

NO. 38920-7-II

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

STATE OF WASHINGTON,

Respondent,

v.

CHRISTOPHER SMITH,

Appellant.

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STATE OF WASHINGTON
BY *[Signature]*
DEPUTY

FILED
COURT OF APPEALS
PIERCE COUNTY

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

The Honorable Linda CJ. Lee, Judge

OPENING BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The trial court erred when it denied appellant's motion to suppress evidence under CrR 3.6.

2. In denying the motion to suppress, the trial court erred when it entered the following findings of fact and conclusions of law:¹

- a. that portion of finding of fact 3 indicating that the Court of Appeals decision in "Jorden was still good law" at the time of the unlawful search to the extent it implies officers had no reason to doubt its continued validity;
- b. that portion of conclusion of law I where the court relied on the inevitable discovery doctrine;
- c. conclusions of law III, IV, and V, where the court found evidence admissible under the inevitable discovery doctrine;
- d. conclusion of law X, where the court relied on inevitable discovery; and
- e. conclusion of law XI, which states, "Article I, Section 7 of the Washington Constitution is not violated by applying the doctrine of 'inevitable discovery' to the facts of this particular case."

3. Appellant's convictions for Rape in the First Degree and Rape of a Child in the Second Degree, based on the same act of intercourse, violate double jeopardy prohibitions.

¹ The court's written findings and conclusions are attached to this brief as an appendix.

Issues Pertaining to Assignments of Error

1. Police illegally obtained information leading to appellant's arrest on an outstanding warrant. That arrest then lead to evidence that appellant had committed several new crimes. The trial court recognized that police improperly obtained the initial information, but found the resulting evidence admissible under the inevitable discovery doctrine. That doctrine, however, is incompatible with article 1, section 7 of the Washington Constitution. Did the court err in denying the defense motion to suppress?

2. All of the trial court's conclusions of law in support of its decision to admit the challenged evidence rest on inevitable discovery. Are they erroneous?

3. Based on legislative history and interpretive case law, it is well established that the Legislature does not intend separate convictions for rape and child rape based on the same act of intercourse. Do appellant's rape convictions, based on the same act, violate double jeopardy prohibitions?

B. STATEMENT OF THE CASE

1. Procedural Facts

The Pierce County Prosecutor's Office charged Christopher Smith with several criminal offenses:

- Count 1 Rape in the First Degree
- Count 2 Rape of a Child in the Second Degree
- Count 3 Kidnapping in the First Degree
- Count 4 Kidnapping in the First Degree
- Count 5 Assault in the First Degree
- Count 6 Felony Harassment
- Count 7 Felony Harassment

CP 1-5. The named victim in counts 3, 5, and 6 was Quianna Quabner. The named victim in counts 1, 2, 4, and 7 was L.S. All of the charges included a deadly weapon enhancement allegation. CP 1-5.

A jury found Smith guilty as charged, the court imposed a composite sentence of 627 months to life, and Smith timely filed his Notice of Appeal. CP 281, 283-286, 289-290, 293-295, 298-304, 462-463, 469.

2. Substantive Facts

a. *Motion to suppress*

Prior to trial, the defense moved to suppress all evidence of the crimes, arguing it was the product of an unlawful search. Specifically, contrary to the Supreme Court's decision in State v. Jordan, 160 Wn.2d 121, 156 P.3d 893 (2007), Lakewood Police had

conducted a random warrant check using the guest registry at the motel where Smith was staying. After arresting Smith on the warrant, officers discovered the evidence leading to the charges in this case. The defense argued the evidence identifying Smith as a motel guest tainted all subsequent evidence, i.e., it created “fruit of the poisonous tree” under Wong Sun v. United States, 371 U.S. 471, 83 S. Ct. 407, 9 L. Ed. 2d 441 (1963), and that the inevitable discovery doctrine was invalid under the Washington Constitution. CP 89-97, 196-210.

At the hearing on the defense motion, Lakewood Police Officer Austin Lee testified that on October 22, 2006, at about 9:30 a.m., he stopped at the Golden Lion Motel. RP² 46. The Golden Lion participates in the “Crime-Free Motel Program,” a partnership between law enforcement and motels intended to reduce crime. RP 47. The program includes checking guests for warrants by obtaining a list of the ten most recent registrations and running the names of those guests through the mobile computer terminal in the officer’s car. RP 48-49. Officer Lee serves as “Program Coordinator” for the

² “RP” refers to the verbatim report of proceedings, sequentially paginated, for 10/9/08, 10/13/08, 10/14/08, 10/15/08, 10/20/08, 10/21/08, 10/22/08, 10/23/08, 10/27/08, 10/28/08, 10/29/08, and 1/30/09.

Lakewood Police Department. RP 46.

Officer Lee employed this method on October 22 and discovered that Smith, a guest at the Golden Lion, had an outstanding warrant for his arrest. RP 50-51, 82-83. Lee called for assistance from other officers, and several responded to the scene. RP 52. Lee knocked on the door to Smith's room. After some delay, Smith answered the door. He was immediately placed under arrest and escorted to Officer Lee's patrol car. RP 52-53.

From the doorway to the room, officers could see there were other people inside, including a woman holding a towel stained with blood from a wound to her head. As part of their "community caretaking" function, officers entered. RP 24-27, 37-40, 101-103, 109. Inside the room, officers found three people: Quianna Quabner, her 12-year-old daughter (L.S.), and L.S.'s two-year-old brother. RP 65, 108, 129. Quabner claimed that Smith had tied her up and assaulted her. She also claimed that Smith had sexually assaulted L.S. RP 62, 65-66.

The room was in disarray, as if there had been a struggle. There was blood and broken glass on the floor, a table was knocked against a wall, and there was a hole in the television screen. RP

104-106. Officers located a metal candlestick holder Smith allegedly used to strike Quabner. RP 106-107. Outside the room, in a dumpster shared by motel guests, police found items that had been removed from the room prior to their arrival. RP 110-111, 119-120.

Officer Lee advised Smith of his Miranda³ rights and drove him to the police station. RP 74-76. Smith asked questions and made unsolicited comments on the way. RP 80. A detective attempted to interview Smith but abandoned the effort after only a few minutes based on concerns about Smith's mental state. RP 78-79.

All officers who testified at the CrR 3.6 hearing agreed that had Officer Lee not obtained Smith's name from the hotel registry, there was no other reason to contact Smith in his room. There had been no distress calls about or from the room, and police did not know Smith was staying there. RP 31, 42, 84-89, 112, 119.

Quabner testified that although there was a working phone in the motel room, she had not called 911 prior to police arriving because she was not able to get to the phone. She would have called, however, at her first opportunity. RP 130-134.

³ Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

After Quabner and her children had been removed from the scene, an evidence technician and detective conducted a more thorough search of the motel room and collected items they perceived to have evidentiary value. They failed to obtain a warrant, however, and the State conceded at the CrR 3.6 hearing that their observations and the physical evidence then collected was properly suppressed. RP 152-153, 155.

The State also conceded that under Jordan, Officer Lee unlawfully obtained evidence that Smith was a motel guest by looking at the guest registrations without a warrant. RP 154. It argued, however, that under the inevitable discovery doctrine, the initial group of officers – who had been inside the room engaged in a community caretaking function – could testify to their observations and the evidence they found in the dumpster. RP 152-153, 168. Moreover, nothing prevented Quabner and L.S. from testifying or the use of evidence gathered as part of their medical treatment. RP 153-155, 168. The State theorized this evidence would have been lawfully discovered once Quabner was finally able to call 911. RP 156-167.

The court agreed with the State that the inevitable discovery doctrine was valid under article 1, section 7 and found the victims' statements, the officers' observations of the victims' injuries, the victims' medical treatment, and evidence found in the motel dumpster admissible under that doctrine. RP 190-195, 198. The court suppressed, however, evidence of the officers' observations concerning the condition of the room, finding it would be speculative to conclude officers would have seen the same things had Quabner called 911 at a later time. The court also excluded Smith's post-arrest statements to police, finding that but for the random check of the motel registry, police would not have had Smith in custody that day. RP 195-197. Consistent written findings were subsequently filed.⁴

b. *Trial evidence*

Both Quabner and L.S. testified at trial. Quabner met Smith when L.S. was eight or nine years old. RP 376. Eventually, she and her two children moved in with Smith at his Spanaway apartment. RP 378. Later, they moved out of the apartment and had been

⁴ Although the court's written findings were designated on May 11, 2009, it appears the Pierce County Superior Court Clerk's Office failed to include them in the index to clerk's papers. Our office is filing another designation to rectify this oversight.

staying at the Golden Lion Motel for about two months prior to the incident. RP 378-379.

On the evening of October 21, 2006, Smith and Quabner argued, and Smith tried to evict Quabner and the children. RP 260-262, 379-380. As Quabner prepared to leave, Smith started breaking things in the room, grabbed some knives, and bound her and her daughter with curtain cords while threatening to cut them. RP 262-266, 382-388. After tying Quabner to a refrigerator, Smith took L.S. into the back bedroom area. RP 269-270, 387-389. L.S. testified that Smith forced her into the bathroom, where he pulled down her pajamas and put his penis in her mouth while threatening her with a knife, punching her, and hitting her in the shoulder with a hammer. RP 270-276, 312-314.

When Smith and L.S. emerged from the bathroom, Quabner noticed that L.S.'s shirt was ripped and her breasts were exposed. Smith then tied L.S. to the refrigerator right next to her mother. RP 389-390. Smith hit Quabner in the head with a brass candlestick holder and a wood picture frame. RP 282-285, 391-392. Quabner was pregnant and Smith threatened to cut the baby out. RP 278-280, 377, 391. Smith also got a gas can and threatened to set them

on fire. RP 277-280. Eventually, however, Smith untied them. RP 395.

L.S. testified that Smith made her clean the room. She placed certain items in the motel dumpster, including a towel she used to clean up blood and some broken glass. RP 286-287, 290, 317-318. L.S. also applied a towel to Quabner's head. The two fell asleep but were awakened when officers arrived. RP 318-319, 395-396.

Two of the officers involved in Smith's arrest testified at trial. They testified that Smith was contacted in the motel room for a reason unrelated to the current charges and described how they inadvertently discovered Quabner, who was bleeding from her head and told them how she had been injured. RP 330-336, 339-348.

Among the State's other witnesses, Rick Wade, property and evidence supervisor for the Lakewood Police Department, testified that he collected evidence from the dumpster, which included a sheet, towels, and clothing items that appeared to have blood on them and photographed Quabner's injuries. RP 351-354, 360-371. Michelle Breland, a pediatric nurse who examined L.S., testified that L.S. told her Smith had tied her up, threatened to kill her and her mother, touched her breasts, and put his penis in her mouth. RP

438-440, 451-452. Andrea Romans, a paramedic who responded to the motel, testified she observed Quabner's head injuries and that Quabner claimed she had been assaulted with a picture frame and metal object. RP 483-489. A detective and Quabner's sister testified to seeing Quabner's injuries shortly after she was taken to the hospital. RP 460-467, 493-495.

To bolster Quabner and L.S.'s claims, the prosecution submitted significant physical and photographic evidence collected at the scene immediately following Smith's unlawful arrest. This included photographs documenting the following: blood and other evidence of a struggle in the room, evidence found in the dumpster, the victims' injuries, and the rope or cord used to restrain the victims. RP 292-296, 354-359; exhibits 32-38, 40-41, 42A, 44-51. In addition, the prosecution admitted some of the actual physical evidence discovered at the scene, including bloodstained sheets, towels, and clothing. RP 360-371; exhibits 1-20, 22-27.

C. ARGUMENT

1. THE TRIAL COURT ERRED WHEN IT DENIED THE DEFENSE MOTION TO SUPPRESS BASED ON INEVITABLE DISCOVERY.

"As a general rule, warrantless searches and seizures are per se unreasonable, in violation of the Fourth Amendment and article 1,

section 7 of the Washington State Constitution.”⁵ State v. Duncan, 146 Wn.2d 166, 171, 43 P.3d 513 (2002) (citing State v. Williams, 102 Wn.2d 733, 736, 689 P.2d 1065 (1984)).

This case is controlled by two Washington Supreme Court opinions. In State v. Jorden, the Supreme Court held that “the practice of checking the names in a motel registry for outstanding warrants without individualized or particularized suspicion” violates article 1, section 7. Jorden, 160 Wn.2d at 130. Based on Jordan, the trial court properly held that Officer Lee violated Smith’s rights when he obtained Smith’s name from the registry at the Golden Lion.

The second controlling case is State v. Winterstein, 167 Wn.2d 620, 220 P.3d 1226 (2009). In Winterstein, decided after Smith’s trial, the Supreme Court held that the inevitable discovery doctrine is incompatible with article 1, section 7, which – in contrast to the Fourth Amendment – is intended to protect personal rights rather than curb government misconduct. Winterstein, 167 Wn.2d at 624, 631-636.

⁵ The Fourth Amendment provides, “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated” Article 1, section 7 of Washington’s Constitution provides that “[n]o person shall be disturbed in his private affairs, or his home invaded, without authority of law.”

Because Officer Lee did not have probable cause to seize the information in the Golden Lion registry identifying Smith as a guest, the fruits of that unlawful seizure were inadmissible, including the arresting officers' observations that day, the victims' statements to police and medical responders, and the significant physical and photographic evidence of the crimes collected at the motel. State v. Byers, 88 Wn.2d 1, 7-8, 559 P.2d 1334 (1977)(citing Wong Sun v. United States), overruled in part on other grounds, State v. Williams, 102 Wn.2d 733, 741 n.5, 689 P.2d 1065 (1984). Use of this evidence is presumed prejudicial and the State cannot demonstrate, as it must, that its admission was harmless beyond a reasonable doubt.⁶ See State v. McReynolds, 117 Wn. App. 309, 326, 71 P.3d 663 (2003) (Fourth Amendment violations subject to constitutional harmless error standard).

One last point on this issue. On February 23, 2005, this Court held that randomly viewing a guest register did *not* violate article 1,

⁶ Whether the State could call Quabner and L.S. to testify at a new trial – in the absence of all the other evidence gathered as a result of the violation of Smith's privacy results – remains to be seen. The State would be required to demonstrate "sufficient attenuation from the illegal search to dissipate its taint." State v. Childress, 35 Wn. App. 314, 316-317, 666 P.2d 941, review denied, 100 Wn.2d 1031 (1983).

section 7. See State v. Jorden, 126 Wn. App. 70, 107 P.3d 130 (2005). Therefore, the State may be tempted to argue that Officer Lee acted in good faith when he examined the motel register, thereby excusing his conduct. Such an argument would fail. Citing State v. White, 97 Wn.2d 92, 109-110, 640 P.2d 1061 (1982), this Court recently reaffirmed that Washington does not recognize the federal good faith exception to the exclusionary rule. State v. McCormick, 152 Wn. App. 536, 216 P.3d 475, 478 (2009); see also State v. Harris, ___ Wn. App. ___, 2010 WL 45755 (1/7/10) (following McCormick). But see State v. Riley, ___ Wn. App. ___, 2010 WL 427118 (filed 2/8/10) (in split decision, two Division One judges rely on good faith exception).

Moreover, even if Washington employed the good faith exception, it would not be satisfied here because it requires reliance on a “presumptively valid” rule. White, 97 Wn.2d at 102 (noting that an ordinance not previously challenged is “presumptively valid” in the federal system). Jorden arose out of the practice of the Pierce County Sheriff’s Office viewing motel registers as part of the same “Lakewood Crime-Free Hotel Motel Program.” In fact, the case even involved the same motel, the Golden Lion. See Jorden, 160 Wn.2d at 123.

By the time Officer Lee viewed the register containing Smith's information (October 22, 2006), the Washington Supreme Court had already granted review of this Court's decision in Jordan, placing its continued validity in doubt. See State v. Jordan, 155 Wn.2d 1011, 122 P.3d 913 (2005) (granting petition for review on October 6, 2005). And because Officer Lee served as Program Coordinator, he would have been aware (or certainly should have been aware) that the Court of Appeals' decision was under review in the Supreme Court. Because Officer Lee had reason to question reliance on this Court's decision in Jordan, he could no longer reasonably presume his actions were valid.

2. SMITH'S TWO CONVICTIONS FOR RAPE, BASED ON THE SAME ACT, VIOLATE DOUBLE JEOPARDY PROHIBITIONS.

The double jeopardy clauses of the State and Federal Constitutions prevent the imposition of multiple punishments for the same offense. U.S. Const. amend. 5; Wash. Const. art. 1, § 9; State v. Calle, 125 Wn.2d 769, 772, 776, 888 P.2d 155 (1995). The protection is constitutional, but 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).

Smith was charged with Rape in the First Degree and Rape of a Child in the Second Degree. CP 1-2. The "to convict" instruction for Rape in the First Degree required the State to prove:

- (1) That on or about the 22nd day of October, 2006, the defendant engaged in sexual intercourse with L.S.;
- (2) That the sexual intercourse was by forcible compulsion;
- (3) That the defendant used or threatened to use a deadly weapon or what appears to be a deadly weapon; and
- (4) That the acts occurred in the State of Washington.

CP 236.

The "to convict" instruction for Rape of a Child in the Second Degree required the State to prove:

- (1) That on or about the 22nd day of October, 2006, the defendant had sexual intercourse with L.S.;
- (2) That L.S. was at least twelve years old but was less than fourteen years old at the time of the sexual intercourse and was not married to the defendant;
- (3) That L.S. was at least thirty-six months younger than the defendant; and
- (4) That the acts occurred in the State of Washington.

CP 241.

Both rape charges were based on the same act of intercourse. See RP 514 (during closing, prosecutor tells jurors “there’s in fact one act of rape that is at issue here, but two different sets of laws that have been violated”).

At sentencing, the State convinced the trial court there was no double jeopardy violation by conducting a strict analysis under the “same evidence” and Blockburger tests. CP 339 (citing, among other cases, State v. Calle and Blockburger v. United States, 284 U.S. 299, 52 S. Ct. 180, 76 L. Ed. 2d 306 (1932)). Under these cases:

The applicable rule is that where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not.

Blockburger, 284 U.S. at 304. Because each crime contains an element the other does not, argued the State, the Legislature intended separate convictions. CP 339-340.

The State failed to recognize, however, that this test is but one tool for discerning legislative intent. It is not dispositive where there is a clear indication of contrary intent. Calle, 125 Wn.2d at 778. This Court and the Washington Supreme Court determined

long ago that the Legislature did not intend separate convictions for rape and child rape when based on the same act.

In State v. Birgen, 33 Wn. App. 1, 2, 651 P.2d 240 (1982), review denied, 98 Wn.2d 1013 (1983), the defendant was convicted of Rape in the Third Degree and Statutory Rape in the Third Degree based on a single act of intercourse with a 15-year-old girl. Under the “same evidence” and Blockburger tests, the offenses had different legal elements and were not the same in law. But the court recognized this was not dispositive. Id. at 7. Examining the historical development of Washington’s rape statutes, and interpretative case law, the Birgen Court held that rape and statutory rape define a single crime and the Legislature has not authorized multiple convictions based on a single act. Birgen, 33 Wn. App. at 5-14.

Birgen received concurrent sentences and, under Washington law at that time, this precluded a double jeopardy violation. Birgen, 33 Wn. App. at 3. Therefore, technically, Birgen was not decided on double jeopardy grounds. But the “concurrent sentence rule” subsequently was abandoned. See Ball v. United States, 470 U.S. 856, 864-65, 105 S. Ct. 1668, 84 L. Ed. 2d 740 (1985). And thirteen years after Birgen, in Calle, the Washington Supreme Court cited

approvingly to Birgen, upholding the opinion on double jeopardy grounds. Calle, 125 Wn.2d at 772-775, 779-780.

More recently, the Washington Supreme Court again relied on Birgen, concluding that the Legislature had not authorized separate convictions for Rape in the Second Degree and Rape of a Child in the Second Degree. See State v. Hughes, 166 Wn.2d 675, 685-686, 212 P.3d 558 (2009).

Birgen, Calle, and Hughes dictate the outcome in Smith's case. No case has ever upheld – under double jeopardy principles – convictions for rape and child rape based on a single act of intercourse. The sentencing court found that the rapes involved the same criminal conduct, but Smith still received a sentence for both crimes, including separate deadly weapon enhancements. RP 609-610; CP 468-469. This was insufficient. The Legislature intended only a single conviction. Therefore, this Court must vacate Smith's conviction for Rape of a Child in the Second Degree. See State v. Weber, 159 Wn.2d 252, 269, 149 P.3d 646 (2006) (usual remedy for double jeopardy violation is to vacate the offense carrying the lesser sentence), cert. denied, 551 U.S. 1137 (2007).

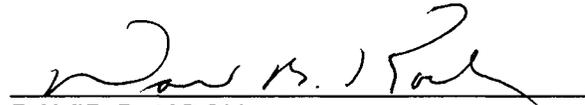
D. CONCLUSION

Smith's convictions must be reversed based on a violation of his Fourth Amendment rights. Moreover, his two convictions for rape violate double jeopardy.

DATED this 11th day of March, 2010.

Respectfully submitted,

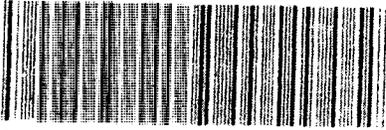
NIELSEN, BROMAN & KOCH, PLLC

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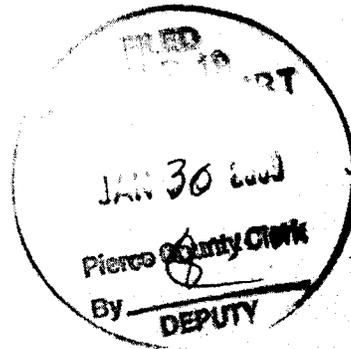
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APPENDIX



06-1-05013-6 31401910 FNCL 02-02-09



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 06-1-05013-6

vs.

CHRISTOPHER LEON SMITH,

FINDINGS AND CONCLUSIONS ON
ADMISSIBILITY OF EVIDENCE CrR
3.6

Defendant.

THIS MATTER having come on before the Honorable Linda Lee on the 9th day of October, 2008, and the court having rendered an oral ruling thereon, the court herewith makes the following Findings and Conclusions as required by CrR 3.6.

THE UNDISPUTED FACTS

I. The Golden Lion Motel in Lakewood participated in a Crime Free Motel Program. Under the terms of the program, the Motel consents to the police randomly reviewing the motel guest registry, and determining if any of the guests have outstanding arrest warrants. In 2005, Division II of the Washington State Court of Appeals decided State v. Jorden, 126 Wn.App. 70, 107 P.3d 130 (2005), holding that Article I, Section 7 of the Washington State Constitution is not violated when police randomly viewed the guest registry of the Golden Lion Motel pursuant to the crime free motel program. This was a published opinion.

II. That on October 22, 2006, Officer Lee of the Lakewood Police Department went to randomly view the guest registry of the Golden Lion Motel in Lakewood, WA. The Golden Lion

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1 Motel was still participating in the Crime Free Motel Program, which involved the manager of
2 the motel consenting to the police reviewing the motel guests for warrants, under circumstances
3 identical to those in State v. Jorden, supra. There was no other reason for the police to have
4 responded to the Golden Lion Motel at that time. At that time, Jorden was still good law.

5 III. Upon reviewing the guest registry, Officer Lee ran the names of the last 10
6 individuals who had checked into the motel. From this, he learned that the defendant was
7 staying at the Motel and that he had a confirmed arrest warrant that had been issued by Pierce
8 County Superior Court.

9 IV. Officers then went to the room that the defendant was staying in so that they could
10 arrest the defendant pursuant to the warrant. The warrant had been discovered as a result of the
11 random search of the motel guest registry. The police knocked on the door and the defendant
12 eventually responded and opened the door. He was placed under arrest and taken to a patrol car.

13 V. During the arrest process, when the door to the motel room was opened, the police
14 observed an adult female present in the motel room. The police were outside of the motel room
15 when they observed the adult female inside of the room. The police could see that the adult
16 female was badly injured, and was holding a bloody towel against her head. She was sobbing
17 and limping. The police entered the motel room to render aid to the female and to ensure the
18 safety of any other occupants in the motel room and to secure any weapons. While inside
19 tending to the victim, the police discovered Quabner's 12 year old daughter L.S. and 2 year old
20 son inside the motel room. Police were informed that the 12 year old had been sexually
21 assaulted. Quabner, who was in great pain, reported that she had been tied with cord around her
22 wrist and her head had been bludgeoned with a metal candle holder. The police were able to
23 examine Quabner's injuries inside the motel room.
24
25

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1 VI. While the police were in the motel room, they observed broken glass on the floor, a
2 TV with a hole in the screen and a broken stereo next to the TV. Blood was observed on the
3 floor. The candle holder was located in the kitchen, and it was dented and had blood on it. L.S.
4 identified that candle holder as the one that was used to bludgeon Quabner.

5 VII. L.S. also reported to police that additional evidence would be found in the dumpster
6 behind the motel. The dumpster is a common dumpster for use of all motel guests. The
7 dumpster is accessible by anyone who might be walking by. When police looked in the
8 dumpster, three bags were observed that contained shards of glass, pieces of gold braided cord,
9 and several items that appeared to be soiled by blood. The bags and their contents were seized as
10 evidence.

11 VIII. The police called for medical aid, and Quabner was evaluated at the scene and then
12 taken to the hospital for further treatment. Subsequently, L.S. was examined at the Child
13 Advocacy Center.

14 IX. After the defendant was taken away, and Quabner and her children were taken to the
15 hospital, police conducted a warrantless search the motel room and collected evidence.

16 X. At the police station, the defendant was interviewed and taken to jail after police took
17 photographs of him. During the interview, the defendant made a series of voluntary statements
18 after being advised of his Miranda warnings.

19 XI. If the police had not arrived when they did, Quianna Quabner would have called the
20 police as soon as possible. Once called, the police would have entered the motel room under
21 their "community caretaking function". They would have then discovered Quabner and her two
22 children. Quabner would still have been injured. Quabner and L.S. would have received
23
24
25

06-1-05013-6

1 medical aid just as they did on October 22, 2006. The evidence in the dumpster would have been
2 recovered.

3 XII. The State has not met its burden in demonstrating that the condition of the motel
4 room would have been the same.

5 XIII. The State has not met its burden in demonstrating that the defendant would have
6 made the same statements that he made to Officer Lee and Detective Holmes.

7 XIV. The State has not met its burden in demonstrating that the defendant's physical
8 condition and lack of injuries, as observed after his arrest, would have been the same when he
9 eventually would have been arrested.

10 XV. Thereafter, the Washington State Supreme Court rendered a decision in State v.
11 Jorden, 160 Wn.2d 121, 156 P.3d 893 (2007), reversing the Washington State Court of Appeals
12 and holding that Article I, Section 7 of the Washington State Constitution is violated when police
13 randomly view the guest registry of a motel.

14 The available evidence that the court must consider in this case consists of

- 15 1) Evidence observed or collected by police inside the motel room as they entered to ensure
16 the safety of the occupants; and
17 2) Evidence found by police in the dumpster which the defendant had abandoned;
18 3) Evidence relating to the search of the motel room following the defendant's arrest;
19 4) Evidence relating to medical treatment of Quabner and L.S.;
20 5) Evidence relating to the defendant's arrest, such as photographs of the defendant's person
21 and statements made by the defendant.
22

23
24 THE DISPUTED FACTS
25

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There are no disputed facts

FINDINGS AS TO DISPUTED FACTS

There are no disputed facts.

REASONS FOR ADMISSIBILITY OR INADMISSIBILITY OF THE EVIDENCE

I The police officers may testify as to their observations regarding the condition and demeanor of Quabner and her two children during their interactions with them inside and outside

of the hotel room. This evidence would have been inevitably discovered under lawful means, as Quanna Quabner testified, which testimony the court found credible, that she would have called 911 at the earliest available opportunity and the "community caretaking function" would have allowed police to enter the motel room to

ensure the safety of the occupants once this crime was reported.

II. The police may not testify as to the condition of the motel room itself, as the condition of the motel room may have changed before police were lawfully summoned to the scene.

III. The police may testify to their observations of the victims as they received medical aid.

IV. The police may testify as to the evidence located in the dumpster, as it would have been inevitably discovered under lawful means.

V. Quabner and L.S. may testify fully as to what they observed.

VI. By agreement of the parties, evidence seized during the warrantless search of the motel room, after the victims and defendant were gone, is suppressed. This warrantless search was not conducted as part of the community caretaking function.

VII. The police may not testify as to the defendant's statements during the State's case in chief, as they would not necessarily have been made had this matter been reported later, resulting in a subsequent lawful arrest.

06-1-05013-6

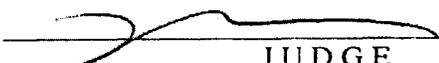
VIII. The police may not testify as to the defendant's lack of physical injuries following his arrest, as his condition may have changed before he would have been arrested later.

IX. The defendant's statements may be used to impeach the defendant's testimony in the event that he does testify. See State v. Greve, 67 Wn.App. 166, 834 P.2d 656 (1992). The State shall first seek permission from the court outside the presence of the jury to determine whether the defendant's statements are proper impeachment.

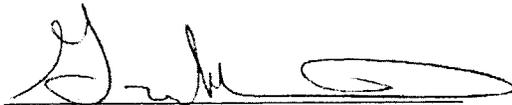
X. The police did not act unreasonably or in an attempt to accelerate discovery of evidence. Furthermore, all of the admissible evidence would have been discovered under proper and standard investigatory means.

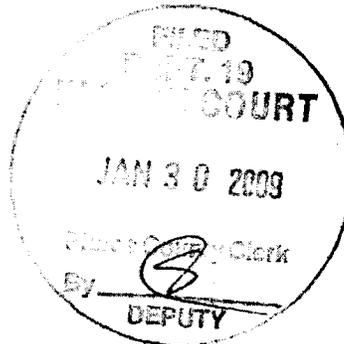
XI. That Article I, Section 7 of the Washington State Constitution is not violated by applying the doctrine of "inevitable discovery" to the facts of this particular case.

DONE IN OPEN COURT this 30 day of ~~October, 2008~~ ^{JANUARY 2009}


JUDGE

Presented by:


GRANT E. BLINN
Deputy Prosecuting Attorney
WSB # 25570



Approved as to Form:


ROBERT QUILLIAN
Attorney for Defendant
WSB # 6836

geb

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO**

STATE OF WASHINGTON)	
)	
Respondent,)	
)	
vs.)	COA NO. 38920-7-II
)	
CHRISTOPHER SMITH,)	
)	
Appellant.)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 11TH DAY OF MARCH, 2010, I CAUSED A TRUE AND CORRECT COPY OF THE **OPENING BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

- [X] KATHLEEN PROCTOR
PIERCE COUNTY PROSECUTING ATTORNEY
930 TACOMA AVENUE SOUTH
ROOM 946
TACOMA, WA 98402

- [X] CHRISTOPHER SMITH
NO. 2009230022
PIERCE COUNTY JAIL
910 TACOMA AVENUE SOUTH
TACOMA, WA 98402

FILED
COURT OF APPEALS
DIVISION II
10 MAR 12 PM 1:39
STATE OF WASHINGTON
BY _____
DEPUTY

SIGNED IN SEATTLE WASHINGTON, THIS 11TH DAY OF MARCH, 2010.

x *Patrick Mayovsky*