

Original

NO. 37078-6-II

COURT OF APPEALS, DIVISION II

STATE OF WASHINGTON,

Respondent

vs.

TONY LEAGUE,

Appellant

FILED
COURT OF APPEALS
DIVISION II
08 APR 14 AM 9:01
STATE OF WASHINGTON
DEPUTY

APPEAL FROM THE SUPERIOR COURT
FOR MASON COUNTY
The Honorable Toni A. Sheldon, Judge
Cause No. 07-1-00415-7

BRIEF OF APPELLANT

THOMAS E. DOYLE, WSBA NO. 10634
PATRICIA A. PETHICK, WSBA 21324
Attorneys for Appellant

P.O. Box 510
Hansville, WA 98340-0510
(360) 638-2106

TABLE OF CONTENTS

	<u>Page</u>
A. ASSIGNMENTS OF ERROR	1
B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.....	1
C. STATEMENT OF THE CASE	2
D. ARGUMENT	4
01. LEAGUE MAY NOT BE CONVICTED OF UNLAWFUL IMPRISONMENT WHERE THE UNLAWFUL IMPRISONMENT WAS INCIDENTAL TO, A PART OF, OR COEXISTENT WITH HIS CONVICTION FOR ROBBERY IN THE FIRST DEGREE	4
02. LEAGUE’S CONVICTIONS FOR UNLAWFUL IMPRISONMENT AND ROBBERY IN THE FIRST DEGREE ENCOMPASSED THE SAME CRIMINAL CONDUCT FOR PURPOSES OF CALCULATING HIS OFFENDER SCORE	8
03. THE SENTENCING COURT ERRED IN DETERMINING LEAGUE’S STANDARD SENTENCE RANGE FOR HIS CONVICTION FOR ROBBERY IN THE FIRST DEGREE	10
04. LEAGUE WAS PREJUDICED BY HIS COUNSEL’S FAILURE TO ARGUE THAT HIS CURRENT CONVICTIONS SHOULD NOT BE COUNTED AS SEPARATE OFFENSES AND THAT HIS STANDARD RANGE SENTENCE WAS INCORRECT	11

//

05. LEAGUE’S CONVICTION FOR UNLAWFUL
IMPRISONMENT MUST BE REVERSED
AND DISMISSED FOR LACK OF
SUFFICIENCY OF THE INFORMATION13

E. CONCLUSION16

TABLE OF AUTHORITIES

	<u>Page(s)</u>
<u>Washington Cases</u>	
<u>In the Matter of Personal Restraint of Anthony C. Burchfield</u> , 111 Wn. App. 892, 46 P.3d 840 (2002).....	4, 5, 6
<u>State v. Ammons</u> , 105 Wn.2d 175, 718 P.2d 796, <u>cert. denied</u> , 479 U.S. 930 (1986).....	8
<u>State v. Adel</u> , 136 Wn.2d 629, 965 P.2d 1072 (1998).....	4
<u>State v. Calle</u> , 125 Wn.2d 769, 888 P.2d 155 (1995)	4, 6
<u>State v. Doogan</u> , 82 Wn. App. 185, 917 P.2d 155 (1996)	11
<u>State v. Dunaway</u> , 109 Wn.2d 207, 215, 743 P.2d 1237, 749 P.2d 160 (1987).....	8
<u>State v. Early</u> , 70 Wn. App. 452, 853 P.2d 964 (1993), <u>review denied</u> , 123 Wn.2d 1004 (1994)	11
<u>State v. Frohs</u> , 83 Wn. App. 803, 924 P.2d 384 (1996).....	4, 6
<u>State v. Gentry</u> , 125 Wn.2d 570, 888 P.2d 1105 (1995).....	11
<u>State v. Gilmore</u> , 76 Wn.2d 293, 456 P.2d 344 (1969).....	11
<u>State v. Graham</u> , 78 Wn. App. 44, 896 P.2d 704 (1995)	11
<u>State v. Henderson</u> , 114 Wn.2d 867, 792 P.2d 514 (1990).....	11
<u>State v. Johnson</u> , 92 Wn.2d 671, 600 P.2d 1249 (1979).....	6
<u>State v. McCorkle</u> , 137 Wn.2d 490, 973 P.2d 461 (1999).....	8
<u>State v. McCorkle</u> , 88 Wn. App. 485, 945 P.2d 736 (1997), <u>affirmed</u> , 137 Wn.2d 490 (1999)	10

<u>State v. Mitchell</u> , 81 Wn. App. 387, 914 P.2d 771 (1996)	8
<u>State v. Roche</u> , 75 Wn. App. 500, 878 P.2d 497 (1994).....	8
<u>State v. Tarica</u> , 59 Wn. App. 368, 798 P.2d 296 (1990).....	11
<u>State v. Tili</u> , 139 Wn.2d 107, 118, 985 P.2d 365 (1999)	9
<u>State v. Tresenriter</u> , 101 Wn. App. 486, 4 P.3d 145 (2000), <u>reviewed denied</u> , 143 Wn.2d 1010 (2001)	9
<u>State v. Turner</u> , 102 Wn. App. 202, 6 P.3d 1226, <u>reviewed denied</u> , 143 Wn.2d 1009 (2001).....	4
<u>State v. White</u> , 81 Wn.2d 223, 500 P.2d 1242 (1972)	11
<u>State v. Zumwalt</u> , 119 Wn. App. 126, 82 P.3d 672 (2003)	5

Federal Cases

<u>Brown v. Ohio</u> , 432 U.S. 161, 53 L. Ed. 2d 187, 97 S. Ct. 2221 (1977)	5
--	---

Constitutional Provisions

Art. 1, Sec. 9	4
Fifth Amendment	4, 6

Statutes

RCW 9.94A.400(1)(a)	8
RCW 9.94A.589(1)(a)	8, 9
RCW 9A.08.020.....	2

RCW 9A.40.010.....	2, 5, 7
RCW 9A.40.040.....	2, 5, 7
RCW 9A.56.190.....	2, 15
RCW 9A.56.200.....	2, 5

Rules

RAP 2.5(a)	4
------------------	---

A. ASSIGNMENTS OF ERROR

01. 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.
02. The trial court erred in calculating League's offender score by counting his two current convictions as separate offenses.
03. The trial court erred in determining League's standard sentence range for his conviction for robbery in the first degree.
04. 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.
05. 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

01. Whether 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?
[Assignment of Error No. 1].
02. Whether the trial court erred in calculating League's offender score by counting his two current convictions as separate offenses?
[Assignment of Error No. 2].

03. Whether the case should be remanded for resentencing where the trial court erred in determining League's standard sentence range for his conviction for robbery in the first degree and the record does not indicate the court would have imposed the same sentence absent the error.
04. Whether 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? [Assignment of Error No. 4].
05. Whether League's conviction for unlawful imprisonment must be reversed and dismissed for lack of sufficiency of the information? [Assignment of Error No. 5].

C. STATEMENT OF THE CASE

01. Procedural Facts

Tony L. League (League) was charged by amended information filed in Mason County Superior Court on November 1, 2007, with robbery in the first degree, count I, and unlawful imprisonment, count II, contrary to RCWs 9A.56.200(1)(a), 9A.56.190, 9A.08.020, 9A.40.040 and 9A.40.010(1). [CP 54-55]

No motions were filed nor heard regarding either a CrR 3.5 or CrR 3.6 hearing. [RP 1, 3]. Trial to a jury commenced on November 1, the

Honorable Toni A. Sheldon presiding. Neither exceptions nor objections were taken to the jury instructions. [RP 74].

The jury returned verdicts of guilty as charged, League was sentenced within his standard range and timely notice of this appeal followed. [CP 3-21, 23-24].

02. Substantive Facts

On August 27, 2007, 16-year-old Brandon Robbins agreed to purchase some marijuana for \$80.00. [RP 16-18]. After withdrawing \$150.00 from his bank, he was driven to the purchase site by R.L. Marshall. [RP 18-19, 45]. The two then “walked into the woods,” where they met League, who immediately whistled after Robbins handed him the \$80.00, at which point, according to Robbins, two other people, Brendon Kerwin and Robby Childs, appeared. [RP 20].

Tony took me to the ground by my neck and Brendan came over and started going through my pockets, and Robby was punching me in the face.
[RP 21].

During the incident, while League restrained Robbins, Kerwin took the remaining \$70.00 from Robbins’s pocket. [RP 21-22]. The ordeal lasted “(t)hirty seconds. It was really quick.” [RP 22]. It ended when the three assailants “got up and ran off.” [RP 23]. Robbins suffered a cut lip.

[RP 23, 29]. Following his arrest, League admitted to the incident. [RP 58-60, 67; State's exhibits 12, 15].

League rested without presenting evidence. [RP 75].

D. ARGUMENT

01. LEAGUE MAY NOT BE CONVICTED OF UNLAWFUL IMPRISONMENT WHERE THE UNLAWFUL IMPRISONMENT WAS INCIDENTAL TO, A PART OF, OR COEXISTENT WITH HIS CONVICTION FOR ROBBERY IN THE FIRST DEGREE.

Article 1, section 9 of the Washington State Constitution and the Fifth Amendment to the United States Constitution provide that no person should twice be put in jeopardy for the same offense. Double jeopardy may be violated by multiple convictions even if the sentences are concurrent. State v. Calle, 125 Wn.2d 769, 775, 888 P.2d 155 (1995). A double jeopardy argument may be raised for the first time on appeal because it is a manifest error affecting a constitutional right. State v. Turner, 102 Wn. App. 202, 206, 6 P.3d 1226, reviewed denied, 143 Wn.2d 1009 (2001) (citing RAP 2.5(a) and State v. Adel, 136 Wn.2d 629, 631, 965 P.2d 1072 (1998); See also State v. Frohs, 83 Wn. App. 803, 811, 924 P.2d 384 (1996). The issue is whether the Legislature intended to authorize multiple punishments for criminal conduct that violates more than one criminal statute. Calle, 125 Wn.2d at 772.

A three-prong test is applied to determine legislative intent. First, multiple convictions constitute double jeopardy even if the offenses “clearly involve different legal elements, if there is clear evidence that the Legislature intended to impose only a single punishment.” In the Matter of Personal Restraint of Anthony C. Burchfield, 111 Wn. App. 892, 897, 46 P.3d 840 (2002) (citing State v. Calle, 125 Wn.2d at 780). Because the Legislature is free to define crimes and fix punishments as it will, “the role of the constitutional guarantee is limited to assuring that the court does not exceed its legislative authorization by imposing multiple punishments for the same offense.” Brown v. Ohio, 432 U.S. 161, 165, 53 L. Ed. 2d 187, 97 S. Ct. 2221 (1977).

Here, neither the unlawful imprisonment nor the robbery in the first degree statutes contain specific language authorizing separate punishments for the same conduct. RCW 9A.56.200(1)(a), 9A.56.190, 9A.40.040, 9A.40.010(1). The offenses are thus not automatically immune from double jeopardy analysis. Burchfield, 111 Wn. App. at 896.

Second, when, as here, the Legislature has not expressly authorized multiple punishments for the same act, this court applies the “same evidence test,” which asks “whether each offense has an element not contained in the other.” Id. The statute under which League was convicted of unlawful imprisonment contains an element of knowingly restraining another person, which is not contained in the robbery in the first degree statute. RCW 9A.40.040(1). An essential element of robbery in the first degree under RCW 9A.56.200(1)(a)(iii) and 9A.56.190 is the unlawful taking of property from another. The two offenses contain different elements and, therefore, are not established by the “same evidence test.” Thus the prohibition against double jeopardy is not violated here by applying this test. See State v. Zumwalt, 119 Wn. App. 126, 130, 82 P.3d 672 (2003).

Of course, the “same evidence” test is not always dispositive. Burchfield, 111 Wn. App. at 897. This court must also determine whether there is evidence that the Legislature intended to treat conduct as a single offense for double jeopardy purposes. Id.; State v. Frohs, 83 Wn. App. at 811. This merger doctrine is simply another way, in addition to the “same evidence” test, by which this court may determine whether the Legislature has authorized multiple punishments. “Thus, the merger doctrine is simply another means by which a court may determine

whether the imposition of multiple punishments violates the Fifth Amendment guarantee against double jeopardy....” Id. The question is whether there is clear evidence that the Legislature intended not to punish the conduct at issue with two separate convictions. Calle, 125 Wn.2d at 778. If a defendant is convicted of two crimes, his or her second conviction will stand if that conviction is based on “some injury to the person or property of the victim or others, which is separate and distinct from and not merely incidental to the crime of which it forms the element.” [Emphasis Added]. State v. Johnson, 92 Wn.2d 671, 680, 600 P.2d 1249 (1979).

In this case, the crime of unlawful imprisonment occurred in furtherance of the crime of robbery in the first degree: The proof of the facts relevant to the restraint element required to sustain the verdict for unlawful imprisonment under RCWs 9A.40.040 and 9A.40.010 involved League taking Robbins to the ground by means of a choke or neck hold while his accomplices continued the assault and removed the cash from Robbins’s pocket, all of which lasted, as argued by the State during closing, “for the amount of time that it took to commit the robbery.” [RP 98]. In short, the force used to obtain the property (cash) from Robbins was the same force used to restrain him.

Under these facts, the lesser crime of unlawful imprisonment was incidental to the greater crime of robbery in the first degree and therefore

merges into that offense. See State v. Freeman, 153 Wn.2d 765, 778, 108 P.3d 753 (2005).

02. LEAGUE'S CONVICTIONS FOR
UNLAWFUL IMPRISONMENT AND
ROBBERY IN THE FIRST DEGREE
ENCOMPASSED THE SAME CRIMINAL
CONDUCT FOR PURPOSES OF
CALCULATING HIS OFFENDER SCORE.

A challenge to the calculation of an offender score may be raised for the first time on appeal. State v. Roche, 75 Wn. App. 500, 513, 878 P.2d 497 (1994); State v. McCorkle, 137 Wn.2d at 495. Although a defendant generally cannot challenge a presumptive standard range sentence, he or she can challenge the procedure by which a sentence within the standard range was imposed. State v. Ammons, 105 Wn.2d 175, 183, 718 P.2d 796, cert. denied, 479 U.S. 930 (1986). A defendant does not acknowledge an incorrect offender score simply by failing to object at sentencing. State v. Ford, 137 Wn.2d at 482-83. A sentencing court's calculation of a defendant's offender score is a question of law and is reviewed de novo. State v. Mitchell, 81 Wn. App. 387, 390, 914 P.2d 771 (1996).

In sentencing League, the trial court calculated his offender score on each count as three by counting his prior offenses and his two current convictions as separate offenses. [CP 5-6].

If multiple crimes encompass the same objective intent, involve the same victim and occur at the same time and place, the crimes encompass the same course of criminal conduct for purposes of determining an offender score. State v. Dunaway, 109 Wn.2d 207, 217, 743 P.2d 1237 (1987).

“RCW 9.94A.400(1)(a) (now recodified as RCW 9.94A.589(1)(a)) requires multiple current offenses encompassing the same criminal conduct to be counted as one crime in determining the defendant’s offender score.” State v. Tresenriter, 101 Wn. App. 486, 496, 4 P.3d 145 (2000), reviewed denied, 143 Wn.2d 1010 (2001) (quoting State v. Tili, 139 Wn.2d 107, 118, 985 P.2d 365 (1999)). As used in this subsection, “same criminal conduct” is defined as “two or more crimes that require the same criminal intent, are committed at the same time and place, and involve the same victim.” RCW 9.94A.589(1)(a).

Here, as previously set forth, given that the evidence demonstrated that League’s two counts were not differentiated by time, location or intended purpose, the offenses encompassed the same course of criminal conduct for purposes of calculating his offender score. Objectively viewed, the criminal purpose of each offense was exactly the same: to get the cash from Robbins. That’s what it was all about. Accordingly,

the matter must be remanded for resentencing based on an offender score that does not include both convictions.

03. THE SENTENCING COURT ERRED IN DETERMINING LEAGUE'S STANDARD SENTENCE RANGE FOR HIS CONVICTION FOR ROBBERY IN THE FIRST DEGREE.

The trial court sentenced League to 60 months incarceration for his conviction for robbery in the first degree after incorrectly determining his standard sentence range for this offense to be 46 to 68 months. [CP 6]. The correct range is 46 to 61 months. RCW 9.94A.525(8).

A standard range sentence based on an incorrect calculation of the defendant's offender score should be remanded unless the record clearly indicates the sentencing court would have imposed the same sentence absent the error. See State v. McCorkle, 88 Wn. App. at 498-99; State v. Parker, 132 Wn.2d 182, 189, 937 P.2d 575(1997). Since the record does not so indicate [RP 111-114], the matter should be remanded for resentencing.

//

//

//

//

04. LEAGUE WAS PREJUDICED BY HIS COUNSEL'S FAILURE TO ARGUE THAT HIS CURRENT CONVICTIONS SHOULD NOT BE COUNTED AS SEPARATE OFFENSES AND THAT HIS STANDARD RANGE SENTENCE WAS INCORRECT.¹

A criminal defendant claiming ineffective assistance must prove (1) that the attorney's performance was deficient, i.e. that the representation fell below an objective standard of reasonableness under the prevailing professional norms, and (2) that prejudice resulted from the deficient performance, i.e. that there is a reasonable probability that, but for the attorney's unprofessional errors, the results of the proceedings would have been different. State v. Early, 70 Wn. App. 452, 460, 853 P.2d 964 (1993), review denied, 123 Wn.2d 1004 (1994); State v. Graham, 78 Wn. App. 44, 56, 896 P.2d 704 (1995). Competency of counsel is determined based on the entire record below. State v. White, 81 Wn.2d 223, 225, 500 P.2d 1242 (1972) (citing State v. Gilmore, 76 Wn.2d 293, 456 P.2d 344 (1969)). A reviewing court is not required to address both prongs of the test if the defendant makes an insufficient showing on one prong. State v. Tarica, 59 Wn. App. 368, 374, 798 P.2d 296 (1990).

¹ While it has been argued in the preceding sections of this brief that these issues can be raised for the first time on appeal, this portion of the brief is presented only out of an abundance of caution should this court disagree with this assessment.

Additionally, while the invited error doctrine precludes review of error caused by the defendant, See State v. Henderson, 114 Wn.2d 867, 870, 792 P.2d 514 (1990), the same doctrine does not act as a bar to review a claim of ineffective assistance of counsel. State v. Doogan, 82 Wn. App. 185, 917 P.2d 155 (1996) (citing State v. Gentry, 125 Wn.2d 570, 646, 888 P.2d 1105 (1995)).

Should this court find that trial counsel waived the issues and errors set forth in the preceding sections of this brief relating to the counting of League's two current convictions as separate offenses and the miscalculation of his standard range sentence, then both elements of ineffective assistance of counsel have been established.

First, the record does not, and could not, reveal any tactical or strategic reason why trial counsel would have failed to properly make these arguments for the reasons set forth in the preceding sections.

Second, the prejudice is self-evident. Again, as set forth in the preceding sections, had counsel properly made these arguments, the trial court would not have imposed a sentence based on an incorrect offender score.

//

//

//

05. LEAGUE'S CONVICTION FOR UNLAWFUL IMPRISONMENT MUST BE REVERSED AND DISMISSED FOR LACK OF SUFFICIENCY OF THE INFORMATION.

The constitutional right of a person to be informed of the nature and cause of the accusation against him or her requires that every material element of the offense be charged with definiteness and certainty. 2 C. Torcia, Wharton on Criminal Procedure Section 238, at 69 (13th ed. 1990). In Washington, the information must include the essential common law elements, as well as the statutory elements, of the crime charged in order to appraise the accused of the nature of the charge. Sixth Amendment; Const. art. 1, Section 22 (amend. 10); CrR 2.1(c); State v. Kjorsvik, 117 Wn.2d 93, 812 P.2d 86 (1991). Charging documents that fail to set forth the essential elements of a crime are constitutionally defective and require dismissal, regardless of whether the defendant has shown prejudice. State v. Hopper, 118 Wn.2d 151, 155, 822 P.2d 775 (1992). If, as here, the sufficiency of the information is not challenged until after the verdict, the information "will be more liberally construed in favor of validity...." State v. Kjorsvik, 117 Wn.2d at 102. The test for the sufficiency of charging documents challenged for the first time on appeal is as follows:

(1) do the necessary facts appear in any form, or by fair construction can they be found, in the charging document; and, if so, (2) can the defendant show that he or she was nonetheless actually prejudiced by the inartful language which caused a lack of notice?

State v. Kjorsvik, 117 Wn.2d at 105-06.

It is not fatal to an information that the exact words of the statute are not used; it is instead sufficient “to use words conveying the same meaning and import as the statutory language.” State v. Leach, 113 Wn.2d 679, 689, 782 P.2d 552 (1989). The information must, however, “state the acts constituting the offense in ordinary and concise language....” State v. Royse, 66 Wn.2d 552, 557, 403 P.2d 838 (1965). The question “is whether the words would reasonably appraise an accused of the elements of the crime charged.” State v. Kjorsvik, 117 Wn.2d at 109.

The primary purpose (of a charging document) is to give notice to an accused so a defense can be prepared. (citation omitted) There are two aspects of this notice function involved in a charging document: (1) the description (elements) of the crime charged; and (2) a description of the specific conduct of the defendant which allegedly constituted the crime.

Auburn v. Brooke, 119 Wn.2d 623, 629-30, 836 P.2d 212 (1992).

The information, in relevant part, stated:

... that said defendant did knowingly restrain another person, to-wit: Brandon Robbins

[CP 55].

The elements of unlawful imprisonment were set out in the court’s to-convict instruction 18 for count II, which stated in pertinent part:

To convict the defendant of the crime of Unlawful Imprisonment 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 the 27th day of August, 2007, the defendant knowingly restrained the movements of another person in a manner that substantially interfered with that person's liberty;
 - (2) That such restraint was
 - (a) without the other person's consent or,
 - (b) accomplished by physical force, intimidation, or deception; and
 - (3) That such restraint was without legal authority;
- and
- (4) That with regard to elements (1) , (2) and (3), the defendant acted knowingly....

[CP 38].

The information failed to appraise League of all of the elements of unlawful imprisonment. It did not allege that the restraint was "without the other person's consent" or "accompanied by physical force, intimidation, or deception," or "without legal authority" or that the restraint "substantially interfered with that's person's liberty(,)" though this language did appear in the court's to-convict instructions as elements of the offense of unlawful imprisonment. "(S)ince both charging documents and jury instructions must identify the essential elements of the crime for which the defendant is charged [information] and tried [jury instructions](,)" State v. McCarty, 140 Wn.2d 420, 426 n.1, 998 P.2d 296 (2000), the information is defective, and the conviction obtained on this

charge must be reversed and the charges dismissed. State v. Kitchen, 61 Wn. App. 911, 812 P.2d 888 (1991). League need not show prejudice, since Kjorsvik calls for a review of prejudice only if the “liberal interpretation” upholds the validity of the information. See State v. Kjorsvik, 117 Wn.2d at 105-06.

E. CONCLUSION

Based on the above, League respectfully requests this court to dismiss his conviction for unlawful imprisonment and to remand his case for resentencing.

DATED this 11th day of April 2008.

Thomas E. Doyle
THOMAS E. DOYLE
Attorney for Appellant
WSBA NO. 10634

Patricia A. Pethick
PATRICIA A. PETHICK
Attorney for Appellant
WSBA NO. 21324

FILED
COURT OF APPEALS
DIVISION II
08 APR 14 AM 9:01
STATE OF WASHINGTON
BY Emm
DEPUTY

CERTIFICATE

I certify that I mailed a copy of the above brief by depositing it in the United States Mail, first class postage pre-paid, to the following people at the addresses indicated:

Monty Cobb
Deputy Pros Atty
P.O. Box 639
Shelton, WA 98584-0639

Tony League #312352
S.C.C.C.
191 Constantine Way
Aberdeen, WA 98520

DATED this 11th day of April 2008.

Thomas E. Doyle
Thomas E. Doyle
Attorney for Appellant
WSBA No. 10634