and “to convict” instructions.

DATED this 30th day of September 2010.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lila J. Silverstein", written over a horizontal line.

Lila J. Silverstein – WSBA 38394  
Washington Appellate Project  
Attorneys for Appellant

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE**

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STATE OF WASHINGTON,	)	
	)	
Respondent,	)	
	)	NO. 63416-0-I
v.	)	
	)	
CHARLES CHAPPELLE,	)	
	)	
Appellant.	)	

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**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 30<sup>TH</sup> DAY OF SEPTEMBER, 2010, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X] KING COUNTY PROSECUTING ATTORNEY APPELLATE UNIT KING COUNTY COURTHOUSE 516 THIRD AVENUE, W-554 SEATTLE, WA 98104	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____
[X] CHARLES CHAPPELLE 10152 32 <sup>ND</sup> AVE SW SEATTLE, WA 98146	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____

**SIGNED** IN SEATTLE, WASHINGTON THIS 30<sup>TH</sup> DAY OF SEPTEMBER, 2010.

X \_\_\_\_\_ 

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