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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

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WASHINGTON STATE COURT OF APPEALS
DIVISION II

STATE OF WASHINGTON,
Respondent,

No. 43762-7-II

v.

STATEMENT OF ADDITIONAL
AUTHORITY PURSUANT TO

LASJANTA CONNER
Appellant.

RAP 10.8

Comes now the Appellant, Lasjanta Conner, pro se,
and submits his statement of Additional Authority pursuant to
RAP 10.8.

A. ISSUES PRESENTED

1. Sentencing: Double Jeopardy
2. Ineffective Assistance: To-convict Jury Instructions

1. SENTENCING: DOUBLE JEOPARDY

A double jeopardy challenge is a constitutional claim that may be raised for the first time on appeal. State v. Davis, 177 Wn. App. 451, 311 P.3d 1278, 1282 (2003). Appellant argues that his multiple convictions for burglary, robbery, and firearms enhancements violate his constitutional right to be free from double jeopardy. Defense counsel failed to challenge these convictions on double jeopardy grounds when the State charged him with 2 counts of first degree robbery and first degree burglary with 3 individual firearm enhancements on 9/15/10 against Robert Steven Dato and Aaron Jaye Dato when only one victim, Robert Steven Dato was robbed and Aaron Jaye Dato was only present; 3 counts of first degree robbery and first degree burglary with 6 individual firearm enhancements on 9/28/10, while Robert Steven Dato, Aaron Jaye Dato and Jeffery J. Turner were present, only Robert Steven Dato was robbed, the others were only present; 2 counts of first degree robbery and first degree burglary on 11/13/10 with 4 individual firearm enhancements. Mr. Darin Michael Tocheck and Keefe Allan Jackson were both present, but only Aaron

Michael Tuck was robbed. When these multiple convictions, taken in context to the crimes, constitute the same crime in law because their statutory elements are the same. State v. Freeman, 153 Wn.2d 765, 770, 771-779, 108 P.3d 753 (2005).

c) First degree robbery.

A single count of robbery results from from taking one or more items from one person or taking one item in the presence of multiple people, as happened here, even if each has an interest in the item. In re Francis, 170 Wn.2d 517, 528, 242 P.3d 806 (2010); RCW 9A.56.020 (1)(A)(iii). Each robbery for which Appellant was convicted is an direct point with Francis.

In State v. Tuealt, 153 Wn.2d 705, 107 P.3d 728 (2005), the Supreme Court explained double jeopardy protects an individual from being convicted of more than one count of a crime for the same "unit of prosecution." Id. at 710, 107 P.3d 728. Quoting State v. Westling, 145 Wn.2d 607, 619, 40 P.3d 669 (2007). The unit of prosecution for robbery has two components: a crime against property and a crime against a person. Id. at

711, 107 P.3d 728. one unit of prosecution for robbery exists for "each separate possible taking of property from or from the presence of a person having an ownership, representative, or possessory interest in the property against the person's will. Id. at 714-15, 107 P.3d 728. thus a single count of robbery results from taking one or more items from one person or taking one item in the presence of multiple people, as happened here, even if each has an interest in that item. Id. at 720, 107 P.3d 728. Each of the three separate sets of robberies fall under this ruling.

b.) First Degree Burglary

appellant argues that his multiple convictions for first degree burglary, arising out of three separate incidents violates his constitutional guarantees against double jeopardy. The Fifth Amendment of the United States Constitution and article I, section 9 of the Washington State Constitution prohibits multiple punishments for the same offense.

"When a defendant is convicted more than once for a violation of a single criminal statute, this court reviews the statute in question to determine the

criminal conduct or unit of prosecution the legislature intended to be a punishable act." In re Davis, 142 Wis.2d 165, 171, 12 P.3d 603 (2000). If a defendant has committed only one unit prosecution, he may only be convicted once. State v. Abel, 136 Wis.2d 629, 639, 961 P.2d 1072 (1998).

Appellant's prosecution for a conviction of multiple counts of first degree burglary, arising out of the same incident, violated prohibitions in the United States and state constitutions against multiple punishments for the same offense, despite the state's argument that burglary was perpetrated against two individuals in the same residence, where the burglary statute unambiguously states that entry into building, rather than number of victims was specific unit of prosecution. State v. Brooks, 113 Wis. App. 397-399, 53 P.3d 1049 (2002).

2. Ineffective Assistance: To-convict Jury Instructions And Trial Court Error

Appellant contends the trial court erred in giving insufficient jury instructions because the information filed in this case failed to provide either a named or unnamed coconspirator. The trial court erred in giving an insufficient to-convict jury instruction

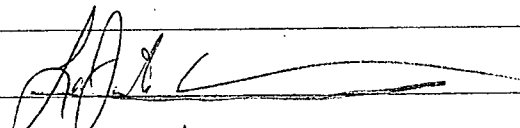
for conspiracy. When a defendant is specifically charged with conspiracy with a named codefendant, he or she cannot be convicted with another person or with some unnamed coconspirator. State v. Valladones, 59 Wn.2d 653, 671, 669 P.2d 528 (1993). Here, the to-convict instruction failed to name a specific conspirator, named or unnamed. See e.g. State v. Brown, 45 Wn. App. 571, 577, 736 P.2d 40 (1986) (advising trial court in the future to instruct jurors that they may convict only if it finds that the defendant conspired with one or more persons named in the information if the state specifically names coconspirators in the information).

Appellant challenges his conviction of conspiracy to burglary in the first degree arguing counsel was ineffective for failing object over these grounds. To establish ineffective assistance of counsel based on counsel's failure to request jury instruction, the defendant must show that he was entitled to the instruction. State v. Okon, 2014 WL 3359388 (citing State v. Genforos, 144 Wn.2d 227, 227, 25 P.3d 1011 (2001)).

3. CONCLUSION

WHEREFORE all of the above, the court
should grant Appellant's appeal

Dated: 10-2-14

by: 
LaJuante Conner,