

65665-1

65665-1

No. 65665-1-1

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

---

STATE OF WASHINGTON,

Respondent,

v.

WALID ALADSSANI,

Appellant.

---

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

---

BRIEF OF APPELLANT

---

JAN TRASEN  
Attorney for Appellant

WASHINGTON APPELLATE PROJECT  
1511 Third Avenue, Suite 701  
Seattle, Washington 98101  
(206) 587-2711



TABLE OF CONTENTS

A. SUMMARY OF ARGUMENT ..... 1

B. ASSIGNMENTS OF ERROR..... 1

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR..... 1

D. STATEMENT OF THE CASE ..... 3

E. ARGUMENT ..... 5

    1. THE TRIAL COURT VIOLATED MR. ALADSSANI’S  
    RIGHT TO DUE PROCESS AND EQUAL PROTECTION  
    BY ALLOWING THE STATE TO STRIKE THE LONE  
    AFRICAN-AMERICAN JUROR..... 5

        a. The Fourteenth Amendment prohibits the State  
        from striking a juror because of his or her race..... 5

        b. Here, the State engaged in unconstitutional  
        discrimination by using a peremptory challenge to  
        strike the lone African-American member of the  
        venire..... 8

        c. Reversal is required. .... 17

    2. THE STATE DID NOT PROVE BEYOND A REASONABLE  
    DOUBT THAT MR. ALADSSANI COMMITTED BAIL  
    JUMPING BECAUSE IT FAILED TO PROVE HE WAS  
    THE PERSON WHO SIGNED THE COURT ORDERS  
    SETTING THE COURT HEARINGS..... 18

        a. The State was required to prove beyond a  
        reasonable doubt that Mr. Aladssani was released  
        from custody by court order and required to appear  
        for court ..... 18

        b. The State did not prove beyond a reasonable doubt  
        that Mr. Aladssani was the person who was  
        charged and failed to appear ..... 20

c. The conviction must be reversed and dismissed..	22
3. THE INFORMATION DID NOT ADEQUATELY NOTIFY MR. ALADSSANI OF THE ESSENTIAL ELEMENTS OF THE CRIME OF BAIL JUMPING IN VIOLATION OF HIS CONSTITUTIONAL RIGHTS .....	23
a. The accused has the constitutional right to notice of the charges he faces at trial.....	23
b. The amended information is constitutionally deficient because it failed to specify the essential element of knowledge.....	25
c. The proper remedy is reversal of the conviction and dismissal of the charge without prejudice .....	26
F. CONCLUSION .....	27

## TABLE OF AUTHORITIES

### **Washington Supreme Court**

<u>Auburn v. Brooke</u> , 119 Wn.2d 623, 836 P.2d 212 (1992).....	24
<u>State v. Brown</u> , 162 Wn.2d 422, 173 P.3d 245 (2007).....	19
<u>State v. Hill</u> , 83 Wn.2d 558, 520 P.2d 618 (1974) .....	20
<u>State v. Kelly</u> , 52 Wn.2d 676, 328 P.2d 362 (1958) .....	22
<u>State v. Kjorsvik</u> , 117 Wn.2d 93, 812 P.2d 86 (1991).....	24
<u>State v. Leach</u> , 113 Wn.2d 679, 782 P.2d 552 (1989) .....	23, 24
<u>State v. McCarty</u> , 140 Wn.2d 420, 998 P.2d 296 (2000).....	23, 27
<u>State v. Quismundo</u> , 164 Wn.2d 499, 192 P.3d 342 (2008).....	26
<u>State v. Rhone</u> , 168 Wn.2d 645, 229 P.3d 752 (2010).....	7, 8, 18
<u>State v. Williams</u> , 162 Wn.2d 177, 170 P.3d 30 (2007).....	19

### **Washington Court of Appeals**

<u>State v. Carver</u> , 122 Wn. App. 300, 93 P.3d 947 (2004).....	25, 26
<u>State v. Dixon</u> , 150 Wn. App. 46, 207 P.3d 459 (2009).....	22
<u>State v. Franks</u> , 105 Wn. App. 950, 22 P.3d 269 (2001).....	24
<u>State v. Fredrick</u> , 123 Wn. App. 347, 97 P.3d 47 (2004).....	26
<u>State v. Green</u> , 101 Wn. App. 885, 6 P.3d 53 (2000), <u>rev. denied</u> , 142 Wn.2d 1018 (2001).....	23, 27
<u>State v. Huber</u> , 129 Wn. App. 499, 119 P.3d 388 (2005) ..	20, 21, 22

## United States Supreme Court

<u>Apprendi v. New Jersey</u> , 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000).....	19
<u>Batson v. Kentucky</u> , 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986) .....	6, 8, 18
<u>Jackson v. Virginia</u> , 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979) .....	19
<u>Miller-El v. Dretke</u> , 545 U.S. 231, 125 S.Ct. 2317, 162 L.Ed.2d 196 (2005) .....	6, 7, 11, 15, 16, 17
<u>Snyder v. Louisiana</u> , 552 U.S. 472, 128 S.Ct. 1203, 170 L.Ed.2d 175 (2008) .....	13, 15, 16

## Washington Constitution

Const. art. I, § 3.....	19
Const. art. I, § 22.....	19

## United States Constitution

U.S. Const. amend. VI .....	19, 23
U.S. Const. amend. XIV .....	6, 19

## Statutes

RCW 9A.76.170 .....	19, 25, 26
RCW 9A.76.170(1).....	24

## Rules

CrR 2.1.....	23
RAP 2.5.....	24

A. SUMMARY OF ARGUMENT

In a trial that focused on issues of racial injustice, the State purposely excluded the sole African-American juror in the venire, both due to her race, as well as her view on racism in America.

Due to this impermissible exercise of racial discrimination during jury selection, Walid Aladssani's federal due process and equal protection rights were violated, resulting in structural error that permeated the trial, requiring reversal.

B. ASSIGNMENTS OF ERROR

1. Mr. Aladssani's Fourteenth Amendment rights to due process and equal protection were violated by the State's use of a peremptory challenge to excuse the sole African-American juror.

2. The State did not prove beyond a reasonable doubt that Mr. Aladssani committed the crime of bail jumping.

3. The amended information was constitutionally deficient because it did not include every element of the crime of bail jumping.

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. A party's use of race as a basis to exercise a peremptory challenge violates the Fourteenth Amendment guarantee of equal protection and due process. Here, over defense objection, the

State used a peremptory challenge to strike the sole remaining African-American juror in the venire. Was Mr. Aladssani's right to due process and equal protection violated when the State's strike was race-based and the rationale utilized by the State was pretextual?

2. A defendant may not be convicted of a crime unless the State proves every element of the crime beyond a reasonable doubt, including the identity of the defendant. The State produced certified copies of court documents showing that someone signed notices setting forth dates for court appearances, but did not prove Mr. Aladssani was the person who signed the forms and thereafter failed to appear. Viewing the evidence in the light most favorable to the State, must the conviction for bail jumping be dismissed in the absence of sufficient proof of identity?

3. The accused has the constitutional right to be informed of the charges against him, and all essential elements of a crime must therefore be set forth in the information. Among the elements of bail jumping is that a person "knowingly failed to appear." Where the amended information did not allege Mr. Aladssani knowingly failed to appear, must the bail jumping conviction be reversed and dismissed because the information was constitutionally deficient?

#### D. STATEMENT OF THE CASE

Mr. Walid Aladssani was a student at Renton Technical College (RTC). 6/1/10 RP 15-16. On May 7, 2009, Mr. Aladssani went to the registration office at RTC to request a copy of his transcript. 6/1/10 RP 63-64. He informed Stacey Willson, the clerk at the registration desk, that he was unhappy with RTC's treatment of black students and planned to complain to the media. Id. Ms. Willson copied his transcripts and spoke to Mr. Aladssani for approximately 15 minutes. Id.

Ms. Willson stated that Mr. Aladssani was very angry with the school and had spoken to her in a threatening manner. 6/1/10 RP 63-70. Due to these allegations, Mr. Aladssani was charged with one count of felony harassment. CP 1-4; RCW 9A.46.020(1),(2). The prosecutor later amended the information to add one count of bail jumping. CP 5-6. The jury acquitted Mr. Aladssani of felony harassment, but found him guilty of bail jumping. CP 17-19.

Due to Mr. Aladssani's allegations of racism against the school, the trial court noted that a larger than usual number of jurors in the venire would be required, since such discussions might

tend to make jurors uncomfortable, leading to cause challenges.

The court noted:

This particular case is not the run of the mill issue of do you have any problem being fair because the defendant is African American or some other race than yourself. This one's different because the allegations will involve statements attributed to the defendant as to reasons for his unhappiness with his experience of Renton Technical College, inclining to believe that white students receive greater favor than black students ... And I think that does distinguish it from other cases.

5/26/10 RP 72.

The deputy prosecutor agreed that this case was indeed different, and asked the court to obtain additional jurors, since "discussions about race are an integral part of this case." 5/26/10 RP 67.

Additional jurors were added to the venire, and voir dire was commenced. Juror 23, the only African-American juror in the box, was challenged peremptorily by the State. 5/27/10 RP 99-100, 148-51. In addition, Juror 5, who the trial court held "could be seen as an African American," was also removed by the State, both over defense objection. *Id.* at 101, 151.

As proof of the bail jumping charge, the State called Laurie Bell as a witness, a supervisor in the King County Superior Court

Clerk's Office at the Regional Justice Center. 6/2/10 RP 15-25. Through Ms. Bell, the State introduced certified copies of court documents showing that Mr. Aladssani failed to appear for the omnibus hearing on September 4, 2009, and that a warrant had been issued for his arrest. 6/2/10 RP 20, 25; Ex. 14, 17, 18. Through Ms. Bell and over defense objection, the State also introduced the clerk's minutes sheet, indicating the lack of a "P," allegedly showing that Mr. Aladssani was not present. 6/2/10 RP 22-23; Ex. 15. No other proof of the bail jumping charge was offered.

Mr. Aladssani was found guilty of bail jumping by a jury that did not include a single African-American juror, following the prosecutor's use of a peremptory challenge to strike the sole African-American juror in the venire. CP 19; 5/27/10 RP 99-100, 148-51.

#### E. ARGUMENT

1. THE TRIAL COURT VIOLATED MR. ALADSSANI'S RIGHT TO DUE PROCESS AND EQUAL PROTECTION BY ALLOWING THE STATE TO STRIKE THE LONE AFRICAN-AMERICAN JUROR.

a. The Fourteenth Amendment prohibits the State from striking a juror because of his or her race. "[T]he State denies

a black defendant equal protection of the laws when it puts him on trial before a jury from which members of his race have been purposefully excluded.” Batson v. Kentucky, 476 U.S. 79, 85, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986); U.S. Const. amend. XIV. Racial discrimination in jury selection harms not only the accused, but also the excluded juror and society as a whole. Batson, 476 U.S. at 87.

Defendants are harmed, of course, when racial discrimination in jury selection compromises the right of trial by impartial jury, but racial minorities are harmed more generally, for prosecutors drawing racial lines in picking juries establish state-sponsored group stereotypes rooted in, and reflective of, historical prejudice.

Miller-El v. Dretke, 545 U.S. 231, 237-38, 125 S.Ct. 2317, 162 L.Ed.2d 196 (2005).

Courts apply a three-part analysis to determine whether a potential juror was peremptorily challenged pursuant to discriminatory criteria. First, the defendant must make out a prima facie case of purposeful discrimination by showing that the totality of the relevant facts gives rise to an inference of discriminatory purpose. Batson, 476 U.S. at 93-94. Washington follows a bright-line rule whereby a defendant establishes a prima facie case of discrimination when, as here, the State exercised a peremptory challenge against the sole remaining venire member of the

defendant's racial group. State v. Rhone, 168 Wn.2d 645, 659, 229 P.3d 752 (2010) (Alexander, J., dissenting); id. at 658 (Madsen, C.J., concurring and stating that henceforth the rule advocated by the four dissenters would apply).

Second, the burden shifts to the State to explain the exclusion and demonstrate that race-neutral selection criteria and procedures "produced the monochromatic result." Batson, 476 U.S. at 94. The prosecutor must give a "clear and reasonably specific" explanation of his or her reasons for striking the relevant juror. Miller-El v. Dretke, 545 U.S. at 239.

Third and finally, the trial court has the duty to determine if the defendant has established purposeful discrimination. Batson, 476 U.S. at 98. In deciding whether the exercise of the peremptory challenge violates equal protection, the court should consider all relevant evidence, and not simply take the State's race-neutral explanation at face value. Id. at 97-98; Miller-El v. Dretke, 545 U.S. at 240. Prosecutors' questions, patterns of peremptory challenges, and disproportionate impact may provide circumstantial evidence of discriminatory intent. Batson, 476 U.S. at 93. "For example, total or seriously disproportionate exclusion of [African Americans] from

jury venires is itself such an unequal application of the law as to show intentional discrimination.” Id. (internal citations omitted).

This Court reviews a trial court’s Batson ruling for clear error. Rhone, 168 Wn.2d at 651. The error is structural, requiring reversal without showing prejudice. Batson, 476 U.S. at 100.

b. Here, the State engaged in unconstitutional discrimination by using a peremptory challenge to strike the lone African-American member of the venire. Here, the State exercised a peremptory challenge to strike the sole African-American juror from the venire – a strike to which the defense lodged an objection. 5/27/10 RP 107-08. Thus, Mr. Aladssani established a prima facie case of improper discrimination. Rhone, 168 Wn.2d at 658-59. The State’s proffered race-neutral reasons for the exclusion are pretextual. The trial court clearly erred in allowing the challenge.

The trial court credited the State’s explanation that Juror 23 had become upset while discussing the issue of race relations in America during voir dire. 5/27/10 RP 100, 149-50. In addition, the court accepted the State’s recollection of Juror 23’s position on harassment: that in evaluating a threat, she would require a person to grab her physically, otherwise she would tend to overlook the

conduct. 5/27/10 RP 100, 149. This however, is a misstatement and a selective rendition of what occurred during voir dire.

At the same time that Juror 23 became upset during the discussion of race within the venire, when she was questioned individually, she discussed that as an African-American woman, she had actually simply felt uncomfortable discussing racism in such a large group of white people. 5/27/10 RP 88. Juror 23 continued:

When we were talking about the racism thing, about the whole racism thing, I don't know why, but I like – I feel like when I'm around a lot of Caucasians, like I feel like they look down on me and that they like be talking about me, even though I don't have any problem against like any of the races, any other nationalities, I mean. But I just feel uncomfortable like in a big group of certain people because of how I think they think of me or whatever. And I didn't really mean to cry earlier, but I was just thinking about that.

5/27/10 RP 88.

The trial court proceeded to ask Juror 23 whether there was any reason she could not serve as a fair juror, and she replied, “No.” 5/27/10 RP 89. She also replied “No” when the court asked whether her emotions over “some of the issues that were discussed” would affect her ability to “evaluat[e] the State’s case.” Id. Juror 23 was asked by the court whether she could be fair to

Mr. Aladssani, and Juror 23 responded, "If you're asking me if I'll be fair no matter what the case may be and just go according to the evidence, then yes." 5/27/10 RP 89.

The State then informed the trial court that it had additional questions for Juror 23:

State: Thank you. I just want to ask you, there is going to be testimony about race and possibly the perception with racism. Is that going to bring up some bad memories or bad feelings?

Juror 23: It shouldn't. I'm just a little sensitive sometimes, so I didn't mean to cry or anything, but – (juror is cut off by deputy prosecutor)

State: You don't have to apologize anymore. All right. Thank you.

Court: Okay. Ms. Redford, did you have questions?

5/27/10 RP 90-91.

Even though Juror 23 became flustered during the discussion of racism in the full venire, she made clear she could decide the case based upon the evidence and law presented. 5/27/10 RP 89-90. The deputy prosecutor's subsequent effort to bait her into an emotional response does not undercut her plain

qualifications as a juror, but rather demonstrates the State's pretextual challenge of this juror.<sup>1</sup>

Next, the State argued that it exercised a peremptory challenge on Juror 23 due to her views on harassment and the manner in which she would evaluate the seriousness of a threat. 5/27/100 RP 100. The State argued that Juror 23 had claimed "that for her to perceive a threat to be real the person had to be grabbing onto her." *Id.* First, the deputy prosecutor and the trial court misstated the record by attributing these comments regarding harassment to Juror 23.

The actual exchange between the State and Juror 23 was quite a bit different. During voir dire, the deputy prosecutor created a hypothetical using a "silly scenario," as she put it, concerning a joking threat to kill delivered between friends, due to jealousy over a boyfriend. 5/27/10 RP 27-30. The jury venire discussed this

---

<sup>1</sup> The deputy prosecutor also argued the following in challenging Juror 23 for cause:

[S]he did say that she feels uncomfortable when she is debating issues or talking about this with Caucasian people, and if she is going to be deliberating with other Caucasian people and this subject is going to be addressed, I just don't think that she is the right person for this, for this jury, and I think she should be challenged for cause.

5/27/10 RP 92-93. The cause challenge was denied. *Id.* at 94. It seems that the deputy prosecutor was actually advocating the seating of an all-white jury, in order to preclude potential conflict during deliberations. *See, e.g., Miller-EI*, 545 U.S. at 241 ("Happenstance is unlikely to produce this disparity.").

hypothetical for several minutes, with all jurors agreeing that a friend jokingly saying “if you say anything to him I’m going to kill you” did not qualify as a credible threat to kill. Id. at 27-30. The prosecutor’s voir dire then moved on to a discussion of more serious threats, such as those made in schools, airports, and between strangers. Id. at 51-60.

When asked about the policy to call 911 whenever there is a telephone or bomb threat at an airport, the deputy prosecutor inquired of Juror 23. Juror 23 responded,

I believe in that particular situation you have to take it really seriously because once your [sic] are up in the plane, like everybody’s lives are at stake and in that kind of situation. So basically, I feel, basically, you should take that kind of thing seriously, and I think she should call 911.

5/27/10 RP 53.

Juror 23’s response to this question can only be seen as pro-law enforcement. The prosecutor continued to contrast the two situations – a joking threat between friends and a serious threat from a stranger. 5/27/10 RP 53-54. Another juror, Juror 24, noted that in the hypothetical threat between friends, the prosecutor was “being more sarcastic than being a real threat,” and contrasted this to a genuine threat. Id. Despite Juror 23’s previous pro-

prosecution answer regarding taking threats seriously and calling 911, the prosecutor returned to question her again:

State: Okay. So would you take it pretty seriously from a stranger, aside from my silly scenario of my friend?

Juror 23: To me if the person grabbed me by the collar or has a real serious look in their eyes maybe I'll take it seriously. Other than that I probably just overlook it.

5/27/10 RP 54 (emphasis added).

Although the State argued that Juror 23 had insisted that physical contact was necessary for a threat to be credible, it is clear from the above exchange that Juror 23's response was simply answering both parts of the State's compound question. The deputy prosecutor was asking jurors to contrast two scenarios: a sarcastic threat made between friends with a serious threat made by a stranger. 5/27/10 RP 53-54. Juror 23's response did just that. Indeed, Juror 23 was not alone in her belief that something more than mere words were necessary, as the 12 jurors selected to judge Mr. Aladssani acquitted him of the harassment charge based upon words they found were not a credible threat.

Clearly all of a juror's statements must be considered in addressing a Batson challenge. Snyder v. Louisiana, 552 U.S. 472, 478, 128 S.Ct. 1203, 170 L.Ed.2d 175 (2008) ("in considering a

Batson objection, or in reviewing a ruling claimed to be Batson error, all of the circumstances that bear upon the issue of racial animosity must be consulted”). The State’s claim that it was concerned about Juror 23’s allegedly fragile emotional state was highly speculative, and cannot support the strike. See id. at 482 (prosecutor’s “highly speculative” claim that juror might find defendant guilty of a lesser-included offense in order to be finished earlier and return to his job was not a sufficient race-neutral reason for striking the juror).

The record demonstrates the actual reason the prosecutor struck Juror 23 was the scenario that was discussed earlier during voir dire – she provided perspective as a person of color and she cared deeply and emotionally about issues of racism. 5/27/10 RP 88-89. But black jurors may not be excluded based on an assumption that they will be unable to impartially consider the State’s case against a black defendant. Batson, 476 U.S. at 89.

As to Juror 23’s views on harassment, if the views ascribed to Juror 23 by the State were not pretextual, the State would also have dismissed Juror 19, who stated that even if a stranger threatened to kill her, “I think you got to look at the situation and is it a fit of – burst of anger or is it more a persistent threat that needs to

be taken seriously.” 5/27/10 RP 28. Yet Juror 19, who was white, served on the jury, and Juror 23, who was African American, did not. 5/27/10 RP 150-51, 163-68. In addition, Juror 21 noted that under the circumstances, he would not have taken the threat described by the prosecutor seriously. Id. at 29. When asked to elaborate, Juror 21 discussed that he would listen to his “gut feelings” depending on the background of a threat – essentially the same as the threat assessment described by Juror 23. Id. at 29-30. Yet Juror 21, who was white, was seated on the jury, while Juror 23, who was African American, was not. 5/27/10 RP 150-51, 163-68.

Thus, this proffered reason for the strike of Juror 23 fails. See Snyder, 552 U.S. at 479-83 (State’s proffered reason for striking juror – his student-teaching obligation – failed because other members of the venire also had conflicting obligations but they were not struck); Miller-El v. Dretke, 545 U.S. at 241 (“If a prosecutor’s proffered reason for striking a black panelist applies just as well to an otherwise-similar nonblack who is permitted to serve, that is evidence tending to prove purposeful discrimination to be considered at Batson’s third step”).

Another circumstance that must be considered in reviewing the Batson ruling is the fact that the State also struck the only other likely African-American venire member under consideration, Juror 5. 5/27/10 RP 101.<sup>2</sup> Despite the State's protestations that Juror 5's race was unclear, the trial court so found: "it appeared to the court that juror 5 could be seen as an African American." 5/27/10 RP 101. The court also held:

Maybe number 5 is not an African American, but number 5, at least in the view of the court, is an individual with dark skin, and likely is a member of a qualifying minority. So I am satisfied that in terms of potential Batson challenge, that the first element has been established.

Id. at 151.

The court granted the State's challenge, and the fact that the State tried for a monochromatic panel should be considered further evidence of racial animosity. See Snyder, 552 U.S. at 478 (explaining that court would consider strike of a second non-white juror in analyzing whether strike of the first juror was race-based). In Miller-EI, the Court found it significant that "prosecutors used their peremptory strikes to exclude 91% of the eligible African-American venire members." Miller-EI v. Dretke, 545 U.S. at 241.

---

<sup>2</sup> The deputy prosecutor stated that she had "no idea what his ethnicity is or if he's considered a person of color." 5/27/10 RP 101.

Here, prosecutors used their peremptory strikes to exclude 100% of the eligible African-American venire members, and tried to exclude 100% of the non-white members. 5/27/10 RP 99-100, 148-58.

“Happenstance is unlikely to produce this disparity.” Id.

Juror 23’s responses during voir dire indicated that she would have taken her responsibilities as a juror seriously and thoughtfully. She offered pro-law enforcement answers to the deputy prosecutor and showed a deep concern for issues of racial justice, issues which were integral to the case. 5/27/10 RP 88-90. When questioned individually by the court, she answered without hesitation, “If you’re asking me if I’ll be fair no matter what the case may be and just go according to the evidence, then yes.” 5/27/10 RP 89.

The prosecutor struck her anyway, and the evidence indicates that the strike was based on race. See Miller-El v. Dretke, 545 U.S. at 247 (“Fields should have been an ideal juror in the eyes of a prosecutor seeking a death sentence, and the prosecutors’ explanations for the strike cannot reasonably be accepted”). The trial court erred in allowing the State to dismiss the lone African-American juror.

c. Reversal is required. Where a trial court’s ruling on a Batson challenge is clearly erroneous, reversal must be

granted. Rhone, 168 Wn.2d at 651. The error is structural, requiring reversal without a showing of prejudice. Batson, 476 U.S. at 100. In this trial that focused on issues of racial injustice, the State purposely excluded the sole African-American juror in the venire. This Court should reverse Mr. Aladssani's conviction and remand for a new trial.

2. THE STATE DID NOT PROVE BEYOND A REASONABLE DOUBT THAT MR ALADSSANI COMMITTED BAIL JUMPING BECAUSE IT FAILED TO PROVE HE WAS THE PERSON WHO SIGNED THE COURT ORDERS SETTING THE COURT HEARINGS

a. The State was required to prove beyond a reasonable doubt that Mr. Aladssani was released from custody by court order and required to appear for court . The due process clauses of the federal and state constitutions require the State prove every element of a crime beyond a reasonable doubt.<sup>3</sup>

---

<sup>3</sup> The Fourteenth Amendment states in part, "nor shall any State deprive any person of life, liberty, or property, without due process of law."

The Sixth Amendment provides in part, "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed."

Article I, Section 3 of the Washington Constitution states, "No person shall be deprived of life, liberty, or property, without due process of law."

Article I, Section 22 provides specific rights in criminal cases. "In all criminal prosecutions the accused shall have the right to appear and defend in person, or by counsel . . . to testify in his own behalf, to meet the witnesses against him face to face, to have compulsory process to compel the attendance of witnesses in his owns behalf, to have a speedy public trial by an impartial jury . . ."

Apprendi v. New Jersey, 530 U.S. 466, 476-77, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000); State v. Williams, 162 Wn.2d 177, 187, 170 P.3d 30 (2007); U.S. Const. amends. VI, XIV; Const. art. I, §§ 3, 22. The critical inquiry on appellate review is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the elements of the crime beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 334, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); State v. Brown, 162 Wn.2d 422, 428, 173 P.3d 245 (2007). The appellate court draws all reasonable inferences in favor of the State. Brown, 162 Wn.2d at 428.

Mr. Aladssani was convicted of bail jumping. CP 19. The bail jumping statute reads, in relevant part:

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 the 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 classification of the crime for purposes of sentencing depends upon the classification of the underlying offense. RCW 9A.76.170(3).

b. The State did not prove beyond a reasonable doubt that Mr. Aladssani was the person who was charged and failed to appear. The State introduced certified copies of various pleadings from the court file and called a superior court clerk to explain what the various documents meant. 6/2/10 RP 7-29; Ex. 14, 15, 17, 18. No witness properly identified Mr. Aladssani's signature, or Mr. Aladssani himself as the person who signed the documents setting the court dates.<sup>4</sup>

"It is axiomatic in criminal trials that the prosecution 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)). Identity is an issue for the jury to decide, and it may be based upon direct or circumstantial evidence. Id.

In Huber, this Court reversed a bail jumping conviction for insufficient evidence where the facts were similar to in this case. There, the State produced certified copies of (1) the information charging the defendant with violation of a protection order and witness tampering, (2) a written court order requiring the defendant

---

<sup>4</sup> After the State rested, the court denied Mr. Aladssani's motion to dismiss the bail jumping charge. 6/2/10 RP 35-36.

to appear on a specific date, (3) the clerk's minutes showing the defendant did not appear on that date, and (4) a bench warrant for the defendant's arrest. Huber, 129 Wn. App. at 500-01. The State did not call any witness or otherwise show that the exhibits related to the Huber who was present in court. Id. at 501. The defendant did not present any evidence and argued in closing that the State had not proved he was the person who had jumped bail. Id.

This Court reversed the bail jumping conviction because the State did not prove the defendant present at trial was the same person who failed to appear. Huber, 129 Wn. App. at 503. The Huber Court noted that to sustain its burden of proof of identity, the State must do more than provide documentary evidence; it must also prove the person named in the documents is the person on trial. Id. at 502.

To sustain this burden [of identity] when criminal liability depends on the accused's being the person to whom a document pertains – as, for example, in most if not all prosecutions for first degree escape, being a felon in possession of an item that a felony may not have, lying under oath on a written application, and being an habitual criminal – the State must do more than authenticate and admit the documents; it also must show beyond a reasonable doubt “that the person named therein is the same person on trial.”

Id. (quoting State v. Kelly, 52 Wn.2d 676, 678, 328 P.2d 362 (1958)) (internal citations omitted). Thus, the State must present some evidence independent of the court records to show the defendant is the same person mentioned in the documents; “identity of names alone” is not sufficient to prove identity. Id.

c. The conviction must be reversed and dismissed.

As in Huber, Mr. Aladssani’s bail jumping conviction must be reversed because the State did not establish his identity as the person who signed the notice of hearing date and failed to appear. While the State provided certified copies of court records, it failed to produce any independent evidence that Mr. Aladssani was the person who received the notice and failed to appear, as it presented insufficient evidence that the signature on the documents was his signature. Mr. Aladssani’s bail jumping conviction must therefore be reversed and dismissed. Huber, 129 Wn. App. at 504 (no proof of identity); State v. Dixon, 150 Wn.App. 46, 50, 53, 207 P.3d 459 (2009) (no proof of notice).

3. THE INFORMATION DID NOT ADEQUATELY NOTIFY MR. ALADSSANI OF THE ESSENTIAL ELEMENTS OF THE CRIME OF BAIL JUMPING IN VIOLATION OF HIS CONSTITUTIONAL RIGHTS

a. The accused has the constitutional right to notice of the charges he faces at trial. A defendant has the constitutional right to be informed of the nature and cause of the charges against him.<sup>5</sup> U.S. Const. amends. VI, XIV; Const. art. I § 22. Accordingly, the charging document must set forth the essential elements of the alleged crime in order to permit the accused to prepare his defense. State v. McCarty, 140 Wn.2d 420, 424-25, 998 P.2d 296 (2000); State v. Green, 101 Wn.App. 885, 889, 6 P.3d 53 (2000), rev. denied, 142 Wn.2d 1018 (2001). In order to satisfy this constitutional requirement, Washington's "essential elements rule" requires the charging document to clearly set forth every material element of the crime along with essential supporting facts. McCarty, 140 Wn.2d at 425; State v. Leach, 113 Wn.2d 679, 686-89, 782 P.2d 552 (1989); CrR 2.1(a)(1).

---

<sup>5</sup> The Sixth Amendment provides in part, "In all criminal prosecutions, the accused shall . . . be informed of the nature and cause of the accusation." Article I, section 22 similarly provides in part, "In criminal prosecutions the accused shall have the right . . . to demand the nature and cause of the accusation against him."

Although Mr. Aladssani did not challenge the information in the trial court, a challenge to the constitutional sufficiency of a charging document may be raised for the first time on appeal. Leach, 113 Wn.2d at 690-91, 697; RAP 2.5(a). A charging document challenged after the State rests will be found valid only if (1) the necessary facts appear in some form or if they can be found by fair construction on the face of the document, and, if so, (2) if the defendant was not actually prejudiced by the inartful language. State v. Kjorsvik, 117 Wn.2d 93, 105-06, 812 P.2d 86 (1991). If, however, the information does not include all the essential elements of the offense, the insufficiency alone is enough to warrant dismissal; the defendant need not show prejudice. Auburn v. Brooke, 119 Wn.2d 623, 636, 836 P.2d 212 (1992); State v. Franks, 105 Wn. App. 950, 22 P.3d 269 (2001).

A conviction for bail jumping requires proof that the accused failed to appear, having been released by a court order "with knowledge of the requirement of a subsequent personal appearance." RCW 9A.76.170(1). This knowledge element is the only mental state required for conviction. The statute requires that the defendant have knowledge of his subsequent court date, and assuming knowledge is established at the time of release, the

defendant is strictly liable for a failure to appear; nonappearance is not excused by poor memory or mistake. State v. Carver, 122 Wn. App. 300, 93 P.3d 947 (2004).

b. The amended information is constitutionally deficient because it failed to specify the essential element of knowledge. In the instant case, the amended information, filed on February 3, 2010, charged Mr. Aladssani as follows:

And I, Daniel T. Satterberg, Prosecuting Attorney aforesaid further do accuse WALID AMIR AL-ADSSANI of the crime of **Bail Jumping**, based on a series of acts connected together with another crime charged herein, committed as follows:

That the defendant WALID AMIR AL-ADSSANI in King County, Washington, on or about September 4, 2009, being charged with Feloy [sic] Harassment, a Class C felony and having been admitted to bail, did fail to appear;

Contrary to RCW 9A.76.170, and against the peace and dignity of the State of Washington.

CP 5-6 (emphasis in original).

To charge bail jumping, the information must allege that the defendant had "knowledge of the requirement of a subsequent personal appearance before any court of the state." RCW 9A.76.170(1) (emphasis added). It is not sufficient to simply state that the defendant was admitted to bail and failed to appear on a

particular date, unless it is specified that he had notice of his obligation to appear on that date. RCW 9A.76.170(1); State v. Fredrick, 123 Wn. App. 347, 353, 97 P.3d 47 (2004); Carver, 122 Wn. App. 300.

Here, the information merely informed Mr. Aladssani that he was charged with felony harassment and that he had been released on bail. The information neglects to state that Mr. Aladssani had been notified to appear, or that he had either actual or constructive knowledge of his hearing date on September 4, 2009. The information is therefore constitutionally deficient.

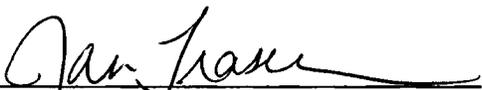
c. The proper remedy is reversal of the conviction and dismissal of the charge without prejudice. The information in this case does not contain the essential elements of bail jumping because it does not include the essential mental state. Thus, even under a liberal construction, the information fails the first part of the Kjorsvik test. Mr. Aladssani's conviction must therefore be reversed without prejudice. State v. Quismundo, 164 Wn.2d 499, 504, 192 P.3d 342 (2008) (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 re-file charges”); McCarty, 140 Wn.2d at 428; Green, 101 Wn. App. at 891.

F. CONCLUSION

Walid Aladssani’s conviction for bail jumping must be reversed and dismissed due to the State’s violation of his due process and equal protection rights during jury selection. His conviction must also be reversed because the State did not prove his identity beyond a reasonable doubt. In the alternative, the conviction must be reversed and dismissed without prejudice because the charging document does not include the essential elements of bail jumping.

Respectfully submitted this 17<sup>th</sup> day of March, 2011.

  
JAN TRASEN (WSBA 41177)  
Washington Appellate Project  
Attorneys for Appellant

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

STATE OF WASHINGTON,	)	
	)	
Respondent,	)	
	)	NO. 65665-1-I
v.	)	
	)	
WALID AL-ADSSANI,	)	
	)	
Appellant.	)	

**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 17<sup>TH</sup> DAY OF MARCH, 2011, 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:

- |  |                          |  |
|--|--------------------------|--|
| <input checked="" type="checkbox"/> KING COUNTY PROSECUTING ATTORNEY<br>APPELLATE UNIT<br>KING COUNTY COURTHOUSE<br>516 THIRD AVENUE, W-554<br>SEATTLE, WA 98104 | (X)<br>( )<br>( )<br>( ) | U.S. MAIL<br>HAND DELIVERY<br>_____  |
| <input checked="" type="checkbox"/> WALID AL-ADSSANI<br>(NO VALID ADDRESS)<br>C/O COUNSEL FOR APPELLANT<br>WASHINGTON APPELLATE PROJECT                          | ( )<br>( )<br>(X)        | U.S. MAIL<br>HAND DELIVERY<br>RETAINED FOR<br>MAILING ONCE<br>ADDRESS OBTAINED |

*MARIA ARRANZA RILEY*  
*FILED*  
*17 MAR 2011*

**SIGNED** IN SEATTLE, WASHINGTON THIS 17<sup>TH</sup> DAY OF MARCH, 2011.

X \_\_\_\_\_ *[Signature]*

**Washington Appellate Project**  
701 Melbourne Tower  
1511 Third Avenue  
Seattle, WA 98101  
Phone (206) 587-2711  
Fax (206) 587-2710