IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. KEVIN RONNIE BRANHAM, Appellant.	No. 41896-7-II UNPUBLISHED OPINION

Hunt, J.—Kevin Ronnie Branham appeals his bail jumping conviction. He argues that the information omitted an essential element of the offense, knowledge of a subsequent court appearance. We affirm.

FACTS

The State charged Branham with bail jumping as follows:

> COUNT VIII—BAIL JUMPING, RCW 9A.76.170(1)—CLASS B FELONY
> In that the defendant, KEVIN RONNIE BRANHAM, in the State of Washington, on or about August 4, 2010, having been charged with a Class A felony and 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, did fail to appear as required.

Clerk's Papers (CP) at 10. Branham did not object to the sufficiency of this language or the charging document below. The jury found him guilty as charged. For the first time on appeal, Branham argues that the information was constitutionally deficient because it did not state the

specific date on which he had been required to appear in court or how he had been given notice of that requirement.

analysis

Branham argues that the information omitted an essential element of bail jumping, knowledge of a subsequent court appearance. His argument fails.

I. Standard of Review

The law requires the State to allege "*all* essential elements of a crime . . . in a charging document" in order to provide sufficient notice to an accused so that he can adequately prepare a defense. *State v. Kjorsvik*, 117 Wn.2d 93, 97, 812 P.2d 86 (1991). The information must contain both the elements of the crime charged and the "facts supporting every element of the offense." *State v. Leach*, 113 Wn.2d 679, 689, 782 P.2d 552 (1989).

When a defendant challenges the sufficiency of a charging document, the standard of review depends on the timing of the challenge. *State v. Ralph*, 85 Wn. App. 82, 84, 930 P.2d 1235 (1997). If, like Brahnam, a defendant challenges the sufficiency of a charging document after the State has rested its case, we construe the information liberally in favor of its validity.[1] *State v. Phillips*, 98 Wn. App. 936, 940, 991 P.2d 1195 (2000). In liberally construing the language, we applying the following two-pronged test: (1) whether "the necessary facts appear in any form, or by fair construction can they be found, in the charging document"; and (2) if so,

[1] In contrast, we apply the strict construction standard only if a defendant challenges the sufficiency of the information *before* the State rests and the information omits an essential element of the crime. Under this strict construction standard, the trial court must dismiss the case "without prejudice to the State's ability to refile the charges." *State v. Phillips*, 98 Wn. App. 936, 940, 991 P.2d 1195 (2000). Because Branham did not object to the sufficiency of the charging information at trial, we do not apply this strict construction standard here.

whether the defendant can "show that he or she was nonetheless actually prejudiced by the inartful language which caused a lack of notice." *Kjorsvik*, 117 Wn.2d at 105-06. Branham fails to carry his heavy burden to challenge the sufficiency of a charging document for the first time on appeal.

The first prong of the test focuses solely on the charging document's language. *Kjorsvik*, 117 Wn.2d at 106. We read the charging document "as a whole, according to common sense and including facts that are implied." *State v. Nonog*, 169 Wn.2d 220, 227, 237 P.3d 250 (2010). We hold that the charging document was sufficient to give Branham notice of the elements of his bail jumping charge and, thus, meets the first prong of the test. We do not reach the second prong of the test because Branham alleges no prejudice.[2] *See Kjorsvik*, 117 Wn.2d at 106.

II. Failure To Meet First Prong of Test

The State charged Branham with bail jumping under RCW 9A.76.170(1), which 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, 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.

Thus, the essential elements of bail jumping are: (1) that the defendant was charged with a certain crime; (2) that he had knowledge of the requirement to appear at a subsequent court date; and (3) that he failed to appear as required. *State v. Downing*, 122 Wn. App. 185, 192, 93 P.3d 900 (2004).

Branham argues that the information failed to allege that he had "knowledge of the

[2] If, however, we were to determine under the first prong of the test that the charging document language was vague, we could then consider whether there was actual prejudice to the defendant and whether he had received actual notice of the charged crime. *Kjorsvik*, 117 Wn.2d at 106.

requirement" to appear at a subsequent court date because the information did not specify that he had notice to appear for his August 4, 2010 hearing, at which he failed to appear. Br. of Appellant at 5. Contrary to Branham's argument, however, "knowledge o[f] the specific date of the hearing is not an element of the crime" of bail jumping. *State v. Carver*, 122 Wn. App. 300, 305, 93 P.3d 947 (2004) (citing *State v. Ball*, 97 Wn. App. 534, 536-37, 987 P.2d 632 (1999)). Instead, RCW 9A.76.170(1) requires only that defendant "was aware of his obligation to appear." *Ball*, 97 Wn. App. at 537. [3]

> Here, the second amended information charged that Branham,
>
> 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*, did fail to appear as required.

CP at 10 (emphasis added). The above-italicized clause apprised Branham of the essential element that he must have "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," as required by RCW 9A.76.170(1). Construing the information liberally and reading it in a common sense manner, we hold that Branham received constitutionally sufficient

[3] The particulars of type and manner of notice are not essential elements of bail jumping. Rather, the essential element is that the defendant had knowledge of the required subsequent court appearance. *See Downing*, 122 Wn. App. at 192.

notice of the charge of bail jumping. 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.

Hunt, J.

We concur:

Penoyar, C.J.

Worswick, J.