

FILED

SEP 24 2010

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

NO. 288153 -III

COURT OF APPEALS,
DIVISION III
OF THE STATE OF WASHINGTON

City of Spokane, Respondent,

v.

Joe Taylor, Jr., Appellant.

BRIEF OF APPELLANT

Michiko Fjeld
Attorney for Appellant

Center for Justice
35 West Main Avenue
Spokane, WA 99201
(509) 835-5211
WSBA #37174

FILED

SEP 24 2010

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

NO. 288153 -III

COURT OF APPEALS,
DIVISION III
OF THE STATE OF WASHINGTON

City of Spokane, Respondent,

v.

Joe Taylor, Jr., Appellant.

BRIEF OF APPELLANT

Michiko Fjeld
Attorney for Appellant

Center for Justice
35 West Main Avenue
Spokane, WA 99201
(509) 835-5211
WSBA #37174

TABLE OF CONTENTS

Table of Authorities	i
I. Introduction	1
II. Assignment of Error	2
No. 1	2
No. 2	2
III. Statement of the Case	2
A. Proceedings at Arraignment.....	2
B. Defendant's Plea of Guilty.....	3
C. Motion to Reconsider	5
D. RALJ Appeal	6
IV. Argument	7
A. The trial court did not abuse its discretion when it accepted Mr. Taylor's plea of guilty to DWLS 3 rd at arraignment.	7
1. Criminal defendants are permitted by State statute and court rules to plead guilty to the crime charged at arraignment.	7
2. The trial court has discretion whether to grant a motion to amend under CrRLJ 2.4(f), and is not required to find prejudice to the defendant before denying amendment.	8
B. A factual basis existed to support a plea to DWLS 3 rd	10
V. Conclusion	11

TABLE OF AUTHORITIES

Table of Cases

Washington State Cases

<i>State v. Kjorsvik</i> , 117 Wn.2d 93, 812 P.2d 86 (1991).....	9
<i>State v. Martin</i> , 94 Wn.2d 1, 614 P.2d 164 (1980).....	7, 8
<i>State v. Pelky</i> , 109 Wn.2d 484, 745 P.2d 854 (1987).....	9
<i>State v. Smith</i> , 155 Wn.2d 496, 120 P.3d 559 (2005)	10

Washington Court Rules

CrRLJ 2.4(f).....	2, 5, 8, 9
CrRLJ 4.1(a)(2).....	4, 7

STATUTES

RCW 46.20.342	2, 5, 10, 11
RCW 10.04.070	4, 5, 7
RALJ 2.2	6

I. INTRODUCTION

Mr. Taylor seeks review of an order entered by the superior court on December 18, 2009. The order vacated Mr. Taylor's plea of guilty to driving on a suspended license in the third degree, remanding it back to be charged as a driving while license suspended in the first degree. The court cited two reasons to support the reversal. First, courts are required to liberally grant requests to amend a charging document, and may only deny such motion if the defendant would suffer prejudice. It was therefore an abuse of discretion to deny a motion to amend without a finding of prejudice to the defendant. And second, no factual basis existed for the plea.

These rulings were erroneous. The amendment rule for criminal courts of limited jurisdiction specifically gives the trial court discretion to allow or deny a motion to amend a charging document. The only limitation the rule places on the court is that such amendment cannot prejudice the defendant. It does not require the court to find prejudice before denying an amendment. The trial court is in the best position to determine whether a motion to amend is appropriate given the specific facts and circumstances of the case. Here, it was appropriate for the trial court to deny the City's motion to amend.

As well, a factual basis did exist for Mr. Taylor's plea to driving while license suspended in the third degree. The elements of this crime are that a person drives knowing his or her license is suspended. The degree assigned to the crime goes to punishment. Here, Mr. Taylor knew his license was suspended when he drove a motor vehicle; therefore a factual basis was established.

Mr. Taylor filed a motion for discretionary review. On June 4, 2010, review was granted.

II. ASSIGNMENTS OF ERROR

1. The superior court erroneously found CrRLJ 2.4(f), the amendment rule, compels a court to liberally grant motions to amend charging documents, and requires a show of prejudice to the defendant before denying such a request.
2. The superior court erroneously found no factual basis existed for Mr. Taylor's plea of guilty to driving on a suspended license in the third degree.

III. STATEMENT OF THE CASE

A. Proceedings at Arraignment

Mr. Taylor was cited on February 25, 2009 for driving while license suspended (DWLS). (Clerk's Papers (CP) 83) On the citation, the officer referred to the Revised Code of Washington (RCW) 46.20.342(1)(a), the statute governing DWLS in the first degree (DWLS 1st); however, the information the officer wrote on the front of the ticket was driving while license suspended in the third degree (DWLS 3rd). (Id.) Mr. Taylor only received a copy of the front of the citation. (CP 39, ¶ 4)

On March 6, 2009, nine days after the citation was issued, Mr. Taylor was arraigned on the charge of DWLS 3rd. (CP 38, ¶ 1-2) At his arraignment, Mr. Taylor pleaded guilty to the crime charged. (Id., ¶ 3) The City objected and stated, "The defense attorney's been on notice prior two days that the City intended to amend this charge to driving with license suspended in the first degree." (Id., ¶4) However, the City did not attempt to amend the charge until after Mr. Taylor entered a plea of guilty. (Id., ¶1-4) Nor did the City move to

dismiss the charge without prejudice to enable re-filing as a DWLS 1st. Instead, the City asked the court to deny Mr. Taylor his right to plead guilty at arraignment in order to correct a mistake they knew existed approximately eight days prior to the proceedings. (Id., ¶ 4; CP 39, ¶ 1) The City offered no explanation as to why it had waited over a week to attempt an amendment. Nor did it cite to any hardship or other circumstance limiting its ability to amend prior to Mr. Taylor entering a plea of guilty.

The court made the following finding:

As to Mr. Joe Taylor on Cause Number B81007, I have reviewed the materials presented from counsel, I find as follows: that you do have an absolute right to plead guilty to the charge at arraignment, *that you had entered a guilty plea prior to the amendment from prosecution* and that to accept the amendment after that plea does prejudice you to a degree that I am not going to allow and that by virtue of the fact that you had filled out with your guilty plea a statement of defendant on guilty plea which does indeed include all of the advisements of your rights and that you were waiving all of those rights to enter into this plea and you were doing so with the assistance of an attorney to guide you through that process, I believe that you are doing this, um, I'm sorry, that this is a voluntary entry of a plea to the charge of driving with license suspended in the third degree. So I will accept your plea to that charge.

(CP 40, ¶ 13; emphasis added) However, the court ultimately gave parties an opportunity to brief the issue. (CP 42, ¶ 7-9)

B. Defendant's Plea Of Guilty.

On March 27, 2009, after the parties briefed the issue, the court ruled Mr. Taylor had a right to plead guilty at arraignment. (CP 43-46) The court made several finding of facts. First, it found the City knew of the scrivener's error as early as March 2nd when it sent defense counsel an email stating its intent to amend. (CP 44, ¶ 5) Second, Mr. Taylor was never served with an amended

charge, nor was he given a copy of the officer's statement. (Id., ¶ 6) Third, the court noted the defendant was not the only person who relied on the plain language on the front of the ticket; the court clerk also relied on it, and entered the charge into the system as a DWLS 3rd. (Id., ¶ 6) Fourth, Mr. Taylor's fully conformed statement of defendant on plea of guilty to DWLS 3rd was on the bench when his name was called at arraignment, and that he was knowingly, voluntarily and with the advice of counsel entering into a plea leaving sentencing up to the judge. (Id., ¶ 7) Fifth, the City did not attempt to amend the charge until after Mr. Taylor pleaded guilty. (Id., ¶ 8)

The court also made the following conclusions of law. First, there is no constitutional right to plead guilty, however under Revised Code of Washington (RCW) 10.04.070 and Courts of Limited Jurisdiction Criminal Rules (CrRLJ) 4.1(a)(2), the defendant may plead guilty to any offense charged at the time of arraignment. (CP 45, ¶ 2) Second, the defendant was entitled to rely upon the plain language in the citation. (Id., ¶ 4) Third, an obvious scrivener's error does not render a plea invalid. (Id., ¶ 4) Fourth, no authority was cited granting a trial court authority to decline a plea of guilty made competently, knowingly, voluntarily, and on advice of counsel. (Id., ¶ 5) Fifth, to be consistent with due process, a penal statute or ordinance must contain ascertainable standards of guilt. (Id., ¶ 6) Sixth, the Constitution does not require the defendant to admit to every element of the charged crime but rather that the defendant understands critical elements of the crime and admits to conduct satisfying those elements. (Id., ¶ 8)

Based on its finding of facts and conclusions of law, the court allowed Mr. Taylor to proceed with his guilty plea. (CP 46-53) The court imposed a sentence of 90 days in jail with 75 days suspended, and 12 months of probation with the condition of no new criminal law violations. (CP 50, ¶ 13)

C. Motion To Reconsider.

On April 15, 2009, the court heard the City's motion to reconsider. (CP 54, ¶ 1) The City made three assignments of error. First, the City argued the court should liberally grant amendments to citations. (Id., ¶ 3) Second, the court did not have a sufficient basis for the plea. (Id., ¶ 5) Finally, the court did not adequately advise the defendant of the consequences of pleading DWLS 3rd since the court did not warn Mr. Taylor the City could also file DWLS 1st. (CP 54, ¶ 5; CP 55, ¶ 3)

Defense argued the only issue before the court was whether Mr. Taylor had a right to plead guilty to the crime charged on the date and time of arraignment. (CP 56, ¶ 11) Defense further averred there was a factual basis for the plea, a *corpus*, of driving while license suspended. (CP 57, ¶ 1-2) In response to the City's separate offenses argument, defense counsel argued additional charges would be prohibited by the rule against double jeopardy. (Id., ¶ 2-4)

The court ruled RCW 10.40.070 absolutely verbatim says he can plead to any crime charged. (CP 60, ¶ 6) The court also found the statutory language of RCW 46.20.342 does not support a legislative intent to allow charges to be filed out in a serial manner for the single act of driving. (CP 61, ¶ 2) Finally, the court stated that Court Rule 2.4(f), which allows for amendment of a charge up to the

time of jury, does not trump the defendant's right to plead guilty at arraignment.

(Id., ¶ 2) The City's motion was denied. (CP 63, ¶ 2)

D. RALJ Appeal

On April 17, 2009, the City appealed the lower court's decision under Rules for Appeal of Decisions of Courts of Limited Jurisdiction (RALJ) 2.2. (CP 1) The City raised three issues on review: (1) Was it error of law for the lower court to rely only on the face sheet of the citation to interpret the charge; (2) Was it error of law for the court to deny the City's motion to amend the charge at arraignment when there was no prejudice to the defendant; and (3) Was it error of law to allow Mr. Taylor to plead to a charge for which there was no factual basis? (CP 12)

The superior court reviewed the briefs presented by the parties (CP 4-36 – Appellant's RALJ Brief; CP 65-80 – Mr. Taylor's Response). On October 30, 2009, the court heard oral arguments and made findings which were later incorporated into a Findings of Fact and Conclusions of Law and Order Vacating Plea filed on December 18, 2009. (CP 90-92)

The court made two rulings. First, the court ruled amendments to charging documents should be liberally granted; thus, a motion to amend should only be denied if the amendment prejudices the defendant. (CP 91, ¶ 7; and CP 92, ¶ 1) The superior court found it was an abuse of discretion for the trial court to deny the City's motion to amend since the defendant would not have been prejudiced by the amendment. (Id., ¶ 2) Second, the trial court erred by accepting Mr. Taylor's guilty plea since no factual basis existed to support the charge. (Id., ¶

3) The court ordered Mr. Taylor's guilty plea to DWLS 3rd be vacated and the matter remanded back to the trial court on the charge of DWLS 1st. (*Id.*, ¶ 4)

Mr. Taylor filed a motion for discretionary with the Court of Appeals for Division Three, and review was accepted.

IV. ARGUMENT

A. The trial court did not abuse its discretion when it accepted Mr. Taylor's plea of guilty to DWLS 3rd at arraignment.

1. Criminal defendants are permitted by State statute and court rules to plead guilty to the crime charged at arraignment.

Mr. Taylor had a right to plead guilty to the offense charged at the time of arraignment. "The defendant may plead guilty to any offense charged." RCW 10.04.070 "Arraignment shall consist of reading the complaint or the citation and notice to the defendant or stating to him or her the substance of the charge and *calling on the defendant to plead thereto.*" Criminal Rules for Courts of Limited Jurisdiction (CrRLJ) 4.1(a)(2) (emphasis added).

In State v. Martin, the defendant pleaded guilty to one count of premeditated murder in the first degree at his arraignment. State v. Martin, 94 Wn.2d 1, 2, 614 P.2d 164 (1980). The defendant presented the court with a Statement of Defendant on Plea of Guilty. Id. at 3. The State argued the defendant did not have the right to plead guilty at arraignment and it had 30 days to request the death penalty. Id. The court denied Mr. Martin's plea. Id. at 3-4. The Supreme Court held that "[w]hile a defendant does not have a constitutional right to plead guilty, it is well established that the State may confer such a right by statute or other means." Id. The Court also held "a criminal defendant has

the right to plead guilty unhampered by a prosecuting attorney's opinions or desires. Id. at 5.

The reasoning and rule set forth in Martin applies to this case. On March 6, 2009, Mr. Taylor was to appear before the City of Spokane Municipal Court to be arraigned on the charge of DWLS 3rd. On the day of his arraignment through the time he entered his plea of guilty, the information before the court was DWLS 3rd. It was not until after Mr. Taylor entered his guilty plea, that the City made any attempt to amend the charge to the DWLS 1st. Just as the State in Martin failed to request the death penalty before arraignment, the City failed to amend the charge to DWLS 1st before Mr. Taylor pleaded guilty. Consequently, Mr. Taylor entered a plea to the crime charged, DWLS 3rd.

2. The trial court has discretion whether to grant a motion to amend under CrRLJ 2.4(f), and is not required to find prejudice to the defendant before denying amendment.

The trial court properly exercised judicial discretion when it denied the City's motion to amend. "The court *may* permit a complaint, a citation and notice, or a bill of particulars to be amended at any time before verdict or finding if substantial rights of the defendant are not prejudiced." CrRLJ 2.4(f) (emphasis added) The language in this court rule is discretionary, not compulsory. The modifying language "if substantial rights of the defendant are not prejudiced" does not require the court to find prejudice when denying a motion to amend under this rule. Rather, the court rule places the right to modify in the sound discretion of the court requiring only that it not prejudice the defendant.

The reviewing court on RALJ appeal found CrRLJ 2.4(f) requires amendments to be liberally granted; and that any denial should incorporate a finding of prejudice to the defendant. (CP 91, ¶ 7, CP 92, ¶ 1) However, case law does not support this contention. In the City's RALJ appeal, the City cited to State v. Kjorsvik, 117 Wn.2d 93, 812 P.2d 86 (1991). In Kjorsvik, the defendant challenged his conviction based upon the State's failure to incorporate the common law elements into the charging document arguing he was not adequately apprised of the nature of the charges against him. This case is not on point. In fact, footnote 18 specifically states "It is unnecessary herein to decide when amendment is appropriate...and is not an issue in the present case" and then cites to State v. Pelky, 109 Wn.2d 484, 745 P.2d 854 (1987) (specifically dealing with mid-trial amendments).

Amendments to charging documents are liberally allowed prior to trial, however not required. "During the investigatory period between the arrest of a criminal defendant and the trial...amendments to the original information are liberally allowed..." Pelky, 109 Wn.2d at 490, 745 P.2d 854. This language allows, not requires, liberal amendment.

CrRLJ 2.4(f) does not require a finding of prejudice. The City did not cite to any authority requiring prejudice to be found before a motion to amend can be denied. Nor did counsel for Mr. Taylor locate any authority requiring a finding a prejudice before denying a motion to amend. The plain language of the statute gives the court discretion to grant or deny motions to amend unless amendment prejudices the defendant.

Ultimately, the decision to allow amendment is discretionary so long as it does not prejudice the defendant. The trial court is in the best position to make such a ruling. In this case, the trial court knew the City had approximately eight days to either amend the charge or dismiss and re-file. The City failed to make any attempts to amend until after Mr. Taylor pleaded guilty. The City did not offer any explanation for its delay; it cited to no hardship or other circumstance explaining why it did not attempt to amend in a timely fashion. The specific circumstances of this case support the court's denial of the City's motion to amend.

B. A factual basis existed to support a plea to DWLS 3rd.

The factual basis for Driving with a License Suspended requires a showing that the defendant drove a motor vehicle knowing his or her license was suspended. "It is unlawful for any person to drive a motor vehicle in this state while that person is in a suspended or revoked status or when his or her privilege to drive is suspended or revoked in this or any other state." RCW 46.20.342(1)

While it may be convenient shorthand to describe revocation [as DWLS 1st], the DWLS statute describes no "degrees" of revocations. Under the statute's plain terms, the crime is *driving with a license that has been suspended or revoked, the degree of which depends on the reason for the revocation.*

State v. Smith, 155 Wn.2d 496, 503-4, 120 P.3d 559 (2005) (emphasis preexisting); citing, RCW 46.20.342(1)(a)-(c). The degrees, which follow in

separate sections, need not be part of the factual basis and only apply to punishment.¹

A factual basis did exist for Mr. Taylor's plea. His license was suspended, and he knew his license was suspended when he drove a motor vehicle within the City of Spokane. All elements listed in RCW 46.20.342 were present in this case.

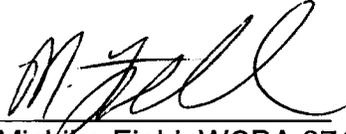
V. CONCLUSION

The trial court properly accepted Mr. Taylor's guilty plea to the charge of DWLS 3rd. The charging document Mr. Taylor, the court clerks, and the judge relied upon clearly stated DWLS 3rd. Arraignment is the earliest opportunity for a criminal defendant to plead guilty to the crime charged; and the City waited until *after* Mr. Taylor pleaded guilty to make its first attempt to amend.

The lower court was not required to find prejudice to the defendant before denying the City's motion to amend; and a factual basis did exist for a plea to DWLS 3rd. Under the specific circumstances of this case, the trial court did not abuse its discretion in denying the City's motion to amend. The superior court's order vacating the plea should be reversed and Mr. Taylor's plea of guilty to DWLS 3rd affirmed.

¹ Similarly, in driving under the influence (DUI) cases the factual determination is whether a person drives after consuming intoxicating liquor or drugs. RCW 46.61.502 The *punishment* is delineated by alcohol concentration levels and DUI history. RCW 46.61.5055

RESPECTFULLY SUBMITTED this 20th day of September, 2010.

A handwritten signature in black ink, appearing to read "M. Fjeld", written over a horizontal line.

Michiko Fjeld, WSBA 37174
Center for Justice
Volunteer Attorney