

73220-0

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July 30, 2015  
Court of Appeals  
Division I  
State of Washington

73220-2

NO. 73220-0-I

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

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STATE OF WASHINGTON,

Respondent,

v.

LORI HARGROVE,

Appellant.

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

The Honorable Michael E. Rickert, Judge

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BRIEF OF APPELLANT

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JARED B. STEED  
Attorney for Appellant

NIELSEN, BROMAN & KOCH, PLLC  
1908 E Madison Street  
Seattle, WA 98122  
(206) 623-2373

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A. ASSIGNMENTS OF ERROR

1. The State presented insufficient evidence to sustain appellant's conviction for bail jumping.

2. The trial court erred when it denied appellant's motion to dismiss the bail jumping charge for insufficient evidence.

Issues Pertaining to Assignments of Error

1. Appellant was charged with one count of bail jumping. Where no evidence shows that appellant had knowledge of the requirement of a subsequent personal appearance before the court, an essential element of the crime of bail jumping, was the State's evidence insufficient to support appellant's conviction for bail jumping?

2. Did the trial court err in denying appellant's motion to dismiss the bail jumping charge where the State failed to show appellant had knowledge of the requirement of a subsequent personal appearance before the court?

B. STATEMENT OF THE CASE

1. Trial Testimony

Armed with an arrest warrant for appellant Lori Hargrove, department of correction officers went to Hargrove's hotel intending to

arrest her for failing to comply with probation requirements. 1RP<sup>1</sup> 25-29, 40. When Hargrove answered the door she indicated she was glad the officers were there because she was fearful for her life. 1RP 29. Hargrove was the only person in the hotel room. 1RP 30.

Officer Marlanea Aspden described Hargrove as paranoid, fidgety, and “hard to track.” 1RP 25, 30. Officer’s handcuffed Hargrove and placed her in the back of a police car. 1RP 30-32. Hargrove told officers she had a pink pipe in the room and knew she would get in trouble for it. 1RP 31. Hargrove then asked officers to retrieve her belongings which included a clear bag containing wet clothing. 1RP 32. While searching the bag, officers felt something in the toe of one of the socks. When officers shook the sock a pink pipe fell out. 1RP 33-34. A substance in the pipe tested positive for methamphetamine. 1RP 48-49. Officers found nothing else in the hotel room. 1RP 38.

Based on this evidence, the Skagit County prosecutor charged Hargrove with one count of possession of methamphetamine for the incident that occurred on January 9, 2014. CP 6-7.

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<sup>1</sup> This brief refers to the verbatim report of proceedings as follows: 1RP – January 13, 2015; 2RP – March 5, 2015.

On November 13, 2014, Hargrove did not appear in court for trial confirmation. Based on Hargrove's absence, the State also charged her with bail jumping. CP 6-7.

In support of the bail jumping charge, the State introduced six certified court records. Exs. 6-11. No trial testimony was presented. 1RP 49-50. Exhibit 6 was a certified copy of a Skagit County District Court Minute Sheet dated May 22, 2014. The minute sheet contained Hargrove's name, case number, stated a charge of possession of methamphetamine, and listed a birth date. The minute sheet contained a "defendant's signature," and ordered the signer to return to court on May 30, 2014 at 9:30 a.m. The minute sheet contained a boldface admonition that failure to return to court as ordered may constitute the crime of bail jump. The minute sheet also contained a "defendant's statement" in which the signer agreed to comply with the above order. Ex. 6. Exhibit 6 also included a copy of an arrest warrant for Lori Ann Hargrove filed on April 28, 2014.

Exhibit 7 was a certified copy of the information charging Lori Ann Hargrove with possession of a controlled substance – methamphetamine, filed on April 25, 2014. Ex. 7.

Exhibit 8 was a court order setting dates, conditions of release, and quashing warrant filed June 13, 2014. The court order contained

Hargrove's name, case number, and listed a residential address. The court order stated the defendant was arraigned on June 13, 2014. The court order contained a "defendant" signature and ordered the signer to return to court on July 25, 2014 for omnibus, August 28, 2014 for trial confirmation, and September 2, 2014 for trial. The court order contained a boldface admonition that failure to return to court as ordered may constitute the crime of bail jump. Ex. 8.

Exhibit 9 was a court order striking all other court dates, filed on October 29, 2014. The court order contained Hargrove's name and case number. The court order contained a "defendant" signature and required the signer's presence on November 13, 2014 for trial confirmation and on November 17, 2014 for trial. Ex. 9.

Exhibit 10 was a court order directing the clerk to issue a bench warrant for the defendant's failure to appear at trial confirmation. The court order was filed November 13, 2014 and contained Hargrove's name and case number. Ex. 10.

Finally, exhibit 11 was a certified copy of clerk's minutes entry on November 13, 2014 that noted Hargrove did not appear at the scheduled hearing. The minutes indicated a warrant was authorized. Ex. 11.

Based on the above evidence, a jury found Hargrove guilty. CP 42-43; 1RP 63-64. Hargrove was sentenced to concurrent prison

sentences of 33 months on the bail jumping conviction and 12 months on the possession of methamphetamine conviction. CP 24-34; 2RP 7. Hargrove timely appeals. CP 39.

2. Motion to Dismiss

After the State's case-in-chief, defense counsel moved to dismiss the bail jumping charge, arguing the State failed to present sufficient evidence that Hargrove had knowledge of the requirement of a subsequent personal appearance before the court. 1RP 50-51. Counsel noted there was no trial testimony related to the bail jumping charge and no evidence showed Hargrove signed the documents which were introduced as evidence of Hargrove's knowledge of the requirement of a subsequent personal appearance before the court. 1RP 51.

In response, the State maintained the exhibits introduced at trial supported the bail jumping charge. The prosecutor explained the exhibits established Hargrove's identity because they showed her various names and department of corrections number. 1RP 51. The prosecutor explained:

And what those documents show is that she was in court, and that a document was signed, and that she was required to be here. I don't even know if I have to prove she signed it. I just have to prove that she was ordered to be here, and she wasn't here.

1RP 51.

The trial court noted the argument was “interesting,” but denied the motion, “based on Exhibits 6 through 11 that purports [*sic*] to be signed and acknowledged by Ms. Hargrove.” 1RP 51.

C. ARGUMENT

1. THE EVIDENCE IS INSUFFICIENT TO PROVE BAIL JUMPING

- a. The State Failed to Present Sufficient Evidence of Bail Jumping because it Failed to Prove Hargrove Had Knowledge of the Requirement of a Subsequent Personal Appearance Before the Court.

The State bears the burden of proving all elements of a charged offense beyond a reasonable doubt as a matter of due process. In re Winship, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970); State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980). A conviction must be reversed where, viewing the evidence in the light most favorable to the State, no rational trier of fact could find all elements of the charged crime beyond a reasonable doubt. State v. Vasquez, 178 Wn.2d 1, 6, 309 P.3d 318 (2013). When the prosecution fails to present sufficient evidence on any essential element, reversal and dismissal of the conviction is required. State v. Hickman, 135 Wn.2d 97, 103, 954 P.2d 900 (1998); State v. Stanton, 68 Wn.App. 855, 867, 845 P.2d 1365 (1993).

This court should hold the State to its burden and hold that the State did not present sufficient evidence to sustain a bail jumping

conviction because no evidence showed Hargrove had knowledge of the requirement of a subsequent personal appearance before the court. The bail jumping to-convict instruction required each of the following elements to be proved beyond a reasonable doubt:

- (1) That on or about November 13, 2014, the defendant failed to appear before a court;
- (2) That the defendant was charged with Possession of a Controlled Substance – Methamphetamine;
- (3) That the defendant had been released by court order or admitted to bail with knowledge of the requirement of a subsequent personal appearance before that court; and
- (4) That any of these acts occurred in the State of Washington.

CP 18 (instructions 8); Accord RCW 9A.76.170(1); State v. Malvern, 110 Wn. App. 811, 813, 43 P.3d 533 (2002); State v. James, 104 Wn. App. 25, 36, 15 P.3d 1041 (2000); State v. Pope, 100 Wn. App. 624, 627, 999 P.2d 51, rev. denied, 141 Wn.2d 1018 (2000).

In light of these jury instructions, the State was required to prove Hargrove had knowledge of the requirement of a subsequent personal appearance before the court. Hickman, 135 Wn.2d at 102 (Jury instructions to which neither party objects become the law of the case and delineate the State's proof requirements).

In its failed attempt to meet its burden, the State admitted into evidence certified copies of various court minutes, scheduling orders, and pleadings. Exs. 6-11. Even when viewed in the light most favorable to the State, no rational finder of fact could have found that this evidence established that Hargrove had knowledge of subsequent personal appearance before the court. State v. Huber,<sup>2</sup> and State v. Santos<sup>3</sup> are instructive in this regard.

In Huber's case for bail jumping the State admitted four certified documents: (1) the information charging the defendant with violation of a protection order and witness tampering, (2) a written court order requiring the defendant 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 witnesses or otherwise show that the exhibits related to the Huber who was present in court. Huber, 129 Wn. App. at 501.

On appeal, the court reversed Huber's conviction, concluding the documentary evidence was insufficient to show Huber was the person named in the documents. Huber, 129 Wn.App at 504. Although one of the warrants contained a general physical description, the Court of

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<sup>2</sup> State v. Huber 129 Wn. App. 499, 119 P.3d 388 (2005).

<sup>3</sup> 163 Wn.App. 780, 260 P.3d 982 (2011).

Appeals found this insufficient, not because the description was vague, but because the record did not reflect any comparison between that description and the person before the court. Huber, 129 Wn. App. at 503, n. 18. The Court noted that to sustain its burden of proof, the State must do more than provide documentary evidence; it must also prove the person named in the documents is the person on trial. Huber, 129 Wn. App. at 502.

In Santos, a felony driving under the influence case, the State was required to prove four or more prior offenses. To meet its burden the State presented judgments that identified the defendant named in those judgments as Santos. Santos, 163 Wn. App. at 782-783. The court found the State did not produce sufficient evidence showing Santos was the same person named in the judgments. The Santos court ruled, “None of the information in the State’s exhibits can be compared to Mr. Santos, the defendant in this case, by simple observation to determine whether he is the person named in the judgments.” Santos, 163 Wn. App. at 785. “The State produced no evidence of Mr. Santos’s address, birth date, or criminal history” nor did it produce “photographs of ‘Santos, Heraquio’ or ‘Heraquio Santos’ to compare to Mr. Santos, who appeared in person at trial.” Id.

Similarly, here no witness identified Hargrove as the same “defendant” who signed any of the documents. No expert testified that the

“defendant” signature on the exhibits matched Hargrove’s signature. Thus, none of these documents showed Hargrove was the same person who signed the arraignment hearing notice on May 22, 2014, the order setting dates and conditions of release on June 13, 2014, or status conference hearing on October 29, 2014, which provided notice of the requirement of a subsequent personal appearance before the court.

During closing argument the State was unable to point to any evidence that Hargrove had knowledge of a subsequent personal appearance before the court. Instead, the State argued the documents proved Hargrove knew she had to appear in court because the defendant’s signature on each of the admitted exhibits “look similar.” RP 57, 59. But, none of the “defendant” signatures in the State’s exhibits could be compared to Hargrove by simple observation to determine whether she was in fact the same Lori Hargrove who signed the documents.

In returning a guilty verdict on bail jumping, the jury was left with no choice but to presume, as the State had asked, that Hargrove had actually signed the court documents. But this presumption was not supported by the evidence. Outside of pure conjecture, there was not sufficient evidence to rationally conclude that Hargrove had actually signed the documents which provided knowledge of a subsequent personal appearance before the court.

Because the State failed to meet its burden of proof, this court must reverse the bail jumping convictions and remand for dismissal of the charges with prejudice. Hickman, 135 Wn.2d at 99.

b. The Trial Court Erred in Denying Hargrove's Motion to Dismiss Where the State Failed to Present Sufficient Evidence.

In ruling on a motion to dismiss for insufficient evidence, the trial court does not weigh the evidence, but only examines the sufficiency thereof. State v. Coleman, 54 Wn. App. 742, 746, 775 P.2d 986 (sufficiency of the evidence is legally the same issue as insufficiency of the proof of a material element of the crime), rev. denied, 113 Wn.2d 1017 (1989). In reviewing a trial court's decision on a motion to dismiss, this Court applies the same standard as the trial court: that is, whether there is sufficient evidence that could support a verdict. State v. Longshore, 97 Wn. App. 144, 147, 982 P.2d 1191 (1999), aff'd, 141 Wn.2d 414, 5 P.3d 1256 (2000). Evidence is sufficient if any rational trier of fact viewing it most favorably to the State could have found the essential elements of the charged crime beyond a reasonable doubt. Id.

As discussed above, the State was required to prove Hargrove had knowledge of the requirement of a subsequent personal appearance before the court. Hargrove's motion to dismiss the bail jumping charge centered on the State's failure to prove this essential element of bail jumping. For

the reasons set forth above, the trial court erred by denying Hargrove's motion to dismiss.

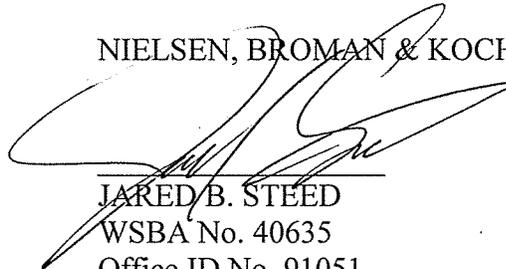
D. CONCLUSION

The State did not produce sufficient evidence to sustain Hargrove's bail jumping conviction. Accordingly, Hargrove asks this court to reverse her bail jumping conviction and remand for dismissal of that charge with prejudice.

DATED this 29<sup>th</sup> day of July, 2015.

Respectfully submitted,

NIELSEN, BROMAN & KOCH



JARED B. STEED  
WSBA No. 40635  
Office ID No. 91051  
Attorneys for Appellant

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

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STATE OF WASHINGTON	)	
	)	
Respondent,	)	
	)	
v.	)	COA NO. 73220-0-1
	)	
LORI HARGROVE,	)	
	)	
Appellant.	)	

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**DECLARATION OF SERVICE**

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 29<sup>TH</sup> DAY OF JULY 2015, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] LORI HARGROVE  
DOC NO. 709029  
WASHINGTON CORRECTIONS CENTER FOR WOMEN  
9601 BUJACHIC ROAD NW  
GIG HARBOR, WA 98332

**SIGNED** IN SEATTLE WASHINGTON, THIS 29<sup>TH</sup> DAY OF JULY 2015.

x *Patrick Mayovsky*