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COURT OF APPEALS  
DIVISION ONE  
JAN - 9 2014

No. 69005-1

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

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STATE OF WASHINGTON,

Respondent,

v.

LUIS ANDRE PEREZ,

Appellant.

---

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

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APPELLANT'S SUPPLEMENTAL ASSIGNMENT  
OF ERROR AND SUPPORTING BRIEF

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**TABLE OF CONTENTS**

A. SUPPLEMENTAL ASSIGNMENT OF ERROR..... 1

B. ISSUE PERTAINING TO SUPPLEMENTAL ASSIGNMENT OF ERROR .....

C. SUPPLEMENTAL STATEMENT OF THE CASE ..... 1

D. ARGUMENT..... 1

THE INFORMATION WAS CONSTITUTIONALLY DEFICIENT  
BECAUSE IT OMITTED AN ESSENTIAL ELEMENT OF THE  
CRIME OF UNLAWFUL IMPRISONMENT..... 2

E. CONCLUSION..... 5

**TABLE OF AUTHORITIES**

**Constitutional Provisions**

Const. art. I, § 22 ..... 1

U.S. Const. amend. VI..... 2

**Cases**

State v. Hopper, 118 Wn.2d 151, 822 P.2d 775 (1992) ..... 3

State v. Johnson, 172 Wn. App. 112, 297 P.3d 710 (2012) ..... 3, 4

State v. Kjorsvik, 117 Wn.2d 93, 812 P.2d 86 (1991) ..... 1, 2

State v. Warfield, 103 Wn. App. 152, 5 P.3d 1280 (2000) ..... 4

**Statutes**

RCW 9A.40.010(6) ..... 3

RCW 9A.40.040(1) ..... 3

A. SUPPLEMENTAL ASSIGNMENT OF ERROR

The information was constitutionally deficient because it omitted an essential element of the crime of unlawful imprisonment.

B. ISSUE PERTAINING TO SUPPLEMENTAL ASSIGNMENT OF ERROR

A charging document is constitutionally deficient if it does not contain all essential elements of the crime. An essential element of the crime of unlawful imprisonment is that the restraint was “without legal authority.” Is the charging document constitutionally deficient, where it omitted the essential element that the restraint was “without legal authority”?

C. SUPPLEMENTAL STATEMENT OF THE CASE

Mr. Perez was charged with one count of unlawful imprisonment. CP 66. The information alleged:

That the defendants LUIS ANDRE PEREZ and CHRISTAPHER TARENCE WHITE, and each of them, together with others, in King County, Washington, during a period of time intervening between January 20, 2010 through January 22, 2010, **did knowingly restrain E.C.**, a human being;

Contrary to RCW 9A.40.040, and against the peace and dignity of the State of Washington.

CP 66. The jury found him guilty as charged. CP 137.

C. ARGUMENT

THE INFORMATION WAS CONSTITUTIONALLY  
DEFICIENT BECAUSE IT OMITTED AN  
ESSENTIAL ELEMENT OF THE CRIME OF  
UNLAWFUL IMPRISONMENT

It is a fundamental principle of criminal procedure, embodied in the state and federal constitutions, that a defendant in a criminal case must receive adequate notice of the nature and cause of the accusation. State v. Kjorsvik, 117 Wn.2d 93, 97, 812 P.2d 86 (1991); Const. art. I, § 22 (“[i]n criminal prosecutions the accused shall have the right . . . to demand the nature and cause of the accusation against him”); U.S. Const. amend. VI (“[i]n all criminal prosecutions, the accused shall . . . be informed of the nature and cause of the accusation”).

In Washington, the well-established means of ensuring adequate notice is through application of the “essential elements rule.” The essential elements rule requires that “[a]ll essential elements of a crime, statutory or otherwise, . . . be included in a charging document.” Kjorsvik, 117 Wn.2d at 97. “The primary goal of the ‘essential elements’ rule is to give notice to an accused of the nature of the crime that he or she must be prepared to defend against.” Id. at 101.

A charging document is constitutionally adequate only if all essential elements are included on the face of the document, regardless

of whether the accused received actual notice of the charge. State v. Vangerpen, 125 Wn.2d 782, 790, 888 P.2d 1177 (1995).

When an information is challenged for the first time on appeal, “it will be construed liberally and will be found sufficient if the necessary elements appear in any form, or by fair construction may be found, on the face of the document.” State v. McCarty, 140 Wn.2d 420, 425, 998 P.2d 296 (2000). But an information cannot be upheld if it does not contain all the essential elements, as “the most liberal possible reading cannot cure it.” State v. Hopper, 118 Wn.2d 151, 157, 822 P.2d 775 (1992).

An “essential element” is “one whose specification is necessary to establish the very illegality of the behavior charged.” State v. Johnson, 172 Wn. App. 112, 297 P.3d 710 (2012), review granted, 178 Wn.2d 1001, 308 P.3d 642 (2013) (quotation marks and citations omitted).

The unlawful imprisonment statute provides, “[a] person is guilty of unlawful imprisonment if he or she knowingly restrains another person.” RCW 9A.40.040(1). To “restrain” means “to restrict a person's movements without consent and without legal authority in a manner which interferes substantially with his or her liberty.” RCW

9A.40.010(6). To restrain a person “without consent” is accomplished by “physical force, intimidation, or deception.” Id.

In Johnson, this Court held an essential element of the crime of unlawful imprisonment is that the restraint was “without legal authority.” Johnson, 172 Wn. App. at 140. The statutory definition of unlawful imprisonment, to “knowingly restrain,” causes the adverb “knowingly” to modify all components of the statutory definition of “restrain.” Id. at 139. Thus, “knowledge of the law is a statutory element of the crime of unlawful imprisonment, without proof of which, defendants’ convictions cannot stand.” Id. (quoting State v. Warfield, 103 Wn. App. 152, 159, 5 P.3d 1280 (2000)). It is truly an essential element and not simply a definitional term. Id. at 140.

In Johnson, the information charging Johnson with unlawful imprisonment alleged that he “did **knowingly restrain** [J.J.], a human being.” Id. at 137. The Court held the information was constitutionally deficient, even under a liberal reading, because there was no way to conclude from the language the essential element that the restraint was “without legal authority.” Id. at 139.

Johnson is indistinguishable from this case. As in Johnson, the information charging Mr. Perez with unlawful imprisonment alleged he

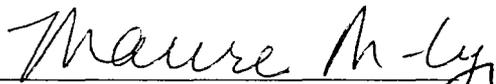
“did knowingly restrain E.C.” CP 66. Even under a liberal reading, there is no way to conclude from the language the essential element that the restraint was “without legal authority.” Johnson, 172 Wn. App. at 139. Therefore, the information is constitutionally deficient. Id.

If the reviewing court concludes the necessary elements are not found or fairly implied in the charging document, the court must presume prejudice. McCarty, 140 Wn.2d at 425. The remedy is reversal of the conviction and dismissal of the charge without prejudice to the State’s ability to refile the charge. Vangerpen, 125 Wn.2d at 792-93. That is the remedy here.

E. CONCLUSION

Because the information omitted an essential element of the crime of unlawful imprisonment, the conviction on that count must be reversed without prejudice to the State’s ability to refile the charge.

Respectfully submitted this 8th day of January, 2014.

  
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STATE OF WASHINGTON,	)	
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	)	
LUIS PEREZ,	)	
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Appellant.	)	

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**DECLARATION OF DOCUMENT FILING AND SERVICE**

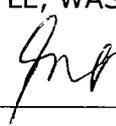
I, MARIA ANA ARRANZA RILEY, STATE THAT ON THE 8<sup>TH</sup> DAY OF JANUARY, 2014, I CAUSED THE ORIGINAL **SUPPLEMENTAL ASSIGNMENT OF ERROR AND BRIEF** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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**SIGNED** IN SEATTLE, WASHINGTON THIS 8<sup>TH</sup> DAY OF JANUARY, 2014.

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