IN THE SUPREME COURT OF IOWA
Supreme Court No. 22-2100
Linn County No. FECR143570

STATE OF IOWA,
Plaintiff-Appellee,

vs.

BRANDON WILLIAM LEE,
Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR LINN COUNTY
THE HONORABLE CHRISTOPHER L. BRUNS, JUDGE

APPELLEE'S BRIEF

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STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

I. This Court Should Overrule *Copenhaver* or, in the Alternative, Find Sufficient Evidence to Support Two Distinct Intentions to Commit a Theft.

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52A C.J.S. Larceny § 53 (1968)

ROUTING STATEMENT

The Supreme Court should retain this case. The Court should revisit the claim that each count of robbery requires a separate and distinct intent to commit theft from each victim. *State v. Copenhaver*, 844 N.W.2d 442, 450–451 (Iowa 2014). *Copenhaver* should be overturned. This Court should find that each conviction of robbery, where there are multiple victims and acts of assault, does not require a separate and distinct intent to commit theft because there are as many robberies as victims who experience an assault.

STATEMENT OF THE CASE

Nature of the Case

Defendant Brandon William Lee appeals his conviction and sentence for two counts of robbery. The Honorable Christopher L. Bruns presided over the trial and imposed the sentence in the case. The issue on appeal is whether *Copenhaver* should be overturned and the whether the single larceny rule applies.

Course of Proceedings

The State accepts the defendant's course of proceedings as adequate and essentially correct. Iowa R. App. P. 6.903(3).

Facts

Sandy and Joe Henderson lived in Coggon, Iowa, until Joe passed away from complications from his colon cancer. Trial Tr. vol. 2 122:23–124:8. Towards the end of his life, Joe also suffered from dementia. Trial Tr. vol. 2 124:3–8. On January 9, 2022, Joe and Sandy were at their home watching *60 Minutes*. Trial. Tr. vol. 2 128:20–25. There was a knock at the door, which Sandy believed to be her daughter. Trial Tr. vol. 2 131:22–132:1. Lee was at the door, a stranger to Joe and Sandy. Trial Tr. vol. 2 131:22–132:1. He introduced himself as a law enforcement investigator, wore a badge around his neck, and alleged that he was investigating Sandy and Joe's son, Alan. Trial Tr. vol. 2 132:4–9; vol. 5 136:15–25. Neither Joe nor Sandy had seen Alan in a while, so Sandy let Lee into the house. Trial Tr. vol. 2 132:10–11.

Sandy took a seat on her couch and Lee stood over her and told her that he was investigating a report that Joe and Sandy had assaulted their son. Trial Tr. vol. 2 132:12–18; vol. 5 137:20–138:1. When Sandy denied assaulting Alan, Lee started screaming at her, continuing to claim that they had assaulted their son. Trial Tr. vol. 2 133:5–9. At this point, Sandy registered that Lee reeked of smoke,

perhaps tobacco, perhaps something else. Trial Tr. vol. 2 133:13–134:3. Sandy demanded to know who he really was, at which point, Lee punched Sandy on the side of the head and knocked her to the floor. Trial Tr. vol. 2 134:4–10; vol. 5 138:2–4. Sandy pretended to be unconscious for a few minutes to prevent being beaten again. Trial Tr. vol. 2 134:19–135:3.

Lee stood over Sandy and attempted to tie her hands behind her back. Trial Tr. vol. 2 135:18–23. Joe then stood up and attacked Lee to prevent him from tying Sandy's hands. Trial Tr. vol. 2 135:24–136:5. Lee pushed Joe back into the recliner, Sandy stood up, and Lee pushed her down on the couch. Trial Tr. vol. 2 136:12–19. Lee then pulled out a gun. Trial Tr. vol. 2 136:22–23. Lee then walked to the front door and yelled "you guys can come in now." Trial Tr. vol. 2 137:1–5. No one entered the house after Lee. Trial Tr. vol. 2 137:6–7. Lee then fired his gun at a window between Joe and Sandy. Trial Tr. vol. 2 137:8–11.

Lee asked Sandy and Joe about their safe, demanding to know where it and the money were kept. Trial Tr. vol. 2 137:22–25. Joe stood up from his recliner and started fighting Lee. Trial Tr. vol. 2 138:1–4. Lee began beating Joe and dragging him to the basement

where Sandy had told Lee the safe was kept. Trial Tr. vol. 2 138:1–24; vol. 5 138:18–20. Joe was on the floor and Lee was on top of him, punching him in the face and head repeatedly. Trial Tr. vol. 2 139:13–19. Sandy watched as her husband was being beaten and grabbed the cordless landline to call the police. Trial Tr. vol. 2 140:5–8. Lee pursued Sandy, knocked the phone out of her hands, and started punching her in the face. Trial Tr. vol. 2 140:12–18. As Sandy was begging for her life, Lee said, "I'm going to kill you, bitch, I'm going to kill both of you." Trial Tr. vol. 2 140:12–18.

Lee walked back to Joe and dragged him down the stairs into the basement. Trial Tr. vol. 2 141:4–10. Sandy left through the garage door and ran to her neighbor's house. Trial Tr. vol. 2 141:14–142:7. Sandy's neighbor called 9-1-1 after she arrived. Trial Tr. vol. 2 144:2–7; vol. 3 61:2–3; State's Ex. 33. Eventually, the police arrived, at which point, Lee had already left. Trial Tr. vol. 3 67:20–68:12. Joe, scared and disoriented, was eventually placed in an emergency vehicle, his face covered with blood. Trial Tr. vol. 3 70:1–16.

Lee left the Henderson's home and went to an acquaintance's house, Amanda Hiepler. Trial Tr. vol. 3 155:3–156:11. Lee still had the fake badge around his neck and was carrying his boots in his hands.

Trial Tr. vol. 3 157:3–18. Lee claimed that he had gotten into a bar fight. Trial Tr. vol. 3 158:3–9. Hiepler asked him to leave as she was alone at home with her children. Trial Tr. vol. 3 158:12–14. Lee also went over to his girlfriend's uncle's house in search of a phone. Trial Tr. vol. 3 181:12–15. The uncle saw blood on Lee's pants and Lee claimed he had gotten into a fight. Trial Tr. vol. 3 183:4–13. Lee then went to another acquaintance's home, where he asked for a change of clothes. Trial Tr. vol. 3 138:1–14. Scott Hepner, the acquaintance, gave Lee a change of clothes, gathered Lee's old clothes, and placed them in a bin in his garage. Trial Tr. vol. 3 139:5–25. Lee then contacted his friend, Nicole Steinke, for a ride. Trial Tr. vol. 4 11:5–18. Steinke and her friend Amanda Graves picked Lee up and drove him to his house in Cedar Rapids. Trial Tr. vol. 4 12:12–24; 16:1–2. Lee placed a bag of bullets in Steinke's pocket, which she handed over to Graves. Trial Tr. vol. 4 23:6–19.

Sandy was taken to the emergency room for her black eye and a contusion in her head that required staples. Trial Tr. vol. 2 153:2–5. Joe was also taken and found to have suffered multiple lacerations. State's Exs. 34, 35, 36, 37, 38, and 39; App. 11, 12, 13, 14, 15, 16. Joe also suffered fractures in his nasal bones and palate. Trial Tr. vol. 5

71:14–72:23. The investigation revealed that there had been $50,000 in the safe at the time of the robbery. Trial Tr. vol. 3 16:17–25. The money included retirement savings, income, and gambling winnings from both Joe and Sandy. Trial Tr. vol. 3 17:7–18. None of the stolen money was recovered. Trial Tr. vol. 3 20:4–9.

ARGUMENT

I. This Court Should Overrule *Copenhaver* or, in the Alternative, Find Sufficient Evidence to Support Two Distinct Intentions to Commit a Theft.

Preservation of Error

To the extent that Lee is appealing a sufficiency of the evidence for two counts of robbery as opposed to one, the State cannot contest error preservation. *State v. Crawford*, 972 N.W.2d 189, 195–202 (Iowa 2022); *see also State v. Anspach*, 627 N.W.2d 227, 231 (Iowa 2001). To the extent this is seen as a challenge to an illegal sentence, the State does not challenge error preservation because an illegal sentence can be challenged at any time. *State v. Bruegger*, 733 N.W.2d 862, 869 (Iowa 2009).

However, although Lee frames this as a challenge to an illegal sentence, Lee is actually alleging that an error in the process of adjudicating his guilt arose from the jury instructions used. *See* Appellant's Br. at 24–25. But his trial counsel made a conscious

decision to accept those marshalling instructions. At trial, Lee's counsel raised objections to several instructions but did not raise any issue with Jury Instructions 20–25. Trial Tr. vol. 6 2:22–11:10. This is better raised as an ineffective-assistance claim, which cannot be raised on a direct appeal, rather, should be raised in a postconviction relief action. *See State v. Trane*, 934 N.W.2d 447, 464–65 (Iowa 2019); *see also* Iowa Code § 814.7. To the extent this is an appeal of the language in the jury instructions, error is not preserved.

Realizing this, Lee has discarded that framework in favor of challenging his sentences imposed for convictions entered upon verdicts returned after submitting these marshalling instructions as "illegal sentences," and he seeks merger of his robbery convictions. Lee's challenge is properly framed as an argument that his multiple sentences were illegally *imposed* because of a procedural error during his trial. *See Tindell v. State*, 629 N.W.2d 357, 359 (Iowa 2001) (explaining that Iowa rules "allow challenges to *illegal* sentences at any time, but they do not allow challenges to sentences that, because of procedural errors, are illegally *imposed*").

Even after *Bruegger*, "[c]hallenges to jury instructions do not implicate the legality of a sentence." *James v. State*, 858 N.W.2d 32, 33 (Iowa Ct. App. 2014).

Standard of Review

When reviewing sufficiency claims, the appellate court will uphold the conviction "so long as there is substantial supporting evidence in the record." *State v. Spies*, 672 N.W.2d 792, 796 (Iowa 2003). "Evidence is substantial if it could convince a rational fact finder that the defendant is guilty beyond a reasonable doubt." *State v. Bayles*, 551 N.W.2d 600, 608 (Iowa 1996). The court examines all evidence in the light most favorable to the verdict, affords it every legitimate and reasonable assumptions that may be deduced. *State v. Petithory*, 702 N.W.2d 854, 856 (Iowa 2005). Circumstantial evidence is as probative as direct. *State v. Meyers*, 799 N.W.2d 132, 138 (Iowa 2011).

A sentence imposed by the district court is reviewed for correction of error at law. *State v. Johnson*, No. 02–0676, 2003 WL 118531, *2 (Iowa Ct. App. Jan. 15, 2003); *State v. Sailer*, 587 N.W.2d 756, 758 (Iowa 1998). Sentencing decisions of the district court are cloaked with a strong presumption in their favor. *State v.*

Grandberry, 619 N.W.2d 399, 401 (Iowa 2000). A sentence will not be upset on appeal unless the defendant demonstrates an abuse of trial court discretion or a defect in the sentencing procedure such as the trial court's consideration of impermissible factors. *Johnson*, 2003 WL 118531, at *2. However, the Court will set aside a sentence and remand a case to the district court for resentencing if the sentencing court relied upon charges of an unprosecuted offense that was neither admitted to by the defendant nor otherwise proved. *Id*.

The Court reviews a claim that a sentence is illegal for correction of error at law. *State v. Davis*, 544 N.W.2d 453, 455 (Iowa 1996). To the extent that Lee may be challenging her sentence on the ground that it is unconstitutional, the Court would review *de novo*. *State v. Hoeck*, 843 N.W.2d 67, 70 (Iowa 2014).

Merits

Lee argues that the single-larceny rule should still apply, and this incident should be considered a single, sustained, criminal impulse. Appellant's Br. at 30. In the alternative, Lee argues that the State failed to prove he had two distinct intents to commit a theft, which the State was required to prove for Lee to be convicted of two counts of robbery as opposed to one. Appellant's Br. at 32–35. For

reasons detailed below, the single-larceny rule has both been statutorily abrogated and does not apply in the present case. However, to the extent that Lee relies on the *Copenhaver* case to argue that there was only one theft and therefore there can only be one robbery, this Court should overrule *Copenhaver* in favor of a different standard.

A. *Copenhaver* should be overruled.

In *State v. Copenhaver*, the defendant entered the Community Savings Bank wearing a mask. 844 N.W.2d 442, 445–446 (Iowa 2014). He approached one teller, handed her a note demanding money, and warned her to not "hit any buttons." *Id.* at 446. The first teller handed the defendant bait money along with other bills. *Id.* Another teller, noticing this interaction, went to another window, which the defendant approached. *Id.* He then demanded money from the second teller. *Id.* Both tellers indicated they were scared and believed the defendant could have hidden weapons. *Id.* The defendant, Copenhaver, was subsequently apprehended. *Id.*

Copenhaver was convicted of two counts of robbery and one count of theft. *Id.* At trial, a jury found him guilty of all three counts. *Id.* The sentencing court sentenced him to "two consecutive ten year

terms on each of the robbery charges a concurrent five year term on the theft charge." *Id.* Similarly, Lee was convicted of two counts of robbery and one count of theft and sentenced to two consecutive 25 year sentences for each robbery, and another consecutive ten years[1] for the theft, totaling 60 years. Sent. Tr. 21:19–22:22. One of Copenhaver's issues on appeal was identical to Lee's, whether the district court imposed an illegal sentence by failing to combine the two convictions for robbery into a single count. *Copenhaver*, 844 N.W.2d at 447. In its analysis, this Court concluded that "an illegal sentence is a sentence that is not permitted by statute." *Id.* (citing *State v. Woody*, 613 N.W.2d 215, 217 (Iowa 2000). "If the legislature criminalizes two separate and distinct acts, separate sentences on each are not illegal." *Id.* (citing *State v. Jacobs*, 607 N.W.2d 679, 688 (Iowa 2000).

In *Copenhaver*, the Iowa Supreme Court determined that "the unit of prosecution for robbery requires the defendant to have the intent to commit a theft, coupled with any of the following—commits

[1] Lee was sentenced to ten years for the theft, ten years for the willful injury causing serious injury, five years for willful injury causing bodily injury, and two years for impersonating an officer. All of these sentences are to be served concurrently but consecutive to the robbery sentences.

an assault upon another, threatens another with or purposefully puts another in fear of immediate serious injury, or threatens to commit immediately any forcible felony." 844 N.W.2d at 449. In other words, "[i]f a defendant intends to commit only one theft, and the defendant does one or more" of the specified acts, "only one robbery has occurred." *Id.* However, "if a defendant intends to commit two separate and distinct thefts, and the defendant accompanies each intended theft with one or more" of the specified acts, "the defendant has committed two separate robberies." *Id.* However, this reasoning leads to problematic results.

In *Copenhaver*, this Court justified affirming two counts of robbery by finding that Copenhaver's choice to approach one teller followed by the other should two separate intents to commit a theft. *Id.* at 450. But, as Copenhaver argued in his appeal, the money did not belong to the tellers, it was the bank's. When Copenhaver walked into the bank, he intended to steal the bank's funds, not the individual teller's funds.

In the present case, as *Copenhaver* currently stands, Lee had to have the intent to separately steal from both Sandy and Joe. In *Copenhaver*, the Court determined that by approaching each teller

individually, the defendant showed an intent to commit theft twice. *Copenhaver*, 844 N.W.2d at 449–50. However, there was nothing in the record to indicate that Copenhaver believed he was robbing anyone but the bank. He did not ask for the tellers' purses or personal belongings. He did not ask them to empty their pockets. Rather, he asked that the bank's till be emptied. *Id.* at 446. Placing each in fear of immediate serious injury should have been determinative.

This point is best illustrated by the fact that theft is not a lesser-included offense of robbery, rather, theft was charged separately. Do295, Jury Inst. No. 22; App. 10. North Dakota, a jurisdiction with a similar statute to Iowa's, addressed this issue when a defendant argued that theft was an essential element of robbery and therefore, should have been included as a lesser offense.

> McKing argues theft is "part and parcel" of the definition of robbery and thus clearly established by proof of the same of less than all the facts required to prove robbery. Under N.D.C.C. § 12.1-23-02(1) a person is guilty of theft when he "[k]nowingly takes or exercises unauthorized control over, or makes an unauthorized transfer of an interest in, the property of another with intent to deprive the owner thereof." The problem with McKing's argument is that it ignores the plain language of our robbery statute, N.D.C.C. § 12.1-22-01, which clearly does not require theft as a predicate act to prove robbery.

State v. McKing, 593 N.W.2d 342, 343 (N.D. 1999). It went on to look at the intent of the drafters of the Federal Criminal Code, which placed an emphasis on the force, rather than the taking.

> To help us understand our corresponding provision to the proposed Federal Criminal Code, we may look to the drafters' official commentaries, the Working Papers of the National Commission on the Reform of Federal Criminal Laws (1970–71). We note the drafters of the proposed Federal Criminal Code describe the "in the course of committing a theft" element of the robbery statute as the "most substantial reform of present law under the proposal … [because] the emphasis is on the use of force, rather than the successful taking of property." The drafters further opine "the crime of robbery itself – under this definition, occurs at the moment the threat is made or force is used to obtain property.

Id. at 344 (internal citations omitted).

Assault was a lesser included offense of robbery at trial, further bolstering the argument that the focus of the statute is on the act of violence rather than any taking. Here, Lee entered the home with an intent to commit a theft, established through the fact that he demanded *both* Joe and Sandy tell him where the safe was located. Trial Tr. vol. 2 137:22–138:9. He then physically assaulted both Joe and Sandy multiple times, going as far as dragging Joe down to the

basement and the safe. Trial Tr. vol. 2 134:4–10; 136:12–19; vol. 2 138:1–24; vol. 5 138:2–4; 138:18–20.

This Court should revisit the conclusions of *Copenhaver* to find that the intent of the robbery statute is to criminalize the threatening and violent behavior of defendants during the commission of a theft rather than the individual intents to commit a theft against each of their victims. Lee violently attacked both Joe and Sandy Henderson. Lee robbed them both of their life savings at a time when Joe was suffering from cancer and dementia. Lee committed two robberies.

Consonant with these principles, the great weight authority holds robbery is a crime against the person, complete with a single act, such that separate robbery convictions will stand for each victim assaulted. *See, e.g.*, *Barringer v. United States*, 399 F.2d 557, 558 (D.C. Cir. 1968) (upholding two robbery convictions for takings from storekeeper and his wife); *Davenport v. Alaska*, 543 P.2d 1204, 1208–09 (Alaska 1975) ("It is established that when there is a robbery of more than one person, multiple convictions do not constitute double jeopardy."); *People v. Ramos*, 639 P.2d 908, 927 (Cal. 1982) ("We view the central element of the crime of robbery as the force or fear applied to the individual victim in order to deprive him of his

property. Accordingly, if force or fear is applied to two victims in joint possession of property, two convictions of robbery are proper."), *rev'd on other grounds California v. Ramos*, 463 U.S. 992, 103 S.Ct. 3446, 77 L.Ed.2d 1171 (1983); *People v. Borghesi*, 66 P.3d 93, 100–03 (Colo. 2003) (noting violence is gravamen of robbery offense, not the larceny, and permits multiple convictions according to number of victims threatened); *State v. Lytell*, 539 A.2d 133, 137–38 (Conn. 1988) ("Where crimes against persons are involved, a separate interest of society has been invaded for each violation. Therefore when two or more persons are the victims of a single episode there are as many offenses as there are victims."); *State v. Shoemake*, 618 P.2d 1201, 1205–06 (Kan. 1980) (holding separate robberies occur where defendant holds several employees at gunpoint and forces them to deliver property); *Commonwealth v. Levia*, 431 N.E.2d 928, 931 (Mass. 1982) (holding offense is against the person assaulted, not against the entity that owns or possesses the property; upholding two robbery convictions for forcible taking from two employees of store); *People v. Wakeford*, 341 N.W.2d 68, 75 (Mich. 1983) (observing language of Michigan robbery statute consistently refers to victim in the singular; upholding multiple convictions); *Jordan v.*

Commonwealth, 347 S.E.2d 152, 156 (Va. Ct. App. 1986) ("Because the essential character of both Code § 18.2-58 and common-law robbery is violence against a person for purpose of the theft, we hold that the appropriate 'unit of prosecution' is determined by the number of persons from whose possession property is taken separately by force or intimidation."); *State v. Larkin*, 853 P.2d 451, 453–59 (Wash. Ct. App. 1993) (upholding two robbery convictions where defendant trained weapon on one of two victims and accomplice stole from both).

Sound reasoning supports the rule the State advances. In upholding separate robbery convictions for assaults against multiple people during an extended theft, the California Supreme Court has opined,

> [a] defendant who commits an act of violence with the intent to harm more than one person or by means likely to cause harm to several persons is more culpable than a defendant who harms only one person. For example, a defendant who chooses a means of murder that places a planeload of passengers in danger, or results in injury to many persons, is properly subject to greater punishment than a defendant who chooses a means that harms only a single person.

Neal v. State, 357 P.2d 839, 844 (Cal. 1960).

Conversely, as the Michigan Supreme Court has observed, the rule the defendant advances here "could be said to permit criminals to engage in an extended crime 'spree,' knowing that at most only one conviction could result and that any crime other than the most serious was 'free' of any possibility of conviction." *Wakeford*, 341 N.W.2d at 105 fn.7. There should be no "bargain rate if [a defendant] assaults a group of human beings." *Vigil v. State*, 563 P.2d 1344, 1351 (Wyo. 1977).

Regardless, even with the application of *Copenhaver* as it currently stands, there is sufficient evidence to support two convictions of robbery as two intentions to commit a theft are evident through Lee's actions. The money in the safe belonged to both Sandy and Joe. Lee asked both Sandy and Joe where the safe was kept. Lee assaulted Sandy, and then Joe, and then Sandy again, and then Joe again – the actions toward each victim were separate. Trial Tr. vol. 2 134:4–10; 136:12–19; vol. 2 138:1–24; vol. 5 138:2–4; 138:18–20

B. The single-larceny rule does not apply.

Lee argues that this Court should overturn *Copenhaver* in favor of readopting the single-larceny rule. First, at common law the single larceny rule applied to larcenies. "Under the longstanding definition

of larceny in this state, the crime occurred when a person stole, took, and carried away property of another." *Copenhaver*, 844 N.W.2d at 453–54 (Iowa 2014) (Mansfield, J., concurring in part and dissenting in part). The crimes Lee takes issue with in this case are not common law larceny, as he was only convicted of one theft. *See State v. Donaldson*, 663 N.W.2d 882, 885 (Iowa 2003) ("At common law, to prove a theft, the State had to show a defendant took the property of another, i.e., secured dominion over it, and carried the property away."); *State v. Ivey*, 194 N.W. 262 (Iowa 1923) (recognizing that a defendant may be in possession of stolen property without being guilty of larceny).

Second, the single larceny rule has been statutorily abrogated and no longer applies. *See Copenhaver,* 844 N.W.2d at 450, n.2. At common law, "[t]he stealing of several articles at the same time and in the same act from the same person constituted but one transaction, and is one act of larceny." *Id.* at 453–54 (Mansfield, J., concurring in part and dissenting in part). This single larceny rule requires the court to ask how, when, and where the taking and carrying away of the property occurred to determine whether it constituted one taking or multiple takings. However, the Iowa Supreme Court has held that

Iowa Code section 714.3 "gives the state the discretion to charge a defendant with multiple crimes in spite of the single-larceny rule." *Id.* at 450, n.2.

Lee primarily relies on *Amsden* in support of his argument, which does state, "[t]he problem of combining thefts for prosecution may involve the taking of several items on one occasion from one person or several persons, or the taking of several items on several occasions from one person or several persons." *State v. Amsden*, 300 N.W.2d 882, 884 (Iowa 1981). In applying Iowa Code section 714.3, the Court in *Amsden* found that "[w]here several articles are stolen from the same owner at the same time and place, only a single crime is committed[.]" *Id.* (quoting 52A C.J.S. Larceny § 53, at 479–80 (1968)).

However, *Chrisman* interpreted the Court's ruling in *Amsden* and concluded that aggregation of theft charges was not required.

> In *Amsden*, the defendant was charged with one count of first-degree theft based on the aggregation of five incidents of taking money from several people on several occasions. We considered whether the evidence was sufficient to support the factual findings necessary for aggregation of the five thefts under section 714.3. We did not hold that aggregation was required which is what Chrisman argues in this case.

. . .

> Although Chrisman stole money from the same owner, the difference in location and the necessity to break into two separate buildings support Chrisman's conviction of two thefts.

State v. Chrisman, 514 N.W.2d 57, 59 (Iowa 1994). But Lee was only ever charged and convicted of one theft. The single-larceny rule does not apply here.

CONCLUSION

For the reasons set forth above, the State respectfully requests that this Court overturn *Copenhaver* and affirm Lee's convictions and sentence.

REQUEST FOR NONORAL SUBMISSION

The State requests that this case be submitted without oral argument. Should the Court grant oral argument, the State asks to be heard.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

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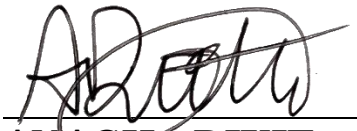

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