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A. ASSIGNMENTS OF ERROR

1. The trial court violated League's double jeopardy rights by entering judgment against him for unlawful imprisonment where the offense was incidental to, a part of, or coexistent with his conviction for robbery in the first degree.
2. The trial court erred in calculating League's offender score by counting his two current convictions as separate offenses.
3. The trial court erred in determining League's standard sentence range for his conviction for robbery in the first degree.
4. The trial court erred in permitting League to be represented by counsel who provided ineffective assistance by failing to argue that his current convictions should not be counted as separate offenses and that his standard range sentence was incorrect.
5. The trial court erred in not taking count II, unlawful imprisonment, from the jury for lack of sufficiency of the information.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Were League's double jeopardy rights violated when the trial court entered a judgment against him for both robbery in the first degree and unlawful imprisonment when the two crimes: (a) have different elements; and (b) are separate and distinct offenses?
2. Did the trial court err by not taking count II, unlawful imprisonment, from the jury for lack of sufficiency of the information when it repeated, verbatim, RCW 9A.40.040-Unlawful imprisonment?

C. EVIDENCE RELIED UPON

The official Report of Proceedings will be referred to as "RP." The Clerk's Papers shall be referred to as "CP."

D. STATEMENT OF THE CASE

1 & 2. Procedural History & Statement of Facts. Pursuant to RAP 10.3(b), the State accepts League's recitation of the procedural history and facts.

3. Summary of Argument

League's double jeopardy rights were not violated when the trial court entered a judgment against him for both robbery in the first degree and unlawful imprisonment because the two crimes: (a) have different elements; and (b) are separate and distinct offenses. Conversely, the State concedes that the trial court erred in calculating League's offender score by counting his two current convictions as separate offenses. Because the trial court erred in determining League's standard range sentence for his conviction for robbery in the first degree, the Court should remand his case back to the trial court for resentencing on both counts. League should be sentenced with an offender score of 2 instead of 3 on both convictions. This concession renders League's ineffective assistance of counsel argument regarding the calculation of his offender score and his sentencing issues moot.

The trial court did not err, however, by not taking count II, unlawful imprisonment, from the jury for lack of sufficiency of the

information because it repeated, verbatim, RCW 9A.40.040-Unlawful imprisonment. The inclusion of this statutory language in the information gave League both due notice of the nature of the charge against him and ample time to prepare a defense. The State asks the Court to find the remainder of the trial court's decision complete and correct.

E. ARGUMENT

1. LEAGUE'S DOUBLE JEOPARDY RIGHTS WERE NOT VIOLATED WHEN THE TRIAL COURT ENTERED A JUDGMENT AGAINST HIM FOR BOTH ROBBERY IN THE FIRST DEGREE AND UNLAWFUL IMPRISONMENT BECAUSE THESE TWO CRIMES: (a) HAVE DIFFERENT ELEMENTS; AND (b) ARE SEPARATE AND DISTINCT OFFENSES.

League's double jeopardy rights were not violated when the trial court entered a judgment against him for both robbery in the first degree and unlawful imprisonment because the two crimes: (a) have different elements; and (b) are separate and distinct offenses.

The double jeopardy clause of the Fifth Amendment and the corresponding provision in the Washington State Constitution protect a defendant from being punished multiple times for the same offense. State v. Reeves, 182 P.3d 491, 493 (Div. 1, May 5, 2008); see State v. Adel, 136 Wash.2d 629, 632, 965 P.2d 1072 (1998). The State may bring multiple charges arising from the same criminal conduct in a single proceeding.

State v. Walker, 181 P.3d 31, ¶ 9 (Div. 2, April 8, 2008); see State v. Michielli, 132 Wash.2d 229, 238-239, 937 P.2d 587 (1997). At issue in any double jeopardy analysis is whether the legislature intended to impose multiple punishments for the same offense. Walker, 181 P.3d at ¶ 9; see In re Pers. Restraint of Orange, 152 Wash.2d 795, 815, 100 P.3d 291 (2004). Double jeopardy questions are reviewed de novo. Walker, 181 P.3d at ¶ 9; see State v. Freeman, 153 Wash.2d 765, 770, 108 P.3d 753 (2005).

Courts may discern the legislature's purpose by applying the tests set forth in Blockburger v. United States, 284 U.S. 299, 304, 52 S.Ct. 180, 76 L.Ed. 306 (1932)(the "same elements" test), and State v. Reiff, 14 Wash. 664, 667, 45 P. 318 (1896)(the "same evidence" test). See State v. Calle, 125 Wash.2d 769, 777-778, 888 P.2d 155 (1995). Under Blockburger's "same elements" test, a court may penalize a defendant for one act or transaction that violates two distinct statutory provisions only if each provision requires proof of a fact which the other does not. Walker, 181 P.3d at ¶ 10; see Blockburger, 284 U.S. at 304.

Under the Washington rule for "same evidence," double jeopardy attaches only if the offenses are identical in both law and fact, which is demonstrated when "the evidence required to support a conviction upon one of them would have been sufficient to warrant a conviction upon the

other.” Walker, 181 P.3d at ¶ 9; see Reiff, 14 Wash. At 667. In other words, if the evidence to prove one crime would also completely prove a second crime, the two crimes are the same in law and fact. Walker, 181 P.3d at ¶ 10; see Orange, 152 Wash.2d at 820. The Washington rule is largely indistinguishable from the Blockburger rule. Walker, 181 P.3d at ¶ 10; see Orange, 152 Wash.2d at 816.

In League’s case, he was charged with two different crimes: count I, robbery in the first degree, and count II, unlawful imprisonment. CP 19: 1-2. Under Blockburger’s “same elements” test, each provision required proof of a fact which the other did not. To prove robbery in the first degree, the State had to prove that League, with intent to commit theft, did unlawfully take personal property that he did not own from another. CP 19: 1. For the State to prove its case on unlawful imprisonment, all it had to prove was that League did knowingly restrain another person. CP 19: 2. Because of this distinction, Blockburger is not satisfied.

Similarly, League’s case also does not pass muster under Washington’s “same evidence” test, because the evidence the State presented to prove one crime did not also completely prove a second crime, showing that the offenses are not identical in law and fact. Just because the State produced evidence to show that League, with intent to commit a theft, did unlawfully take personal property from the victim does

not necessarily mean that he also knowingly restrained that person. CP 19: 1. Conversely, just because League knowingly restrained the victim in no way shows that he also took personal property from him. Because neither the “same elements” nor “same evidence” rule is satisfied, the trial court did not err by entering a judgment against League for both robbery in the first degree and unlawful imprisonment because the two crimes: (a) have different elements; and (b) are separate and distinct offenses.

2. THE TRIAL COURT DID NOT ERR BY NOT TAKING COUNT II, UNLAWFUL IMPRISONMENT, FROM THE JURY FOR LACK OF SUFFICIENCY OF THE INFORMATION BECAUSE IT REPEATED, VERBATIM, RCW 9A.40.040-UNLAWFUL IMPRISONMENT

The trial court did not err by not taking count II, unlawful imprisonment, from the jury for lack of sufficiency of the information because it repeated, verbatim, RCW 9A.40.040-Unlawful imprisonment.

Under article 1, section 22 of the Washington Constitution, “the accused shall have the right...to demand the nature and cause of the accusation against him.” State v. Berrier, 143 Wash.App. 547 ¶ 12, 178 P.3d 1064 (Div. 2 March 18, 2008). This requires that “[a] criminal defendant is to be provided with notice of all charged crimes.” Berrier, 143 Wash.App. 547 at ¶ 12; see State v. Schaffer, 120 Wash.2d 616, 619, 845 P.2d 281 (1993).

Our state and federal constitutions require only that a criminal defendant be provided notice of the charges sufficient to allow the defendant to prepare a defense. Berrier, 143 Wash.App. 547 at ¶16; see State v. Yates, 161 Wash.2d 714, 757-760, 168 P.3d 359 (2007); State v. Kjorsvik, 117 Wash.2d 93, 97, 812 P.2d 86 (1991).

Although a defendant may challenge the sufficiency of the information for the first time on appeal, the document is liberally construed in favor of its validity. State v. Laramie, 141 Wash.App. 332, 337, 169 P.3d 859 (Div. 3, October 23, 2007). In determining the validity of an information, a two-prong test is applied: (1) whether the necessary facts appear in any form, or by fair construction can be found in the charging document; and if so, (2) whether the defendant nonetheless suffered actual prejudice as a result of the inartful, vague or ambiguous charging language. Laramie, 141 Wash.App. at 338; see State v. McCarty, 140 Wash.2d 420, 425, 998 P.2d 296 (2006); Kjorsvik, 117 Wash.2d at 105-106.

If the necessary elements, however, are not found or fairly implied, prejudice is presumed and reversal occurs. McCarty, 140 Wash.2d at 425. Such liberal construction prevents what has been described as “sandbagging,” insofar as it removes any incentive to refrain from challenging a defective information before or during trial, when a

successful objection would result only in an amendment to the information. Laramie, 141 Wash.App. at 338; see Kjorsvik, 117 Wash.2d at 103.

Moreover, it reinforces the “primary goal” of the essential elements rule, which is to provide constitutionally mandated notice to the defendant of the charges against which he or she must be prepared to defend. Laramie, 141 Wash.App. at 338; see State v. Davis, 119 Wash.2d 657, 661, 835 P.2d 1039 (1992). The goal of notice is met where a fair, commonsense construction of the charging document “would reasonably apprise an accused of the elements of the crime charged.” Laramie, 141 Wash.App. at 338; see Kjorsvik, 117 Wash.2d at 109. It has never been necessary to use the exact words of a statute in a charging document, as it is sufficient if words conveying the same meaning and import are used. Kjorsvik, 117 Wash.2d at 108. This same rule applies to nonstatutory elements.

RCW 9A.40.040-Unlawful imprisonment, reads as follows:

- (1) A person is guilty of unlawful imprisonment if he knowingly restrains another person.
- (2) Unlawful imprisonment is a class C felony.

In the amended information that was filed on November 1, 2007, League was charged with that crime in count II as follows:

In the County of Mason, State of Washington, On or about the 27th day of August, 2007, the above-named defendant, TONY L. LEAGUE, did commit UNLAWFUL IMPRISONMENT, a Class C Felony, in that said defendant did knowingly restrain another person, to wit: Brandon W. Robins, and/or was an accomplice to said crime, contrary to RCW 9A.40.040 and 9A.40.010(1) and 9A.08.020 and against the peace and dignity of the State of Washington. CP 19: 2.

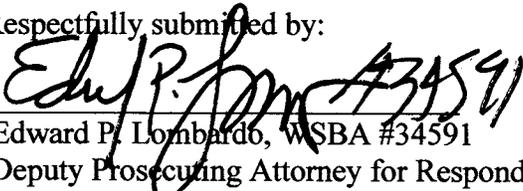
Under article I, section 22 of the Washington State Constitution, League was fully apprised of the nature and cause of the accusation against him through this amended information. Accordingly, he sustained no prejudice, and no error occurred.

F. CONCLUSION

The State respectfully requests that the Court remand League's case back to the trial court for resentencing on both counts with an offender score of 2 instead of 3. The State also requests that the Court find the remainder of the trial court's decision to be complete and correct.

Dated this 17th day of JUNE, 2008

Respectfully submitted by:


Edward P. Lombardo, WSBA #34591
Deputy Prosecuting Attorney for Respondent
Gary P. Burlison, Prosecuting Attorney
Mason County, Washington

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

STATE OF WASHINGTON,)
)
 Respondent,)
)
 vs.)
)
 TONY L. LEAGUE,)
)
 Appellant,)
 _____)

No. 37078-6-II

DECLARATION OF
FILING/MAILING
PROOF OF SERVICE

BY
STATE OF WASHINGTON
DEPUTY

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FILED
COURT OF APPEALS
DIVISION II

I, EDWARD P. LOMBARDO, declare and state as follows:

On TUESDAY, JUNE 17, 2008, I deposited in the U.S. Mail,
postage properly prepaid, the documents related to the above cause number
and to which this declaration is attached, BRIEF OF RESPONDENT, to:

Thomas Edward Doyle
Attorney at Law
P.O. Box 510
Hansville, WA 98340-0510

I, EDWARD P. LOMBARDO, declare under penalty of perjury of
the laws of the State of Washington that the foregoing information is true
and correct.

Dated this 17TH day of JUNE, 2008, at Shelton, Washington.


Edward P. Lombardo, WSPA #34591

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