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Division II  
State of Washington  
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NO. 54348-6-II

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

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STATE OF WASHINGTON,

Respondent,

v.

DAVID SMALLEY,

Appellant.

---

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

---

REPLY

---

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## A. ARGUMENT

Despite the State's efforts to complicate it, this case remains simple—David Smalley heard Xavier Chambers was telling “everybody” that Mr. Smalley had stabbed him only accidentally, and Mr. Smalley asked his friend to find out whether Mr. Chambers would sign a statement to that effect. No evidence suggests Mr. Smalley ever learned before trial Mr. Chambers believed the stabbing was intentional. No evidence suggests Mr. Smalley heard Mr. Chambers was not willing to sign a statement, yet tried to pressure him to do so anyway. Mr. Smalley did no more than what every defendant has the right to do—ask Mr. Chambers to provide testimony in his defense that, as far as he knew, Mr. Chambers believed to be true. And for that purely innocent conduct, Mr. Smalley was convicted of witness tampering.

- 1. The State presented insufficient evidence that Mr. Smalley attempted to induce Mr. Chambers to “testify falsely,” as required to prove witness tampering.**

To convict Mr. Smalley of witness tampering, the State had to prove he attempted to induce Mr. Chambers to

“[t]estify falsely.” RCW 9A.72.120(1)(a); *State v. Stroh*, 91 Wn.2d 580, 581, 588 P.2d 1182 (1979). This required the State to prove that Mr. Smalley tried to get Mr. Chambers to make a statement Mr. Chambers did not believe to be true, and that he knew Mr. Chambers did not believe it. Br. of App. at 10–11, 16–18; *Stroh*, 91 Wn.2d at 585–86. The State does not argue otherwise.

*a. The State presented no evidence that Mr. Smalley attempted to induce Mr. Chambers to make a statement Mr. Chambers did not believe was true.*

On April 7, during one of the recorded jail calls the trial court admitted as an exhibit, Ms. Melton told Mr. Smalley that Mr. Chambers “told everybody” Mr. Smalley had not stabbed him “on purpose.” Ex. 3 at 5, 8, 18; Ex. 6A, 4/7/19 at 1:10–1:19, 3:44–4:04, 9:27–9:40. Mr. Smalley directed Ms. Melton to approach Mr. Chambers and ask whether he would sign a statement that the stabbing was an accident. Ex. 3 at 1–3, 7–8, 18–19; Ex. 6A, 4/6/19 at 0:32–1:22, 4/7/19 at 3:05–3:31, 9:40–9:58. Because he tried to get Mr. Chambers to endorse a statement that, as far as he knew, Mr. Chambers

believed to be true, Mr. Smalley did not attempt to induce Mr. Chambers to “[t]estify falsely.” Br. of App. at 13–14.

The State accuses Mr. Smalley of arguing that the statements Ms. Melton overheard “allowed [Mr. Smalley] to reach out to Smalley [presumably the State means Mr. Chambers] about changing his statement.” Br. of Resp. at 18. But Mr. Smalley never asked Mr. Chambers to “chang[e] his statement.” Instead, he asked Mr. Chambers to sign a statement to the same effect as what he had already “told everybody”—that the stabbing was an accident. Ex. 3 at 5, 7–8, 18–19; Ex. 6A, 4/7/19 at 1:10–1:19, 3:05–3:31, 3:44–4:04, 9:27–9:58.

The State asserts that other remarks in the recorded jail calls show Mr. Smalley “knew he was trying to get Chambers to testify falsely.” Br. of Resp. at 15, 19. The State mischaracterizes the calls’ contents. Mr. Smalley noted Mr. Chambers “lied twice” to the police, providing “cover” for Mr. Smalley, but “told the truth in the end.” Ex. 3 at 12, 33–34;

Ex. 6A, 4/7/19 at 6:16–6:25, 4/11/19 at 8:17–9:13.<sup>1</sup> But the lie Mr. Chambers told “twice” was that a man named “Tony” stabbed him in or near a park, and the “truth” was that Mr. Smalley stabbed Mr. Chambers. RP 89–90, 105, 171–73, 185–86.<sup>2</sup>

The State does not cite the “discovery” Mr. Smalley referred to during the call—likely because the State did not offer it into evidence at trial—and therefore cannot rely on it as evidence Mr. Smalley knew Mr. Chambers believed the stabbing was intentional. Br. of Resp. at 15; Ex. 3 at 33; Ex. 6A, 4/11/20 at 8:17–8:50. In any event, Mr. Smalley likely knew Mr. Chambers told the police who stabbed him, but this does not contradict what Mr. Chambers “told everybody” afterward—that the stabbing was an accident. Ex. 3 at 5, 8,

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<sup>1</sup> The State does not bother to provide time stamps for any of its citations to the recorded calls.

<sup>2</sup> Similarly, the “lie” Mr. Smalley admitted telling during his police interrogation was that he did not stab Mr. Chambers at all; after owning up to this lie, he insisted it was an accident. Br. of Resp. at 10; RP 264; Ex. 3 at 12, 33–34; Ex. 6A, 4/7/19 at 6:16–6:25, 4/11/19 at 8:53–9:03.

18; Ex. 6A, 4/7/19 at 1:10–1:19, 3:44–4:04, 9:27–9:40. Asking Mr. Chambers to repeat this statement in writing therefore cannot amount to “pressur[ing] him into changing his statement to police.” Br. of Resp. at 18.

As it did below, the State argues “cryptic and incomplete” remarks somehow show Mr. Smalley knew Mr. Chambers did not believe the stabbing was an accident. Br. of Resp. at 15, 17, 19. The remarks themselves, however, cannot bear the nefarious implications the State tries to hang on them. The only portions of the calls that may reasonably be called “cryptic” are when Mr. Smalley mentions a man soon to be released from jail, and refers to an “old Denny’s in Lakewood.” Ex. 3 at 24–25, 45; Ex. 6A, 4/11 at 1:13–2:00, 4/12/19 (2) at 0:53–1:15. As the State admits, however, in context, Mr. Smalley simply named the “old Denny’s” as a place Mr. Chambers could be found. Br. of App. at 14; Br. of Resp. at 10.

There is nothing even arguably “cryptic” about the other excerpts the State cites, in each of which Mr. Smalley

explains a friend named “Ross” is available to drive Ms. Melton around and help her look for Mr. Chambers. Ex. 3 at 27–28, 40, 45; Ex. 6A, 4/11/19 at 3:57–4:47. Nothing in Mr. Smalley’s remarks suggests that either of Mr. Smalley’s friends—“Ross,” or the other man soon to be released from the jail—was to do anything more than help Ms. Melton find Mr. Chambers and ask him to sign a statement.

Not only did Mr. Smalley’s “literal words” suggest no intent to induce Mr. Chambers to make a false statement, but neither did their “inferential meaning” in context. *State v. Rempel*, 114 Wn.2d 77, 83–84, 785 P.2d 1134 (1990). As even the State acknowledges, Ms. Melton only asked Mr. Chambers to sign a statement once. Br. of Resp. at 11 (citing RP 110–11). Ms. Melton did not report this contact to Mr. Smalley during any of the recorded phone calls introduced at trial—the increasing frustration he expressed as the calls progressed was based on her failure to make contact, not any refusal on Mr. Chambers’s part. Br. of App. at 13; *see* Br. of Resp. at 14.

Mr. Chambers himself said he felt threatened, but because of his unfounded belief Mr. Smalley “put a hit” on him. RP 145–46, 357; *see* Br. of Resp. at 11. Nothing in Mr. Smalley’s jail calls even hints at instructions to threaten violence against Mr. Chambers. Whether read for their plain meaning or considered in context, Mr. Smalley’s words convey only a request that Mr. Chambers truthfully relay what, as far as Mr. Smalley knew at the time, Mr. Chambers actually believed—that the stabbing was an accident.

The cases the State cites are inapposite. Br. of Resp. at 16–17, 19. In most of them, the defendant induced the witness to “change” or “recant” their statement, showing the defendant knew the witness did not believe the proposed testimony was true. *See State v. Williamson*, 131 Wn. App. 1, 5–6, 86 P.3d 1221 (2004) (defendant urged child witness to “recant your statement”); *State v. Lubers*, 81 Wn. App. 614, 622, 915 P.2d 1157 (1996) (defendant asked witness to “recant[] information” witness had “given the police”); *State v. Henshaw*, 62 Wn. App. 135, 136–37, 138, 813 P.2d 146 (1991)

(after defendant called witness from jail, witness recanted allegations); *State v. Hurley*, No. 72545-9-I, 2016 WL 785546, at \*4 (Wash. App. Feb. 29, 2016) (unpub.) (defendant asked witness to “change her statement”); *see* GR 14.1(a).

In *State v. Gonzalez*, 2 Wn. App. 2d 96, 408 P.3d 743 (2018), there was no evidence the witness had given the defendant permission to drive a vehicle, as the defendant wanted her to say. *Id.* at 116. Here, by contrast, the evidence was Mr. Smalley knew Mr. Chambers had “told everybody” Mr. Smalley did not stab him “on purpose.” Ex. 3 at 5, 8, 18; Ex. 6A, 4/7/19 at 1:10–1:19, 3:44–4:04, 9:27–9:40. And in *State v. Whitfield*, 132 Wn. App. 878, 134 P.3d 1203 (2006), the defendant argued his statements “were taken out of context and not taken seriously” by the witness, not that the witness believed the statements he wanted her to make. *Id.* at 897–98. The opinion has nothing to say about whether asking a witness to endorse a statement the witness believes to be true amounts to witness tampering.

*b. The trial court's finding that Mr. Smalley attempted to induce false testimony based solely on its post-trial finding that the incident was not an accident rests on an untenable reading of the statute.*

RCW 9A.72.120 must be read to require that the defendant knew the witness did not believe the testimony the defendant attempted to induce. Br. App. at 15–18. Otherwise, the defendant would be punished for the entirely innocent act of trying to obtain truthful testimony, frustrating the right to present a defense. *Stroh*, 91 Wn.2d at 585–86; *Washington v. Texas*, 388 U.S. 14, 19, 87 S. Ct. 1920, 18 L. Ed. 2d 1019 (1967). This knowledge requirement is also implicit in the statute's use of the word “attempt”—if the defendant must have intended to induce false testimony, then the defendant must also have known that the testimony he intended to induce would be false. *Attempt*, Black's Law Dictionary (11th ed. 2019); see *Williamson*, 131 Wn. App. at 6 (likening witness tampering to the crime of attempt); *State v. Johnson*, 173 Wn.2d 895, 909, 270 P.3d 591 (2012) (attempt to promote commercial sexual abuse of a minor requires knowledge the intended victim is a minor).

The State does not dispute that RCW 9A.72.120 includes such a knowledge requirement. In fact, it sometimes appears to endorse it. *See* Br. of Resp. at 19 (arguing the evidence showed Mr. Smalley “knew he was trying to get Chambers to testify falsely”). Instead, the State appears to resort to answering arguments Mr. Smalley never made. It argues there is no risk of “criminalization of innocent conduct” here because the statute requires an “attempt to induce a person to ‘testify falsely.’” Br. of Resp. at 17–18. It ignores the point of Mr. Smalley’s argument—no attempt to induce false testimony occurred where Mr. Smalley asked Mr. Chambers to make what would be, as far as Mr. Smalley knew, a truthful statement. Br. of App. at 18.

Similarly, the State argues convicting Mr. Smalley of witness tampering did not limit his right to present a defense because that right “does not encompass contacting witnesses to attempt to induce them to change their statements.” Br. of Resp. at 18. As noted, there is no evidence Mr. Smalley asked Mr. Chambers to change any statement; he merely asked Mr.

Chambers to repeat what, according to Ms. Melton, he had already “told everybody.” Ex. 3 at 5, 7–8, 18–19; Ex. 6A, 4/7/19 at 1:10–1:19, 3:05–3:31, 3:44–4:04, 9:27–9:58. And the State again ignores the point of Mr. Smalley’s argument—the witness tampering statute frustrates the right to present a defense if it sweeps in attempts to obtain testimony that, as far as the defendant knows, the witness believes to be true.<sup>3</sup> Br. of App. at 16–17.

The next straw man the State knocks down is the argument that the trial court “could not use its conclusion the stabbing was intentional beyond a reasonable doubt in its analysis of whether witness tampering occurred.” Br. of Resp. at 19. Of course the trial court could consider this finding, just as it could consider all the evidence the parties presented. What the trial court could *not* do was find Mr. Smalley guilty of witness tampering without first finding that he *knew* Mr.

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<sup>3</sup> The cases the State cites concern attempts to present evidence during trial, and therefore have nothing to say about obtaining evidence prior to trial. Br. of Resp. at 18; *State v. Thomas*, 150 Wn.2d 821, 857, 83 P.3d 970 (2004); *State v. Lizarraga*, 191 Wn. App. 530, 553, 364 P.3d 810 (2015).

Chambers did not believe the testimony he attempted to induce. Br. of App. at 18. That is precisely what the trial court did. RP 476; CP 54 FF 33.

*c. The conviction of witness tampering must be reversed.*

Had Mr. Smalley's statements during the recorded jail phone calls revealed that he believed Mr. Chambers would be lying by calling the stabbing an accident, this would suffice to show he intended to induce Mr. Chambers to testify falsely. Br. of App. at 18. Instead, the only reasonable conclusion to draw is that Mr. Smalley thought Mr. Chambers believed the stabbing was an accident. *Id.* at 13–15.

Had Mr. Smalley prevailed upon multiple people to repeatedly harass or even threaten Mr. Chambers into signing a statement, one might reasonably infer that he knew the statement would not be truthful. *Cf. Rempel*, 114 Wn.2d at 83–84 (insufficient evidence where witness did not feel threatened). Instead, Mr. Smalley asked Ms. Melton to reach out to Mr. Chambers and ask him to sign a statement if he was willing to. Ex. 3 at 1–3, 7–8, 18–19; Ex. 6A, 4/6/19 at

0:32–1:22, 4/7/19 at 3:05–3:31, 9:40–9:58. And, as far as Mr. Smalley knew, Ms. Melton never succeeded in making contact with Mr. Chambers for this purpose. Ex. 3 at 41, 47, 49–50, 53; Ex. 6A 4/12/19 (1) at 1:58–2:19, 4/13/19 at 0:16–0:40, 4/23/19 at 0:31–0:57, 3:11–3:51.

The State presented insufficient evidence to prove the essential element of an attempt to induce Mr. Chambers to “[t]estify falsely.” RCW 9A.72.120(1)(a). Mr. Smalley’s conviction of witness tampering must be reversed. Br. of App. at 18–19.

**2. Count III of the information—alleging possession of a controlled substance—was deficient for failure to allege knowledge.**

Under the “essential element rule,” the information must set out all elements of the charged offense. *State v. Pry*, 194 Wn.2d 745, 751–52, 452 P.3d 536 (2019). As explained in Mr. Smalley’s opening brief, principles of statutory construction require that the offense of possession of a controlled substance be read to include a knowledge element. Br. of App. at 20–22. The information does not allege Mr.

Smalley possessed a controlled substance knowingly, and therefore does not satisfy the essential element rule. CP 7.

*a. Possession of a controlled substance requires proof of knowledge to avoid punishing innocent conduct.*

As the State points out, our Supreme Court has held that knowledge is not an essential element of possession of a controlled substance. Br. of Resp. at 26; *State v. Bradshaw*, 152 Wn.2d 528, 537, 98 P.3d 1190 (2004); *State v. Cleppe*, 96 Wn.2d 373, 380, 635 P.2d 435 (1981). The State ignores the Supreme Court's recent grant of review on this precise issue. *State v. Blake*, 194 Wn.2d 1023, 1023, 456 P.3d 395 (2020); see Pet.'s Supp. Br. at 1–2, *State v. Blake*, No. 96873-0 (Wash. Mar. 2, 2020), <https://www.courts.wa.gov/content/Briefs/A08/968730%20Pet'r's%20Supp%20Brief.pdf>. Should the Court hold knowledge is an essential element of the offense while this appeal is pending, that conclusion will apply to this case. *State v. Hanson*, 151 Wn.2d 783, 784, 91 P.3d 888 (2004). The State does not contend otherwise. Br. of Resp. at 25–26.

*b. Count III failed to allege that Mr. Smalley possessed a controlled substance knowingly.*

Where challenged for the first time on appeal, an information is insufficient unless each essential element is expressly alleged or “by fair construction may be found” on its face. *State v. McCarty*, 140 Wn.2d 420, 425, 998 P.2d 296 (2000). Here, the information fails to allege Mr. Smalley “knowingly” possessed methamphetamine. CP 7. The archaic, boilerplate phrase “unlawfully and feloniously” is not a substitute, Br. of App. at 23–25, and the State does not suggest otherwise, Br. of Resp. at 25–26. Should the Supreme Court in *Blake* hold knowledge is an essential element of the offense, the information fails to allege that element, and the conviction must be reversed. *McCarty*, 140 Wn.2d at 425.

**3. Count I of the information—alleging assault—is deficient for failing to allege the assault was carried out with “unlawful force.”**

The use of “unlawful force” is required to prove assault in any degree, and is therefore an essential element of the offense. *State v. Hupe*, 50 Wn. App. 277, 282, 748 P.2d 263 (1988), *disapproved on other grounds*, *State v. Smith*, 159

Wn.2d 778, 154 P.3d 873 (2007). Accordingly, the information was required to allege “unlawful force” under the essential elements rule. *Pry*, 194 Wn.2d at 751–52. The information here failed to allege “unlawful force,” and therefore is constitutionally deficient. CP 6.

The cases the State cites to the contrary concern jury instructions, not pleading sufficiency. Br. of Resp. at 22–24; *State v. Prado*, 144 Wn. App. 227, 246–47, 181 P.3d 901 (2008); *State v. Brooks*, 142 Wn. App. 842, 847–48, 176 P.3d 549 (2008); *Hupe*, 50 Wn. App. at 282; *State v. Morganflash*, No. 36147-1-III, 2019 WL 2226116, at \*3 (Wash. App. May 23, 2019) (unpub.); see GR 14.1(a). As the State astutely observes, however, “[t]he essential elements required in the jury instructions differ from those required in the information.” Br. of Resp. at 24; see *Pry*, 194 Wn.2d at 757 (noting “charging documents and jury instructions serve different purposes”). The State’s cases therefore say nothing regarding what elements of assault must be set forth in the information.

The State also points out it is not obliged to allege the absence of such affirmative defenses as self-defense. Br. of Resp. at 23; *State v. McCullum*, 98 Wn.2d 484, 493, 656 P.2d 1064 (1983). But there is no such generic affirmative defense as “lawful force”—rather, use of force cannot amount to assault unless it was unlawful. *Hupe*, 50 Wn. App. at 282.

The State further argues “unlawful force” is merely part of the definition of the element of “assault,” and not an element itself. Br. of Resp. at 22–23. But there is a difference between a statute or piece of case law that is “merely definitional” and one that “provid[es] essential elements that the State must prove.” *Pry*, 194 Wn.2d at 757. For pleading purposes, the common-law definitions of assault developed in case law must be deemed to fall in the second category. *Hupe*, 50 Wn. App. at 282. Otherwise, defendants would be deprived of notice of the charged offense, as there exists no statute they can turn to for a definition of the crime. *See id.*

Lastly, the State argues the phrase “unlawfully and feloniously” was sufficient to notify Mr. Smalley that

“unlawful force” was alleged. Br. of Resp. at 22. As already noted, however, the State included this outdated, boilerplate language in every count in the information. CP 6–7; Br. of App. at 25. The State cannot include the same phrase in all three counts and expect a common-sense reader to assign it different meanings with respect to different offenses.

**4. The trial court erred in imposing discretionary community custody supervision fees despite finding Mr. Smalley indigent.**

Legal financial obligations can pose enormous barriers to reentry into society for the indigent. *State v. Blazina*, 182 Wn.2d 827, 835, 344 P.3d 680 (2015). Because the trial court maintains jurisdiction until all obligations are paid, people unable to pay more than a little each month can remain entangled in the criminal justice system long after they serve their sentences. *Id.* at 836–37 (citing RCW 9.94A.760(5)).<sup>4</sup> This continuing involvement may appear on background checks, resulting in “negative consequences on employment,

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<sup>4</sup> When *Blazina* was decided, the cited provision was located at RCW 9.94A.760(4). *See* Laws of 2018, ch. 269, § 14.

on housing, and on finances.” *Id.* at 837. “All of these reentry difficulties increase the chances of recidivism.” *Id.*

In 2018, the Legislature prohibited trial courts from saddling the indigent with certain discretionary obligations. RCW 10.01.160(3); Laws of 2018, ch. 269, § 6; *State v. Ramirez*, 191 Wn.2d 732, 748, 426 P.3d 714 (2018). As supervision fees “are waivable by the trial court,” they are discretionary. *State v. Dillon*, 12 Wn. App. 2d 133, 152, 456 P.3d 1199 (2020); *State v. Lundstrom*, 6 Wn. App. 2d 388, 396 n.3, 429 P.3d 1116 (2018); RCW 9.94A.703(2)(d). Following the 2018 amendment, this Court has taken care to ensure that, where a trial court intends to impose only mandatory legal financial obligations, it does not inadvertently order payment of supervision fees. *See Dillon*, 12 Wn. App. 2d at 152; *Lundstrom*, 6 Wn. App. 2d at 396 & n.3.

In *Dillon*, the trial court stated “it would waive the DNA fee, the filing fee, and ‘simply order \$500 victim penalty assessment, which is still truly mandatory.’” 12 Wn. App. 2d at 152. “The trial court did not mention supervision fees.” *Id.*

Nonetheless, this Court concluded based on the trial court’s remarks that it “intended to waive all discretionary LFOs,” including supervision fees, and remanded for correction of the judgment. *Id.* at 152–53. Likewise, in *Lundstrom*, this Court noted that “the trial court intended to impose only mandatory LFOs,” yet incongruously imposed supervision fees. 6 Wn. App. 2d at 396 n.3.<sup>5</sup>

Here, the State argues, the trial court’s remarks at sentencing did not unambiguously express intent to waive all discretionary obligations. Br. of Resp. at 28. To the contrary, the court made its intent at least as clear as in *Dillon*. When the State asked which “LFOs” the court would impose, it answered, “\$500 crime victim penalty assessment, *and that is it.*” RP 491 (emphasis added). In imposing only a single legal

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<sup>5</sup> The State calls this portion of the *Lundstrom* opinion “dicta.” Br. of Resp. at 27. Far from inconsequential to the outcome, however, this Court’s conclusion that supervision fees are a discretionary legal financial obligation was one of its reasons for ordering remand. *Lundstrom*, 6 Wn. App. 2d at 396 & n.3; see *State v. Burch*, 197 Wn. App. 382, 403, 389 P.3d 685 (2016) (“A statement is dicta when it is not necessary to the court’s decision in a case.”).

financial obligation, the court necessarily excluded all others. The inclusion of the boilerplate obligation to pay supervision fees in the form judgment and sentence therefore is a scrivener's error, and this Court should remand with instructions to correct it. *Dillon*, 12 Wn. App. 2d at 152–53.

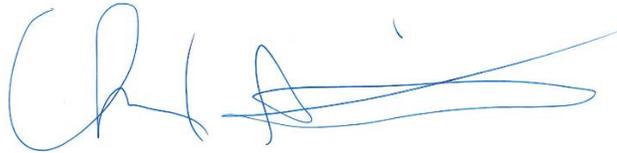
The State remarks in passing that Mr. Smalley did not object to the supervision fees requirement below. Br. of Resp. at 28. If the State means to imply that he may not challenge it now, it is mistaken. This Court routinely remands to the trial court to correct scrivener's errors in the judgment. *E.g.*, *State v. Sullivan*, 3 Wn. App. 2d 376, 381, 415 P.3d 1261 (2018); *State v. Makekau*, 194 Wn. App. 407, 420–21, 378 P.3d 577 (2016).

## B. CONCLUSION

This Court should reverse Mr. Smalley's conviction of witness tampering with prejudice and his convictions of second-degree assault and unlawful possession of a controlled substance without prejudice. Alternatively, this Court should

remand with instructions to strike the requirement to pay  
community custody supervision fees.

DATED this 14th day of September, 2020.



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*Attorney for David Smalley*

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

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STATE OF WASHINGTON,	)	
	)	
Respondent,	)	
	)	NO. 54348-6-II
v.	)	
	)	
DAVID SMALLEY,	)	
	)	
Appellant.	)	

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**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 14<sup>TH</sup> DAY OF SEPTEMBER, 2020, I CAUSED THE ORIGINAL **REPLY BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION TWO** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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**SIGNED** IN SEATTLE, WASHINGTON THIS 14<sup>TH</sup> DAY OF SEPTEMBER, 2020.



X \_\_\_\_\_

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**Appellate Court Case Title:** State of Washington, Respondent v. David Smalley, Appellant  
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