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No. 60248-9-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

CIPRIANO B. NONOG,

Appellant.

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COURT OF APPEALS DIV. #1
STATE OF WASHINGTON

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

APPELLANT'S REPLY BRIEF

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A. ARGUMENT IN REPLY

COUNT IV OF THE INFORMATION IS
CONSTITUTIONALLY DEFICIENT BECAUSE IT OMITTED
AN ESSENTIAL ELEMENT OF THE CRIME OF
INTERFERING WITH DOMESTIC VIOLENCE REPORTING

The State contends count IV of the information contains all essential elements of the crime of interfering with domestic violence reporting, even though it does not specify the particular underlying domestic violence crime Mr. Nonog allegedly committed. SRB at 6-15. The State relies on State v. Laramie, 141 Wn. App. 332, 169 P.3d 859 (2007) to argue, first, that the particular domestic violence crime allegedly committed is not an essential element of the crime of interfering with domestic violence reporting and therefore need not be set forth in the information. Second, the State contends that when an element is missing from one count of a multiple-count information, a reviewing court may look to allegations contained in other counts of the information in order to supply the missing element, when the information is challenged for the first time on appeal. In sum, the State urges this Court to adopt the holding and reasoning of Division Three in Laramie rather than that of Division Two in State v. Clowes, 104 Wn. App. 935, 18 P.3d 596 (2001).

A review of the history and application of the “essential elements” rule in Washington ineluctably leads to the conclusion

that the Laramie court misapplied the rule. First, as discussed below, the particular underlying domestic violence crime allegedly committed is a fact that the State must prove to obtain a conviction for the crime of interfering with domestic violence reporting, and it is therefore a fact that must be set forth in the information. Here, there should be no dispute that this essential fact is not contained in count IV of the information. Even the most liberal reading of the language contained in count IV cannot cure this fundamental defect and thus the information is constitutionally deficient.

Second, it is a long-standing and well-established rule in Washington, as in other jurisdictions, that a reviewing court may not pluck an element from one count of an information and drop it into another in order to cure a fundamental defect in the information. The Washington Supreme Court's decisions in State v. Kjorsvik, 117 Wn.2d 93, 812 P.2d 86 (1991) and State v. Leach, 113 Wn.2d 679, 782 P.2d 552 (1989) did not upset this line of cases. Thus, even if the essential fact missing from count IV of the information in this case is contained in other counts of the information, that cannot cure the defect contained in count IV.

1. Count IV of the information is constitutionally deficient, because it does not contain the essential element of the particular underlying domestic violence crime allegedly committed.

a. The particular underlying domestic violence crime committed is an essential element of the crime of interfering with domestic violence reporting. In Clowes, Division Two recognized that the particular underlying domestic violence crime committed is an “essential element” of the crime of interfering with domestic violence reporting. 104 Wn. App. at 942. In Laramie, Division Three concluded the particular underlying domestic violence crime is not an essential element, but is rather a “supporting fact.” 141 Wn. App. at 332. But an examination of the statute and of analogous crimes shows the particular underlying domestic violence crime allegedly committed is an element of the crime of interfering with domestic violence reporting, as it is a fact the State must prove to obtain a conviction.

An element of a crime is a fact "that the prosecution must prove to sustain a conviction." State v. Miller, 156 Wn.2d 23, 27, 123 P.3d 827 (2005) (citing Black's Law Dictionary 559 (8th ed. 2004)).

The elements of the crime of interfering with domestic violence reporting are:

(1) A person commits the crime of interfering with the reporting of domestic violence if the person:

(a) Commits a crime of domestic violence, as defined in RCW 10.99.020; and

(b) Prevents or attempts to prevent the victim of or a witness to that domestic violence crime from calling a 911 emergency communication system, obtaining medical assistance, or making a report to any law enforcement official. . . .

RCW 9A.36.150. The statute further provides, “[c]ommission of a crime of domestic violence under subsection (1) of this section is a necessary element of the crime of interfering with the reporting of domestic violence.” RCW 9A.36.150(2). Thus, commission of an underlying crime of domestic violence as defined in RCW 10.99.020 is a “necessary element” of the crime of interfering with domestic violence reporting.

The language of the statute indicates that, to sustain a conviction, the State must prove the *particular* underlying domestic violence crime committed. That is because the State must prove the domestic violence crime is “as defined in RCW 10.99.020,” which it can do only if it proves a specific crime. RCW 9A.36.150(1)(a).

The Washington Pattern Jury Instruction Committee recognizes that the particular underlying domestic violence crime committed is an element of the crime of interfering with domestic violence reporting. WPIC 36.57, the pattern “to convict” instruction, provides:

To convict the defendant of the crime of interference with the reporting of a domestic violence offense, each of the following *elements* of the crime must be proved beyond a reasonable doubt:

- (1) That on or about [date] the defendant committed the crime of [*name of charged offense*] against [name of victim] [as charged in Count ____];
- (2) That on that date the defendant was a family or household member of [name of victim];
- (3) That the defendant prevented or attempted to prevent [name of victim] [or] [a witness to the [*name of charged offense*]] from [calling a 911 emergency communication system] [or] [obtaining medical assistance] [or] [making a report to any law enforcement officer]; and
- (4) That the acts occurred in the [State of Washington] [County of ____] [City of ____]. . . .

(emphasis added). The Note on Use further provides, “[f]or the charged offense, insert the name of a crime of domestic violence as defined in RCW 10.99.020.” The comment cites RCW 9A.36.150(2), which provides that commission of a crime of domestic violence is a “necessary element” of the crime.

The “to convict” instruction in this case mirrored the pattern jury instruction:

To convict the defendant of the crime of interference with the reporting of a domestic violence offense, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about 30th of March 2006 the defendant committed the crime of *Domestic Violence Violation of a Court Order as charged in Count I, or Residential Burglary - Domestic Violence as charged in Count II*, or both, against Nanette Estandian;

(2) That on that date the defendant was a family or household member of Nanette Estandian;

(3) That the defendant prevented or attempted to prevent Nanette Estandian from calling a 911 emergency communication system; and

(4) That the acts occurred in the State of Washington. . . .

CP 55 (Instruction no. 21) (emphasis added). Thus, the court and the parties recognized the particular underlying domestic violence crime committed was an element of the crime charged.

Finally, it is useful to compare the crime of interfering with domestic violence reporting with other crimes that require proof of the commission of an underlying crime. For the crime of first or second degree felony murder, for instance, Washington courts consistently recognize the name of the particular underlying felony is an element that must be set forth in the information.¹ State v.

¹ The first degree felony murder statute provides:

(1) A person is guilty of murder in the first degree when:

...

(c) He or she commits or attempts to commit the crime of either (1) robbery in the first or second degree, (2) rape in the

Medlock, 86 Wn. App. 89, 101, 935 P.2d 693 (1997); State v. Bryant, 65 Wn. App. 428, 438, 828 P.2d 1121 (1992); State v. Anderson, 10 Wn.2d 167, 180, 116 P.2d 346 (1941); State v. Ryan, 192 Wash. 160, 164-65, 73 P.2d 735 (1937); State v. Fillpot, 51 Wash. 223, 228, 98 P. 659 (1908).

Similarly, for the crime of bail jumping, the *particular crime* the defendant was held for, charged with, or convicted of, is an element of the crime that must be charged.² State v. Williams, 162

first or second degree, (3) burglary in the first degree, (4) arson in the first or second degree, or (5) kidnapping in the first or second degree, and in the course of or in furtherance of such crime or in immediate flight therefrom, he or she, or another participant, causes the death of a person other than one of the participants

RCW 9A.32.030. Second degree felony murder is defined as:

A person is guilty of murder in the second degree when:

...

(b) He or she commits or attempts to commit any felony, including assault, other than those enumerated in RCW 9A.32.030(1)(c), and, in the course of and in furtherance of such crime or in immediate flight therefrom, he or she, or another participant, causes the death of a person other than one of the participants

RCW 9A.32.050.

² The elements of the crime of bail jumping are set forth in section (1) of the statute, Williams, 162 Wn.2d at 184, which provides:

(1) 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

Wn.2d 177, 185, 170 P.3d 30 (2007) (citing State v. Pope, 100 Wn. App. 624, 627, 999 P.2d 51 (2000)).

By contrast, for the crime of burglary, the specific crime the defendant intended to commit inside the burglarized premises is not an element that must be included in the information, because it is not a fact the State must prove to sustain the conviction. State v. Bergeron, 105 Wn.2d 1, 16, 711 P.2d 1000 (1985). The burglary statute provides a person is guilty of burglary “if, with intent to commit *a crime* against a person or property therein, he enters or remains unlawfully” in a building. RCW 9A.52.020(1); RCW 9A.52.025(1); RCW 9A.52.030(1) (emphasis added). Thus, the statute requires the State to prove only the intent to commit *any crime*, and not a specific named crime, inside the burglarized premises. Bergeron, 105 Wn.2d at 4. Therefore, the particular crime the defendant intended to commit need not be set forth in the information. Id. at 10-11, 14-16.

The crime of interfering with domestic violence reporting is like the crimes of felony murder and bail jumping, and unlike the

service of sentence as required is guilty of bail jumping. . . .

RCW 9A.76.170. The elements of bail jumping are that the defendant (1) was held for, charged with, or convicted of a particular crime; (2) was released by court order or admitted to bail with the requirement of a subsequent personal

crime of burglary, in that the statute requires the State to prove a specific underlying crime. Thus, as the courts have concluded for the crimes of felony murder and bail jumping, and as the Clowes court concluded for the crime of interfering with domestic violence reporting, the name of the particular underlying crime committed must be included in the information.

b. Because it is an essential element of the crime, the name of the particular underlying domestic violence crime committed must be contained in the information. The Laramie court acknowledged the “essential elements” rule, but held the information was sufficient because it contained “all essential *statutory* elements of interfering with the reporting of domestic violence.” 141 Wn. App. at 340 (emphasis added). In other words, because the information alleged the defendant “did commit a crime of domestic violence as defined in RCW 10.99.020,” which set forth the element in the language of the statute, it was sufficient under a liberal interpretation. Id.

In State v. Leach, the Washington Supreme Court specifically rejected the approach taken by the Laramie court. Leach explained “[i]n an information or complaint for a statutory

appearance; and (3) knowingly failed to appear as required. Pope, 100 Wn. App. at 627.

offense, it is sufficient to charge in the language of the statute if the statute defines the crime sufficiently to apprise an accused person with reasonable certainty of the nature of the accusation.” 113 Wn.2d at 686. The question is whether the information “state[s] the acts constituting the offense in ordinary and concise language, not the name of the offense, but the statement of the acts constituting the offense.” *Id.* at 689 (quoting State v. Royse, 66 Wn.2d 552, 557, 403 P.2d 838 (1965)). In other words, the information must “*allege facts supporting every element of the offense*,” which is not the same as stating or listing every statutory element. *Id.* at 689. The State may charge in the language of the statute only if that language sufficiently apprises the accused with reasonable certainty of the *acts* constituting the offense. *Id.* at 688-89.

This is a long-standing rule in Washington, extending back to territorial days. *Id.* at 687-89 (citing, *inter alia*, Leonard v. Territory, 2 Wash. Terr. 381, 392, 7 P. 872 (1885) (remanding case for new trial because charging document omitted necessary *facts* constituting crime)).

The requirement that the information set forth sufficient *facts* to support every element of the crime, so that the accused may

know what *acts* constitute the crime charged, does not change simply because an information is challenged for the first time on appeal. Thus, “charging instruments which fail to set forth the essential elements of a crime in such a way that the defendant is notified of both the illegal conduct and the crime with which he is charged are constitutionally defective, and require dismissal.” State v. Hopper, 118 Wn.2d 151, 155, 822 P.2d 775 (1992). When the challenge is raised for the first time on appeal, the method of interpretation to determine whether the information contains all the elements is relaxed, but the court must still determine whether “a person of common understanding can, from the allegations of the information, know the exact nature of the charge against him.” Id. at 157 (quoting State v. Unosawa, 29 Wn.2d 578, 589, 188 P.2d 104 (1948)). An information cannot be upheld, regardless of when the challenge is raised, if it does not contain all the elements, as “the most liberal possible reading cannot cure it.” Hopper, 118 Wn.2d at 157.

Again, this is a long-standing requirement in Washington, as the strict standard of review set forth in Kjorsvik “merely states the proper method of interpretation; it does not alter the requirements for sufficiency.” Id. at 157.

Finally, a bill of particulars cannot cure a constitutionally defective information, as “[a] bill of particulars is not part of the information and can in no way aid an information which is fundamentally defective.” State v. Holt, 104 Wn.2d 315, 321, 704 P.2d 1189 (1985), overruled on other grounds by Leach, 113 Wn.2d at 689. “Rather, the function of such a bill is to amplify or clarify particular matters essential to the defense.” Id. Thus, if the information contains the essential elements but is vague as to such matters, the defendant who does not request a bill of particulars waives his right to challenge the information on appeal. Leach, 113 Wn.2d at 687. But if the information does *not* contain the essential elements, it is fundamentally defective and must be dismissed. Hopper, 118 Wn.2d at 155.

In Hopper, the court concluded that, when liberally construed, the allegation defendant committed an “assault” was sufficient to apprise him that “knowing conduct” was an element of the offense. 118 Wn.2d at 158-59. That was because “the term ‘assault’ contains within it the concept of knowing conduct.” Id. at 158; see also State v. Davis, 119 Wn.2d 657, 663, 835 P.2d 1039 (1992) (when liberally construed, allegation that defendant “did assault” the victim conveyed essential element of “intent,” as the

word assault “contemplates *knowing, purposeful* conduct,” and “is *not* commonly understood as referring to an *unknowing* or *accidental* act.”).

By contrast, in State v. McCarty, the information stating the defendant “did unlawfully conspire to deliver a controlled substance,” even when construed liberally, did not contain the essential element that defendant agreed with persons involved outside the act of delivery to engage in or cause the performance of a crime. 140 Wn.2d 420, 424, 427, 998 P.2d 296 (2000). That is because “[n]othing in the conclusory language of the information, however liberally construed, could imply anything more than a simple conspiracy -- an agreement between two or more people to commit a crime.” Id. at 427.

As in McCarty, the conclusory language of count IV of the information in this case, however liberally construed, does not imply the necessary element of the particular underlying domestic violence crime committed. Count IV alleges that Mr. Nonog,

having committed a crime of domestic violence as defined by RCW 10.99.020, did intentionally prevent or attempt to prevent Nanette Estandian, the victim of that crime, from calling a 911 emergency communication system, obtaining medical assistance, or making a report to any law enforcement official.

CP 11-12 (emphasis added). No accused person would understand from this language what particular underlying domestic violence crime is alleged. Thus, the information is constitutionally defective and Mr. Nonog did not waive his right to challenge the information by failing to request a bill of particulars.

2. The reviewing court may not pluck elements from one count of an information and drop them into another in order to cure a constitutional defect. The Laramie court held that in liberally construing a multiple-count information, the reviewing court need not limit its inquiry to the specific count at issue. Laramie, 141 Wn. App. at 339-40. The court concluded the Kjorsvik court's statement "[w]ords in a document are read as a whole," means "review [is] of the *charging document as a whole*," and is not limited to the count at issue. Laramie, 141 Wn. App. at 339 (quoting Kjorsvik, 117 Wn.2d at 109). But the rule is well-established and long-standing in Washington, as well as other jurisdictions, that each count of a multiple-count charging document must stand on its own and be construed as a separate count. State v. Unosawa, 29 Wn.2d 578, 587-89, 188 P.2d 104 (1948); State v. Taylor, 47 Wn.2d 213, 215, 287 P.2d 298 (1955). The Supreme Court's decisions in Leach and Kjorsvik did not overturn this line of cases; in fact the court made

clear it intended to adhere to tradition in clarifying the nature and application of the essential elements rule.

The Laramie court faulted Clowes for relying on its earlier decision in State v. Gill, 103 Wn. App. 435, 13 P.3d 646 (2000), which concluded without citation to authority, that the liberal construction rule of Kjorsvik did not allow courts to pluck elements from one count in a charging document and drop them into another. Laramie, 141 Wn. App. at 339. But there is ample authority for the Gill court's holding.

In Washington, each count of a multiple-count information must stand on its own and contain every element of the charged crime, unless allegations from other counts are expressly incorporated. Unosawa, 29 Wn.2d at 587; CrR 2.1(a)(1). RCW 10.37.060³ permits the State to join in the same information multiple counts that arise out of the same or related acts or transactions.

³ RCW 10.37.060 provides:

When there are several charges against any person, or persons, for the same act or transaction, or for two or more acts or transactions connected together, or for two or more acts or transactions of the same class of crimes or offenses, which may be properly joined, instead of having several indictments or informations, the whole may be joined in one indictment, or information, in separate counts; and, if two or more indictments are found, or two or more informations filed, in such cases, the court may order such indictments or informations to be consolidated.

State v. Brunn, 145 Wash. 435, 436-37, 260 P. 990 (1927). Before the statute was enacted, in 1925, an information could charge only one crime. Unosawa, 29 Wn.2d at 587; Brunn, 145 Wash. at 436. But although joining multiple counts in a single information is now permitted, “[t]he law still requires the charge to be direct and certain as to each act or transaction.” Unosawa, 29 Wn.2d at 587.

This means each count in a multiple-count information must include every element of the crime charged *within that count*, unless allegations from other counts are expressly incorporated: “[W]here several counts are employed in the indictment to describe the same transaction in different ways, each count should charge accused as if he had committed a distinct offense, the counts being regarded as separate indictments.” Unosawa, 29 Wn.2d at 587 (quoting 42 C.J.S. 1081, Indictments and Informations, § 152). In other words, “separate offenses must be stated in separate counts,” and if one count does not, standing alone, charge an offense, that conviction must be reversed. Taylor, 47 Wn.2d at 215. The charges contained in one count may, by reference, be incorporated in a subsequent count, but such reference must be explicit, definite and specific, so that the matter referred to is clearly and accurately

incorporated in the referring count. Unosawa, 129 Wn.2d at 588; CrR 2.1(a)(1).

Clowes and Gill are consistent with this line of cases, which have not been overruled by the Washington Supreme Court. The court cannot be deemed to have overruled this binding precedent “sub silentio.” See State v. Studd, 137 Wn.2d 533, 548, 973 P.2d 1049 (1999).

Moreover, the weight of authority from other jurisdictions is consistent with the rule in Washington -- that each count of a multiple-count information must contain all essential elements of the crime, unless allegations from other counts are expressly incorporated. In United States v. Rodriguez-Gonzales, for instance, the Ninth Circuit recently explained: “The Supreme Court and the Ninth Circuit have long held that ‘each count in an indictment . . . is regarded as if it were a separate indictment’ and ‘must be sufficient in itself.’ Further, each count ‘must stand or fall on its own allegations without reference to other counts not expressly incorporated by reference.’” 358 F.3d 1156, 1158 (9th Cir. 2004) (citing Dunn v. United States, 284 U.S. 390, 393, 52 S.Ct. 189, 76 L.Ed. 356 (1932), overruled on other grounds by Sealfon v. United States, 332 U.S. 575, 68 S.Ct. 237, 92 L.Ed. 180 (1948); Walker v.

United States, 176 F.2d 796, 798 (9th Cir. 1949)). Further, “[m]any of this court’s sister circuits have cited this long-standing rule requiring specificity with approval. We now re-affirm this long-standing rule’s validity.” Id. at 1158 (citing Davis v. United States, 357 F.2d 438, 440 (5th Cir. 1966); United States v. Gordon, 253 F.2d 177, 180 (7th Cir. 1958) (referring to the requirement as the ‘universal rule’); McClintock v. United States, 60 F.2d 839, 841 (10th Cir. 1932)); see also United States v. Miller, 774 F.2d 883, 885 (8th Cir. 1985) (it is well-settled that “each count of an indictment ‘must stand on its own, and cannot depend for its validity on the allegations of any other count not specifically incorporated’” (citations omitted); Asgill v. United States, 60 F.2d 780, 783 (4th Cir. 1932) (“each count shall be treated as charging a separate offense,” unless there is clear and specific incorporation by reference).

State courts are generally in agreement. See People v. Brinson, 739 P.2d 897, 899 (Colo. App. 1987) (“Each count of an information must be considered independently of any other count and must, itself, allege all of the material elements of the crime charged, so that each count charges a distinct and separate offense”); State v. Green, 376 A.2d 424, 429 (Del. Super. 1977)

“Each count is considered as if it were a separate indictment and must be sufficient without reference to other counts unless they are incorporated by reference”); Davis v. State, 371 So.2d 721, 722 (Fla. App. 1979) (“allegations of each count must be separately considered and not by reference to the other”); Perry v. State, 8 S.E.2d 425, 427 (Ga. App. 1940) (“Each count must be considered as if it there were no other count”); State v. White, 266 P. 415, 417 (Idaho 1928) (same); State v. Wilson, 337 S.E.2d 470, 476 (N.C. 1985) (same); Browning v. State, 165 N.E. 566, 569 (Ohio 1929) (same); State v. Johnson, 722 P.2d 1266, 1268 (Or. App. 1985) (same); State v. Rector, 155 S.E. 385, 386 (S.C. 1930) (same), overruled on other grounds by Evans v. State, 611 S.E.2d 510 (S.C. 2005); Usary v. State, 112 S.W.2d 7, 8 (Tenn. 1937) (same); Smith v. State, 571 S.W.2d 917, 919 (Tex. Crim. App. 1978) (distinguishing between elements of crime, which must be contained within specific count, and “defects in form,” which may be supplied by reference to other parts of indictment); State v. Vaughan, 117 S.E. 127, 128 (W.Va. 1923) (incorporation by reference “must be so full and distinct, as in effect to incorporate the matter going before with that in the count in which it is made”); but see People v. Hall, 96 Ill.2d 315, 320-21, 450 N.E.2d 309, 320

(Ill. 1982) (“elements missing from one count of a multiple-count indictment or information may be supplied by another count”).

Finally, Leach, Kjorsvik and the Supreme Court’s subsequent cases indicate the court intends to adhere to the essential elements rule as traditionally applied in Washington. In Leach, for instance, the court expressly reaffirmed Unosawa’s holding that an information must contain every element of the crime. Leach, 113 Wn.2d at 687-88 (citing Unosawa, 29 Wn.2d at 589). The court noted that in Unosawa “[t]he *facts* stated in count No. 2 of the information, as amended, [did] not charge the crime.” Id. (emphasis in Leach). As discussed above, count 2 in Unosawa was constitutionally deficient because it did not contain every element of the crime. Unosawa, 20 Wn.2d at 587, 589. Unosawa expressly held the missing element could not be supplied by the other counts. Id. Thus, Leach implicitly reaffirmed the rule from Unosawa that each count in a multiple-count information must be construed separately. Further, Leach discussed the court’s earlier decisions, going back to territorial days, at length, indicating the court intended to reaffirm and clarify, and not overturn, its prior decisions applying the essential elements rule. Leach, 113 Wn.2d at 687-89.

Similarly, in Hopper, the court again cited Unosawa and approved of its application of the “common understanding” rule, a liberal standard of construction akin to the standard set forth in Kjorsvik. Hopper, 118 Wn.2d at 157 (citing Unosawa, 29 Wn.2d at 589). Unosawa held the “common understanding” rule cannot be applied unless it is first determined that the information contains all the essential elements. Id. Hopper made clear “[t]he application of the strict standard of review [from Kjorsvik] does not upset this line of cases.” Hopper, 118 Wn.2d at 157. In other words, the court again reaffirmed it would adhere to the essential elements rule as traditionally applied in Washington.

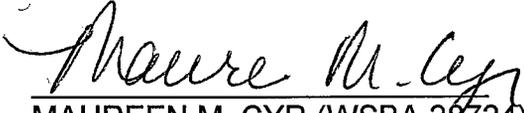
In sum, the traditional rule in Washington is that each count of a multiple-count information must be complete in itself and separately construed. The Supreme Court has never overruled the line of cases setting forth the rule and the court’s recent decisions indicate it intends to adhere to tradition in applying the essential elements rule. Moreover, the rule is consistent with the weight of authority from other jurisdictions. In light of these considerations, this Court must conclude the traditional rule still applies in Washington. The constitutional deficiency in count IV cannot be cured by facts alleged in other counts of the information.

B. CONCLUSION

Because count IV of the information omitted the essential element of the particular underlying domestic violence crime committed, it is constitutionally defective. Thus, as explained in the opening brief, the conviction for interfering with domestic violence reporting must be reversed and dismissed without prejudice to the State's ability to re-file the charge.

As for the other assignments of error raised, Mr. Nonog relies on his arguments presented in the opening brief. In particular, this Court should accept the State's concessions of error regarding the offender score calculation and the erroneous statutory reference on the face of the judgment and sentence.

Respectfully submitted this 25th day of April 2008.


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