625683

REC'D

OCT 08 2009

King County Prosecutor
Appellate Unit

625683

COA NO. 62568-3-I

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

STATE OF WASHINGTON,

Respondent,

v.

CHRISTOPHER EUGENE GREGORY,

Appellant.

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COURT OF APPEALS
DIVISION ONE
OCT - 8 2009

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

The Honorable Dean Lum, Judge

SUPPLEMENTAL OPENING BRIEF OF APPELLANT

CASEY GRANNIS
Attorney for Appellant

NIELSEN, BROMAN & KOCH, PLLC
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STATE OF WASHINGTON
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A. SUPPLEMENTAL ARGUMENT

1. THE SEARCH INCIDENT TO ARREST WAS ILLEGAL BECAUSE GREGORY DID NOT HAVE IMMEDIATE ACCESS TO THE PASSENGER COMPARTMENT OF THE CAR AT THE TIME OF THE SEARCH.

The United States Supreme Court in Arizona v. Gant held "[p]olice may search a vehicle incident to a recent occupant's arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest." Arizona v. Gant, __U.S.__, 129 S. Ct. 1710, 1723, 173 L. Ed. 2d 485 (2009). In light of Gant, the search in Gregory's case not only violated the Fourth Amendment for reasons set forth in the initial opening brief,[1] but also article I, section 7 of the Washington Constitution. The Fourth Amendment of the United States Constitution provides the minimum protection against unlawful searches. State v. Young, 123 Wn.2d 173, 179-80, 867 P.2d 593 (1994). "The intentional difference between the state and federal provisions naturally does not permit a reading of the state provision that is more restrictive of defendants' rights than federal law." State v. Simpson, 95 Wn.2d 170, 178, 622 P.2d 1199 (1980). For this reason, article I, section 7 must now, at minimum, be read to prohibit searches incident to arrest under the

[1] Opening Brief of Appellant at 33-37.

conditions set forth in Gant. The search incident to arrest violated Gregory's right to privacy under Washington law as well as federal law.

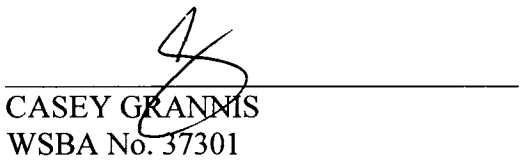
D. CONCLUSION

For the reasons stated above and in the initial opening brief, this Court should reverse conviction and dismiss the charge with prejudice.

DATED this 8th day of October 2009.

Respectfully Submitted,

NIELSEN, BROMAN & KOCH, PLLC.



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DIVISION I

STATE OF WASHINGTON,	)	
	)	
Respondent,	)	
	)	
v.	)	COA NO. 62568-3-I
	)	
CHRISTOPHER GREGORY,	)	
	)	
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 8TH DAY OF OCTOBER, 2009, I CAUSED A TRUE AND CORRECT COPY OF THE **SUPPLEMENTAL OPENING BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] CHRISTOPHER GREGORY
DOC NO. 305622
MONROE CORRECTIONAL COMPLEX
P.O. BOX 777
MONROE, WA 98272

SIGNED IN SEATTLE WASHINGTON, THIS 8TH DAY OF OCTOBER, 2009.

x Patrick Mayovsky

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