

NO. 35087-4-II

---

---

**COURT OF APPEALS, DIVISION II  
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

CLARENCE D. TATE, APPELLANT

---

Appeal from the Superior Court of Pierce County  
The Honorable Thomas J. Felnagle

No. 04-1-01529-6

---

**BRIEF OF RESPONDENT**

---

GERALD A. HORNE  
Prosecuting Attorney

By  
KATHLEEN PROCTOR  
Deputy Prosecuting Attorney  
WSB # 14811

930 Tacoma Avenue South  
Room 946  
Tacoma, WA 98402  
PH: (253) 798-7400

FILED  
MAY 11 2004  
CLARENCE D. TATE

**Table of Contents**

A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.....1

    1. Did the State adduce sufficient evidence to enable a reasonable jury to find that defendant intended to cash a counterfeit check and assisted Tammy Bromley in doing the same? .....1

    2. Did defendant fail to meet his burden of establishing an affirmative defense to defendant's three counts of bail jumping?.....1

    3. Did the court properly admit the information charging defendant with forgery and theft? .....1

B. STATEMENT OF THE CASE .....1

    1. Procedure.....1

    2. Facts .....2

C. ARGUMENT.....7

    1. THE STATE PRESENTED SUFFICIENT EVIDENCE TO ENABLE A REASONABLE JURY TO FIND THAT DEFENDANT INTENDED TO CASH A FRAUDULENT CHECK AND ASSISTED BROMLEY IN DOING THE SAME.....7

    2. DEFENDANT FAILED TO MEET ITS BURDEN OF ESTABLISHING AN AFFIRMATIVE DEFENSE TO DEFENDANT'S THREE COUNTS OF BAIL JUMPING.....13

    3. THE TRIAL DID NOT ABUSE ITS DISCRETION WHEN IT ADMITTED THE PROSECUTOR'S INFORMATION CHARGING DEFENDANT WITH FORGERY AND THEFT. ....16

D. CONCLUSION .....18

## Table of Authorities

### Federal Cases

<u>Jackson v. Virginia</u> , 443 U.S. 307, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979).....	7
--	---

### State Cases

<u>In re Seago</u> , 82 Wn.2d 736, 513 P.2d 831 (1973).....	8
<u>Nissen v. Obde</u> , 55 Wn.2d 527, 348 P.2d 421 (1960).....	8
<u>Seattle v. Gellein</u> , 112 Wn.2d 58, 61, 768 P.2d 470 (1989).....	7
<u>State v. Barrington</u> , 52 Wn. App. 478, 484, 761 P.2d 632 (1987), <u>review denied</u> , 111 Wn.2d 1033 (1988) .....	8
<u>State v. Camarillo</u> , 115 Wn.2d 60, 71, 794 P.2d 850 (1990).....	8, 12
<u>State v. Casbeer</u> , 48 Wn. App. 539, 542, 740 P.2d 335, <u>review denied</u> , 109 Wn.2d 1008 (1987).....	8
<u>State v. Cord</u> , 103 Wn.2d 361, 367, 693 P.2d 81 (1985).....	9
<u>State v. Delmarter</u> , 94 Wn.2d 634, 638, 618 P.2d 99 (1980) .....	8
<u>State v. Gonzalez-Lopez</u> , 132 Wn. App. 622, 633, 132 P.3d 1128 (2006) .....	17
<u>State v. Green</u> , 101 Wn. App. 885, 6 P.3d 53 (2000).....	17
<u>State v. Green</u> , 94 Wn.2d 216, 221-22, 616 P.2d 628 (1980) .....	7
<u>State v. Holbrook</u> , 66 Wn.2d 278, 401 P.2d 971 (1965) .....	8
<u>State v. Ibsen</u> , 98 Wn. App. 214, 989 P.2d 1184 (1999).....	17
<u>State v. James</u> , 104 Wn. App. 25, 33, 15 P.3d 1041 (2000).....	16, 17, 18
<u>State v. Joy</u> , 121 Wn.2d 333, 338, 851 P.2d 654 (1993).....	7
<u>State v. Mabry</u> , 51 Wn. App. 24, 25, 751 P.2d 882 (1988).....	7

<u>State v. McCullum</u> , 98 Wn.2d 484, 488, 656 P.2d 1064 (1983) .....	7
<u>State v. Myers</u> , 133 Wn.2d 26, 38, 941 P.2d 1102 (1997) .....	10
<u>State v. Rempel</u> , 114 Wn.2d 77, 82-83, 785 P.2d 1134 (1990).....	7
<u>State v. Russell</u> , 27 Wn. App. 309, 617 P.2d 467 (1980).....	16
<u>State v. Salinas</u> , 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).....	8
<u>State v. Turner</u> , 29 Wn. App. 282, 290, 627 P.2d 1323 (1981).....	8

**Statutes**

RCW 5.44.010 .....	16, 17
RCW 9A.08.020(3)(a) .....	12
RCW 9A.56.020(1)(b).....	10
RCW 9A.56.030(1)(a) .....	10
RCW 9A.60.020(1)(a)(b) .....	9
RCW 9A.76.010 .....	14, 15
RCW 9A.76.170 .....	14

A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Did the State adduce sufficient evidence to enable a reasonable jury to find that defendant intended to cash a counterfeit check and assisted Tammy Bromley in doing the same?
2. Did defendant fail to meet his burden of establishing an affirmative defense to defendant's three counts of bail jumping?
3. Did the court properly admit the information charging defendant with forgery and theft?

B. STATEMENT OF THE CASE.

1. Procedure

On March 29, 2004, the Pierce County Prosecutor's Office filed an information charging appellant, CLARENCE TATE, hereinafter "defendant," with two counts of forgery and two counts of theft. CP 1-3. On December 19, 2005, the Prosecutor's Office filed and amended information additionally charging defendant with three counts of bail jumping. CP 45-48.

The matter came on for trial before the Honorable Thomas J. Felnagle on March 23, 2006. 13RP<sup>1</sup> 13. After hearing the evidence the jury convicted defendant as charged. 16RP 226-227, CP 55-56. At the sentencing hearing on June 2, 2006, the parties agreed that defendant's offender score was 7 with a resulting standard sentence of 22-29 months for each count of forgery, 43-57 months for each count of theft, and 51 to 60 months for each count of bail jumping. CP 61-74, 18RP 9-10. Upon defendant's motion, the court stayed sentencing to determine whether defendant was eligible for a Drug Offender Sentencing Alternative (DOSA). 18RP 13. On July 7, 2006, the court imposed a DOSA sentence, ordering defendant to 27.75 months in confinement and 27.75 months in community custody. CP 61-74, 19RP 16-17.

Defendant timely appealed from this judgment and sentence. CP 75.

2. Facts

a. Facts pertaining to defendant's check fraud and theft charges.

Ms. Chang Kim, an employee of Best Check Cashing, testified that she had known defendant for 20 years. 13RP 35-37. She testified that

---

<sup>1</sup> There are 19 verbatim report or proceedings. They are cited as: **1RP** – 4/14/04; **2RP** – 6/29/04; **3RP** – 8/12/04; **4RP** – 2/9/05; **5RP** – 12/16/04, 3/14/05, 6/23/05, 9/6/05, 10/3/05; **6RP** – 3/21/05; **7RP** – 3/30/05; **8RP** – 4/20/05; **9RP** – 4/25/05; **10RP** – 4/26/05; **11RP** – 6/8/05; **12RP** – 3/22/06; **13RP** – 3/23/06; **14RP** – 3/27/06; **15RP** – 3/29/06; **16RP** – 3/30/06; **17RP** – 5/1/06; **18RP** – 6/2/06; **19RP** – 7/7/06.

defendant came into the Best Check Cashing on two occasions in January of 2004. Id. On the first occasion Kim was not working, but another employee accepted and cashed a Harbor Community Bank cashier's check for defendant. 13RP 37. The check was for \$4,851.22. 13RP 38. Prior to cashing the check, the Best Check Cashing employee had defendant show his identification and fill out an application. 13RP 43. The employee, additionally, called a number printed on the check for verification. 13RP 37-39.

Defendant returned to Best Check Cashing the following day with Tammy Bromley. 13RP 39. Kim cashed the Harbor Community Bank cashier's check made out to Bromley for \$ 5,824.10. 13RP 41. Prior to cashing the check, Kim called the number printed on the check for its verification. 13RP 42. Kim also had Bromley complete an application and show personal identification. 13RP 41-43, 47, 52.

The owner of Best Check Cashing testified that the checks he received from defendant and Bromley were counterfeit, and that he never received payment on the checks. 13RP 55-56. Likewise, Karen Gurley, head of operations of Western Securities Bank, testified that both checks were fraudulent. (Western Securities Bank purchased Harbor Community Bank in December, 2004.) 13RP 57. Gurley was able to determine that the checks were not a Harbor Community Bank checks. 13RP 57. The checks' logo, address, and color were incorrect. 13RP 58. The top of the checks, as opposed to the sides, were perforated. Id.

Detective Gary Hill testified that Kim identified defendant and Bromley as the individuals who cashed the counterfeit checks. 14RP 71. He prepared a photomontage and Kim identified the photographs of defendant and Bromley. 14RP 71-72.

At trial defendant testified that he had paid Tony Drake of Vincent E. Tax Service \$250 to file his income taxes. 15RP 142. Defendant testified that Drake gave him the fraudulent cashier's check. Defendant testified that he believed that the check Drake gave him was his tax return and that he did not know the check was counterfeit. 15RP 144-145. Defendant testified that Drake had an office in Federal Way, but that he came to defendant's store to pick up defendant's W-2 tax form and then returned within 24 hours and gave him the check. 15RP 172. Defendant did not have a copy of the W-2 that he provided Drake. 15RP 171. Defendant testified that he had a bank account at a local bank where he could have cashed the check for free, but because it was after hours he went to Best Check Cashing and paid \$150 to cash the check. 15 RP 173-174.

Tammy Bromley, defendant's business partner and co-defendant in this case, testified that she too had her taxes prepared by Drake and that he gave her a Harbor Community Bank Cashiers check for her tax refund. 14RP 101-103, 108. Bromley testified that the prosecutor did not offer her a plea bargain, but that she pled guilty to forgery and theft in order to avoid going to trial. 14RP 104-105, 110. Bromley testified that she

prepared the taxes for defendant's businesses, but that she "always" hired accountants to prepare her personal income tax statements. 14RP 106-107. Bromley, like defendant, testified that she did not have a copy of her W-2 or any of the paperwork that she gave Drake to prepare her tax return. 14RP 108-109.

Lea Sanders, a private investigator for the Department of Assigned Counsel, testified that she was unable to locate Vincent E. Tax Services. 15RP 133. She found the criminal history of a man named Tony Lee Drake, the addresses of that individual's parents, and the address of commercial space that he had rented in Federal Way. 15RP RP 134-135. After speaking with Drake's parents, Sanders determined that she had, "exhausted all avenues" and subsequently stopped searching for Drake. 15RP 135.

b. Facts pertaining to defendant's bail jumping charges.

On May 13, 2004, defendant failed to appear for in court. 2RP 3, 15 RP 178. Defendant testified that he failed to show because he had anxiety attack and had locked himself in his bathroom because he feared going to court. 15RP 150, 178. Defendant testified that he again failed to appear in court on October 14, 2004, to attend a scheduling order because he was afraid. 15RP 153. Defendant testified that whenever he would talk to his attorney about court or legal proceedings that he would "blank

out.” 15 RP 184-185. Defendant testified that he failed to appear to two hearings on April 14 and 15, 2005, because he “couldn’t sleep” and was too tired to go to court. 15RP 154.

On April 25, 2005, defendant arrived late to trial after the court had issued a bench warrant. 9RP 32-33. Defendant was taken into custody. The following day defendant had a seizure in jail. 10RP 49. Upon defense counsel’s motion, the court ordered defendant to be medically evaluated. 10RP 54.

On June 23, 2005, the court held a competency hearing. 5RP 12. The court reviewed the competency health report submitted by Western State Hospital and questioned defendant in regards to his health. The court found defendant competent and scheduled a new trial date. 5RP 12-13.

At trial, defense counsel read a report written by defendant’s doctor, Rostom Rivera, into the record. 15RP 137. Dr. Rivera first saw defendant on June 30, 2005. After two follow-up visits Dr. Rivera determined in March of 2006 that defendant “had a problem with panic attacks and anxiety disorder.” 15RP 137-138. Defendant’s symptoms included depression, memory loss, mood swings, anxiety, sleeping disorder, increase in blood pressure, frequent urination, shortness of breath, dizziness, and fatigue. 15RP 138. Dr. Rivera’s report concluded that defendant, “when faced with the challenge of appearing in court[] was

debilitated to the point of ‘shutting down’ or becoming incapacitated.”

15RP 139.

Defendant testified that in the past he used cocaine and methamphetamine. 15RP 181-183.

C. ARGUMENT.

1. THE STATE PRESENTED SUFFICIENT EVIDENCE TO ENABLE A REASONABLE JURY TO FIND THAT DEFENDANT INTENDED TO CASH A FRAUDULENT CHECK AND ASSISTED BROMLEY IN DOING THE SAME.

Due process requires that the State bear the burden of proving each and every element of the crime charged beyond a reasonable doubt. State v. McCullum, 98 Wn.2d 484, 488, 656 P.2d 1064 (1983); see also Seattle v. Gellein, 112 Wn.2d 58, 61, 768 P.2d 470 (1989); State v. Mabry, 51 Wn. App. 24, 25, 751 P.2d 882 (1988).

The applicable standard of review is whether, 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. State v. Joy, 121 Wn.2d 333, 338, 851 P.2d 654 (1993); State v. Rempel, 114 Wn.2d 77, 82-83, 785 P.2d 1134 (1990) (citing State v. Green, 94 Wn.2d 216, 221-22, 616 P.2d 628 (1980), and Jackson v. Virginia, 443 U.S. 307, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979)). Also, a challenge to the sufficiency of the evidence admits the truth of the State’s

evidence and any reasonable inferences from it. State v. Barrington, 52 Wn. App. 478, 484, 761 P.2d 632 (1987), review denied, 111 Wn.2d 1033 (1988) (citing State v. Holbrook, 66 Wn.2d 278, 401 P.2d 971 (1965); State v. Turner, 29 Wn. App. 282, 290, 627 P.2d 1323 (1981)). All reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against defendant. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

Circumstantial and direct evidence are considered equally reliable. State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). In considering this evidence, “[c]redibility determinations are for the trier of fact and cannot be reviewed upon appeal.” State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990) (citing State v. Casbeer, 48 Wn. App. 539, 542, 740 P.2d 335, review denied, 109 Wn.2d 1008 (1987)).

The written record of a proceeding is an inadequate basis on which to decide issues based on witness credibility. The differences in the testimony of witnesses create the need for such credibility determinations; these should be made by the trier of fact, who is best able to observe the witnesses and evaluate their testimony as it is given. On this issue, the Supreme Court of Washington said:

Great deference . . . is to be given to the trial court’s factual findings. In re Sego, 82 Wn.2d 736, 513 P.2d 831 (1973); Nissen v. Obde, 55 Wn.2d 527, 348 P.2d 421 (1960). It, alone, has had the opportunity to view the witnesses’ demeanor and to judge his veracity.

State v. Cord, 103 Wn.2d 361, 367, 693 P.2d 81 (1985). Therefore, when the State has produced evidence of all the elements of a crime, the decision of the trier of fact should be upheld.

- a. The State presented sufficient evidence to enable a reasonable jury to find that defendant intended to cash a fraudulent check and defraud Best Check Cashing.

To convict defendant of the crime of forgery, as charged in Count I, the following elements of the crime must be proved beyond a reasonable doubt: (1) That on or about the 26<sup>th</sup> day of January, 2004, the defendant possessed or offered or disposed of or put off as true a written instrument which had been falsely made, completed or altered; (2) that the defendant knew that the instrument had been falsely made, completed or altered; (3) that the defendant acted with the intent to injure or defraud; and (4) that the acts occurred in the State of Washington. CP 33-49 (Jury Instruction No. 10), RCW 9A.60.020(1)(a)(b).

To convict the defendant of the crime of theft in the first degree, as charged in Count III, each of the following elements of the crime must be proved beyond a reasonable doubt: (1) That on or about the 26<sup>th</sup> day of January, 2004, the defendant by color or aid of deception, obtained control over the property of another; (2) that the property exceeded \$1,500 in value; (3) that the defendant intended to deprive the other person of the property; and (4) that the acts occurred in the State of Washington. CP

33-49 (Jury Instruction No. 17), RCW 9A.56.020(1)(b), RCW 9A.56.030(1)(a).

A person acts intentionally when acting with the objective or purpose to accomplish a result, which constitutes a crime. CP (Jury Instruction No. 16).

Defendant contends only that the State did not provide evidence that defendant “intended to defraud Best Check Cashing and knew that the check was a forgery.” Brief of appellant at 11. Defendant’s argument is without merit.

First, the State provided conclusive and unchallenged evidence that defendant did in fact cash a counterfeit check. “A jury may infer criminal intent from a defendant’s conduct where it is plainly indicated as a matter of logical probability.” State v. Myers, 133 Wn.2d 26, 38, 941 P.2d 1102 (1997). The jury could have reasonably determined it improbable that defendant unknowingly came to possess a \$4,851.22 counterfeit check of a quality sufficient to deceive a cashier. As such, the jury’s determination that the most logical probability was that defendant knew the check was counterfeit and that he intended to use it to defraud Best Check Cashing was reasonable and should not be disturbed on appeal.

Second, the State adduced evidence that defendant had a personal bank account and could have cashed his alleged tax return check for free. Defendant nevertheless decided to cash the check at Best Check Cashing for a fee of approximately \$150. The jury could have reasonably inferred

that if defendant believed his check was valid that he would have cashed it at his bank to avoid needlessly paying \$150. The jury could, likewise, have inferred that defendant cashed the check to avoid commingling illegal funds into his personal bank account.

Defendant mistakenly assumes on appeal that because he offered innocent explanation of how he came to possess the check that the State failed to prove intent beyond a reasonable doubt. The State did not have the burden of disproving defendant's explanation. It was up to the jury to determine whether it was credible. The jury reasonably determined that defendant's explanation of how he obtained the check; that a man came to his store and picked up his W-2 and then returned within 24 hours with a check made out to defendant for \$4,851.22, was not probable or credible. Defendant did not testify that he signed his tax return. He did not have a copy of his W-2 statement or any of the other paperwork that he alleged he gave Drake to prepare his tax return. Moreover, the jury could have reasonably determined that if Drake's plan was to defraud defendant by charging him \$250 for allegedly preparing his taxes; that Drake would have had no incentive to create or procure counterfeit checks of the "quality" necessary to be successfully cashed. Drake could have simply sold the counterfeit checks for a sum far greater than \$250. The jury reasonably determined that defendant's explanation was not probable and not credible. "Credibility determinations are within the sole province of

the jury and are not subject to review.” Id., citing State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).

The State provided evidence to prove beyond a reasonable doubt that defendant intended to defraud Best Check Cashing, therefore, the jury’s finding should be upheld.

- b. The State presented sufficient evidence to enable a reasonable jury to convict defendant of Count II, forgery and Count IV, theft in the first degree, under accomplice liability.

A person who is an accomplice in the commission of a crime is guilty of that crime whether present at the scene or not. A person is an accomplice in the commission of a crime if, with knowledge that it will promote or facilitate the commission of the crime, he or she either: (1) Solicits, commands, encourages, or requests another person to commit the crime; or (2) aids or agrees to aid another person in planning or committing the crime. The word “aid” means all assistance whether given by words, acts, encouragement, support, support or presence. More than mere presence and knowledge of the criminal activity of another must be shown to establish that a person present is an accomplice. CP 33-49 (Jury Instruction No. 5), RCW 9A.08.020(3)(a).

The day after successfully cashing his check, defendant returned to Best Check Cashing with Bromley who cashed a second counterfeit check. This evidence enabled the jury to reasonably infer that once defendant

confirmed that the Best Check Cashing would accept the counterfeit checks, advised Bromley to cash her check there. The jury could reasonably have inferred that by attempting to cash his check, defendant conducted a probing mission to determine whether Bromley's check would pass muster at the Best Check Cashing. Defendant aided Bromley by finding a check cashing store that would accept her check, by advising her of the store, and by returning with her to cash the check. Moreover, defendant and Bromley ran the same check scheme together. They both had fraudulent Harbor Community Checks drawing from the account of Vincent E. Tax Services, they cashed the checks at the same cash checking store, they told the same story of how they came to possess the checks, and they went to Best Check Cashing together to cash the second check.

The State provided sufficient evidence that defendant aided Bromley. The jury's finding is reasonable and should be upheld.

2. DEFENDANT FAILED TO MEET ITS BURDEN OF ESTABLISHING AN AFFIRMATIVE DEFENSE TO DEFENDANT'S THREE COUNTS OF BAIL JUMPING.

It is an affirmative defense to prosecution for bail jumping that uncontrollable circumstances prevented the person from appearing, and that the person did not contribute to the creation of such circumstances in reckless disregard of the requirement to appear, and that the person appeared or surrendered as soon as such circumstances ceased to exist.

The defendant has the burden of proving by a preponderance of the evidence that uncontrollable circumstances prevented the defendant from appearing. CP 33-49 (Jury Instruction No. 23), RCW 9A.76.170.

“Uncontrollable circumstances” means an act of nature such as a flood, earthquake, or fire, or a *medical condition that requires immediate hospitalization or treatment*, or an act of man such as an automobile accident or threats of death, forcible attack, or a substantial bodily injury in the immediate future for which there is no time for a complaint to the authorities and not time or opportunity to resort to the courts. RCW 9A.76.010, (emphasis added).

Defendant failed at trial and fails on appeal to allege facts, even if true, sufficient to establish an affirmative defense to his bail jump charges. Defendant alleged that he had severe panic attacks on the days that he was required to report to court. Additionally, defendant presented evidence that he had an anxiety disorder. This alone, however, is insufficient to establish an affirmative defense to his bail jump charges. Defendant, neither testified that he was immediately hospitalized nor sought immediate treatment as a result of these panic attacks. Defendant failed to appear in court in May of 2004 and October of 2004, and again on April 14 and 15, 2005, but defendant did not seek treatment for anxiety until after he was taken into custody on April 25, 2005. Dr. Rivera first saw defendant for anxiety in June 2005, approximately 2 months after the last time defendant failed to appear. 15RP 137. It cannot now be argued

that defendant's condition required "immediate hospitalization or treatment." Under RCW 9A.76.010, a medical condition is only an "uncontrollable circumstance" sufficient to justify a failure to appear where the medical condition requires immediate hospitalization or immediate treatment.

Moreover, the jury was in the best position to determine whether defendant did in fact have anxiety attacks on the days he was to appear, whether the attacks were the cause of his absence, and whether the attacks constituted uncontrollable circumstances. Even if the jury believed that defendant suffered from anxiety, it could still have reasonably determined that his explanation for failing to appear was not credible or that his medical condition was not the cause of his absence. Even if the jury determined that defendant did not go to court because of anxiety attacks, it could still have reasonably determined that his anxiety did not amount to an "uncontrollable circumstance" as defined by RCW 9A.76.010. The jury was properly instructed on defendant's burden of establishing an affirmative defense. It's finding that defendant did not meet its burden was reasonable and should be upheld.

3. THE TRIAL DID NOT ABUSE ITS DISCRETION  
WHEN IT ADMITTED THE PROSECUTOR'S  
INFORMATION CHARGING DEFENDANT  
WITH FORGERY AND THEFT.

“Court documents authenticated under RCW 5.44.010<sup>2</sup> fall within the public records firmly rooted hearsay exception.” State v. James, 104 Wn. App. 25, 33, 15 P.3d 1041 (2000).

However, to be admissible, court documents containing hearsay must not only meet the requirements of RCW 5.44.010, “but must also contain facts rather than conclusions involving discretion or expression of opinion.” Id.

The determination of admissibility is left to the sound discretion of the trial court and will only be reversed for an abuse of that discretion. State v. Russell, 27 Wn. App. 309, 617 P.2d 467 (1980).

Here, the State moved to admit a certified copy of the original information which did not include the bail jump charges. 14RP 93. The State offered the information in conjunction with the order establishing the conditions of defendant's release to show that defendant knew he had pending criminal charges that would require his presence in court. 14RP 95. Defendant objected on the grounds that the declaration of probable

---

<sup>2</sup> RCW 5.44.010 provides;  
The records and proceedings of any court of the United States, or any state or territory shall be admissible in evidence in all cases in this state when duly certified by the attestation of the clerk, prothonotary or other officer having charge of the records of such court, with the seal of such court annexed.

cause was attached to the information. 14RP 94. The Court admitted the information but ordered the State to remove the declaration. 14RP 94.

The information, stripped of the State's declaration, provided only objective facts, the crimes with which defendant was charged. The information, therefore met both the requirements of RCW 5.44.010 and those set forth by this Court in James.

Moreover, the jury was well aware of the charges brought against defendant prior to the court admitting the information. The court informed the jury of the charges brought against defendant at the beginning of trial. 13RP 24. Additionally, the court reiterated the charges against defendant by way of the jury instructions. CP 33-49 (Jury Instructions No. 10, 11, 17, 18). The defendant was not prejudiced by the court informing the jury of the charges against defendant, likewise, he was not prejudiced by the court when it admitted the information.

Introducing an information to prove the underlying offence of the bail jumping is common and accepted in Washington. State v. Gonzalez-Lopez, 132 Wn. App. 622, 633, 132 P.3d 1128 (2006) (Holding that an amended information was constitutionally sufficient for proving the underlying offense); State v. Ibsen, 98 Wn. App. 214, 989 P.2d 1184 (1999); State v. Green, 101 Wn. App. 885, 6 P.3d 53 (2000) (Holding that an information must state the underlying offense for the bail jump to be sufficient to convict the defendant of bail jumping). The court did not err by admitting the information stripped of the State's declaration.

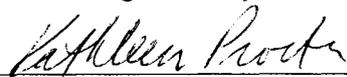
Defendant mistakenly relies on James to assert that the information contained inadmissible hearsay. In James this Court held that a prosecutor's declaration was inadmissible because it "contain[ed] the prosecutor's own legal conclusion based upon facts that the prosecutor assert[ed] to be true." Defendant fails to distinguish between a declaration and an information. The latter states only offenses charged, it does not include the basis for which the prosecutor brought the charges. Here the trial court removed the declaration from the information to ensure that defendant would not be prejudiced.

D. CONCLUSION.

For the above reasons, the State respectfully requests this Court to uphold defendant's convictions

DATED: May 1, 2007.

GERALD A. HORNE  
Pierce County  
Prosecuting Attorney

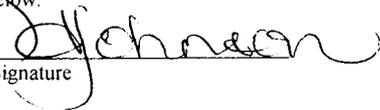
  
KATHLEEN PROCTOR  
Deputy Prosecuting Attorney  
WSB # 14811

---

Brett Shepard  
Legal Intern

Certificate of Service:

The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

7/2/07   
Date Signature

7/2/07  
TACOMA, WA  
U.S. MAIL  
FIRST CLASS PERMIT NO. 1000 TACOMA WA 98401