

NO. 44790-8-II

COURT OF APPEALS, DIVISION II

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STATE OF WASHINGTON,

Respondent,

vs.

ROLAND K. DOUGLAS,

Appellant.

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APPEAL FROM THE SUPERIOR COURT  
FOR MASON COUNTY  
The Honorable Amber Finlay, Judge  
Cause No. 09-1-001774

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REPLY BRIEF

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A. ASSIGNMENT OF ERROR

The trial court erred in not taking count II, bail jumping, from the jury for lack of sufficiency of the information.

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

Whether a conviction for bail jumping pursuant to an information that fails to allege the particular underlying crime must be reversed where it cannot be cured by looking to other sources or counts in the information?

C. STATEMENT OF THE CASE

Appellant Roland K. Douglas incorporates and adopts by reference the statement of the case and law set forth in his Brief of Appellant filed herein September 29, 2013. On Dec. 4, the State filed its Brief of Respondent. For purposes of this Reply Brief, Douglas limits his argument to the following.

D. ARGUMENT IN REPLY TO STATE'S RESPONSE

A CONVICTION FOR BAIL JUMPING PURSUANT TO AN INFORMATION THAT FAILS TO ALLEGE THE PARTICULAR UNDERLYING CRIME MUST BE REVERSED WHERE IT CANNOT BE SAVED BY LOOKING TO OTHER SOURCES OR COUNTS IN THE INFORMATION.

As fully set forth in the Brief of Appellant, the trial court erred in not taking count II, bail jumping, from the jury for lack of sufficiency of the information to include the underlying offense, as

required under this court's decisions in State v. Pope, 100 Wn. App. 624, 627, 999 P.2d 541 (2000) and State v. Green, 101 Wn App. 885, 888, 6 P.3d 53 (2000). [Br. of Appellant at 8].

In its Brief of Respondent, the State impliedly concedes the point but urges this court to look elsewhere to find the missing element, arguing along the way that both Pope and Green can be distinguished for ostensibly the same reason: Pope because the defendant was not charged with an additional offense encompassing the underlying crime of bail jumping [Br. of Respondent at 9], and Green because the underlying offense was not charged in the same information.<sup>1</sup> [Br. of Respondent at 10].

As this court is aware, analogous arguments have consistently been rejected: State v. Franks, 105 Wn. App. 950, 958-59, 22 P.3d 269 (2001) (information insufficient where it included defendant's name in caption of information, but not in document's charging language); State v. Gill, 103 Wn. App. 435, 442, 13 P.3d 646 (2000) (a missing element in one count cannot be drawn from its proper inclusion in another, similar count); State v. Couneya, 132 Wn. App. 347, 351-52, 131 P.3d 343 (2006) (reversal

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<sup>1</sup> Respondent also advances that Green is somehow of no importance because there "both the information and the jury instructions were deficient. (cite omitted). Whereas in the instant case, only the charging information is at issue." [Br. of Respondent at 10]. The point of which remains unknown.

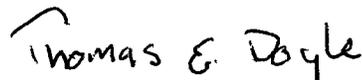
required where defective missing-element instruction in first mistrial not amended before conviction in second trial).

The State wishes this court to look beyond the face of the charge in the information in an apparent attempt to argue that Douglas had proper notice. This argument ignores relevant authority and should be rejected.

E. CONCLUSION

Based on the above, Douglas respectfully requests this court to reverse his conviction for bail jumping.

DATED this 11<sup>th</sup> day of December 2013.



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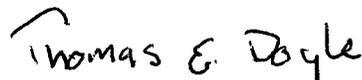
CERTIFICATE

I certify that I served a copy of the above reply brief on this date as follows:

Tim Higgs  
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Roland K. Douglas #311586  
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P.O. Box 769  
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DATED this 11<sup>th</sup> day of December 2013.



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**December 11, 2013 - 3:58 PM**

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