

**Court of Appeals No. 41447-3-II**

COURT OF APPEALS  
DIVISION II  
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STATE OF WASHINGTON  
BY  DEPUTY

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

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**STATE OF WASHINGTON**

**Plaintiff/Respondent,**

**v.**

**BRENT SCOTT UNRUH,**

**Defendant/Appellant.**

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**BRIEF OF APPELLANT**

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**Appeal from the Superior Court of Pierce County,  
Cause No. 09-1-03681-2  
The Honorable Ronald E. Culpepper, Presiding Judge**

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## **I. ASSIGNMENTS OF ERROR**

1. Error is assigned to Finding of Fact No. 23, which states:

On August 2, 2009 Puyallup Police Officer Culp responded to the Meeker Fellowship at 414 Spring Street, Puyallup, Pierce County, Washington regarding an intoxicated male that had been present in front of the business for a few days. CP 35.

2. Error is assigned to Finding of Fact No. 24, which states:

Officer Culp contacted the defendant at the Meeker Fellowship and observed the defendant was intoxicated and appeared transient, with three bags of clothing with him. Officer Culp arrested the defendant. CP 36.

3. Mr. Unruh was unlawfully arrested on August 2, 2009.
4. The State presented insufficient admissible evidence to convict Mr. Unruh of failure to register as a sex offender.
5. Mr. Unruh's offender score was improperly calculated where the State presented insufficient evidence to permit the trial court to conduct an accurate comparability analysis of the 1984 California conviction for assault with intent to commit rape.

## **II. ISSUES PRESENTED**

1. Was Mr. Unruh lawfully arrested where Officer Culp was not aware of facts sufficient to establish probable cause to arrest Mr. Unruh? (Assignments of Error Nos. 1, 2, and 3.)
2. Did the State present sufficient admissible evidence to convict Mr. Unruh of failure to register as a sex offender where all evidence that he had failed to register was

discovered as the direct result of an unlawful arrest?  
(Assignment of Error No. 4.)

3. Was Mr. Unruh's offender score improperly calculated where the State failed to provide the Court with sufficient evidence to allow the Court to conduct an accurate comparability analysis because:

- (a) the California court sentencing documents presented state that there were "unusual circumstances"; and

- (b) Mr. Unruh received a suspended 7-month jail sentence and was released to probation instead of being sentenced to the mandatory statutory prison term of two, four, or six years. (Assignment of Error No. 5.)

### **III. STATEMENT OF THE CASE**

On February 15, 1984, Brent Unruh pled guilty in the Sacramento, California Superior Court to one count of assault with intent to commit rape in violation of section 220 of the California Penal Code. CP 75.

That section provided:

Every person who assaults another with intent to commit mayhem, rape, sodomy, oral copulation, or any violation of Section 264.1, 288 or 289 is punishable by imprisonment in the state prison for two, four, or six years.

CP 153.

However, the Sacramento Superior Court found "unusual circumstances," suspended imposition of sentence, granted probation, and ordered seven months confinement in the County Jail, with a recommendation for "the work furlough program," then participation in

the Drug Abuse Program and Professional Counseling through the Probation Office. CP 75, 79-80. Mr. Unruh testified that he was not required to register as a sex offender in California. 10/04/10 RP 28.

Mr. Unruh moved to Washington in 2005. 10/04/10 RP 5. Mr. Unruh testified that he reported to the Sheriff's window office of the Tacoma County-City Building in 2005, but was told not to register as a sex offender because his case "was too old." 10/04/10 RP 6.

On September 15, 2008, Mr. Unruh pled guilty in Pierce County Superior Court to failure to register as a sex offender in violation of RCW 9A.44.130. CP 139. The underlying offense was the 1984 California conviction. CP 139-140. Mr. Unruh's offender score was not calculated at that time (CP 140), and the State presented no evidence that a comparability evaluation of Mr. Unruh's out-of-state convictions took place in 2008.

On August 2, 2009, Mr. Unruh attended an Alcoholics Anonymous meeting at the Meeker Fellowship in Puyallup. 10/04/10 RP 13. The Puyallup Police Department received a call from a member of the Meeker Fellowship asking the Department to check on an individual who had been sitting at a picnic table out in front of the building "for a number of days." 9/30/10 RP 95-96. Officer Adam Culp contacted the individual, who identified himself as Brent Unruh, as he was sitting at the picnic table.

9/30/10 RP 96. Officer Culp stated he “had a few bags of clothing sitting around a table. I believe he had some food with him, just sitting there at that picnic table.” *Id.* Officer Culp stated that he didn’t remember Mr. Unruh’s physical appearance, but

I could obviously -- as soon as I started talking to him, I could smell intoxicants. There’s a general smell that, like you said earlier, that even with appearance, there’s also kind of a general smell with transients, and it was kind of that smell that I could pick up on.

*Id.* at 96-97.

When asked if he “end[ed] up arresting him,” Officer Culp stated that he did arrest Mr. Unruh and booked him into Puyallup City Jail. *Id.* at 97. Michael Cheney, Mr. Unruh’s probation officer in August 2009, testified that Mr. Unruh was arrested for “public intoxication.” 9/30/10 RP 70.

On September 29, 2010, Mr. Unruh waived his right to a jury trial and a bench trial ensued.<sup>1</sup> 9/29/10 RP 5-8. The prosecutor noted that one of the issues for trial was to what Washington offense the California conviction was comparable. *Id.* at 9.

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<sup>1</sup> On September 8, 2010, jury trial began. 9/8/10 RP 1. Defense counsel brought a motion for mistrial when Mr. Cheney stated in the presence of the jury that Mr. Unruh was currently “detained in the jail.” *Id.* at 83. The motion for mistrial was granted. *Id.* at 87.

On November 2, 2010, the Court entered Findings of Fact and Conclusions of Law Following Bench Trial, finding Mr. Unruh guilty of failing to register as a sex offender. CP 32-37.

Mr. Unruh's offender score was calculated as 8, with 3 points assigned to the California conviction for assault with intent to commit rape. 11/02/10 RP 13; CP 42. Based on the offender score of 8, Mr. Unruh was sentenced to 33 months. CP 45.

#### IV. ARGUMENT

##### A. **There was insufficient admissible evidence to convict Mr. Unruh of failure to register as a sex offender.**

1. Mr. Unruh was unlawfully arrested on August 2, 2009.

Findings of Fact No. 23 and 24 state:

23. On August 2, 2009, Puyallup Police officer Culp responded to the Meeker Fellowship at 414 Spring Street, Puyallup, Pierce County, Washington regarding an intoxicated male that had been present in front of the business for a few days.

24. Officer Culp contacted the defendant at the Meeker Fellowship and observed the defendant was intoxicated and appeared transient, with three bags of clothing with him. Officer Culp arrested the defendant.

CP 35-36.

During the bench trial, the Court commented,

He was arrested a couple months later in Puyallup apparently at a AA meeting. Interestingly the officer who

arrested him, nobody asked him why he was arrested. I don't know exactly why he was arrested, but discovered he failed to register.

...

When he was arrested in Puyallup was the officer called because he was drunk? It's not illegal to be drunk. It's maybe a bad habit.

10/04/10 RP 33, 34.

Judge Culpepper was correct. There is no Washington statute and no Puyallup ordinance that prohibits public intoxication of adult citizens. In fact, "[i]t is the policy of this state that . . . intoxicated persons may not be subjected to criminal prosecution solely because of their consumption of alcoholic beverages[.]" RCW 70.96A.010.

Nor is there any Washington statute or Puyallup ordinance that prohibits homelessness.

An encounter between a police officer and a person, whether a pedestrian or a passenger in a vehicle, constitutes a seizure when under the particular objective facts and circumstances surrounding the incident, a reasonable person would not have felt free to leave or otherwise terminate the encounter. *State v. Armenta*, 134 Wn.2d 1, 10-11, 948 P.2d 1280 (1997). A person is seized when, by means of a show of force or authority, his freedom of movement is restrained. *State v. Mendez*, 137 Wn.2d 208, 222, 970 P.2d 722 (1999). The test is whether a reasonable person, under

the circumstances, would have believed that he or she was not free to leave. *Mendez*, 137 Wn.2d at 222. Mr. Unruh was seized because he was arrested.

A seizure “must be supported by probable cause or be conducted pursuant to one of the narrowly drawn exceptions to that rule.” *State v. Young*, 86 Wn. App. 194, 199, 935 P.2d 1372 (1997), *affirmed* 135 Wn.2d 498, 957 P.2d 681 (1998) (citing *State v. Hudson*, 124 Wn.2d 107, 112, 874 P.2d 160 (1994)).

Probable cause to arrest exists where the totality of the facts and circumstances known to the officers at the time of the arrest would warrant a reasonably cautious person to believe an offense is being committed. *State v. Herzog*, 73 Wn.App. 34, 53, 867 P.2d 648, *review denied* 124 Wn.2d 1022, 881 P.2d 255 (1994) (quoting *State v. Fricks*, 91 Wn.2d 391, 398, 588 P.2d 1328 (1979) (quoting *State v. Gluck*, 83 Wn.2d 424, 426-27, 518 P.2d 703 (1974)).

Officer Culp had no probable cause to arrest Mr. Unruh. Officer Culp testified that he contacted Mr. Unruh as he sat at a picnic table, that he had some food with him, and a “few bags of clothing sitting around a table.” 9/30/10 RP 96. Officer Culp did **not** testify that Mr. Unruh was intoxicated: rather, he stated,

As soon as I started talking to him, I could smell intoxicants. There's a general smell that, like you said earlier, that even with appearance, there's also kind of a general smell with transients, and it was kind of that smell that I could pick up on.

9/30/10 RP 96-97.

To the extent that Findings of Fact No. 23 and 24 indicate that the Puyallup Police were contacted "regarding an intoxicated male" (CP 35) and that Officer Culp "observed the defendant was intoxicated" (CP 36), they are not supported by the evidence.

Smelling like a transient is not a crime, nor does smelling like a transient support a belief that one is committing a crime. Officer Culp had no probable cause to arrest Mr. Unruh.

2. Discovery of any outstanding warrant, if one existed, was the fruit of an unlawful arrest.

The State did not elicit testimony from Officer Culp about the reason he arrested Mr. Unruh other than the facts set out in the preceding section of this Brief. The only testimony regarding the reason for Mr. Unruh's arrest was that of his probation officer, Michael Cheney, who testified that Mr. Unruh had been arrested "for public intoxication."

9/30/10 RP 70.

Based on the evidence before the Court, discovery of any outstanding warrant occurred subsequent to and was the direct result of

the arrest “for public intoxication.” Because the arrest was unlawful, all evidence obtained as the result of the arrest must be suppressed. *Wong Sun v. United States*, 371 U.S. 471, 484-85, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963); *State v. Bonds*, 98 Wn.2d 1, 10-11, 653, 653 P.2d 1024 (1982), *cert. denied* 464 U.S. 831, 104 S.Ct. 111, 78 L.Ed.2d 112 (1983).

3. Absent the tainted evidence, there was insufficient evidence to convict Mr. Unruh of failure to register as a sex offender.

In a criminal matter, the State must prove every element of the crime charged. *State v. Teal*, 152 Wn.2d 333, 337, 96 P.3d 974 (2004). Where a criminal defendant challenges the sufficiency of the evidence, appellate courts review the evidence in the light most favorable to the State to determine whether any rational trier of fact could have found guilt beyond a reasonable doubt. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). A claim of insufficiency admits the truth of the State’s evidence and all of the inferences that can reasonably be drawn therefrom. *Salinas*, 119 Wn.2d at 201, 829 P.2d 1068. Evidence is sufficient to support a conviction if, viewed in the light most favorable to the State, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. *Salinas*, 119 Wn.2d at 201, 829 P.2d 1068.

A fact finder is permitted to draw inferences from the facts, so long as those inferences are rationally related to the proven fact. *State v.*

*Bencivenga*, 137 Wn.2d 703, 707, 974 P.2d 832 (1999). The existence of a fact cannot rest upon guess, speculation or conjecture. *State v. Carter*, 5 Wn.App. 802, 807, 490 P.2d 1346 (1971), *review denied*, 80 Wn.2d 1004 (1972). If there is insufficient evidence to prove an element, reversal is required and retrial is ‘unequivocally prohibited.’ *State v. Hickman*, 135 Wn.2d 97, 103, 954 P.2d 900 (1998).

Even if Mr. Unruh had been intoxicated when Officer Culp contacted him, Officer Culp would have had no probable cause to arrest Mr. Unruh, as previously discussed. Discovery of an existing warrant would not have taken place if Officer Culp had properly simply left Mr. Unruh alone. Any existing warrant discovered after the August 2, 2009 arrest is “fruit of the poisonous tree” and must be suppressed. Absent the tainted evidence, there was no evidence to support the November 2, 2010 conviction for failure to register as a sex offender. The Court should reverse the conviction.

**B. The State did not present sufficient information for the court to conduct an accurate comparability analysis of Mr. Unruh’s 1984 conviction for assault with intent to rape.**

The use of a prior conviction as a basis for sentencing under the SRA is constitutionally permissible if the State proves the existence of the prior conviction by a preponderance of the evidence. *State v. Ammons*,

105 Wn.2d 175, 186, 713 P.2d 719, 718 P.2d 796, *cert. denied*, 479 U.S. 930, 107 S.Ct. 398, 93 L.Ed.2d 351 (1986).

Where the state seeks to use prior out-of-state convictions to calculate an offender score, the out-of-state convictions must be “classified according to the comparable offense definitions and sentences provided by Washington law.” *State v. Ford*, 137 Wn.2d 472, 479, 973 P.2d 452 (1999). “To properly classify an out-of-state conviction according to Washington law, the sentencing court must compare the elements of the out-of-state offense with the elements of potentially comparable Washington crimes.” *Ford*, 137 Wn.2d at 479, 973 P.2d 452.

If the elements of the out-of-state crime and the potentially comparable Washington crimes are not identical or if the offense is defined more narrowly in Washington, the court may “inquire into the record of the out-of-state conviction to determine whether the defendant’s conduct would have violated a comparable Washington criminal statute.” *State v. Labarbera*, 128 Wn.App. 343, 349, 115 P.3d 1038 (2005), *review denied* 163 Wash.2d 1002, 180 P.3d 783 (2008).

The State bears the burden of ensuring the record supports the existence **and classification** of out-of-state convictions, and, should the state fail to establish a sufficient record, the sentencing court is without the necessary evidence to reach a proper decision and it is impossible to

determine whether the convictions are properly included in the offender score. *Ford*, 137 Wn.2d at 480-481, 973 P.2d 452.

Challenges to the classification of prior out-of-state convictions, used in calculating offender score under the SRA, may be raised for the first time on appeal. *Ford*, 137 Wn.2d at 477-478, 973 P.2d 452. Review of the trial court's comparability decision is de novo. *Labarbera*, 128 Wn.App. at 348, 115 P.3d 1038.

1. The documents related to the California conviction for assault with intent to rape indicate that the conviction involved "unusual circumstances."

Mr. Unruh was convicted in California in 1984 of the crime of assault with intent to commit rape, in violation of the California Penal Code § 220 (1983), which provides:

Every person who assaults another with intent to commit mayhem, rape, sodomy, oral copulation, or any violation of Section 264.1, 288 or 289 is punishable by imprisonment in the state prison for two, four, or six years.

CP 153.

Further, California Penal Code § 1203.065(b) provided, "Except in unusual cases where the interests of justice would best be served if the person is granted probation, probation shall not be granted to any person convicted of a violation of Section 220 for assault with intent to commit

rape[.]” *People v. Navarro*, 126 Ca. App. 3d, 785, 791, 179 Cal.Rptr. 118 (1981).

Mr. Unruh received a suspended sentence of 7 months in the county jail (CP 75), with a recommendation that Mr. Unruh “be considered for the Work Furlough Program.” CP 76. He was placed on probation for five years. CP 79.

2. The California statute describing rape is broader than the Washington statute describing rape in the second degree.

The State argued in its Sentencing Memorandum and at the sentencing hearing that the Washington second degree rape statute was broader than the California rape statute. CP 64; 11/2/10 RP 8. The State argued, incorrectly, that “the commission of rape in the second degree by forcible compulsion equates to most of the subsections of California’s rape statute.” CP 63. The State was wrong. **Only** subsection (2) of California Penal Code § 261 is characterized as a “forcible rape.” *Navarro*, 126 Cal.App.3d at 790, fn3, and 791, 179 Cal.Rptr. 118. A comparison of the two statutes, set forth on the following page, demonstrates how the State was wrong.

<p>RCW 9A.44.050 (1983)</p>	<p>California Penal Code § 261 (1983)</p>
<p>(1) A person is guilty of rape in the second degree when, under circumstances not constituting rape in the first degree, the person engages in sexual intercourse with another person:</p> <p>(a) By forcible compulsion</p> <p>(b) When the victim is incapable of consent by reason of being physically helpless or mentally incapacitated....</p>	<p>Rape is an act of sexual intercourse with a person not the spouse of the perpetrator, under any of the following circumstances:</p> <p>(1) Where a person is incapable, through lunacy or other unsoundness of mind, whether temporary or permanent, of giving legal consent.</p> <p>(2) Where it is accomplished against a person's will by means of force or fear of immediate and unlawful bodily injury on the person of another.</p> <p>(3) Where a person is prevented from resisting by any intoxicating, narcotic or anaesthetic substance, administered by or with the privity of the accused.</p> <p>(4) Where a person is at the time unconscious of the nature of the act, and this is known to the accused.</p> <p>(5) Where a person submits under the belief that the person committing the act is the victim's spouse and this belief is induced by any artifice, pretense or concealment practiced by the accused, with the intent to induce the belief.</p> <p>(6) Where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat. . . .</p>

CP 61; CP 62.

The California statute defines rape as occurring in circumstances that are not included in the Washington statute describing rape in the second degree, i.e., rape in California is defined as intercourse with a person prevented from resisting because of the administration of an intoxicating, narcotic, or anaesthetic substance by the defendant or “with privity” of the defendant; intercourse with a person who is unconscious of the nature of the act when the defendant knows of fact; intercourse occurs

where the victim believes that the defendant is the victim’s spouse as the result of artifice, pretense or concealment by the defendant with the intent to induce the belief; and intercourse against the victim’s will by threats of retaliation in the future against the victim or any other person.

The California statute, defining **all** circumstances that constitute rape, is broader than the Washington statute defining only rape in the second degree.

3. Because the California statute was broader than the Washington statute, it was necessary to consider the facts underlying the California conviction.

When an offense is defined more narrowly in Washington, “it may be necessary to look into the record of the out-of-state conviction to determine whether the defendant’s conduct would have violated the comparable Washington offense.” *Ford*, 137 Wn.2d at 455-456, 973 P.2d 452 (citing *State v. Morley*, 134 Wn.2d 588, 606, 952 P.2d 167 (1998)).

As demonstrated in section 2 above, the California statute was broader than the Washington statute, requiring the trial court to examine the underlying facts of the California conviction to conduct a proper comparability analysis.

4. Mr. Unruh's unusually lenient sentence combined with the California court's finding of "unusual circumstances" required the trial court in this case to look beyond the language of the California statute to make a true comparability determination.

California defendants convicted of forcible rape "are simply not eligible for probation." *Navarro*, 126 Cal.App.3d at 792, 179 Cal.Rptr. 118 (1981). However, Mr. Unruh *did* receive a sentence of probation. CP 75-78. The fact that the California trial court made a finding of "unusual circumstances" and imposed such a lenient sentence indicates that Mr. Unruh's case was not a typical case falling with the standard fact pattern of an assault with intent to commit rape in California. The trial in this case court should have examined the facts underlying the conviction when making its comparability analysis. For example, the fact that Mr. Unruh was placed on probation is very strong evidence that he did not attempt to commit forcible rape, and, therefore, that his actions would not be comparable to attempted second degree rape in Washington. Thus, the trial court's failure to conduct a review of the underlying facts of the

California conviction casts serious doubt on the accuracy of the trial court's comparability analysis.

5. Because of the finding of "unusual circumstances," the lesser included Washington crime of simple assault should have been considered as a comparable crime.

The State acknowledged that Mr. Unruh was not convicted of rape, but for assault with intent to rape. 11/2/10 RP 9. The State provided the California statute defining assault, which states: "Assault is an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another." CP 154 (quoting California Penal Code § 240). "Violent injury" under Section 240 meant "any wrongful act committed by means of physical force even though that force entails no pain or bodily harm." *People v. Carapeli*, 201 Cal.App.3d 589, 595 fn 3, 247 Cal.Rptr. 478 (1988).

Simple assault was a lesser included offense of assault with the intent to commit rape in California in 1984. *Carapeli*, 201 Cal.App. at 595, 247 Cal.Rptr. 478. Simple assault was also a lesser included offense of attempted rape in the second degree in Washington in 1984. *See State v. Deach*, 40 Wn. App. 614, 615, 699 P.2d 811 (1985).

The non-sex offense of assault should have been compared to the underlying facts of the 1984 California conviction for assault with intent

to commit rape. Had the trial court found that simple assault was the comparable crime, Mr. Unruh's offender score would have been a 6 instead of an 8, and his sentence range would have been 17-22 months instead of 33-43 months.

6. Mr. Unruh's sentence was based on insufficient evidence.

Because the California rape statute is broader than the Washington second degree rape statute, and given his suspended sentence and grant of parole, it was necessary in this case for the trial court to "look into the record" to determine whether Mr. Unruh's conduct would have constituted the Washington crime of attempted second degree rape.

The State failed to provide the trial court with the facts underlying the California conviction to allow the trial court to conduct a sufficient and accurate comparison between Washington crime of attempted rape in the second degree and the underlying facts of the 1984 California conviction.

Because the trial court had an insufficient factual basis to conduct a proper comparability analysis between potential Washington crimes and the facts underlying the California assault with intent to rape conviction, the Court was unable to conduct a valid comparability analysis. "[A]

sentence based on insufficient evidence may not stand.” *Ford*, 137 Wn.2d at 485, 973 P.2d 452.

Where an out of state conviction for an offense defined more broadly than in Washington is included in an offender score, without defense counsel having required the State to present evidence of factual comparability, the remedy is remand for a factual comparability hearing. *State v. Thiefault*, 160 Wn.2d 409, 417 and n. 4, 158 P.3d 580 (2007). *See also Ford*, 137 Wn.2d at 485, 973 P.2d 452 (“where, as here, the defendant fails to specifically put the court on notice as to any apparent defects, remand for an evidentiary hearing to allow the State to prove the classification of the disputed convictions is appropriate.”). Here, the trial court repeatedly encouraged defense counsel to participate in the sentencing hearing, to no avail. *See* 11/2/10 RP 11, 12, 16, 17.

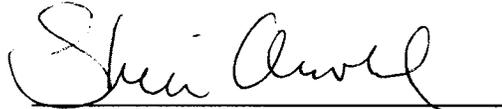
## **VI. CONCLUSION**

Because the arrest of Mr. Unruh on August 2, 2009 was unlawful, there was insufficient admissible evidence to convict Mr. Unruh of failing to register as a sex offender. The Court should reverse the conviction and remand with instruction to dismiss the charge with prejudice. *State v. Hickman*, 135 Wn.2d 97, 954 P.2d 900 (1998) (“Retrial following reversal for insufficient evidence is “unequivocally prohibited” and dismissal is the remedy.”).

Alternatively, because the California statute defining rape is broader than the Washington statute defining second degree rape, and because there were unknown “unusual circumstances” involved in the California conviction, the trial court had insufficient evidence to conduct an accurate comparability analysis between 1984 Washington offenses and the 1984 California conviction of assault with intent to commit rape. Further, the defense counsel did not object or put the trial court on notice of any defects in the comparability analysis, in spite of the trial court’s encouragement that he do so. *See* 11/2/10 RP 11, 12, 16, 17. Under *Thiefault* and *Ford, supra*, the Court should remand for a factual comparability hearing and resentencing.

DATED this 18<sup>th</sup> day of April, 2011.

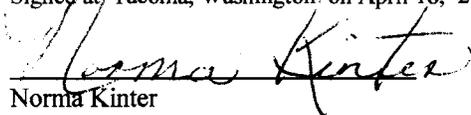
Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Sheri Arnold", written over a horizontal line.

Sheri Arnold, WSBA No. 18760  
Attorney for Appellant

**CERTIFICATE OF SERVICE**

The undersigned certifies that on April 18, 2011, she delivered in person to the Pierce County Prosecutor's Office, County-City Building, 910 Tacoma Avenue South, Tacoma, Washington 98402, and by United States Mail to appellant, Bruce S. Unruh, Washington Corrections Center Post Office Box 900, Shelton, Washington 98584 true and correct copies of this Opening Brief. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington on April 18, 2011.

  
Norma Kinter

COURT OF APPEALS  
DIVISION II

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STATE OF WASHINGTON  
BY \_\_\_\_\_  
DEPUTY

**AMENDED CERTIFICATE OF SERVICE**

The undersigned certifies that on April 18, 2011, she delivered in person to the Pierce County Prosecutor's Office, County-City Building, 910 Tacoma Avenue South, Tacoma, Washington 98402, and on April 19, 2011, by United States mail remailed to appellant, Bruce S. Unruh, DOC # 322834, Monroe Corrections Center, Twin Rivers Unit, Post Office Box 888, Monroe, Washington 97272, true and correct copies of this Opening Brief. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington on April 19, 2011.

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Norma Kinter