

64148-4

64148-4

NO. 64148-4-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

JAMES LOCKREM, JR.,

Appellant.

FILED
COURT OF APPEALS DIV. #1
2010 JUL 23 PM 4:11

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR WHATCOM COUNTY

The Honorable Charles R. Snyder, Judge

BRIEF OF APPELLANT

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TABLE OF CONTENTS

	Page
A. <u>ASSIGNMENTS OF ERROR</u>	1
<u>Issues Pertaining to Assignments of Error</u>	1
B. <u>STATEMENT OF THE CASE</u>	1
1. <u>Procedural Facts</u>	1
2. <u>Underlying Facts of the Charges</u>	2
3. <u>Pretrial Motions</u>	4
C. <u>ARGUMENTS</u>	6
1. THE TRIAL COURT VIOLATED LOCKREM’S RIGHT TO CONFRONTATION BY PRECLUDING HIM FROM CROSS-EXAMINING FREEMAN ABOUT THE <u>WIEDERSPOHN CASE</u>	6
2. THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING LOCKREM’S MOTION FOR A BILL OF PARTICULARS.	11
3. LOCKREM WAS ENTITLED TO A UNANIMITY INSTRUCTION ON THE OBSTRUCTING CHARGE	15
D. <u>CONCLUSION</u>	22

TABLE OF AUTHORITIES

	Page
<u>WASHINGTON CASES</u>	
<u>State v. Bobenhouse</u> 166 Wn.2d 881, 214 P.3d 907 (2009).....	16
<u>State v. Clark</u> 143 Wn.2d 731, 24 P.3d 1006 (2001).....	8
<u>State v. Darden</u> 145 Wn.2d 612, 41 P.3d 1189 (2002).....	8
<u>State v. Demery</u> 144 Wn.2d 753, 30 P.3d 1278 (2001).....	11
<u>State v. Dictado</u> 102 Wn.2d 277, 687 P.2d 172 (1984).....	12
<u>State v. Gregory</u> 158 Wn.2d 759, 147 P.3d 1201 (2006).....	9
<u>State v. Handran</u> 113 Wn.2d 11, 775 P.2d 453 (1989).....	21
<u>State v. Hanson</u> 59 Wn. App. 651, 800 P.2d 1124 (1990).....	17, 20, 21
<u>State v. Harris</u> 106 Wn.2d 784, 725 P.2d 975 (1986).....	12
<u>State v. Holeman</u> 103 Wn.2d 426, 693 P.2d 89 (1985).....	20
<u>State v. Kitchen</u> 110 Wn.2d 403, 756 P.2d 105 (1988).....	15, 16, 21
<u>State v. Lalonde</u> 35 Wn. App. 54, 665 P.2d 421 (1983).....	20

TABLE OF AUTHORITIES (CONT'D)

	Page
<u>State v. McDaniel</u> 83 Wn. App. 179, 920 P.2d 1218 (1996).....	9, 11
<u>State v. Newman</u> 63 Wn. App. 841, 822 P.2d 308 (1992).....	14
<u>State v. Noltie</u> 116 Wn.2d 831, 809 P.2d 190 (1991).....	12
<u>State v. O'Connor</u> 155 Wn.2d 335, 119 P.3d 806 (2005).....	8
<u>State v. O'Hara</u> 167 Wn.2d 91, 217 P.3d 756 (2009).....	15
<u>State v. Ortiz</u> 104 Wn.2d 479, 706 P.2d 1069 (1985).....	21
<u>State v. Vander Houwen</u> 163 Wn.2d 25, 177 P.2d 93 (2008).....	16
<u>State v. Wilson</u> 60 Wn. App. 887, 808 P.2d 754 (1991).....	9

FEDERAL CASES

<u>United States v. Terry</u> 702 F.2d 299 (2nd Cir. 1983)	10
<u>Wiederspohn v. Freeman</u> No. 07-2074 (W.D. Wash., January 30, 2009)	5, 7, 10, 11

RULES, STATUTES AND OTHER AUTHORITIES

12 <u>Wash. Prac., Criminal Practice & Procedure</u> § 1901 (3d ed. 2010.)	12, 13, 14
---	------------

<u>5A Wash. Prac., Evidence Law and Practice § 608.6</u> (5th ed. 2010).....	9
CrR 2.1.....	12
ER 608.....	7, 8, 9, 10
RAP 2.5.....	15
RCW 9A.76.020.....	13
U.S. Const., Amend. VI.....	7, 10, 12, 15
Wash. Const., Art. I, § 22.....	7, 12

A. ASSIGNMENTS OF ERROR

1. Appellant was denied his right to confrontation.
2. The trial court erred in denying Appellant's request for a bill of particulars.
3. Appellant was denied his right to a unanimous jury verdict.

Issues Pertaining to Assignments of Error

1. Where a recent jury verdict concluded the State's key witness against Appellant had lied and fabricated facts during the course of carrying out his duties as a law enforcement officer, was it error to deny Appellant the opportunity to confront the witness with this verdict?

2. Where multiple acts might have been the basis for conviction, was it error for the trial court to deny Appellant's request for a bill of particulars?

3. Where the State presented evidence of multiple acts, any one of which the jury could have relied upon to convict, did the trial court err in refusing to instruct the jury that it had to be unanimous as to which act it relied on to convict Appellant?

B. STATEMENT OF THE CASE

1. Procedural Facts

The Whatcom County Prosecutor charged Appellant James Lockrem Jr. ("Lockrem"), along with his father, James Lockrem Sr.

("Senior"), and his brother-in-law, Jarred Ziegler, with third degree assault and obstructing a public servant.¹ CP 12; RCW 9A 76.020(1); RCW 9A 36.031. The prosecution alleged that on May 25, 2008, the three men assaulted Whatcom County Sheriff Jeremiah Freeman and Forest Service Officer Jeremy Smith and obstructed the officers when they served a warrant on Lockrem's younger brother, Joshua Lockrem ("Joshua"), in the Mount Baker National Forest. CP 112.

All three were tried together by a jury before the Honorable Charles R. Snyder in August 2009. The jury found Lockrem guilty of the obstructing, but not assault. CP 34-35. Senior and Zeigler were found guilty of third degree assault and obstructing. Supp CP __ (sub no. 69, supra). Lockrem was sentenced to 365 days, with 345 days suspended, a \$200 fine, and 24 months of probation. CP 12-18. Lockrem appeals. CP 11.

2. Underlying Facts of the Charges

Several members of the Lockrem family were camping on Friday, May 23, 2008, in the Mt. Baker National Forest. 2RP 161, 168. While setting up their camp, Officer Smith approached and inspected their fishing licenses. 2RP 625, 648. Smith later decided to run their names for

¹ Senior was also charged with attempting to disarm a law enforcement officer, but not convicted. Supp CP __ (sub no. 69, Trial Minutes, 6/1/10).

According to Lockrem, he attempted to convince Senior to comply with Freeman by laying on the ground, and became concerned when Senior refused. 2RP 1195. During the fight between Freeman and Senior, the release button for Freeman's police dog was triggered, and the dog ran into the fray, initially running toward the Lockrem family's dog and Lockrem's sister. 2RP 329-30, 1211. Eventually the police dog started biting Senior, and Lockrem pulled the dog off his father. 2RP 1213. Lockrem did not know it was a police dog. 2RP 1220. The dog was not intentionally released by Freeman and was not under any commands after being released. 2RP 343. Freeman had not released the dog in part because he feared the dog would bite the bystanders. 2RP 344. Lockrem asked Smith for help with the dog. 2RP 1215. Smith did not help and Smith had no ability to control the dog. 2RP 693. Lockrem relaxed his grip, and the dog bit him, taking off about two thirds of his bicep. 2RP 1224.

3. Pretrial Motions

Lockrem moved pretrial to question Freeman about a recent verdict in the Western District Federal Court of Washington for malicious

prosecution. 1RP² 28; Supp CP __ (sub no. 25, Defendant's Motion to Motion to Compel Discovery, 2/4/09) (citing Wiederspohn v. Freeman, No. 07-2074 (W.D. Wash., January 30, 2009)). The court, focusing on this as an ER 404(b) question, stated that "the Wiederspohn case is going to come down on the nature of that prior bad act, I guess, goes towards the issue of credibility." 1RP 28.

In Wiederspohn v. Freeman, a jury found Freeman liable for malicious prosecution. Supp CP __ (sub no. 25, supra). The jury awarded \$250,000 to the plaintiff, finding that Freeman's conduct during the course of a law enforcement encounter with Wiederspohn was "malicious, oppressive or in reckless disregard" of Wiederspohn's rights. Id. Freeman had attempted to serve a warrant on a person at Wiederspohn's house, and claimed that in the course of serving that warrant Wiederspohn assaulted him. Wiederspohn was charged with third degree assault, but acquitted. Id.

In a subsequent civil proceeding, Wiederspohn contended Freeman's police reports were knowingly false or made with reckless disregard for the truth. Id. For instance, Freeman and another deputy referred to "rickety" wooden steps as a reason for Freeman putting his foot

² There are twelve volumes of verbatim report of proceedings referenced as follows: 1RP - 5/26/09 (pretrial); and 2RP - 6/1/09; 6/3/09; 6/4/09; 6/8-11/09; 6/15-18/09; 8/17/09 (consecutively paginated eleven-volume set from trial and sentencing).

inside Wiederspohn's door to balance himself, when in actuality it was a concrete ramp that led to Wiederspohn's door. Id.

Lockrem argued he should be able to use the case to question Freeman about testifying honestly. 1RP 29. The court deferred ruling, saying it would be taken up during trial. 1RP 35.

Lockrem also requested a bill of particulars prior to trial, arguing the jury "need[s] to be unanimous as to what, what is he doing by obstructing . . . the obstructing can be used to define everything that takes place." 1RP 25-26. In denying the motion, the Court ruled:

I think the best way to resolve that is proper instructions to the jury, so they can judge the evidence based upon what they see, and they'll decide whether it meets the requirement. If there's something that meets the requirements of obstruction, they'll have to say what it is, and if there's something that meets the requirements of assault, they'll have to say what it is.

1RP 26.

C. ARGUMENTS

1. THE TRIAL COURT VIOLATED LOCKREM'S RIGHT TO CONFRONTATION BY PRECLUDING HIM FROM CROSS-EXAMINING FREEMAN ABOUT THE WIEDERSPOHN CASE.

Deputy Freeman was the State's key witness against Lockrem and his credibility was crucial to the jury's determination of guilt or innocence.

The trial court's refusal to allow cross examination of Freeman about the

Wiederspohn matter, however, insulated the jury from relevant, recent information about Freeman's willingness to lie about circumstances of his encounters as a law enforcement officer, including alleging he was assaulted by bystanders during the course of serving a warrant. The exclusion of this evidence deprived Lockrem of his constitutional right to confront the witnesses against him and therefore this Court should reverse his conviction.

A defendant has both a constitutional and evidence rule-based right to confront and cross examine the witnesses against him. U.S. Const., Amend. 6³; Wash. Const., Art. I, § 22⁴; ER 608(b)⁵. Although the right to confront and cross-examine adverse witnesses must be "zealously guarded," the rights are limited by general considerations of relevance because there is no constitutional right to the admission of irrelevant

³ "In all criminal prosecutions, the accused shall enjoy the right to . . . be confronted with the witnesses against him . . ."

⁴ "In criminal prosecutions the accused shall have the right to . . . to meet the witnesses against him face to face . . ."

⁵ ER 608(b) provides:

Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility, other than conviction of crime as provided in rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross examination of the witness (1) concerning the witness' character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

evidence. State v. O'Connor, 155 Wn.2d 335, 348-49, 119 P.3d 806 (2005).

“[A] court’s limitation of the scope of cross-examination will not be disturbed unless it is the result of manifest abuse of discretion.” State v. Darden, 145 Wn.2d 612, 619, 41 P.3d 1189 (2002). However, “[f]ailing to allow cross-examination of a state’s witness under ER 608(b) is an abuse of discretion if the witness is crucial and the alleged misconduct constitutes the only available impeachment.” State v. Clark, 143 Wn.2d 731, 766, 24 P.3d 1006 (2001) (citation omitted); accord Darden, 145 Wn.2d at 619.

The Rules of Evidence provide specific, strong protection for the right to cross examine witnesses because the right to cross-examination calls into question “the ultimate integrity of th[e] fact-finding process” and the right is designed “to test the perception, memory, and credibility of witnesses.” Darden, 145 Wn.2d at 620 (citations omitted). ER 608(b) provides that specific instances of a witness’s conduct may, “in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination.” In exercising its discretion, the trial court may consider whether the instance of the witness’s misconduct is relevant to the witness’s veracity on the stand and whether it is germane or

relevant to the issues presented at trial. State v. Gregory, 158 Wn.2d 759, 798, 147 P.3d 1201 (2006).

“By its terms, Rule 608 authorizes inquiry into specific instances only when the alleged conduct tends to show the witness’s general disposition for truthfulness or untruthfulness,” and “conduct involving fraud or deception is likely to be indicative of the witness’s general disposition with regard to truthfulness.” 5A Wash. Prac., Evidence Law and Practice § 608.6 (5th ed. 2010). For example, in State v. Wilson, 60 Wn. App. 887, 808 P.2d 754 (1991), a prosecution for statutory rape and indecent liberties, the State was properly allowed to impeach a defense witness by eliciting the witness’s own admission that she had once made a false statement under oath on a DSHS financial assistance form. The Court further concluded that the State properly asked detailed questions concerning the facts surrounding her false statement “since they demonstrate the extent to which [the witness] could be untruthful.” Id. at 893-94.

Similarly, under a constitutional analysis, this Court determined that it was error to prohibit a defendant from questioning a witness about the fact that she had lied under oath in a prior civil proceeding because the evidence was highly relevant. State v. McDaniel, 83 Wn. App. 179, 186-87, 920 P.2d 1218 (1996). The court reached this conclusion without

considering the argument that the witness's lies were subject to cross-examination under ER 608(b). Instead, the court reasoned that the cross-examination should have been permitted under the Sixth Amendment, irrespective of state evidence rules. Id. at 188 n.5.

This same reasoning has been applied to prior judicial proceedings during which it was determined that the witness had not been truthful. For example, in a Second Circuit case, the Court held a district court properly allowed the government to question a defense expert witness about prior occasions where his testimony had been found unreliable in unrelated cases. United States v. Terry, 702 F.2d 299, 316, (2nd Cir. 1983). The Court reasoned that the prior determinations were admissible under ER 608(b) because they assisted the jury in determining the "weight to be accorded to his testimony." 702 F.2d at 316.

A similar result should have been reached here, under either ER 608(b) or the Sixth Amendment. Deputy Freeman was the State's key witness against Lockrem and his credibility was critical to obtaining a conviction. The defense was entitled to cross-examine him concerning his untruthfulness in the Wiederspohn matter because the facts there so closely resembled the facts of Lockrem's case and were not remote in time. This is particularly true because the defense had no other evidence to meaningfully challenge Freeman's credibility and "[a]n officer's live

testimony offered during trial . . . may often carry an aura of special reliability and trustworthiness.” State v. Demery, 144 Wn.2d 753, 763, 30 P.3d 1278 (2001) (internal punctuation and citations omitted). The court therefore abused its discretion in refusing to permit cross-examination of Freeman about the Wiederspohn matter.

A violation of a defendant’s rights under the confrontation clause is constitutional error that is presumed prejudicial, and the State bears the burden of proving the error harmless. McDaniel, 83 Wn. App. at 187. Absent the jury accepting Freeman’s testimony, it is unlikely the State would have obtained a conviction. Thus, denying Lockrem the right to cross-examine Freeman about the Wiederspohn matter was not harmless and therefore reversal is required.

2. THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING LOCKREM’S MOTION FOR A BILL OF PARTICULARS.

Prior to trial, Lockrem’s requested a bill of particulars because “obstructing can be used to define everything that takes place” during Lockrem’s interaction with the officers prior to his arrest. 1RP 25. Indeed, there are four possible acts that could have been the basis for the obstruction charge, involving both officers individually as well as the police dog. By denying Lockrem’s request for a bill of particulars, the

trial court forced him to defend against all four acts, violating his federal and state constitutional rights.

Both the federal and state constitutions guarantee an accused to the right to demand the “nature and cause” of the accusations against him. U.S. Const., Amend. 6;⁶ Wash. Const., Art. I, § 22.⁷ “Where an information does not exactly allege the nature and extent of the crime of which the defendant is accused as to enable him properly to prepare his defense, he may request a bill of particulars for specification of the acts on which the prosecution intends to rely.” 12 Wash. Prac., Criminal Practice & Procedure § 1901 (3d ed. 2010.) (citing CrR 2.1(c)). This is so even if the State has filed a technically proper charging information. State v. Dictado, 102 Wn.2d 277, 286, 687 P.2d 172 (1984), overruled on other grounds, State v. Harris, 106 Wn.2d 784, 789-90, 725 P.2d 975 (1986). The trial court’s denial of a motion for a bill of particulars is reviewed for an abuse of discretion. State v. Noltie, 116 Wn.2d 831, 844, 809 P.2d 190 (1991).

The information charging Lockrem with obstructing a public servant provides:

⁶ “In all criminal prosecutions, the accused shall enjoy the right . . . to be informed of the nature and cause of the accusation . . .”

⁷ “In criminal prosecutions the accused shall have the right . . . to demand the nature and cause of the accusation against him [and] to have a copy thereof . . .”

That on or about the 25th day of May, 2008, the said defendants, JAMES LOCKREM, JR. then and there being in said county and state, did willfully hinder, delay, and obstruct a law enforcement officer in the discharge of his/her official powers and duties; in violation of RCW 9A.76.020(1), which is a Gross Misdemeanor[.]

CP 109-110.

The charging document is legally sufficient because it includes all of the crime's essential elements and alleges facts supporting every element of the offense. 12 Wash. Prac., Criminal Practice & Procedure § 1902 (3d ed. 2010). Nonetheless, Lockrem was entitled to a bill of particulars because the information did not inform him which of his several alleged criminal acts formed the basis of the obstructing charge.

The affidavit of probable cause makes clear that Lockrem could have committed the obstructing charge in four ways. The affidavit alleges that Lockrem's conduct amounted to obstructing because he: 1) "failed to follow lawful commands; remained in the midst of the assault;" 2) "proved an immediate threat and distraction to Officer Smith who was trying to control a scene where numerous people were present;" 3) "made unwanted and intentional physical contact with the officers . . ." ; and 4) "assaulted a police dog, coming to the aid of his handler[.]" CP 112-113. This left Lockrem to guess what conduct he had to defend against at trial on this charge.

Moreover, the information does not allege a particular victim whom Lockrem obstructed—Deputy Freeman or Officer Smith. Lockrem was entitled to this information and, again, this is the type of vagueness a bill of particulars is intended to clarify. See 12 Wash. Prac., Criminal Practice & Procedure § 1903 (3d ed. 2010) (“A defendant is ordinarily entitled to the . . . the name of the complainant and victim”).

The trial court refused to grant Lockrem’s motion for a bill of particulars by concluding that proper jury instructions, apparently meaning a unanimity instruction (“Petrich⁸ instruction”), would rectify an ambiguity in the charging information. 1RP 26. But the court gave no such instruction.

Without the bill of particulars, Lockrem was forced to defend against every allegation that could have formed the basis of the charge. Thus, the court abused its discretion by failing to grant Lockrem’s request for a bill of particulars. Cf. State v. Newman, 63 Wn. App. 841, 852, 822 P.2d 308 (1992) (holding that in a multiple acts rape case where State did not elect which act formed the basis of the charge, defendant could have

⁸ State v. Petrich, 101 Wn.2d 566, 569, 683 P.2d 173 (1984), held that a defendant may only be convicted when a unanimous jury concludes that that act charged has been committed.

clarified ambiguity by requesting a bill of particulars; issued waived because he didn't request the bill).

3. LOCKREM WAS ENTITLED TO A UNANIMITY INSTRUCTION ON THE OBSTRUCTING CHARGE.⁹

In denying Lockrem's request for a bill of particulars, the trial court specifically referred to the need for "proper instructions to the jury" and that if the State wanted to prove its case on obstruction "they'll have to say what it is" that meets the requirements of the charge. 1RP 26. In the end, however, the court did not give a unanimity instruction and the State failed to elect specific conduct it believed constituted obstruction. The failure to properly instruct the jury to insure a unanimous verdict violated Lockrem's constitutional right to a unanimous jury verdict.

A defendant may only be convicted when a unanimous jury concludes the act charged has been committed. State v. Kitchen, 110 Wn.2d 403, 409, 756 P.2d 105 (1988); Wash. Const. art. 1, §22; U.S. Const. Amend 6. Where different acts could form the basis for the charge: (1) the State must elect the act on which it will rely for conviction; or (2) the trial court must instruct the jury to agree unanimously, beyond a reasonable doubt, on a specific criminal act as the basis of conviction.

⁹ Lockrem may raise this issue for the first time on appeal because it involves a manifest error of constitutional magnitude. RAP 2.5(a); State v. O'Hara, 167 Wn.2d 91, 217 P.3d 756 (2009).

State v. Bobenhouse, 166 Wn.2d 881, 893, 214 P.3d 907 (2009); State v.

Vander Houwen, 163 Wn.2d 25, 37-38, 177 P.2d 93 (2008).

The failure to do so in multiple acts cases is constitutional error. “The error stems from the possibility that some jurors may have relied on one act or incident and some [jurors a different act], resulting in a lack of unanimity on all of the elements necessary for a valid conviction.” State v. Kitchen, 110 Wn.2d 403, 411, 756 P.2d 105 (1988).

Bobenhouse, 166 Wn.2d at 893 (bracketed language in original).

The State did not elect which act it was relying on to convict Lockrem of the obstruction charge. The question therefore is whether the trial court erred in failing to give a unanimity instruction, which turns on three questions:

First, what must be proven under the applicable statute?

...

Second, what does the evidence disclose? As with all proposed jury instructions, this involves looking at the evidence in the light most favorable to the proponent of the instruction.

...

Third, does the evidence disclose more than one violation of the statute? [] If the evidence proves only one violation, then no [unanimity] instruction is required, for a general verdict will necessarily reflect unanimous agreement that the one violation occurred. On the other hand, if the evidence discloses two or more violations, then a [unanimity] instruction will be required, for without it some jurors might convict on the basis of one violation while others convict on the basis of a different violation.

State v. Hanson, 59 Wn. App. 651, 656-57, 800 P.2d 1124 (1990)

(footnotes and citations omitted). This three-part test reveals the trial court erred in failing to give a unanimity instruction here.

The to-convict instruction provided:

To convict JAMES LOCKREM, JR of the crime of obstructing a law enforcement officer, 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 May 25, 2008, JAMES LOCKREM JR willfully hindered, delayed, or obstructed a law enforcement officer in the discharge of the law enforcement officer's official powers or duties;
- (2) That JAMES LOCKREM JR knew that the law enforcement officer was discharging official duties at the time;
- (3) That the acts occurred in the State of Washington.

CP 66 (Instruction 26).

This instruction provides the elements the State had to prove to convict Lockrem of obstructing, but does not specify which officer (Freeman or Smith) Lockrem allegedly obstructed. Thus, the State could have proved its case by presenting evidence that Lockrem obstructed either or both officers.

The evidence shows multiple acts the jurors could have relied on to find Lockrem guilty of obstructing. For example, Freeman claimed Lockrem was standing behind him as he was engaged with Senior. 2RP

219. Lockrem got involved in the fight. 2RP 311. Freeman commanded everybody to get back but nobody listened. 2RP 312. Lockrem grabbed onto Senior to try to pull him away from Freeman. 2RP 312. Lockrem grabbed Freeman's left arm. 5RP 316, 318. Lockrem was not following Freeman's commands. 2RP 312. Lockrem was grabbing Freeman's left hand, preventing Freeman from trying to control Senior. RP 321. Lockrem was grabbing Freeman's arm, preventing him from controlling Senior's right arm, and preventing Freeman from focusing his attention on Senior. 2RP 323. Lockrem did not follow Freeman's commands to get back and get on the ground. 2RP 325. Lockrem grabbed onto the police dog's collar with both hands and pulled him off of Senior, so that the dog was no longer able to assist Freeman. 2RP 353.

Officer Smith similarly testified to several acts jurors could have relied on to convict Lockrem of obstructing. Smith testified Lockrem was "blocking" Smith. 2RP 675. The prosecutor stated, and Smith affirmed, that Lockrem prevented Smith from getting to Freeman's aid. 2RP 686. Smith also stated Lockrem "didn't listen to my commands either during the incident." 2RP 690. Smith testified he was only able to place handcuff on Lockrem because Freeman's dog was biting the other arm. 2RP 694.

The lack of clarity in the charge was emphasized in Lockrem's closing argument.¹⁰ The defense argued the acts underlying the obstruction charge probably involved Freeman and Senior: "if the charge of obstruction, which we don't have defined, if it's related to something to do with dad, my client was being chewed on [by the police dog] for over a minute, and three minutes after that, dad is handcuffed. My client did not hinder, delay, or obstruct anything in that regard." 2RP 1641. The defense goes on to argue that "[w]ith regard to obstruction . . . [in the] Probable cause statement, no reference to it. Freeman says it takes him 15 to 20 seconds to get a compliant person. You can watch the videotape, the activity where [Lockrem] may or may not be involved is less than 30 seconds, and then he's being chewed on for the balance of the time." 2RP 1643. In its rebuttal argument, as in the probable cause statement and the jury instructions, the State failed to address the defense argument and clarify the basis for the obstruction charge. 2RP 1676-91.

¹⁰ In closing, the State argued Lockrem was "guilty of obstructing and delaying because throughout the course of this incident from beginning to end, he wasn't following orders." 2RP 1573 (emphasis added). The State also argued Lockrem "proved a hindrance. He proved to delay [sic]. . . . He proved also to prevent. He prevented Officer Smith from doing his duties of helping an officer who was fighting for his life." 2RP 1573.

The next question is whether two or more of the above-identified acts could potentially support a conviction for obstructing. See Hanson, 59 Wn. App. at 657. There are at least four possibilities:

1. Lockrem interfered with Freeman's ability to arrest Senior. This act potentially supports a conviction for obstructing. State v. Holeman, 103 Wn.2d 426, 429-30, 693 P.2d 89 (1985) (person has no right to come to aid of another who is arrested by uniformed police officer, where there is no threat of serious bodily injury to arrestee).

2. Lockrem was not following commands from either Freeman or Smith. Either refusal potentially supports a separate conviction for obstructing. State v. Lalonde, 35 Wn. App. 54, 61-62, 665 P.2d 421 (1983) (evidence that crowd was angry, scene was noisy and confused, and defendant repeatedly approached officers attempting to make arrest and tried to talk to them after they told him to get out of the way was sufficient to support inference that defendant knew that his conduct hindered, delayed, and obstructed officer and interfered with discharge of his duties).

3. Lockrem interfered with both the police dog and Smith's ability to assist Freeman during his struggle with Senior. Either interference could support a conviction for obstructing. See Holeman, supra, and Lalonde, supra.

4. Lockrem resisted Smith's effort to handcuff him. State v. Ortiz, 104 Wn.2d 479, 485, 706 P.2d 1069 (1985) (struggling constituted resisting arrest and thus obstructing a public servant).

Because the relevant facts, viewed in the light most favorable to Lockrem, demonstrate there was evidence of multiple acts upon which the jurors could have relied on to convict, he was entitled to a unanimity instruction. Hanson, 59 Wn. App. at 657.

Finally, the failure to instruct Lockrem's jury on the unanimity requirement was not harmless. Such failures are harmless "only if no rational trier of fact could have entertained a reasonable doubt that each incident established the crime beyond a reasonable doubt." Kitchen, 110 Wn.2d at 405-06 (citations omitted).

Here, there is simply no way to determine which of the many acts the jury believed actually occurred. On this record, it is unclear during which of the numerous incidents the jury concluded Lockrem possessed an intent to obstruct the officers and which he did not. Thus, there is no basis to assume the jury was unanimous as to the act or acts that formed the basis of its guilty verdict. Reversal is therefore required.

The State may argue that there is a continuing course of conduct such that no unanimity instruction was required. See, e.g., State v. Handran, 113 Wn.2d 11,17, 775 P.2d 453 (1989) (holding that Petrich

requirement does not apply where there is a “continuing course of conduct” rather than discrete acts). Handran’s exception to the unanimity requirement does not apply here, however, because the possible acts here are distinct: there were two different officers and several possible acts – interference with Freeman’s arrest of Senior; failure to follow commands; interference with Smith’s or the police dog’s assistance to Freeman; and interference with Smith’s attempts to restrain Lockrem himself. These distinct acts against distinct actors distinguish this case from the continuing course of conduct contemplated by Handran. 113 Wn.2d at 17 (finding continuing course of conduct when conduct occurred “between the same aggressor and victim”).

D. CONCLUSION

For the reasons stated above, this Court should reverse Lockrem conviction.

DATED this 22nd day of July 2010

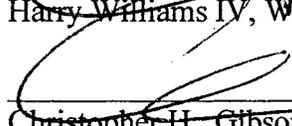
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State v. James Lockrem, Jr.

No. 64148-4-I

Certificate of Service of brief of appellant by Mail

Today I deposited in the mails of the United States of America, a properly stamped and addressed envelope directed to:

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James Lockrem, Jr.
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Sedro Woolley, WA 98284-

Containing a copy of the brief of appellant, in State v. James Lockrem, Jr.,
Cause No. 64148-4-I, in the Court of Appeals, Division I, for the state of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.



John Sloane
Done in Seattle, Washington

7-23-10
Date