

**RECEIVED  
SUPREME COURT  
STATE OF WASHINGTON  
CLERK'S OFFICE**

Oct 11, 2016, 11:31 am

**RECEIVED ELECTRONICALLY**

NO. 93689-7  
COA NO. 47069-1-II  
Cowlitz Co. Cause NO. 13-1-00772-7

**SUPREME COURT OF STATE OF  
WASHINGTON**

STATE OF WASHINGTON,

Respondent,

v.

**JUSTIN HART**  
Appellant/Petitioner.

---

**RESPONSE TO PETITION FOR REVIEW**

---

**RYAN JURVAKAINEN**  
Prosecuting Attorney  
AILA WALLACE/WSBA 46898  
Deputy Prosecuting Attorney  
Representing Respondent

**HALL OF JUSTICE  
312 SW FIRST  
KELSO, WA 98626  
(360) 577-3080**



**TABLE OF CONTENTS**

|  | <b>PAGE</b> |
|--|-------------|
| <b>I. IDENTITY OF RESPONDENT .....</b>   | <b>1</b>    |
| <b>II. ANSWER TO ISSUES PRESENTED FOR REVIEW .....</b>   | <b>1</b>    |
| <b>III. STATEMENT OF THE CASE .....</b>  | <b>1</b>    |
| <b>IV. ARGUMENT .....</b>  | <b>2</b>    |
| <b>The Court of Appeals properly held that the to-convict instruction<br/>included all of the statutory elements of the crime of bail jumping.</b> | <b>2</b>    |
| <b>V. CONCLUSION .....</b>   | <b>4</b>    |

**TABLE OF AUTHORITIES**

**PAGE**

**Cases**

*State v. Hassan*, 184 Wn. App. 140, 148, 336 P.3d 99 (2014)..... 3

*State v. Kyllo*, 166 Wn.2d 856, 864, 215 P.3d 177 (2009)..... 3

**Rules**

RAP 13.4(b) ..... 2

**Constitutional Provisions**

U.S. Const. Amend. XIV ..... 3

**Other Authorities**

WPIC 120.40..... 3

WPIC 120.41..... 3

**I. IDENTITY OF RESPONDENT**

The State of Washington, by and through the Cowlitz County Prosecuting Attorney's Office, respectfully requests this Court deny review of the August 16, 2016, published opinion of the Court of Appeals in *State v. Hart*, COA No. 47069-1-II. This decision upheld the petitioner's conviction for one count of bail jumping.

**II. ANSWER TO ISSUES PRESENTED FOR REVIEW**

The Court of Appeals properly held that the to-convict jury instruction for bail jumping that was given in Hart's case included all the required elements, and, therefore, Hart's due process rights were not violated.

**III. STATEMENT OF THE CASE**

Justin Hart, the defendant, was charged with multiple felonies on June 19, 2013, which were later dismissed. While the case was pending, Hart was ordered to appear at a pretrial hearing on September 9, 2013. He was not present at that hearing and the State filed an amended information charging him with one count of bail jumping. CP 3.

The parties proceeded to jury trial on the bail jumping charge on December 16, 2014. The State presented evidence indicating Hart signed

a promise to appear on September 9, 2013, and then was not present on that date. RP 22–39. The defendant was found guilty. RP 70.

#### IV. ARGUMENT

**The Court of Appeals properly held that the to-convict instruction included all of the statutory elements of the crime of bail jumping.**

RAP 13.4(b) states that a petition for review will only be accepted by the Supreme Court only if one of four conditions are met: (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with a decision of another division of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court. Neither in the petition for review nor in the decision from the Court of Appeals are there any issues that would fall under one of the four conditions as outlined by RAP 13.4(b). The Division II Court of Appeals holding in this case is not in conflict with any decisions either the Washington Supreme Court or another division of the Court Appeals. The holding also does not raise a significant question of law or involve an issue of substantial public interest.

A trial court's failure to instruct the jury as to every element of the crime charged violates due process. *State v. Hassan*, 184 Wn. App. 140, 148, 336 P.3d 99 (2014); U.S. Const. Amend. XIV. Therefore, a "to convict" jury instruction must contain all the elements of the crime and "must make the relevant legal standard manifestly apparent to the average juror." *State v. Kyllo*, 166 Wn.2d 856, 864, 215 P.3d 177 (2009).

The "to convict" instruction given in this case, instruction number eight, mirrored Washington Pattern Jury Instruction 120.41. CP 58; WPIC 120.41. The court's instruction read:

To convict the defendant of the crime of bail jumping, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about September 9, 2013, the defendant failed to appear before a court;
- (2) That the defendant was facing charges that he had committed crimes classified as Class B or C felonies in Cowlitz County Superior Court;
- (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 all of these acts occurred in the State of Washington.

CP 58. Additionally, the trial court's instruction number six, which mirrors the definition of bail jumping in WPIC 120.40, states that a person commits the crime of bail jumping only when he "fails to appear as require to appear after having been released by court order or admitted to bail *with knowledge of the requirement* of a subsequent personal

appearance before any court of this state while charged with a Class B or C felony.” CP 56 (emphasis added).

The instructions given to the jury clearly explained that the jury had to find Hart was aware that he was required to appear at a later date (September 9, 2013), and that he did in fact fail to appear on that date. The evidence presented at trial showed that Hart signed a promise to appear on September 9, 2013, and then was not present on that date. Taken as a whole, the jury instructions properly instructed the jury on the law. The Court of Appeals did not err in affirming Hart’s conviction, there is no significant question of law or public interest, and the petition should be denied.

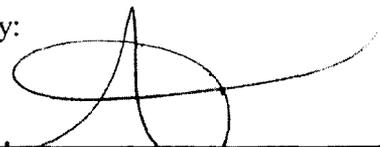
#### V. CONCLUSION

For the reasons stated above, Petitioner’s petition for discretionary review should be denied.

Respectfully submitted this 14<sup>th</sup> day of October, 2016.

RYAN JURVAKAINEN  
Prosecuting Attorney

By:



---

AILA R. WALLACE, WSBA#46898  
Deputy Prosecuting Attorney  
Representing Respondent

**CERTIFICATE OF SERVICE**

Michelle Sasser, certifies the Response to Petition for Review was served electronically via e-mail to the following:

Supreme Court  
Temple of Justice  
P.O. Box 40929  
Olympia, WA 98504  
[supreme@courts.wa.gov](mailto:supreme@courts.wa.gov)

and,

Skylar T. Brett  
Attorney at Law  
P.O. Box 18084  
Seattle, WA 98118

[skylarbrettlawoffice@gmail.com](mailto:skylarbrettlawoffice@gmail.com)

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Kelso, Washington on October 14<sup>th</sup>, 2016.

  
\_\_\_\_\_  
Michelle Sasser