OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS
110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

April 2, 2014

To:

Hon. Jason A. Rossell
Circuit Court Judge
Kenosha County Courthouse
912 56th St
Kenosha, WI 53140

Rebecca Matoska-Mentink
Clerk of Circuit Court
Kenosha County Courthouse
912 56th Street
Kenosha, WI 53140

Gabe Johnson-Karp
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Parker Mathers
419 W. Silver Spring Dr.
Milwaukee, WI 53217-5048

Robert D. Zapf
District Attorney
Molinaro Bldg
912 56th Street
Kenosha, WI 53140-3747

You are hereby notified that the Court has entered the following opinion and order:

2013AP1636-CR State of Wisconsin v. Larry J. Garrett (L.C. # 2010CF39)

Before Brown, C.J., Reilly and Gundrum, JJ.

Larry J. Garrett appeals from a judgment of conviction and an order denying his motion for postconviction relief. He contends that some of his convictions for uttering a forgery were multiplicitous. Based on our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2011-12).[1] We affirm the judgment and order of the circuit court.

---

[1] All references to the Wisconsin Statutes are to the 2011-12 version.

Garrett was convicted following a jury trial of twelve counts of uttering a forgery. The charges stemmed from Garrett's purchase of multiple electronic devices using counterfeit fifty-dollar bills. In one instance, Garrett used nine counterfeit fifty-dollar bills to purchase a television and DVD player. In another instance, he used three counterfeit fifty-dollar bills to purchase a phone.

The circuit court imposed four years of probation for each count, to run concurrently. Garrett subsequently filed a motion for postconviction relief, arguing that some of his convictions were multiplicitous. The circuit court denied his motion. This appeal follows.

On appeal, Garrett renews his argument based on multiplicity. He submits that he should not have been prosecuted or convicted for twelve counts of what he considers merely two acts: each "transaction" in which he spent the counterfeit bills.

The issue of multiplicity arises when a defendant is charged in more than one count for a single offense. ***State v. Ziegler***, 2012 WI 73, ¶59, 342 Wis. 2d 256, 816 N.W.2d 238. The test to determine whether multiple counts are permissible is first, whether the charges are identical in law and fact, and second, whether the legislature intended to allow more than one unit of prosecution. *See* ***State v. Anderson***, 219 Wis. 2d 739, 746, 580 N.W.2d 329 (1998). If the offenses are different in law or fact, then there is a presumption that the legislature intended multiple punishments. ***Id.*** at 751. The presumption may be rebutted only by showing clear intent to the contrary. ***Id.*** Questions of multiplicity and legislative intent are questions of law that we review de novo. *See* ***State v. Davison***, 2003 WI 89, ¶15, 263 Wis. 2d 145, 666 N.W.2d 1.

Here, we are satisfied that the twelve counts of uttering a forgery were different in fact. That is because each required proof of an additional fact that the others did not (i.e., the uttering of a separate counterfeit fifty-dollar bill). Accordingly, we presume that the legislature intended multiple punishments for the offenses in question. *See* ***Anderson***, 219 Wis. 2d at 751. That presumption is consistent with the language of WIS. STAT. § 943.38(2), which allows prosecution and punishment for "*any* forged writing or object" (emphasis added) uttered as genuine. Because Garrett has not met his burden of overcoming this presumption, we reject his multiplicity challenge.

Upon the foregoing reasons,

IT IS ORDERED that the judgment and order of the circuit court are summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals