

FILED
Court of Appeals
Division III
State of Washington
8/13/2018 9:59 AM

NO. 35552-7-III

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

STATE OF WASHINGTON,

Respondent,

v.

DEREK RODNEY GARNER,

Appellant.

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

The Honorable Julie M. McKay

BRIEF OF APPELLANT

VALERIE MARUSHIGE
Attorney for Appellant

23619 55th Place South
Kent, Washington 98032
(253) 520-2637

TABLE OF CONTENTS

	Page
A. <u>INTRODUCTION</u>	1
B. <u>ASSIGNMENTS OF ERROR</u>	2
C. <u>ISSUES PERTAINING TO ASSIGNMENTS OF ERROR</u>	2
D. <u>STATEMENT OF THE CASE</u>	3
1. Procedure	3
2. Facts	3
E. <u>ARGUMENT</u>	9
1. REVERSAL IS REQUIRED BECAUSE GARNER WAS DENIED HIS CONSTITUTIONAL RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL WHERE DEFENSE COUNSEL’S REPRESENTATION WAS DEFICIENT IN FAILING TO HAVE A VIDEO ADMITTED AS AN EXHIBIT AT A 3.5 HEARING AND COUNSEL’S DEFICIENT PERFORMANCE PREJUDICED GARNER WHERE HE IS CONSEQUENTLY DEPRIVED OF APPELLATE REVIEW OF THE VIDEO TO DETERMINE WHETHER SUBSTANTIAL EVIDENCE SUPPORTS THE TRIAL COURT’S FINDINGS AND WHETHER THE FINDINGS SUPPORT THE COURT’S CONCLUSIONS.....	9
2. IF THE STATE SUBSTANTIALLY PREVAILS ON APPEAL, THIS COURT SHOULD EXERCISE ITS DISCRETION AND NOT AWARD COSTS BECAUSE GARNER REMAINS INDIGENT.....	15
F. <u>CONCLUSION</u>	18

TABLE OF AUTHORITIES

	Page
<u>WASHINGTON CASES</u>	
<i>State v. Blazina</i> , 82 Wn.2d 827, 344 P.3d 680 (2015)	15
<i>State v. Estes</i> , 188 Wn.2d 450, 395 P.3d 1045 (2017)	9
<i>State v. Grier</i> , 171 Wn.2d 17, 246 P.3d 1260 (2011)	10
<i>State v. I.B.</i> , 187 Wn. App. 315, 348 P.3d 1250 (2015)	13
<i>State v. Jones</i> , 183 Wn.2d 327, 352 P.3d 776 (2015)	9
<i>State v. Kyлло</i> , 166 Wn.2d 856, 215 P.3d 177 (2009)	10
<i>State v. Lord</i> , 117 Wn.2d 829, 822 P.2d 177 (1991)	10
<i>State v. McFarland</i> , 127 Wn.2d 322, 899 P.2d 1251 (1991)	9
<i>State v. Nolan</i> , 141 Wn.2d 620, 8 P.3d 300 (2000)	16
<i>State v. Roden</i> , 179 Wn.2d 893, 321 P.3d 1183 (2014)	12
<i>State v. Russell</i> , 180 Wn.2d 860, 330 P.3d 151 (2014)	12
<i>State v. Schoel</i> , 54 Wn.2d 388, 341 P.2d 481 (1958)	13

TABLE OF AUTHORITIES

	Page
<i>State v. Sweet</i> , 90 Wn.2d 282, 581 P.2d 579 (1978)	13
<i>State v. Thomas</i> , 109 Wn.2d 222, 743 P.2d 816 (1987)	9
 <u>FEDERAL CASES</u>	
<i>Strickland v. Washington</i> , 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)	9
 <u>STATUTES, RULES, OTHER</u>	
RCW 10.73.160(1)	16
RAP 14.2	15
RAP 15.2(f)	17
U. S. Const. amend. VI	9
Wash. Const. art. I, section 22	9, 13
AM. CIVIL LIBERTIES UNION, IN FOR A PENNY: THE RISE OF AMERICA’S NEW DEBTOR’S PRISONS (2010) . . .	15

A. INTRODUCTION

The United States and Washington Constitutions guarantee the right to effective assistance of counsel. Appellant Derek Rodney Garner was denied this fundamental right.

The trial court held a 3.5 hearing where defense counsel presented an officer's body camera video as evidence that after Garner invoked his constitutional right to remain silent the officer proceeded to question him. Defense counsel argued that Garner's statements must be suppressed because Garner said "no" when the officer asked Garner if he wanted to talk to him. The court disagreed, finding that Garner responded "yeah" on the video and therefore waived his right to silence. The court ruled that Garner's statements were admissible allowing the State to use Garner's statements to prove that he possessed a stolen motor vehicle.

Defense counsel did not have the video admitted as an exhibit and consequently the video is not part of the record on review. Defense counsel's representation was deficient in failing to have the video admitted and Garner was prejudiced by counsel's deficient representation which deprives him of his right to appellate review of the trial court's findings of fact and conclusions of law.

Garner's conviction must therefore be reversed.

B. ASSIGNMENTS OF ERROR

1. Garner was denied his constitutional right to effective assistance of counsel.

2. In the event the State prevails on appeal this Court should deny any requests for costs.

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. The trial court held a 3.5 hearing where defense counsel presented an officer's body camera video as evidence that Garner invoked his right to remain silent. After watching the video, the court found that Garner waived his right and concluded that his statements were admissible. Is reversal required because Garner was denied his constitutional right to effective assistance of counsel where defense counsel's representation was deficient in failing to have the video admitted as an exhibit and Garner is prejudiced by counsel's deficient representation which deprives him of his right to appellate review of the video to determine whether substantial evidence supports the court's findings and whether the findings support the court's conclusions?

2. If the State substantially prevails on appeal, should this Court exercise its discretion and deny costs where Garner is presumably still indigent because there has been no evidence provided to this Court, and

no findings by the trial court, that his financial condition has improved or is likely to improve?

D. STATEMENT OF THE CASE

1. Procedure

On April 24, 2017, the Prosecuting Attorney for Spokane County, Washington, charged appellant, Derek Rodney Garner, with one count of possession of a stolen motor vehicle. CP 1. The Honorable Julie M. McKay held a 3.5 hearing on June 26, 2017, and the trial began thereafter on the same day. RP 12-63. A jury found Garner guilty as charged. CP 50, RP 114-16.

On July 24, 2017, the court imposed a DOSA (Drug Offender Sentencing Alternative), sentencing Garner to 25 months in confinement and 25 months in community custody, ordered community custody conditions, and ordered Garner to pay legal financial obligations and restitution. CP 57-71; RP 122-24.

Garner filed a timely notice of appeal. CP 72-73. The court entered 3.5 Findings of Fact and Conclusions of Law on October 19, 2017. CP 78-80.

2. Facts

a. 3.5 Hearing

Officer Brandon Rankin testified that on April 20, 2017, he was dispatched to a trailer park in Spokane to investigate a suspicious person sleeping in a vehicle reported stolen two days earlier. RP 14-15. He arrived on the scene just after 3 a.m. and saw Derek Garner sleeping behind the steering wheel with the vehicle parked and running. RP 15-16, 23. When backup arrived, he and another officer opened the door, announced that they were the police, and pulled Garner out of the vehicle. RP 15-16. Rankin informed Garner that he was in a stolen vehicle, handcuffed him, and took Garner to his patrol car.

When Rankin asked Garner to identify himself, he provided his name and date of birth. RP 16-17. Another officer ran the name through dispatch and learned that Garner had a felony warrant for his arrest. RP 17. Rankin read Garner his *Miranda* rights after placing him in the patrol car. RP 17-18. After Garner said he understood his rights, Rankin asked Garner if he would speak to him and answer questions. Rankin did not understand Garner's initial response so he "asked him again if he wanted to speak with me, and he agreed to speak with me." RP 18.

Garner said he bought the vehicle two days ago for \$800.00 from a tall white guy, which surprised Rankin because the vehicle was a 2015 Chevrolet SUV that looked in great condition. RP 18-19. Garner could not provide any more details but said the bill of sale should be in the vehicle.

Rankin asked Garner if he was currently employed and he said he did not have a job but made money under the table. RP 19-20. After other officers searched the vehicle and did not find any documents indicating the vehicle was sold to Garner, Rankin told Garner that he was under arrest and pulled him out of the patrol car. RP 20-21.

As Rankin removed Garner from the patrol car, he “made a voluntary statement that he thought the vehicle was stolen and he was planning on turning it in.” RP 21. When Rankin asked him why he did not do so, Garner said “he was tired.” RP 21. Rankin searched Garner incident to arrest and thoroughly searched the vehicle for a bill of sale but did not find one. RP 22.

During cross-examination, Rankin acknowledged that his interaction with Garner was video and audio recorded on his body camera. RP 23. With the court’s permission, defense counsel played the video. RP 33. On the video, Rankin asks Garner if he wanted to talk to him and Garner responds, “No, I do not.” RP 37. Under questioning by defense counsel, Rankin said he did not understand Garner’s response so he asked Garner again if he would agree to speak to him. RP 37. Defense counsel continued the video where Rankin advises Garner that he has a right to an attorney and Garner says he understands his rights. Then Rankin asks Garner again if he wants to talk to him and Garner responds, “(Inaudible) no.” RP 38. After

watching the video, defense counsel asked Rankin if he heard Garner say “hell, no.” Rankin replied that he “thought Garner said yeah.” RP 38. Later on the video, Rankin tells Garner that he is under arrest for possession of a stolen vehicle and Garner says, “I figured it was stolen.” RP 45-46.

The State argued that Garner’s statements were admissible because after Rankin properly advised Garner of his constitutional rights, he agreed to speak with Rankin and he later made voluntary statements not in response to questions. RP 50-52. Defense counsel argued that the statements should be suppressed because the body camera video showed that when Rankin asked Garner if he would speak with him, Garner “responded by shaking his head side to side, ever so slightly, on the first response, and saying, ‘Hell no.’” When asked to clarify, Mr. Garner reiterated, ‘Hell no.’ ” RP 56-57.

The court found that in watching and listening to the video, when Rankin asked Garner if he would answer questions, Garner said, “ ‘Yeah, I will’ is what I heard the defendant say, not ‘hell no.’ ” RP 61. The court concluded that Garner waived his rights and voluntarily spoke with Rankin and later made voluntary statements not in response to questions, ruling that Garner’s statements were admissible. RP 60-61. The video was not offered nor admitted as an exhibit.

b. Trial Testimony

Christopher Gowland drove his 2015 Chevy Trax LT to work on the morning of April 18, 2017. When he went out to the parking lot to go to lunch, his car was missing. After searching for his car and discovering that he must have dropped his keys while walking from the car to work, he reported the car stolen. RP 64-65. Two days later, the Spokane Police Department notified him that it found his car at a local motel and he went to inspect the car then drive it home. RP 65-66. Gowland had purchased the car in 2016 for \$18,000. RP 67.

Officer Brandon Rankin was working the graveyard shift on April 20, 2018, when dispatch received a call about a male asleep in a car at a motel. Dispatch checked the license plate number provided by the caller and learned that the car owned by Christopher Gowland was reported stolen. RP 68-70. Rankin arrived at the location around 3 a.m. and saw Derek Garner asleep in the driver's seat with the car running. RP 71. The ignition and car was not altered in any way and the windows were not broken. RP 77-78.

When backup officers arrived, they decided to use the element of surprise to get Garner safely out of the car. Rankin opened the door and together with another officer pulled Garner out the car. Rankin placed him in handcuffs and informed him that they were investigating a report of a stolen car. RP 71-72. Garner was cooperative as Rankin took Garner to

his patrol car, conducted a safety frisk, and advised him of his *Miranda* rights. RP 71-72, 79.

After Rankin advised Garner of his rights, he agreed to talk to him and said he bought the car two days earlier. Garner explained that he bought the car downtown from a tall white guy and paperwork of the sale was in the car. RP 72-73, 79-80. Garner said he paid \$800 for the car which surprised Rankin because the car looked rather new and in pretty good shape. RP 73. When Rankin asked Garner if it was a deal that was too good to be true and perhaps the car was stolen, he replied “that was, in fact, a possibility.” RP 74. Rankin asked Garner if he was working and he replied that he did not have a job but saved money over time by working under the table. RP 73-74.

The other officers searched the car and found no paperwork indicating that the car was sold to Garner. Thereafter, Rankin placed Garner under arrest and searched him incident to arrest. RP 74-75. When Rankin told Garner that he was under arrest for possession of a stolen vehicle, Garner said “he thought the vehicle was, in fact, stolen, and that he was going to turn it in.” RP 75. Rankin asked Garner why he had not done so and “he responded that he was tired.” RP 75-76.

E. ARGUMENT

1. REVERSAL IS REQUIRED BECAUSE GARNER WAS DENIED HIS CONSTITUTIONAL RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL WHERE DEFENSE COUNSEL'S REPRESENTATION WAS DEFICIENT IN FAILING TO HAVE A VIDEO ADMITTED AS AN EXHIBIT AT A 3.5 HEARING AND COUNSEL'S DEFICIENT PERFORMANCE PREJUDICED GARNER WHERE HE IS CONSEQUENTLY DEPRIVED OF APPELLATE REVIEW OF THE VIDEO TO DETERMINE WHETHER SUBSTANTIAL EVIDENCE SUPPORTS THE TRIAL COURT'S FINDINGS AND WHETHER THE FINDINGS SUPPORT THE COURT'S CONCLUSIONS.

The Sixth Amendment to the United States Constitution and art. I, section 22 of the Washington Constitution guarantee the right to effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 684-87, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); *State v. Thomas*, 109 Wn.2d 222, 229, 743 P.2d 816 (1987). A claim of ineffective assistance of counsel is a mixed question of law and fact that appellate courts review de novo. *State v. Jones*, 183 Wn.2d 327, 338-39, 352 P.3d 776 (2015).

Washington has adopted *Strickland's* two-pronged test for evaluating whether a defendant received constitutionally deficient representation. Under *Strickland*, the defendant must show both (1) deficient performance and (2) resulting prejudice to prevail on an ineffective assistance of counsel claim. *State v. Estes*, 188 Wn.2d 450, 457-58, 395 P.3d 1045 (2017). Performance is deficient if it falls "below an

objective standard of reasonableness based on consideration of all the circumstances. *State v. McFarland*, 127 Wn.2d 322, 334-35, 899 P.2d 1251 (1991). Prejudice exists if “there is a reasonable probability that but for counsel’s deficient performance, the outcome of the proceedings would have been different.” *State v. Kylo*, 166 Wn.2d 856, 862, 215 P.3d 177 (2009).

There is a strong presumption that counsel has rendered adequate assistance and has made all significant decisions by exercising reasonable professional judgment. *State v. Lord*, 117 Wn.2d 829, 883, 822 P.2d 177 (1991). A criminal defendant can rebut the presumption of reasonable performance by showing that there “is no conceivable legitimate tactic that explains counsel’s performance.” *State v. Grier*, 171 Wn.2d 17, 33, 246 P.3d 1260 (2011).

Here, the trial court held a 3.5 hearing where Officer Rankin testified that after he advised Garner of his *Miranda* rights and asked if he wanted to speak to him, Rankin did not understand Garner’s initial response so he asked him again and Garner agreed to speak to him. RP 31-32. Thereafter, defense counsel played a body camera video of the first time Rankin asked Garner:

Q. (Rankin) Do you want to talk to me?
A. (Garner) No, I do not.

RP 37.

Defense counsel asked Rankin if he understood Garner's response on the video and Rankin replied that he could not. RP 37. Then defense counsel played the video of when Rankin asked Garner again:

Q. (Rankin) You have the right to have your attorney present during the questions, if you can't afford an attorney one will be appointed for you without cost if you so desire. You understood these rights?

A. (Garner) Yes.

Q. (Rankin) With these rights in mind, you want to talk to me?

A. (Garner) (Inaudible) no.

Q. (Rankin) What's that?

A. (Garner) (Inaudible).

RP 37-38.

Defense counsel asked Rankin if he heard Garner say "hell no" on the video and Rankin replied, "I can't. I thought he said yeah." RP 38.

Defense replayed that portion of the video. RP 38-39.

During argument, the prosecutor asserted that she "thought that we heard 'yeah' at some point." RP 50. Defense counsel referred to the body camera video:

Officer Rankin asked Mr. Garner if he wished to speak with him. And as the body cam video illustrates, Mr. Garner responded by shaking his head side to side, ever so slightly, on the first response, and saying, "Hell no." When asked to clarify, Mr. Garner reiterated, "Hell no." Mr. Garner unequivocally invoked his rights when he shook his head. Mr. Garner unequivocally invoked his right when he said, "Hell no." Twice.

RP 56-57.

The trial court found that Garner waived his right to remain silent:

I was present when the body cam video was played. The officer testified that, from his perspective, he heard Mr. Garner say that he would speak to him about the incident with regards to the car.

In reviewing my notes, as I was taking notes during the testimony and listening to the information, and the answers and questions as they came up on the body cam, the defendant would answer questions. “Yeah, I will” is what I heard the defendant say, not “hell no.”

RP 60-61.

The court ruled that Garner’s statements in response to Rankin’s questions were admissible as well as his voluntary statement not in response to a question. RP 61. The court subsequently entered Findings of Fact and Conclusions of Law, denying a finding of fact proposed by the defense. CP 76-80.

When reviewing a trial court’s ruling on a motion to suppress evidence, this Court determines whether substantial evidence supports the trial court’s findings of fact and whether the findings of fact support the court’s conclusions of law. *State v. Russell*, 180 Wn.2d 860, 866, 330 P.3d 151 (2014). This Court reviews the trial court’s legal conclusions de novo. *State v. Roden*, 179 Wn.2d 893, 898, 321 P.3d 1183 (2014).

To Garner’s detriment, this Court cannot review the trial court’s ruling which was based on the body camera video because defense counsel

failed to have the video admitted as an exhibit at the 3.5 hearing and therefore the video is not part of the record for appellate review. Importantly, the verbatim report of proceedings of the video played in court indicate that Garner initially responded, “No, I do not,” and “no” a second time. RP 37-38. The court reporter certified that “the foregoing proceedings are a full, true, and accurate transcription of the requested proceedings,” in a certificate attached at the end of the transcription. Furthermore, defense counsel argued that not only did Garner say “no,” he shook his head. RP 56-57. This Court held in *State v. I.B.*, 187 Wn. App. 315, 323, 348 P.3d 1250 (2015), that by shaking his head, I.B. unambiguously signaled his desire for the questioning to stop and the police were required to immediately cease their questioning. Without the video, this Court cannot determine whether substantial evidence supports the trial court’s findings and whether the findings support the court’s conclusions. Consequently, defense counsel’s performance fell below an objective standard of reasonableness under prevailing professional norms. Counsel’s representation was deficient because there is no legitimate tactic for failing to have the video evidence admitted as an exhibit as a matter of course for 3.5 hearings.

It is well established that “Washington’s Const. art I, section 22 (amendment 10) grants not a mere privilege but a ‘right to appeal in all

cases.’ ” *State v. Sweet*, 90 Wn.2d 282, 286, 581 P.2d 579 (1978)(quoting *State v. Schoel*, 54 Wn.2d 388, 341 P.2d 481 (1958)). In honoring this right, the Washington Supreme Court emphasized that the “presence of the right to appeal in our state constitution convinces us it is to be accorded the highest respect by this court.” *Id.*

Garner has been prejudiced by defense counsel’s failure to have the video admitted as an exhibit which deprives him of his right to appellate review of the trial court’s ruling. The record substantiates that without Garner’s statements, there is a reasonable probability that the State could not have proven all the elements of possession of a stolen vehicle beyond a reasonable doubt where there was no evidence of knowledge.¹ Consequently, defense counsel’s deficient performance and the resulting

¹ Jury Instruction No. 8 in relevant part:

To convict the defendant of the crime of possessing a stolen motor vehicle, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about April 20, 2017, the defendant knowingly possessed a stolen motor vehicle;
- (2) That the defendant acted with knowledge that the motor vehicle had been stolen;
- (3) That the defendant withheld or appropriated the motor vehicle to the use of someone other than the true owner or person entitled thereto; and
- (4) That any of these acts occurred in the State of Washington.

CP 43.

prejudice of denial of his right to appeal requires reversal. *Estes*, 188 Wn.2d at 457-58.

2. IF THE STATE SUBSTANTIALLY PREVAILS ON APPEAL, THIS COURT SHOULD EXERCISE ITS DISCRETION AND NOT AWARD COSTS BECAUSE GARNER REMAINS INDIGENT.

Under RCW 10.73.160 and RAP Title 14, this Court may award costs to a substantially prevailing party on appeal. RAP 14.2 (amended effective January 31, 2017) provides in relevant part:

A commissioner or clerk of the appellate court will award costs to the party that substantially prevails on review, unless the appellate court directs otherwise in its decision terminating review, or unless the commissioner or clerk determines an adult offender does not have the current or likely future ability to pay such costs. When the trial court has entered an order that an offender is indigent for purposes of appeal, that finding of indigency remains in effect, pursuant to RAP 15.2(f) unless the commissioner or clerk determines by a preponderance of evidence that the offender's financial circumstances have significantly improved since the last determination of indigency.

National organizations have chronicled problems associated with legal financial obligations (LFOs) imposed against indigent defendants. These problems include increased difficulty in reentering into society, the doubtful recoupment of money by the government, and inequity in administration. *State v. Blazina*, 82 Wn.2d 827, 835, 344 P.3d 680 (2015)(citing, et al., AM. CIVIL LIBERTIES UNION, IN FOR A PENNY: THE RISE OF AMERICA'S NEW DEBTOR'S PRISONS (2010)). In

2008, The Washington State Minority and Justice Commission issued a report that assessed the problems with the LFO system in Washington. The report points out that many indigent defendants cannot afford to pay their LFOs and therefore the courts retain jurisdiction over impoverished offenders long after they are released. Legal or background checks show an active court record for those who have not paid their LFOs, which can have negative consequences on employment, on housing, and on finances. *Blazina*, 182 Wn.2d at 836-37.

In *State v. Nolan*, 141 Wn.2d 620, 8 P.3d 300 (2000), the Washington Supreme Court concluded that an award of costs “is a matter of discretion for the appellate court, consistent with the appellate court’s authority under RAP 14.2 to decline to award costs at all.” The Court emphasized that the authority “is permissive” as RCW 10.73.160 specifically indicates. *Nolan*, 141 Wn.2d at 628. The statute provides that the “court of appeals, supreme court, and superior courts *may* require an adult offender convicted of an offense to pay appellate costs.” RCW 10.73.160(1)(emphasis added).

In the event the State substantially prevails on appeal, this Court should exercise its discretion and not award costs where the trial court determined that Garner is indigent. The trial court found that Garner is entitled to appellate review at public expense due to his indigency and

entered an Order of Indigency. CP 85-86. This Court should therefore presume that Garner remains indigent because the Rules of Appellate Procedure establish a presumption of continued indigency throughout review:

Continued Indigency Presumed. A party and counsel for the party who has been granted an order of indigency must bring to the attention of the appellate court any significant improvement during review in the financial condition of the party. The appellate court will give a party the benefit of an order of indigency throughout the review unless the appellate court finds the party's financial condition has improved to the extent that the party is no longer indigent.

RAP 15.2(f).

There has been no evidence provided to this Court, and there is no reason to believe, that Garner's financial condition has significantly improved. Garner is therefore presumably still indigent and this Court should exercise its discretion to not award costs where there is no basis for the commissioner or clerk to determine by a preponderance of evidence that his financial circumstances have significantly improved since the last determination of indigency.

E. CONCLUSION

For the reasons stated, this Court should reverse Garner's conviction.

In the event the State substantially prevails on appeal, this Court should exercise its discretion and not award costs because Garner remains indigent.

DATED this 13th day of August, 2018.

Respectfully submitted,

/s/ Valerie Marushige

VALERIE MARUSHIGE

WSBA No. 25851

Attorney for Appellant Derek Rodney Garner

23619 55th Place South

Kent, Washington 98032

(253) 520-2637

ddvburns@aol.com

DECLARATION OF SERVICE

On this day, the undersigned sent by email, a copy of the document to which this declaration is attached to the Spokane County Prosecutor's Office at SCPAAppeals@spokanecounty.org by agreement of the parties and by U.S. Mail to Derek Rodney Garner, DOC # 361730, Coyote Ridge Corrections Center, P.O. Box 769, Connell, Washington 99326.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 13th day of August, 2018.

/s/ Valerie Marushige
VALERIE MARUSHIGE
Attorney at Law
WSBA No. 25851
23619 55th Place South
Kent, Washington 98032
(253) 520-2637
ddvburns@aol.com

August 13, 2018 - 9:59 AM

Transmittal Information

Filed with Court: Court of Appeals Division III
Appellate Court Case Number: 35552-7
Appellate Court Case Title: State of Washington v. Derek Rodney Garner
Superior Court Case Number: 17-1-01489-4

The following documents have been uploaded:

- 355527_Briefs_20180813095717D3240004_0109.pdf
This File Contains:
Briefs - Appellants
The Original File Name was Garner Appellants Opening Brief.pdf

A copy of the uploaded files will be sent to:

- bobrien@spokanecounty.org
- scpaappeals@spokanecounty.org

Comments:

Sender Name: Valerie Marushige - Email: ddvburns@aol.com
Address:
23619 55TH PL S
KENT, WA, 98032-3307
Phone: 253-520-2637

Note: The Filing Id is 20180813095717D3240004