IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. MARIO CHARLES, Appellant.	No. 40278-5-II UNPUBLISHED OPINION

Worswick, A.C.J. — A jury found Mario Charles guilty of attempting to elude a police vehicle and bail jumping. He appeals, arguing that (1) the trial court improperly excluded witness testimony, (2) there was insufficient evidence of bail jumping, (3) the jury instructions were deficient, (4) the trial court admitted improper opinion testimony against him, (5) he received ineffective assistance of counsel, and (6) the 2008 amendments to the Sentencing Reform Act of 1981 (SRA)[1] unconstitutionally shifted the State's burden of proof at sentencing. Charles also

[1] Ch. 9.94A RCW.

submits a statement of additional grounds (SAG).[2] We affirm Charles's convictions but hold that the burden of proof was impermissibly shifted at sentencing and remand for resentencing, allowing the State an opportunity to prove the defendant's criminal history.

FACTS

Police arrested Charles after a high speed chase. The State charged him with attempting to elude a police vehicle.[3] The trial court released Charles under personal recognizance and set a status hearing for November 25, 2009. Charles was not present in court at the November 25 hearing when his case was called, and the trial court issued a bench warrant. The State charged Charles with bail jumping[4] for his failure to appear.

At trial, Charles sought to call his mother and father to testify that they provided transportation for Charles to his hearing on November 25.[5] The trial court excluded this testimony, finding that, based on the bail jumping statute and pattern jury instructions, the proffered testimony did not relate to a defense to bail jumping.

The State's evidence included documents from Charles's attempted eluding case: the

[2] RAP 10.10.

[3] RCW 46.61.024.

[4] RCW 9A.76.170.

[5] Charles's father was expected to testify that he was with Charles when Charles got onto a bus to Tacoma. The prosecutor stated that Charles's mother was expected to testify that she drove Charles from Tacoma to the courthouse. But according to Charles's trial counsel, Charles's mother was expected to testify that she drove Charles to a park-and-ride from which he could take a bus to the courthouse.

charging information, the conditions of release document, the order setting the trial and hearing dates, and the bench warrant. The State called Deputy Prosecutor Scott Jackson who was the prosecutor at the November 25 hearing, although Jackson testified that he had no independent recollection of the hearing.

Jackson testified about the course of ordinary pretrial proceedings and the function of the charging information, the conditions of release document, the order setting trial date and other hearings, and the bench warrant. He further testified that the information charged Charles with attempting to elude a police vehicle. He also testified that the conditions of release document was from Charles's case and that the order setting trial date and other hearings listed the dates that Charles was required to be in court, including November 25th. Jackson also testified that the bench warrant showed that Charles was not present at his November 25 hearing.

In conclusion, Jackson testified that Charles was charged with a crime, that he had been released on conditions of release, that he had been given notice of the November 25 hearing, and that he was not present in the courtroom when his case was called. Charles did not object to Jackson's testimony.

Trooper Robert Howson and Sergeant Thomas Martin testified about the elude charge. Trooper Howson, who began the chase, testified that the pursued driver (later identified as Charles) drove at high speeds through residential areas, ran stop signs and a red light, and crossed the roadway's center line. The State played a dashboard camera video of the chase from Trooper Howson's police car. Before playing the video, the State asked Trooper Howson what the

recording depicted. Trooper Howson answered, "It's a recording of the pursuit, the traffic violations, the reckless driving, the speeds, the audio and visual recording of this pursuit." Report of Proceedings (RP) (Jan. 27, 2010) at 37. Charles did not object to this testimony.

During Sergeant Martin's testimony, the State asked whether Sergeant Martin became aware that the pursued vehicle had successfully eluded Trooper Howson, and Sergeant Martin answered in the affirmative. Sergeant Martin also testified that law enforcement set up a perimeter around the area where the pursued vehicle was abandoned because "typically in a pursued situation, they're trying to get away from us." RP (Jan. 27, 2010) at 64. Charles did not object to either of these statements.

Deborah Murphy, Charles's defense attorney who had represented Charles at the November 25 hearing, testified that she saw Charles in the hall outside the courtroom before his hearing, that she told him to come inside, and that when his case was called, he was neither in the courtroom nor in the hall.

Charles conceded during closing argument that the driver in the pursued vehicle drove recklessly and attempted to elude the police, but he argued that the State could not prove that he had been the driver. The trial court gave jury instructions that included a "to convict" instruction on bail jumping. This instruction required the jury to find that Charles "failed to appear" on

November 25.[6] Clerk's Papers (CP) at 35. The jury found Charles guilty of both attempting to elude a police vehicle and bail jumping.

At sentencing, the trial court based Charles's offender score on a document entitled "prosecutor's statement of criminal history," which provided a list of Charles's prior convictions. Attached to the statement was a worksheet showing the State's calculation of Charles's offender score. The worksheet included one point for Charles's community custody status, which was not listed in the criminal history statement or elsewhere. The prosecutor told the trial court that the defense had examined this statement and that the prosecutor believed the convictions were agreed. Charles's counsel stated that he had reviewed Charles's prior convictions, affirming that Charles had two convictions for vehicular assault and asking for a sentence at the bottom of the standard range. Charles's counsel did not explicitly affirm Charles's other convictions or his

[6] The "to convict" instruction provided:

> To convict the defendant of the crime of bail jumping, as charged in Count II, each of the following elements of the crime must be proved beyond a reasonable doubt:
>
> (1) That on or about November 25, 2009, the defendant failed to appear before a court;
>
> (2) That the defendant was charged with Attempting to Elude a Pursuing Police Vehicle;
>
> (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.
>
> If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.
>
> On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

CP at 35-36.

offender score, but did not raise any objection to the statement of criminal history. Charles appeals.

ANALYSIS

I. Excluded Testimony

Charles first contends that the trial court erroneously excluded his parents' testimony. He argues that the testimony was relevant and admissible, and that the trial court's exclusion of this evidence denied him the right to present a defense. This claim fails.

Both the Sixth Amendment to the United States Constitution and art. I, § 22 of the Washington Constitution guarantee a defendant the right to present a defense. *State v. Maupin*, 128 Wn.2d 918, 924, 913 P.2d 808 (1996) (quoting *Washington v. Texas*, 388 U.S. 14, 19, 87 S. Ct. 1920, 18 L. Ed. 2d 1019 (1967)). But this right extends only to relevant evidence. *State v. Jones*, 168 Wn.2d 713, 720, 230 P.3d 576 (2010). ER 401 provides that evidence is relevant if it makes a fact "of consequence to the determination of the action" more or less probable. "The threshold to admit relevant evidence is low, and even minimally relevant evidence is admissible." *State v. Gregory*, 158 Wn.2d 759, 835, 147 P.3d 1201 (2006).

We review a trial court's decision to exclude evidence for an abuse of discretion. *State v. Lord*, 161 Wn.2d 276, 294, 165 P.3d 1251 (2007). A trial court abuses its discretion when it adopts a position that no reasonable person would take, when it applies the wrong legal standard, or when it relies on unsupported facts. *Salas v. Hi-Tech Erectors*, 168 Wn.2d 664, 669, 230 P.3d 583 (2010). Where a trial court erroneously excludes testimony as irrelevant, such error is

harmless "if the untainted, admitted evidence is so overwhelming as to necessarily lead to a finding of guilt."[7] *Lord*, 161 Wn.2d at 295-96. Erroneously excluding evidence that would be merely cumulative with overwhelming, untainted, admitted evidence is harmless. *See State v. Flores*, 164 Wn.2d 1, 19, 186 P.3d 1038 (2008).

The trial court excluded Charles's parents' testimony because, after consulting the bail jumping statute and pattern jury instructions, the trial court found that the testimony did not "go to any of the facts that are allowed as a defense" to bail jumping. RP (Jan. 27, 2010) at 70. Based on this ruling, it appears that the trial court believed that the evidence was irrelevant because it did not go to prove the statutory defense to bail jumping provided in RCW 9A.76.170(2).[8] In doing so, the trial court applied the wrong legal standard. The proper standard was whether the testimony made any fact "of consequence to the determination of the action" more or less probable. Under the proper standard, Charles's parents' testimony was admissible.

Nonetheless, we hold that this error was harmless. It was uncontroverted that Charles

[7] Charles asserts that, because he has the constitutional right to present relevant evidence in his own defense, the State bears the burden to show that any error was harmless beyond a reasonable doubt. *Maupin*, 128 Wn.2d at 928-29, supports this contention. But this proposition in *Maupin* is contradicted by *Lord*, which held that the "current" standard on this issue is the "overwhelming untainted evidence" test. 161 Wn.2d at 295 n.17. Following *Lord*, we reject Charles's contention that this issue must be reviewed under the constitutional harmless error standard.

[8] RCW 9A.76.170(2) provides:

> It is an affirmative defense to a prosecution under this section that uncontrollable circumstances prevented the person from appearing or surrendering, and that the person did not contribute to the creation of such circumstances in reckless disregard of the requirement to appear or surrender, and that the person appeared or surrendered as soon as such circumstances ceased to exist.

was in the courthouse on November 25 but not in the courtroom when his case was called. His parents' testimony was merely cumulative of the overwhelming, untainted, admitted evidence of this fact. Charles's claim on this point fails.

II. Sufficiency of Evidence

Charles next argues that the evidence was insufficient to support his conviction for bail jumping. He makes this argument on two bases. First, he argues that the word "appear" in the bail jumping statute did not require him to personally appear at his hearing, but only to "come into sight." Br. of Appellant at 17. And second, he argues that the State failed to prove that Charles did not appear "as required," because the State did not prove that Charles's hearing was held at the address where the order setting trial date said it would be held. These arguments also fail.

A. Definition of "Appear"

The bail jumping statute, RCW 9A.76.170(1), provides, "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 . . . and who fails to appear . . . as required is guilty of bail jumping." Charles argues that the word "appear" in this statute is ambiguous, because the word has more than one definition: it can mean a personal appearance, as in court, and it can also mean "to come into sight." Charles argues that the multiple possible definitions of "appear" render the bail jumping statute ambiguous and thus, the rule of lenity requires us to interpret the term in his favor. Charles thus argues that the bail jumping statute does not require defendants to attend their hearings, but merely to be visible in the courthouse on the correct date.

We review questions of statutory interpretation de novo. *State v. Mandanas*, 168 Wn.2d 84, 87, 228 P.3d 13 (2010). The purpose of statutory interpretation is to give effect to the legislature's intent. *In re Pers. Restraint of Cruze*, 169 Wn.2d 422, 427, 237 P.3d 274 (2010) (quoting *State v. Jacobs*, 154 Wn.2d 596, 600, 115 P.3d 281 (2005)). Where the meaning of a statute is plain, the legislative intent is derived from the text. *State v. Engel*, 166 Wn.2d 572, 579, 210 P.3d 1007 (2009). Plain meaning is derived from the ordinary meaning of the words used, the context of the statute, related provisions, and the statutory scheme as a whole. *Engel*, 166 Wn.2d at 578. We should avoid a reading that produces absurd results because the legislature is presumed not to intend them. *Engel*, 166 Wn.2d at 579.

"If a statute is susceptible to more than one reasonable interpretation, it is ambiguous and, absent legislative intent to the contrary, the rule of lenity requires us to interpret the statute in favor of the defendant." *State v. Coucil*, 170 Wn.2d 704, 706-07, 245 P.3d 222 (2010). Our first inquiry, therefore, is whether the statute is ambiguous.

The bail jumping statute is not ambiguous. The statute applies when a defendant has been released and knows that he is required to make "a subsequent personal appearance before any court of this state." RCW 9A.76.170(1). A defendant commits the crime of bail jumping if he "fails to appear . . . as required." RCW 9A.76.170(1). The requirement to "appear as required" plainly refers to the preceding clause, which requires that the defendant know that he is required to make *a personal appearance before a court*. By the statute's plain terms, a defendant who fails to make a personal appearance before a court does not appear "as required" and is guilty of

bail jumping.

Charles asks us to ignore the statute's reference to a personal appearance before a court and read the word "appear" in isolation. Accepting Charles's argument would allow defendants to avoid bail jumping charges by appearing at the courthouse on the correct date without attending their hearings. This would lead to an absurd result. The legislature's intent is clear from the text of the statute: that defendants be required to appear at previously ordered hearings, and not simply "come into sight" by being seen in or around the courthouse. Charles's argument fails under the statute's plain meaning.

B. "As Required" Element

Charles next argues that the State failed to prove that he did not appear "as required." Charles argues that because he was required to appear at a specific address, and because the State did not prove that his hearing occurred at that address, the State failed to prove an element of bail jumping.

The State must prove every essential element of the crime charged beyond a reasonable doubt. *State v. Feeser*, 138 Wn. App. 737, 741, 158 P.3d 616 (2007). "An 'essential element is one whose specification is necessary to establish the very illegality of the behavior.'" *Feeser*, 138 Wn. App. at 743 (quoting *State v. Johnson*, 119 Wn.2d 143, 147, 829 P.2d 1078 (1992)).

Charles essentially argues that the words "appear as required" make the address of the hearing an essential element of RCW 9A.76.170(1). We disagree. The plain meaning of these words refers to appearance before the specified court on the specified date. If the State shows

that the defendant was required to appear before a court and failed to do so, the State has proved that the defendant failed to appear "as required." *Cf. State v. Aguilar*, 153 Wn. App. 265, 278, 223 P.3d 1158 (2009), *review denied*, 168 Wn.2d 1022, 228 P.3d 18 (2010) (The fact that court actually convened for a defendant's hearing is not an essential element of bail jumping). Thus, the address where a hearing was held is not a fact "whose specification is necessary to establish the very illegality of the behavior," and the address is not an essential element of the crime. *Feeser*, 138 Wn. App at 743. Because the address of the hearing is not an essential element, the State was not required to prove it. Charles's claim on this point also fails.

III. Jury Instructions

Charles next argues that the trial court erred by giving a deficient "to convict" bail jumping instruction. Br. of Appellant at 21. He claims that the instruction was deficient because it did not instruct the jury that it must find that Charles failed to appear "as required." We reject Charles's argument.

"To convict" instructions must include every element of the crime charged. *State v. Fisher*, 165 Wn.2d 727, 753, 202 P.3d 937 (2009). Failure to include every element is constitutional error that may be raised for the first time on appeal. *Fisher*, 165 Wn.2d at 753. But omission of an element in jury instructions is harmless if uncontroverted evidence supports that element. *State v. Brown*, 147 Wn.2d 330, 341, 58 P.3d 889 (2002). We review "to convict" instructions de novo. *Fisher*, 165 Wn.2d at 754.

The "to convict" instruction here instructed the jury that to convict Charles of bail

jumping, it was required to find that he "failed to appear before a court." Clerk's Papers (CP) at 35. This instruction omitted the statutory language in RCW 9A.76.170(1) that requires that the defendant failed to appear "as required." By omitting the "as required" language, the instruction technically permitted the jury to find that Charles was guilty of bail jumping based on his failure to appear before *any* court, not limited to the court where he was required to appear. This arguably reduced the State's burden of proof to show that Charles failed to appear specifically at his own hearing.

Although the "to convict" instruction was arguably erroneous, any such error was harmless. The evidence showed that Charles was given notice of the November 25 hearing. And Murphy's testimony, as well as the trial court's bench warrant, showed that he failed to appear at that hearing. This uncontroverted evidence showed that Charles failed to appear at his hearing at the correct court on the correct date—that is, "as required." Thus, even assuming that the instruction erroneously omitted the "as required" element, uncontroverted evidence supports that element and any such error was harmless. *Brown*, 147 Wn.2d at 341 (2002). Charles's claim fails.

IV. Opinion Testimony

Charles next argues that the trial court erred by admitting improper opinion testimony. He claims that Deputy Prosecutor Jackson, Trooper Howson, and Sergeant Martin all impermissibly testified as to their opinions of his guilt. We disagree.

The Sixth Amendment to the United States Constitution and art. I, § 21 of the

Washington Constitution guarantee the right to a trial by jury. *State v. Elmore*, 154 Wn. App. 885, 897, 228 P.3d 760 (2010). In general, witnesses may not comment on the guilt or veracity of the defendant because such testimony invades the exclusive province of the jury. *State v. Demery*, 144 Wn.2d 753, 759, 30 P.3d 1278 (2001) (quoting *City of Seattle v. Heatley*, 70 Wn. App. 573, 577, 854 P.2d 658 (1993)). "Testimony that is 'based on one's belief or idea rather than on direct knowledge of the facts at issue' is opinion testimony." *State v. Saunders*, 120 Wn. App. 800, 811, 86 P.3d 232 (2004) (quoting *Demery*, 144 Wn.2d at 760). Conversely, a statement based solely on inferences from the evidence is not opinion testimony. *See Saunders*, 120 Wn. App. at 812 (a witness who based his testimony on a review of the evidence and did not interject his personal opinion did not give opinion testimony).

In determining whether testimony was improper opinion testimony, "the court will consider the circumstances of the case, including the following factors: (1) the type of witness involved, (2) the specific nature of the testimony, (3) the nature of the charges, (4) the type of defense, and (5) the other evidence before the trier of fact." *State v. Kirkman*, 159 Wn.2d 918, 928, 155 P.3d 125 (2007) (quoting *Demery*, 144 Wn.2d at 759) (internal quotation marks omitted).

Charles did not object to any of the purportedly improper opinion testimony at trial. And a claim of improper opinion testimony may be raised for the first time on appeal only if it is a manifest error affecting a constitutional right. RAP 2.5(a)(3); *Kirkman*, 159 Wn.2d at 926. "Manifest error" requires a showing of actual and identifiable prejudice to the defendant's

constitutional rights at trial. *Kirkman*, 159 Wn.2d at 926-27 (citing *State v. McFarland*, 127 Wn.2d 322, 333, 899 P.2d 1251 (1995)). In the case of improper opinion testimony, a defendant can show manifest constitutional error only if the record contains "an explicit or almost explicit witness statement on an ultimate issue of fact." *Kirkman*, 159 Wn.2d at 938. A statement is not manifest error under this standard when it does not relate directly to the defendant. *See State v. Borsheim*, 140 Wn. App. 357, 375, 165 P.3d 417 (2007).

A. Deputy Prosecutor Jackson

At trial, Deputy Prosecutor Jackson testified about the meaning and significance of the court documents demonstrating the facts underlying the bail jumping charge. Jackson then testified that, based on his review of these documents, Charles was charged with a crime, had been released on conditions of release, had been given notice of the November 25 hearing, and was not present in the courtroom when his case was called.

Jackson did not testify as to his belief that Charles was guilty. Rather, he testified regarding the inferences he drew from reviewing the documents admitted into evidence. This was not opinion testimony. *See Saunders*, 120 Wn. App. at 812. Charles's claim fails.

B. Trooper Howson

Trooper Howson testified that the dashboard camera video recording of the chase was a "recording of the pursuit, the traffic violations, the reckless driving, the speeds, the audio and visual recording of this pursuit." RP (Jan. 27, 2010) at 37. Objection to Trooper Howson's testimony may be raised for the first time on appeal because his statement that the video showed

"reckless driving" was a nearly explicit comment on an ultimate issue for the jury, i.e., whether Charles drove in a "reckless manner." RCW 46.61.024(1).

As we noted above, we look to the five factors identified in *Kirkman* to decide whether testimony is improper opinion testimony. The second and fourth factors are dispositive here. The second factor is the nature of the testimony. Trooper Howson's testimony was a brief and indirect comment describing the contents of the video. We also look to the fourth factor, the type of defense. Charles asserted the defense that he was not the driver depicted in the video. Charles conceded that the driver depicted in the video drove recklessly. We hold that Trooper Howson's testimony was not improper opinion testimony as to Charles's guilt. Charles's claim on this point fails.

C. Sergeant Martin

The State asked Sergeant Martin whether he became aware that the pursued vehicle had successfully eluded Trooper Howson, and Sergeant Martin answered in the affirmative. Sergeant Martin also testified that "typically in a pursued situation, they're trying to get away from us." RP (Jan. 27, 2010) at 64.

Sergeant Martin's testimony did not relate directly to Charles. Sergeant Martin first testified that the pursued driver had eluded Trooper Howson, but he did not testify that Charles was that driver. Likewise, in Sergeant Martin's second statement, he explained what happens in a *typical* pursuit situation. He did not testify that it was Charles who was trying to get away from the police.

In *Borsheim*, a witness testified that the victim's medical diagnosis was consistent with sexual abuse. 140 Wn. App. at 375. But the witness did not testify that the defendant had been the perpetrator of this abuse. *Borsheim*, 140 Wn. App. at 375. *Borsheim* held that this testimony could not be characterized as manifest error, because testimony deemed to be an opinion as to the defendant's guilt must relate directly to the defendant. 140 Wn. App. at 375 (citing *State v. Sanders*, 66 Wn. App. 380, 387, 832 P.2d 1326 (1992)). So too here, Trooper Howson's testimony did not relate directly to Charles. It therefore cannot be characterized as manifest error and we do not review it for the first time on appeal.

V. Ineffective Assistance of Counsel

Charles next claims that his trial counsel's failure to object to the purported opinion testimony deprived him of his right to effective assistance of counsel. We reject Charles's claim.

The Sixth Amendment to the United States Constitution and art. I, § 22 of the Washington Constitution guarantee effective assistance of counsel. *State v. Grier*, 171 Wn.2d 17, 32, 246 P.3d 1260 (2011). We review ineffective assistance claims de novo. *State v. Sutherby*, 165 Wn.2d 870, 883, 204 P.3d 916 (2009).

In order to show that he received ineffective assistance of counsel, a defendant must show (1) that defense counsel's conduct was deficient and (2) that the deficient performance resulted in prejudice. *State v. Reichenbach*, 153 Wn.2d 126, 130, 101 P.3d 80 (2004). To show prejudice, Charles must show a reasonable possibility that, but for counsel's purportedly deficient conduct, the outcome of the proceeding would have differed. *Reichenbach*, 153 Wn.2d at 130. Because

both prongs must be met, a failure to show either prong will end the inquiry. *State v. Fredrick*, 45 Wn. App. 916, 923, 729 P.2d 56 (1986).

Charles cannot meet his burden to show he was prejudiced by the testimony. Neither Jackson's nor Trooper Howson's testimony was opinion testimony, and any objection on the basis of improper opinion testimony would have failed. And Sergeant Martin's testimony did not directly relate to Charles, making it unlikely that even a sustained objection would have changed the outcome of the proceeding. Charles has failed to show any reasonable possibility that, had counsel objected to the testimony at issue, the outcome of the proceeding would have differed. Because Charles has failed to show prejudice, his ineffective assistance claim fails.

VI. 2008 SRA Amendments

Charles further argues that the 2008 amendments to the SRA violated his right to due process by shifting the burden of proof at sentencing. We agree.

In *State v. Hunley*, No. 39676-9 (Wash. Ct. App. May 17, 2011) at ¶¶ 15-16, *petition for review filed* No. 81635-8 (Wash. Jun 20, 2011), we held that under *State v. Ford*, 137 Wn.2d 472, 973 P.2d 452 (1999), the 2008 amendments to RCW 9.94A.500 violate due process by shifting the burden of proof to the defendant at sentencing in providing that a prosecutor's criminal history summary constitutes prima facie evidence of criminal history. Under *Ford*, the State must prove criminal history with at least some evidence and may not rest on the prosecutor's assertions unless the defendant affirmatively acknowledges the criminal history. 137 Wn.2d at 482-83. Furthermore, the 2008 amendment to RCW 9.94A.530 violates due process by

providing that the defendant's failure to object constitutes acknowledgement.

Here, there was no evidence of Charles's criminal history or community custody status on the record. Instead, the trial court relied on the prosecutor's statement of criminal history and offender score worksheet. These unsworn documents were not evidence, but merely assertions. Thus, as in *Hunley*, the State failed to meet its burden of proof at sentencing. Consistent with *Hunley*, we vacate Charles's sentence and remand for resentencing, allowing the State to present evidence of Charles's criminal history at the resentencing hearing.

Statement of Additional Grounds

In his SAG, Charles asserts that (1) he received ineffective counsel, (2) the trial court erroneously calculated his offender score, (3) the State failed to meet its burden to prove that he was released on bail, (4) the State failed to prove that he knew his exact hearing date, and (5) his conviction for attempting to elude a police vehicle must be reversed for unspecified reasons. We decline to consider his arguments concerning ineffective assistance of counsel, erroneous calculation of his offender score, and reversal of his conviction, and we reject his remaining arguments.

I. Errors Lacking Adequate Specificity

In his SAG, Charles first asserts that he has filed an ineffective assistance of counsel claim showing deficient performance with resulting prejudice. Charles's only argument on this point, however, is that he could not be convicted of bail jumping "under these circumstances." SAG at 1. RAP 10.10(c) provides that an appellant filing an SAG need not cite authority or the record. However, he must inform the court of the "nature and occurrence of alleged errors." RAP 10.10(c). We will not consider additional grounds for review when the appellant fails to identify the nature and occurrence of alleged errors. *See State v. Raleigh*, 157 Wn. App. 728, 739, 238 P.3d 1211 (2010). Charles fails to inform us of the nature and occurrence of any ineffective assistance of counsel, and thus we do not consider his argument on this point.

Charles also asserts that his conviction for attempting to elude a police vehicle must be reversed, but he provides no argument on this point. Charles fails to inform us of the nature and

occurrence of any error related to his attempted eluding conviction so we do not consider this additional ground for review.

II. Offender Score

Charles next asserts that the trial court erred in calculating his offender score. He asserts that the trial court improperly included multiple offenses in his offender score that should have been treated as single offenses because he received concurrent sentences or because the offenses were the same criminal conduct. The facts underlying these claims are not in the record before us. On direct appeal, we do not entertain arguments pertaining to matters outside the record. *McFarland*, 127 Wn.2d at 335. We therefore do not consider Charles's argument on this point. Because we remand for resentencing, however, Charles may challenge the State's offender score calculation below.

III. Sufficiency of Evidence

Charles finally asserts that there was insufficient evidence to convict him of bail jumping. He makes this argument on two grounds: that the State failed to prove that he was released on bail, and that the State failed to prove that he knew his hearing date.

Charles first asserts that the State was required to prove that he was released on bail in order to convict him of bail jumping. He argues that because he was released on his own recognizance, the State could not meet its burden on this point. Charles is incorrect. RCW 9A.76.170(1) requires the State to prove that the defendant was "released by court order or admitted to bail with knowledge of the requirement of a subsequent personal appearance before

any court of this state . . . ." In other words, a defendant may be convicted of bail jumping if the State proves that he was released by court order with knowledge of the requirement of a subsequent personal appearance. The State was not required to prove that Charles was released on bail and his claim on this point fails.

Charles also asserts that the State was required to prove that he knew the exact date of his hearing. He is mistaken. To sustain a charge of bail jumping, the State must prove that the defendant was given *notice* of his court date, not that he actually *knew* the date thereafter. *State v. Carver*, 122 Wn. App. 300, 306, 93 P.3d 947 (2004). Charles signed the order setting trial date which informed him that he was required to attend a hearing on November 25. This is sufficient evidence that Charles was given notice of his hearing. Charles's claim fails.

We affirm Charles's convictions but remand for resentencing.

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 pursuant to RCW 2.06.040, it is so ordered.

Worswick, A.C.J.

We concur:

Quinn-Brintnall, J.

Van Deren, J.