

FILED
COURT OF APPEALS
DIVISION II

10 OCT 18 AM 9:37

NO. 39721-8-1 STATE OF WASHINGTON

BY JW
DEPUTY

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

STATE OF WASHINGTON,

Respondent,

v.

ALBERT JAMAL YOUNGBLOOD,

Appellant.

ON APPEAL FROM CLARK COUNTY

Before the Honorable John Nichols, Judge

REPLY BRIEF OF APPELLANT

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P m 10/15/10

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A. ISSUE IN REPLY

1. Were both counts of the kidnapping incidental to the robberies, and should the reasoning of *State vs. Korum, infra*, control?

B. ARGUMENT IN REPLY

1. MR. YOUNGBLOOD'S KIDNAPPING CONVICTIONS VIOLATED HIS CONSTITUTIONAL RIGHT NOT TO BE TWICE PUT IN JEOPARDY FOR THE SAME OFFENSE

In its response, the State, quoting *State v. Louis*, 155 Wn.2d 563, 120 P.3d 936 (2005), argues that the robbery counts and kidnapping counts do not merge and that double jeopardy is not implicated. Brief of Respondent at 3-7. Mr. Youngblood submits that *Louis* is distinguishable from the facts of his case. Mr. Youngblood's first degree robbery convictions rested on the display and threatened use of a firearm. Similarly, his kidnapping convictions rested on the intent to facilitate the commission of first degree robbery. The use of the firearm elevated both offense, the robbery would not be a first degree robbery without the use of firearm, and similarly, the kidnapping would not have been first degree kidnapping without the intent to facilitate the commission of robbery. The essential elements of first degree kidnapping are intentional abduction "with intent to facilitate the commission of Robbery or flight thereafter

...” “Abduct” is defined as “to restrain a person by using or threatening to use deadly force.” “Restrain” is defined as restricting “another person's movements without consent and without legal authority in a manner that interferes substantially with that person’s liberty.” Restraint is “without consent” if it is accomplished by physical force, intimidation, or deception. RCW 9A.40.010(1).

Here, the amount of force used to commit kidnapping was the same in law and fact. To abduct by restraining Roberta Damewood and Javier Rivera by using or threatening to use deadly force for purposes of kidnapping is the same legal and factual principal used to accomplish first degree robbery as charged in this case.

The State had to prove that “immediate force, violence, or fear of injury” was used to obtain property or prevent resistance to the taking of money from the restaurant cash register, and the identical facts underlie the elements of each of the offenses challenged. RCW 9A.56.190; RCW 9A.56.200. As charged and proven, the robbery and kidnapping offenses require intentional restraint, and necessitate the same proof. Mr. Youngblood’s first degree robbery conviction rested on his or an accomplice’s display and threatened use of a firearm. Similarly, his kidnapping convictions rested on his intent to facilitate the commission of first degree robbery. Mr. Youngblood submits that the State’s reliance on

Louis is misplaced, and that *State v. Korum*, 120 Wn.App. 686, 703, 86 P.3d 166 (2004), rev'd on other grounds, 157 Wn.2d 614 (2006), is the controlling authority under the circumstances of his case. In *Korum*, the Court dismissed kidnapping offenses on the grounds they were incidental to robbery. *In re Pers. Restraint of Bybee*, 142 Wn.App. 260, 266, 175 P.3d 589 (2007) (discussing holding in *Korum*). The court found that as a matter of law, there was "insufficient evidence to prove kidnappings independent of and with a different purpose than the robberies." *Bybee*, 142 Wn.App. at 266; *Korum*, 120 Wn.App. at 707.

Here, the duration of the restraint of Damewood and Rivera did not exceed the length of time used to accomplish the robbery. They were not tied nor locked in a room. Mr. Youngblood argues that the kidnapping was incidental to the robbery and the "substantial interference" required with a person's freedom of movement, required by RCW 9A.40.010(1), was incidental to the commission of another crime. *State v. Green*, 94 Wn.2d 216, 227, 616 P.2d 628 (1980); *Korum*, 120 Wn.App. at 707.

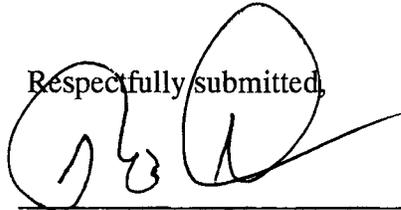
In this case, the first first-degree robbery as charged necessarily proved the kidnapping and first degree kidnapping necessarily proved the robbery. Mr. Youngblood's conduct as charged demonstrates that convictions for robbery and kidnapping violate double jeopardy.

C. CONCLUSION

Based on these arguments, and the argument contained in his previously-filed brief, Mr. Youngblood respectfully requests that this court dismiss the conviction for attempting to elude a pursuing police vehicle, and to dismiss the kidnapping convictions as incidental to the robbery and contrary to the prohibition against double jeopardy, or in the alternative, grant him a new trial on the charges of kidnapping.

DATED this 15th day of October 2010.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'P. B. Tiller', is written over a horizontal line. The signature is stylized and somewhat cursive.

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COURT OF APPEALS NO.
39721-8-II

CLARK COUNTY CAUSE
NO. 08-1-00819-3

CERTIFICATE OF MAILING

The undersigned attorney for the Appellant hereby certifies that one original Appellant's Reply Brief was mailed by first class mail to the Court of Appeals, Division 2, Albert J. Youngblood, Appellant, and Michael Kinnie, Deputy Prosecutor, by first class mail, postage pre-paid on October 15, 2010, at the Centralia, Washington post office addressed as follows:

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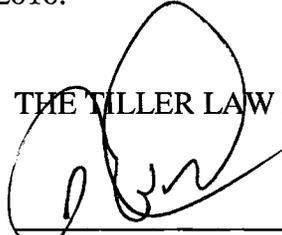
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