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Washington State
Court of Appeals
Division Two

March 10, 2020

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. ROBERT ALAN WOLFE, Appellant.	No. 52124-5-II UNPUBLISHED OPINION

CRUSER, J. — Robert Alan Wolfe appeals his convictions for maintaining a premise for using controlled substances, unlawful possession of methamphetamine, unlawful possession of heroin, and bail jumping. Wolfe argues that (1) the trial court erred when it denied his motion to suppress evidence found in his residence, (2) the to-convict jury instruction for bail jumping was improper, and (3) insufficient evidence supported his bail jumping conviction.

We disagree and (1) hold that the trial court properly denied Wolfe's motion to suppress because the warrant was supported by probable cause, (2) decline to address Wolfe's challenge to the bail jumping to-convict instruction because Wolfe's claim does not involve a manifest constitutional error under RAP 2.5(a)(3), and (3) hold that sufficient evidence supported his bail jumping conviction. We affirm.

FACTS

I. BACKGROUND

Wolfe resided in a house in Kitsap County and rented rooms to three or four people. Wolfe's mother owned the house but resided elsewhere. In early September 2017, Wolfe's neighbor, Tim Calnan, made a complaint to the police department regarding Wolfe's residence. Calnan owned two properties across the street. Calnan complained about the constant number of people coming and going from Wolfe's residence.

Detective Cory Manchester of the Kitsap County Sheriff's Office investigated Calnan's complaint and executed an affidavit in support of a search warrant for Wolfe's residence on October 23, 2017. The detective sought the search warrant based on a compilation of information, including Calnan's complaint. The relevant information in the affidavit included the following:

- During the first week of September 2017, the detective received Calnan's complaint regarding Wolfe's residence. Calnan stated that people were constantly coming and going from the house and that the door was at times left open. During this time, Calnan had workers at his residence. The workers confirmed that there was heavy traffic coming and going out of the house. The detective referred to this as "short stay traffic," something he knew "to be an indicator of possible narcotics dealing." Clerk's Papers (CP) at 26.
- One of Calnan's workers, Jeffery Whallon, stated that people were "consistently" coming and going from the house. *Id.* at 27. He stated the activity usually started at about 7:00 AM. On September 20, 2017, Whallon reported that he saw 12 different visitors in a 30-minute time period. Whallon also stated that there was often a piece of paper in the window indicating that the house is not taking visitors.
- Calnan stated that many of Wolfe's visitors arrived in cars and would often park in front of his yard. Calnan complained of a syringe and multiple syringe caps on his lawn next to where the visitors would park. On September 21, 2017, the detective also observed a syringe and several caps on Calnan's lawn.
- In 2014, "similar suspected narcotic activity" was reported at Wolfe's residence. Police investigated the report, but the investigation did not lead to any arrests.
- On September 21, 2017, the detective observed Angela Smiley on the driveway of Wolfe's residence. The detective knew Smiley "from multiple

contacts . . . over the years," and he knew Smiley "to be a local drug user, and . . . to associate with other drug users." *Id.* at 28. Smiley has four felony convictions under the Uniform Controlled Substance Act, ch. 69.50 RCW.

- In June 2017, a different detective investigated Smiley. In an attempt to locate Smiley, the detective went to Wolfe's residence. While at the residence, the detective arrested Corbin Egeler for an outstanding warrant. Egeler was "known to associate with the local Heroin crowd." *Id.* at 27.
- On October 8, 2017, a police officer was patrolling the area around Wolfe's residence. Cynthia Sylvester, "former drug user," contacted the officer. *Id.* at 28 (italics omitted). Sylvester reported that "not too long ago," people at Wolfe's residence took her dog and other items as payment during a "drug rip." *Id.* at 29 (italics omitted). Sylvester reported that "[h]eroin is being sold from this house for sure." *Id*. (italics omitted).
- The officer patrolling the area observed Corey Butler, a known "drug user and thief," walking from Wolfe's residence. *Id*. (italics omitted). The officer knew Corey from past contacts and stated that Corey is "known to [steal] things and trade them for drugs." *Id*. (italics omitted). When the officer asked Corey about using drugs at Wolfe's residence, Corey "made a motion that he might have." *Id*. (italics omitted). Corey stated that he uses heroin. The officer found unused syringes in Corey's pocket.
- The patrolling officer also observed Shawna Orlowski exit a car and walk to Wolfe's residence. The officer "observed a square piece of tin foil with black burnt residue in the center console." *Id.* at 30 (italics omitted). The officer recognized this "as smoked [h]eroin." *Id*. (italics omitted). Later that evening, the officer made contact with Orlowski and told her that she "need[s] to be more careful with [her] drug paraphernalia." *Id*. (italics omitted). Orlowski was in denial but quickly "thanked [the officer] when she realized" the officer would not arrest her. *Id.* at 31 (italics omitted). Orlowski stated that "drugs are being used" at Wolfe's residence and that "she sees other people" using drugs at the residence. *Id*. (italics omitted).
- On October 17, 2017, Calnan contacted the detective and stated that the traffic coming to and from Wolfe's residence had not slowed down. Five days later, Calnan reported finding a syringe on his property where Wolfe's visitors parked and a syringe in his shed located on the same property.

The court issued a search warrant based on the detective's affidavit. The warrant stated that it incorporated the affidavit by reference. The warrant permitted a search of Wolfe's residence to "seize any fruits, instrumentalities and/or evidence of the crime" of maintaining a premise for

using controlled substances under RCW 69.50.402(1)(f),[1] including any suspected drugs and drug paraphernalia. *Id.* at 36.

Police executed the search warrant on October 25, 2017. The officers found numerous items used for consuming controlled substances, including multiple boxes of new and used syringes, pipes consistent with the use of methamphetamine consumption, and burnt foil consistent with the use of heroin consumption. The officers also found heroin and methamphetamine inside the residence.

The State charged Wolfe with one count of maintaining a premise for using controlled substances,[2] one count of possession of a controlled substance methamphetamine,[3] and one count of possession of a controlled substance heroin.[4]

II. PROCEDURAL HISTORY

A. OMNIBUS HEARING

Wolfe was released on bail. The order for pretrial release stated that Wolfe "shall appear" on December 19, 2017 for an omnibus hearing, and that failure to appear when required by the court is a crime. Ex. 58 at 2. At the hearing on December 19, Wolfe's counsel stated, "He is here"

[1] Under RCW 69.50.402(1)(f), it is unlawful to knowingly "keep or maintain any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft, or other structure or place, which is resorted to by persons using controlled substances in violation of this chapter for the purpose of using these substances, or which is used for keeping or selling them in violation of this chapter."

[2] RCW 69.50.402(1)(f).

[3] RCW 69.50.4013, .206(d)(2).

[4] RCW 69.50.4013, .204(b)(13).

and requested the court reset the omnibus hearing to January 19, 2018 and continue trial. Ex. 64 at 2.

The court granted his request and entered an order resetting the omnibus hearing for January 19, 2018 in open court. The court also entered an order on counsel's motion to continue, which reflected that Wolfe appeared at the December 19 hearing and confirmed that "[w]ritten and oral notice [was] given to defendant" of the new set date for the omnibus hearing. Ex. 61 at 1.

Wolfe failed to appear for the January 19, 2018 omnibus hearing. The court issued a bench warrant. Wolf appeared on the warrant on January 25, 2018. The State filed an amended information that also charged Wolfe with one count of bail jumping under RCW 9A.76.170.

B. MOTION TO SUPPRESS

Wolfe moved to suppress all seized evidence from his residence pursuant to CrR 3.6. Wolfe argued that the affidavit was absent of any information establishing a nexus between the short-stay traffic reported at his residence and drug trafficking. Wolfe also argued that assertions based on information provided by Sylvester and Orlowski must be disregarded because they fail to satisfy the *Aguilar-Spinelli*[5] test, and Butler's statements were insufficient to establish probable cause for maintaining a drug house. Wolfe also argued that evidence regarding syringes was "irrelevant and innocuous" because syringes are legal items with many legitimate uses. CP at 14. The court denied Wolfe's motion.

[5] *Aguilar v. Texas*, 378 U.S. 108, 84 S. Ct. 1509, 12 L. Ed. 2d 723 (1964), *abrogated by Illinois v. Gates*, 462 U.S. 213, 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983); *Spinelli v. United States*, 393 U.S. 410, 89 S. Ct. 584, 21 L. Ed. 2d 637 (1969), *abrogated by Gates*, 462 U.S. 213.

C. TRIAL

Wolfe's case proceeded to trial on all counts. The court instructed the jury on the elements of bail jumping. The instruction read in relevant part,

> To convict the defendant of the crime of Bail Jumping as charged in Count IV, each of the following elements of the crime must be proved beyond a reasonable doubt—
> 1[.] That on or about January 19, 2018, the defendant failed to appear before a court;
> 2[.] That the defendant was charged with a class B or C felony;
> 3[.] That the defendant had been released by court order with knowledge of the requirement of a subsequent personal appearance before that court; and
> 4[.] That these acts occurred in the State of Washington.

Id. at 92. Wolfe did not object to this instruction.

The jury found Wolfe guilty on all counts. Wolfe appeals.

DISCUSSION

I. MOTION TO SUPPRESS

Wolfe argues that the trial court violated his constitutional rights when it denied his motion to suppress evidence seized from his residence because the affidavit in support of the search warrant failed to establish probable cause that evidence of a crime would be found in his residence. We disagree.

A. LEGAL PRINCIPLES

We review the issuance of a search warrant for abuse of discretion and we give great deference to the issuing judge's probable cause determination. *State v. Neth*, 165 Wn.2d 177, 182, 196 P.3d 658 (2008). We also afford appropriate deference to the issuing judge's findings on reliability and credibility. *In re Det. of Petersen*, 145 Wn.2d 789, 800, 42 P.3d 952 (2002). At a suppression hearing, the trial court acts in an appellate-like capacity. *Neth*, 165 Wn.2d at 182. We

review de novo the trial court's conclusion of whether an affidavit is supported by probable cause to issue a search warrant. *Id*.

Under the Fourth Amendment to the United States Constitution and article I, section 7 of the Washington Constitution, a search warrant may be issued only upon a showing of probable cause. *State v. Chenoweth*, 160 Wn.2d 454, 462, 158 P.3d 595 (2007). "Probable cause requires more than suspicion or conjecture, but it does not require certainty." *Id*. at 476. An affidavit in support of a warrant application must contain "facts and circumstances sufficient to establish a reasonable inference that the defendant is involved in criminal activity and that evidence of the crime can be found at the place to be searched." *State v. Scherf*, 192 Wn.2d 350, 363, 429 P.3d 776 (2018). The issuing judge "is entitled to make reasonable inferences from the facts and circumstances set forth in the affidavit." *Id*. at 363.

When examining the trial court's conclusion, we examine "'whether the qualifying information as a whole amounts to probable cause.'" *State v. Emery*, 161 Wn. App. 172, 202, 253 P.3d 413 (2011) (quoting *Petersen*, 145 Wn.2d at 800), *aff'd*, 174 Wn.2d 741, 278 P.3d 653 (2012). Individual facts that would not support probable cause when standing alone can support probable cause when viewed together with other facts in the search warrant affidavit. *State v. Garcia*, 63 Wn. App. 868, 875, 824 P.2d 1220 (1992). The application for a search warrant must be judged in the light of common sense and we resolve all doubts in favor of upholding the warrant. *Chenoweth*, 160 Wn.2d at 477.

B. PROBABLE CAUSE EXISTED

Wolfe argues that the warrant was not supported by probable cause because (1) allegations of "known drug users" present at the house are improperly conclusory (Br. of Appellant at 13), (2)

many of the allegations were stale or failed to provide a timeframe of when drug activity occurred at the residence, (3) statements from informants alleging drug activity at the house failed to pass the *Aguilar-Spinelli* reliability test, (4) allegations regarding short-stay traffic were insufficient to establish probable cause, (5) Wolfe's criminal history was irrelevant to criminal activity at the residence, and (6) the presence of syringes on a neighbor's property was insufficient to establish probable cause. We disagree.

While none of the circumstances when viewed in isolation established probable cause, the warrant as a whole was supported by probable cause. *Garcia*, 63 Wn. App. at 875. First, the affidavit outlined in detail the extent of short-stay traffic at Wolfe's residence. The affidavit provided factual statements from two citizen informants and the detective, all who readily observed multiple people coming and going from Wolfe's residence during short time periods. The affidavit contained Whallon's statement that "he sees people at the house consistently, coming and going," and on one day he noted 12 different visitors during a 30-minute time period. CP at 28. The detective referred to short-stay traffic as something he knew "to be an indicator of possible narcotics dealing." *Id.* at 26.

In addition to heavy and consistent short-stay traffic at Wolfe's residence, Calnan found multiple syringes and several syringe caps on his front lawn where Wolfe's frequent visitors parked their cars. Wolfe argues that because short-stay traffic and the syringes have innocent and legitimate explanations, this evidence does not support a probable cause finding.

When items or circumstances have legitimate and innocent explanations, they are alone insufficient to support probable cause. *Neth*, 165 Wn.2d at 185 ("[i]nnocuous objects that are equally consistent with lawful and unlawful conduct do not constitute probable cause to search").

For example, in *Neth*, the court concluded that possession of "small baggies may well create reasonable suspicion justifying further investigation, but this fact alone does not rise to the level of probable cause." *Id*. at 185 n.3. The court further reasoned that "[a]dditional information such as being in a high drug crime area, baggies with the appearance of having once contained illicit substances, or observations of transactions involving the baggies may well have been sufficient" to support a finding of probable cause. *Id*.

The affidavit at issue here did not just contain evidence of syringes and short-stay traffic. While investigating Calnan's complaint, the detective reported that he witnessed four individuals known to police for drug-related activity at Wolfe's residence. While the presence of known drug users alone is not sufficient to support a finding of probable cause, it is a relevant consideration in determining whether probable cause exists. *State v. Hobart*, 94 Wn.2d 437, 446, 617 P.2d 429 (1980) (prior drug use may lead to the suspicion of current drug use but does not in itself support probable cause); *State v. Weyand*, 188 Wn.2d 804, 817, 399 P.3d 530 (2017) (a visit to a "known" drug house alone did not justify an investigative stop).

However, three of the known drug users provided additional information to the officer that created a nexus between the short-stay traffic at Wolfe's residence, syringes and syringe caps on Calnan's lawn, and the presence of known drug users to criminal activity inside of Wolfe's residence. Butler, a known drug user, was seen walking from Wolfe's residence. Butler told the officer that he is an active drug user and had syringes in his pocket. The officer also witnessed Orlowski, a known drug user, exit her car and enter Wolfe's residence. Drug paraphernalia was visible in the center console of her car. After leaving Wolfe's residence, Orlowski admitted to current drug use and told the officer that she witnessed people use drugs at Wolfe's residence. On

the same night, Sylvester reported that individuals sold drugs out of Wolfe's residence and that individuals associated with Wolfe's residence recently stole her dog and other personal items as payment for drugs. This information was sufficient to establish a reasonable inference that Wolfe was involved in criminal activity and that evidence of the crime could be found at his residence. *See Scherf*, 192 Wn.2d at 363.

Wolfe also contends that we should not consider Whallon's, Orlowski's, or Sylvester's statements when determining whether probable cause exists because their statements fail to meet the *Aguilar-Spinelli* reliability test. However, the *Aguilar-Spinelli* reliability test applies only to information provided by a confidential informant or an anonymous tipster. *Spinelli*, 393 U.S. at 413; *Aguilar*, 378 U.S. at 114-15; *State v. O'Connor*, 39 Wn. App. 113, 120, 692 P.2d 208 (1984) ("[T]he *Aguilar/Spinelli* strictures were aimed primarily at *unnamed* police informers.").

In this case, Whallon, Orlowski, and Sylvester were mere witnesses, not anonymous tipsters or confidential informants. In the absence of a claim that the detective *omitted* material information from the affidavit that might have borne upon their credibility, the magistrate was entitled to evaluate their credibility and find them reliable for purposes of evaluating probable cause. *Chenoweth*, 160 Wn.2d at 479 ("[O]nly material falsehoods or omissions made recklessly or intentionally will invalidate a search warrant."). Because all of the witnesses were named in the warrant affidavit, the *Aguilar-Spinelli* test does not apply. *O'Connor*, 39 Wn. App. at 120.

The decision to issue a search warrant is highly discretionary. *Chenoweth*, 160 Wn.2d at 477. The issuing judge "is entitled to make reasonable inferences from the facts and circumstances set forth in the affidavit" and we resolve all doubts in favor of upholding the warrant. *Scherf*, 192

Wn.2d 363. Based on the information outlined above, we hold that the issuing judge did not abuse its discretion because the affidavit was supported by probable cause.

II. JURY INSTRUCTIONS

For the first time on appeal, Wolfe argues that the trial court erred by instructing the jury in a manner that relieved the State of its burden to prove that Wolfe "received notice" of the January 19, 2018 hearing and failed to appear "as required," which is the language used in RCW 9A.76.170(1). Wolfe argues that this error violated his due process rights under the Fourth and Fourteenth Amendments of the United States Constitution and article I, section 3 of the Washington Constitution.

We decline to address Wolfe's challenge to the to-convict instruction because Wolfe's challenge does not involve a manifest constitutional error under RAP 2.5(a)(3).

A. UNPRESERVED CHALLENGE

Wolfe argues that the claim of error he raises, that the instruction relieved the State of its burden to prove Wolfe "received notice" of the hearing and failed to appear "as required," is a manifest constitutional error as a matter of law that can be raised for the first time on appeal. We disagree.

Wolfe did not object to the to-convict instruction at trial. "Generally, a party who fails to object to jury instructions below waives a claim of instructional error on appeal." *State v. Edwards*, 171 Wn. App. 379, 387, 294 P.3d 708 (2012). But an appellant does not waive a manifest error affecting a constitutional right by failing to object below. RAP 2.5(a)(3). To merit review of this issue on appeal, the appellant must show that (1) the error is of constitutional magnitude and (2) the error is manifest. RAP 2.5(a)(3); *State v. O'Hara*, 167 Wn.2d 91, 98, 217 P.3d 756 (2009).

To determine whether the error was manifest, RAP 2.5(a)(3) requires the appellant to show actual prejudice. *O'Hara*, 167 Wn.2d at 99. We focus on "whether the error is so obvious on the record that the error warrants appellate review." *Id.* at 99-100.

RCW 9A.76.170(1) states that a person is guilty of bail jumping if the person is released by court order "with knowledge of the requirement of a subsequent personal appearance before any court" and "fails to appear . . . *as required*." (Emphasis added.) The elements of bail jumping are that the defendant "'(1) was held for, charged with, or convicted of a particular crime; (2) was released by court order or admitted to bail with the requirement of a subsequent personal appearance; and (3) knowingly failed to appear as required.'" *State v. Williams*, 162 Wn.2d 177, 183-84, 170 P.3d 30 (2007) (emphasis omitted) (quoting *State v. Pope*, 100 Wn. App. 624, 627, 999 P.2d 51 (2000)).

The trial court instructed the jury on the elements of the bail jumping using a to-convict instruction that was modeled on 11A *Washington Practice: Washington Pattern Jury Instructions: Criminal* 120.41, at 570 (4th ed. 2016). Two of the instruction's elements were that Wolfe "failed to appear before a court" and that he "had been released by court order or with knowledge of the requirement of a subsequent personal appearance before that court." CP at 92.

B. "RECEIVED NOTICE" ELEMENT

Wolfe argues that the trial court erred by instructing the jury in a manner that relieved the State of its burden to prove that Wolfe "received notice," therefore the State did not prove that he had knowledge of the January 19, 2018 hearing. We disagree.

RCW 9A.76.170(1) requires that the defendant have "knowledge of the requirement of a subsequent personal appearance before any court." The knowledge requirement is satisfied "when

the State proves that the defendant has been given notice of the required court dates." *State v. Fredrick*, 123 Wn. App. 347, 353, 97 P.3d 47 (2004). In *Fredrick*, the court held that evidence that the defendant knew she had a court date was sufficient to prove the "knowledge" element of bail jumping. *Id*. at 355. Prior to the missed hearing, Fredrick signed a scheduling order that listed the required court date. *Id*. at 350.

Wolfe relies on *State v. Cardwell*, where the court held that there was insufficient evidence that the defendant knew that he had a required scheduled appearance. 155 Wn. App. 41, 47-48, 226 P.3d 243 (2010), *modified on remand*, 166 Wn. App. 1011 (2012). The State's notice of the required hearing was mailed to Cardwell but did not reach him until after the scheduled appearance. *Id*. at 47. Citing *Fredrick*, 123 Wn. App. at 353, we concluded that without any notice of the required hearing date, the State could not prove knowledge. *Id*. We further concluded that if the State proves receipt of notice, then the element of knowledge is satisfied. *Id*.

Based on the foregoing cases, Wolfe argues that the State was required to prove that he received notice of the required hearing in order to prove knowledge. But Wolfe's argument relies on the logical fallacy of the inverse or "denying the antecedent." *State v. Brush*, 183 Wn.2d 550, 568 n.8, 353 P.3d 213 (2015) (Wiggins, J., concurring in part and concurring in result). This fallacy occurs when one assumes that the inverse of a true statement is also true. For example, if the conditional statement, "'If P, then Q'" is true, then "'if not P, then not Q'" must also be true. *Id*. This premise is flawed because denying the truth of the P (the antecedent) does not necessitate the denial of Q (the consequent). *Id*. As applied here, Wolfe points to our holding that if the State proves receipt of notice, then the knowledge element is satisfied (if P, then Q). Wolfe claims that the inverse is also true, or if the State does *not* prove receipt of notice, then the knowledge element

is *not* satisfied (if not P, then not Q). This conclusion is invalid because negating the antecedent does not necessitate the denial of the consequent. *Id*. Additionally, Wolfe's argument confuses what is necessary and what is sufficient to prove knowledge. Wolfe argues that if the State can prove knowledge by showing a defendant received notice of the hearing, then it must be the case that the State is *required* to prove the defendant received notice even if the State produces other evidence of the defendant's actual knowledge of the requirement to appear. This premise is also flawed because although showing that a defendant received notice is sufficient to prove knowledge, it is not the only way to prove knowledge.

Our conclusion is supported by the plain language of RCW 9A.76.170(1), which does not require that the State prove that a defendant received notice. RCW 9A.76.170(1) expressly states that the defendant must have "knowledge of the requirement of a subsequent personal appearance." Moreover, it is axiomatic that if the State proves that the defendant had knowledge of the missed hearing, the defendant must have received notice of the hearing at some point.

In sum, the knowledge element may be satisfied by proving that the defendant was given notice of the missed court date, but receipt of notice is not an essential element of bail jumping under RCW 9A.76.170(1). Because receipt of notice is not an element, the trial court did not err by not including receipt of notice in the to-convict instruction. Therefore, Wolfe's challenge on this ground does not involve a manifest constitutional error under RAP 2.5(a)(3), and we decline to address it.

C. "AS REQUIRED" ELEMENT

Wolfe also argues that the to-convict instruction was improper because it did not state that Wolfe failed to appear "as required," which permitted the jury to find him guilty regardless of

whether he was actually required to attend the January 19 hearing. Wolfe further argues that we should decline to follow *State v. Hart*,[6] where we addressed an identical argument, because its reasoning is erroneous.

We disagree and decline to address this argument because under our decision in *Hart*, the challenge to the to-convict instruction does not involve a manifest constitutional error under RAP 2.5(a)(3).

Here, the to-convict instruction instructed the jury that to convict Wolfe of bail jumping, it was required to find that he "failed to appear before a court." CP at 92. The instruction omitted the statutory language that requires that a defendant failed to appear "as required." RCW 9A.76.170(1). However, the instruction required the jury to find that Wolfe "had been released by court order with knowledge of the requirement of a subsequent personal appearance before that court." CP at 92.

In *Hart*, we addressed the argument Wolfe makes here, that the to-convict instruction relieved the State of its burden to prove that he had failed to appear at a court hearing "as required." 195 Wn. App. at 455. The trial court's to-convict instruction in *Hart* also did not include "as required" after "the defendant failed to appear before a court." *Id*. at 454. However, the instruction required the State to prove beyond a reasonable doubt 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." *Id*. The court held that the instruction did not violate Hart's due

[6] 195 Wn. App. 449, 455, 381 P.3d 142 (2016), *abrogated on other grounds by State v. Burns*, 193 Wn.2d 190, 438 P.3d 1183 (2019).

process rights because the instruction included the element of a required subsequent appearance. *Id*. at 456.

Wolfe contends that *Hart* was wrongly decided because (1) its reasoning is erroneous in cases such as his where a defendant is released with knowledge of a required subsequent personal appearance, but is charged with bail jumping for failing to appear at a hearing other than the hearing the defendant had notice of at the time of release and (2) its reasoning conflates two different elements of bail jumping.

Wolfe draws a distinction between (1) evidence that the defendant failed to appear in court "'as required'" and (2) evidence that the court ordered a hearing that the defendant was required to attend. Br. of Appellant at 35-36. Wolfe argues that the to-convict instruction did nothing to inform the jury of the first prong that he actually failed to appear as he had been ordered to on December 19, 2017, rather than on the date his hearing was reset for, on January 19, 2018. He also argues that the holding in *Hart* renders superfluous the language "as required" in RCW 9A.76.170(1).

We hold that the reasoning in *Hart* is not flawed. First, Wolfe's distinction between the defendant's knowledge of his or her required attendance at a future hearing and the defendant's actual failure to appear in court "as required" is unsupported by the reasoning in *Hart* or the language of RCW 9A.76.170(1). *Hart* specifically references the previous phrase "with knowledge of the requirement of a subsequent personal appearance," which makes it clear that a defendant cannot be convicted of bail jumping for failing to appear in court where there was no prior requirement that the defendant do so. *Id*. at 456 (emphasis omitted). Further, a defendant cannot have a valid claim that he or she did not fail to attend the hearing "as required" when the

defendant knows that the court had ordered him or her to return for a future hearing, and the defendant fails to attend that hearing.

Second, Wolfe's reading of RCW 9A.76.170(1) creates a distinction between the trial court's initial order requiring Wolfe to return for the December 19, 2017 hearing and the trial court's subsequent order requiring Wolfe to return for the January 19, 2018 hearing. Wolfe's distinction is unnecessary because regardless of any potential scheduling changes of the hearing itself, the defendant still knows that he or she is required to make a subsequent personal appearance at that hearing when it does occur.

We follow *Hart* and hold that Wolfe's challenge to the to-convict instruction is not a manifest constitutional error because we have already determined that identical language satisfies due process. Accordingly, we decline to review Wolfe's challenge.

III. INSUFFICIENT EVIDENCE

Wolfe argues that the State presented insufficient evidence to convict him of bail jumping because no rational juror could have found beyond a reasonable doubt that Wolfe received notice to appear at the hearing and that his appearance was required. . Because we conclude that receipt of notice is not an element of bail jumping, we review whether the State presented insufficient evidence that Wolfe knowingly failed to appear at the court hearing as required. We hold that the State presented sufficient evidence.

Due process requires that the State prove beyond a reasonable doubt every element of a charged crime. *State v. Kalebaugh*, 183 Wn.2d 578, 584, 355 P.3d 253 (2015). Whether the State presented sufficient evidence to support a conviction is a question of law that we review de novo. *State v. Rich*, 184 Wn.2d 897, 903, 365 P.3d 746 (2016).

The test for determining sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found guilt beyond a reasonable doubt. *State v. Cardenas-Flores*, 189 Wn.2d 243, 265, 401 P.3d 19 (2017). In a sufficiency of the evidence claim, the defendant admits the truth of the evidence and the court views the evidence and all reasonable inferences drawn from that evidence in the light most favorable to the State. *Id*. at 265-66. Circumstantial and direct evidence are equally reliable. *Id*. at 266.

Wolfe was charged with bail jumping under RCW 9A.76.170(1), which reads,

> 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 this 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.

As discussed above, the elements of bail jumping are that the defendant "'(1) was held for, charged with, or convicted of a particular crime; (2) was released by court order or admitted to bail with the requirement of a subsequent personal appearance; and (3) knowingly failed to appear as required.'" *Williams*, 162 Wn.2d at 183-84 (emphasis omitted) (quoting *Pope*, 100 Wn. App. at 627).

At trial, the State presented Wolfe's order for pretrial release, which was signed by Wolfe and received in open court on October 27, 2017. The order stated that Wolfe "shall appear" on December 19, 2017, and that failure to appear when required by the court is a crime. Ex. 58 at 2.

The State also presented the transcript from the December 19, 2017 hearing at trial. At the hearing, Wolfe's counsel stated, "He is here" and requested the court to continue the hearing to January 19, 2018. Ex. 64 at 2. The court granted counsel's request, and entered an order resetting

the omnibus hearing for January 19, 2018 in open court. The court also entered an order on counsel's motion to continue, which reflected that Wolfe appeared at the December 19, 2017 hearing and that "[w]ritten and oral notice [was] given to defendant" of the new set date for the omnibus hearing. Ex. 61 at 1. Wolfe failed to appear for the January 19, 2018 omnibus hearing.

In raising a sufficiency of the evidence claim, Wolfe admits the truth of the evidence and we view the evidence and all reasonable inferences drawn from that evidence in the light most favorable to the State. *Cardenas-Flores*, 189 Wn.2d at 265-66. In viewing Wolfe's counsel's statement that "[h]e is here" in the light most favorable to the State, we draw a reasonable inference that Wolfe was present at the December 19, 2017 hearing. Ex. 64 at 2. Furthermore, Wolfe admits the truth of the court's order reflecting that Wolfe appeared at the December 19, 2017 hearing and was given "[w]ritten and oral notice" of the new set date for the omnibus hearing. Ex. 61 at 1. This evidence, coupled with the trial court's order entered in open court resetting the omnibus hearing for January 19, 2018, created a reasonable inference that Wolfe had knowledge of the January 19, 2018 hearing date.

Furthermore, Wolfe's order for pretrial release stated that Wolfe was required to appear on December 19, 2017 and that failure to appear when required by the court is a crime. As stated above, Wolfe appeared for the hearing, but his counsel rescheduled. Since the matter was reset, a reasonable juror could also find that Wolfe knew his appearance would also be required at the subsequent January 19, 2018 hearing.

Viewing this evidence in the light most favorable to the State, we hold that the evidence was sufficient for a reasonable jury to find beyond a reasonable doubt that Wolfe knowingly failed

to appear at the January 19, 2018 hearing as required. Accordingly, we hold that there was sufficient evidence to support Wolfe's conviction.

CONCLUSION

We hold that the trial court did not err by denying Wolfe's motion to suppress because the State had probable cause to enter Wolfe's residence. We decline to address Wolfe's challenge to the bail jumping to-convict instruction because Wolfe's claim does not involve a manifest constitutional error under RAP 2.5(a)(3). Finally, we hold that sufficient evidence supports Wolfe's bail jumping conviction. We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Cruser, J.
CRUSER, J.

We concur:

Worswick, J.
WORSWICK, J.

Lee, A.C.J.
LEE, A.C.J.