

66634-7

66634-7

No. 66634-7-1

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

STATE OF WASHINGTON,

Respondent,

v.

DAMON R. SMITH,

Appellant.

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

2011 AUG - 5 PM 4: 55
COURT OF APPEALS DIV 1
STATE OF WASHINGTON

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The State did not prove beyond a reasonable doubt that Damon Smith resisted a lawful arrest.

2. Mr. Smith's separate convictions for resisting arrest and assault in the third degree "with intent to prevent or resist the lawful apprehension or detention of the defendant" violated constitutional double jeopardy prohibitions.

3. The trial court exceeded its statutory authority by giving Mr. Smith a sentence for resisting arrest that exceeded the maximum term.

4. The trial court erred by admitting irrelevant testimony that Mr. Smith made obscene gestures and statements during his lengthy encounter with the arresting officer.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. A defendant may not be convicted of a crime unless the State proves every element of that crime beyond a reasonable doubt. U.S. Const. amend. XIV; Const. art. I, § 22. Damon Smith was convicted of resisting arrest, but he was never informed he was under arrest. Viewing the evidence in the light most favorable to the State, must Mr. Smith's conviction for resisting arrest be dismissed?

2. The double jeopardy provisions of the federal and state constitutions protect against multiple prosecutions and multiple punishments for the same conduct. U.S. Const. amend. V; Const. art. I, § 9. An arrest is an official duty of a law enforcement officer, and resisting arrest is thus a lesser-included offense of assault in the third degree by means of assaulting a law enforcement officer or employee in the performance of his official duties. Where the State relied upon the same acts to prove both assault in the third degree and resisting arrest, must Mr. Smith's resisting arrest conviction be vacated because it violates double jeopardy?

3. The superior court may only sentence a defendant as authorized by statute. Resisting arrest is a misdemeanor, and the statutory maximum term is 90 days. Must Mr. Smith's four-month sentence be vacated because it exceeds the statutory maximum?

4. Evidence of a defendant's other crimes or misconduct may be admitted to prove an important ingredient of the charged offenses only if the trial court determines the misconduct occurred, identifies a non-propensity purpose for admitting the evidence, determines its relevancy, and weighs its probative value against the prejudicial effect. Did the trial court err by admitting Trooper

Stracke's testimony that Mr. Smith made obscene gestures and comments after his arrest?

C. STATEMENT OF THE CASE

After his encounter with a Washington State Patrol trooper, Damon Smith was charged with five offenses – attempting to elude a pursuing police vehicle, assault in the third degree, driving while under the influence of alcohol or drugs, obstructing a public servant, and resisting arrest. CP 11-13. The jury, however, acquitted Mr. Smith of two charges. CP 23-24. He appeals his convictions for attempting to elude a pursuing police vehicle, RCW 46.61.024 (Count 1); assault in the third degree by means of assaulting a law enforcement officer who was performing his official duties, RCW 9A.36.031(1)(g) (Count 2); and resisting arrest, RCW 9A.76.040 (Count 5). CP 21-22, 25, 70-81.

At trial, Trooper Michael Stracke testified that he noticed a light-colored Thunderbird driving rapidly northbound on I-5, coming too close to a semi-trailer truck. 1RP 93.¹ In a traditionally-marked Washington State Patrol car, the trooper followed the Thunderbird caught up as it exited the freeway at N.E. Northgate Way. 1RP 90,

¹ The verbatim report of proceedings is found in two volumes referred to as:

1RP - December 15 and 16, 2010

2RP – December 20 and 22, 2010, and January 7, 2011.

96; 2RP 20. At the exit, the trooper turned on the patrol car's emergency lights. 1RP 96; 2RP 22. The car slowed on the exit ramp but did not pull over. The trooper followed the car onto 1st Avenue N.E. and through the Northgate Mall parking lot, where the trooper used his loudspeaker to instruct the car to stop. 1RP 100, 102-05. It was about 11:00 in the evening; traffic was very light and there were hardly any cars in the parking lot. 1RP 92; 21RP 23-24.

The Thunderbird exited the mall parking lot, headed north on 1st Avenue N.E., and passed over I-5 on 117th Street. 1RP 105-07. According to the trooper, at one point the Thunderbird went left around a stopped vehicle and made a right turn in front of it, and also went through the stop sign without stopping. 1RP 105-08. At a roundabout at 117th Street and Corliss Avenue N.E., the Thunderbird appeared to go into a ditch and emerge with all four tires off the ground. 1RP 108-09.

Washington State Patrol Trooper Dominic Ledesma had been following about an eighth of a mile behind Trooper Stracke and caught up when the Thunderbird came to a stop at the 11600 block of Corliss. 1RP 110-11, 124. Mr. Smith got out of the car, and the troopers also exited their cars, both with weapons drawn and pointed at Mr. Smith. 1RP 111, 127-28, 131-32; 2RP 28. Mr.

Smith put his hands over his head and asked what was wrong.

1RP 112, 136. Trooper Stracke ordered Mr. Smith to turn around and get on the ground. 1RP 112, 129.

When Mr. Smith did not follow the order, the trooper holstered his weapon, walked over to Mr. Smith, and tried to grab his wrist and place his arms behind his back. 1RP 112-13. Trooper Stracke, however, did not tell Mr. Smith he was under arrest. 2RP 30. Mr. Smith quickly pulled his arms out of his jacket and in the same movement pushed the trooper in the face and then pulled an arm back as if to swing at the trooper. 1RP 113-15, 128, 137-38; 2RP 30-31.

Mr. Smith then ran about 15 to 20 feet across the street before turning around. Trooper Stracke testified Mr. Smith tripped and fell, but Trooper Ledesma said he simply stopped. 1RP 114-15, 129-30, 139; 2RP 32. Both troopers took the opportunity to simultaneously shoot Mr. Smith with their tasers, and he was then handcuffed. 1RP 115, 130-31, 139, 142. Trooper Stracke removed the fish-hook-like taser barbs that had entered Mr. Smith's skin, but was not confident he removed all of them. 1RP 36-37, 40-41, 143.

Mr. Smith exercised his constitutional right to remain silent and refused to answer Trooper Stracke's questions. 2RP 44, 50.

Several times, however, Mr. Smith apologized to the trooper and told him he was not trying to hit him. 2RP 9. Later, after a trip to Harborview Hospital, Mr. Smith was booked into the jail, and Trooper Stracke heard Mr. Smith tell other people in the holding cell that he had tried to hit the trooper. 2RP 16. The trooper also complained that Mr. Smith was laughing, joking, and making obscene gestures throughout their encounter in an attempt to offend the trooper. 2RP 13, 15-17, 53-54.

D. ARGUMENT

1. THE STATE DID NOT PROVE BEYOND A REASONABLE DOUBT THAT MR. SMITH INTENTIONALLY RESISTED ARREST

a. The State was required to prove every element of resisting arrest beyond a reasonable doubt. The due process clauses of the federal and state constitutions require the government prove every element of a crime beyond a reasonable doubt. Apprendi v. New Jersey, 530 U.S. 466, 476-77, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000); U.S. Const. amends. VI, XIV; Const. art. I, §§ 3, 22. The inquiry on appellate review is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the elements of the crime beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307,

334, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); State v. Smith, 155 Wn.2d 496, 501, 120 P.3d 559 (2005).

b. Mr. Smith did not intentionally resist arrest because he was informed that he was under arrest. Mr. Smith was convicted of resisting arrest, RCW 9A.76.040. CP 25. A person is guilty of resisting arrest if he “intentionally prevents or attempts to prevent a peace officer from lawfully arresting him.” RCW 9A.76.040(1). A person acts intentionally if “he acts with the objective or purpose to accomplish a result which constitutes a crime.” RCW 9A.08.010(1)(a). Proof that a person acted intentionally also establishes that he acted with knowledge. RCW 9A.08.010(2). Mr. Smith’s conviction for resisting arrest cannot stand because the State did not prove that Mr. Smith intentionally resisted arrest when he was never informed that he was under arrest.

After being pursued by Washington State Patrol Trooper Stracke, Mr. Smith’s car apparently ran out of fuel. 1RP 111-12. Mr. Smith got out of his car with his hands over his head, faced the trooper and asked what was wrong. 1RP 112, 127, 136. Trooper Stracke told Mr. Smith to turn around and get on the ground, but did not tell Mr. Smith he was under arrest. 2RP 29-30. When Mr. Smith did not comply, the trooper tried to grab Mr. Smith’ right wrist

and put his arm behind his back, still without informing Mr. Smith he was under arrest. 1RP 112-13, 129; 2RP 30-31. Mr. Smith, however, got away from the trooper's grasp by getting out of his jacket or sweatshirt. 1RP 112, 137-38. According to Trooper Stracke, Mr. Smith pushed him and unsuccessfully swung at him. 1RP 113-14. Mr. Smith then ran 15 to 20 feet toward the other side of the street, then slowed down and fell to the ground, whereupon both Trooper Stracke and Trooper Ledesma shot Mr. Smith with tasers and placed him under arrest. 1RP 114-16, 130-31.

Mr. Smith could not intentionally resist arrest – act with intent to commit the crime -- if he was unaware that he was under arrest. RCW 9A.08.010(1)(a); RCW 9A.76.040(1). The jury was concerned that it would not be logically possible for Mr. Smith to resist an arrest of which he was unaware. The jury therefore asked the court if a police officer must inform a suspect he is under arrest before the suspect's actions can constitute resisting arrest. CP 19. The trial court, however, did not provide an answer except to tell it to utilize the instruction it had already been given. CP 20.

In appellate cases affirming resisting arrest convictions it is clear that the defendant was informed by the arresting officer that he or she was under arrest. A juvenile was guilty of resisting arrest

when, after being told she was under arrest for obstructing their arrest of her companion, the juvenile said “your [sic] not going to take me” and ran. State v. Ware, 111 Wn.App. 738, 740, 745, 46 P.3d 280 (2002). Similarly, a resisting arrest conviction was affirmed where police officers arrested the defendant, informed him of a warrant for his arrest, and told the defendant that he could see the warrant when he got to the police station. The defendant then turned away to leave and got into scuffle with the officers. State v. Simmons, 35 Wn.App. 421, 422, 667 P.2d 133, rev. denied, 100 Wn.2d 1025 (1983).

Similarly, the crime of obstructing a police officer in the performance of his official duties requires a finding that the defendant knew the police officer was acting in an official capacity. RCW 9A.76.020 makes it a crime to “willfully” hinder, delay or obstruct “any law enforcement officer in the performance of his or her official powers or duties.” RCW 9A.76.020(1). Essential elements of the crime are “knowledge by the defendant that the officer is discharging his duties” and intent to hinder the officer. State v. C.L.R., 40 Wn.App. 839, 841-42, 700 P.2d 1195 (1985); accord Lassiter v. Bremerton, 556 F.3d 1049, 1053 (9th Cir. 2009). Willfully is satisfied if a defendant acts knowingly, and is thus a

lesser mental state than intent, the mental state required for resisting arrest, RCW 9A.08.010(3), (4); State v. Allen, 101 Wn.2d 355, 359-60, 678 P.2d 798 (1984) (statute creates “hierarchy” of mental states with technical meanings). Thus, logically, Mr. Smith could not intentionally resist arrest because he was not informed that he was under arrest.

c. The resisting arrest conviction must be dismissed. In 1931, the Washington Supreme Court made the obvious point that, in order to obstruct a police officer, “it is essential that accused have knowledge that the person obstructed is an officer; consequently it is incumbent upon an officer, seeking to make an arrest, to disclose his official character, if not known to the offender.” State v. Bandy, 164 Wash. 216, 219, 2 P.2d 748 (1931).

Using the same logic, Mr. Smith could not commit the crime of resisting a lawful arrest if he was not aware he was under arrest, and it was incumbent upon the trooper to inform Mr. Smith he was under arrest. Trooper Stracke, however, did not tell Mr. Smith that he was under arrest, but instead tried to grab Mr. Smith’s arm in order to handcuff him.

Because the State did not prove Mr. Smith knew he was under arrest, it failed to prove he intentionally resisted arrest, and

Mr. Smith's conviction for resisting arrest must be reversed and dismissed. Smith, 155 Wn.2d at 505-06.

2. CONVICTIONS FOR ASSAULT IN THE THIRD DEGREE AND RESISTING ARREST VIOLATED THE CONSTITUTIONAL PROTECTION AGAINST DOUBLE JEOPARDY

a. A defendant may not be convicted of multiple crimes for the same conduct. The double jeopardy clauses of the federal and state constitutions protect against multiple prosecutions for the same conduct and against multiple punishments for the same offense. U.S. Const. amends. V, XIV; Const. art. I, § 9; United States v. Dixon, 509 U.S. 688, 696, 113 S.Ct. 2849, 125 L.Ed.2d 556 (1993); Blockburger v. United States, 284 U.S. 299, 304, 52 S.Ct. 180, 76 L.Ed. 306 (1932). A conviction or sentence violates the constitutional prohibition against double jeopardy if the two crimes are the same in law and in fact. State v. Hughes, 166 Wn.2d 675, 682, 212 P.3d 558 (2009).

[W]here 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.

b. Resisting arrest is a lesser-included offense of assault in the third degree as charged. Mr. Smith's convictions for third degree assault and resisting arrest violated double jeopardy principles because all of the elements of resisting arrest were subsumed in the third-degree assault. The State charged Mr. Smith with third degree assault under the prong criminalizing an assault on "a law enforcement officer or other employee of a law enforcement agency who was performing his or her official duties at the time of the assault." RCW 9A.36.031(1)(g); CP 11-12. The resisting arrest statute is violated if the defendant "intentionally prevents or attempts to prevent a peace officer from lawfully arresting him." RCW 9A.76.040(1). An arrest is an official duty of a law enforcement officer. State v. Mierz, 127 Wn.2d 460, 473, 479, 901 P.2d 286 (1995); State v. Hoffman, 116 Wn.2d 51, 100, 804 P.2d 577 (1991). Thus, resisting arrest is a lesser-included offense of third degree assault as charged in this case. See State v. Godsey, 131 Wn.App. 278, 288-89, 127 P.3d 11, rev. denied, 158 Wn.2d 1022 (2006) (resisting arrest is lesser-included offense of third degree assault charged under RCW 9A.36.031(1)(a), assaulting another person "with intent to prevent or resist the

execution of any lawful process or mandate of any court officer or the lawful apprehension or detention of himself or another person.”)

c. The State relied upon the same facts to support the third degree assault and resisting arrest convictions. In addition to being the same in law, the resisting arrest and third degree assault convictions were based upon the same facts in Mr. Smith’s case. In closing argument the prosecuting attorney relied upon the same conduct to prove third degree assault and resisting arrest. 2RP 73-75. She argued Mr. Smith committed assault in the third degree by pushing Trooper Stracke in the face and attempting to swing at the trooper. 2RP 74. The prosecutor then relied upon the same facts to constitute resisting arrest, stating “he pushes, tries to take a swing at Trooper Stracke but then he runs about 25 feet away.” 2RP 84.

d. Mr. Smith’s resisting arrest conviction must be vacated. Multiple prosecutions for the same conduct violate double jeopardy when the underlying offense is a lesser-included offense of another crime for which the defendant was prosecuted. Dixon, 509 U.S. at 698 (citing Harris v. Oklahoma, 433 U.S. 682, 682-83, 97 S.Ct. 2912, 53 L.Ed.2d 1054 (1977)). Prosecutions for both assault in the third degree by assaulting a law enforcement officer performing

his official duties and resisting arrest for the same conduct violated double jeopardy. Both crimes are the same in law and in fact, and thus the lesser-included crime of resisting arrest must be reversed and dismissed. Dixon, 509 U.S. at 698; Blockburger, 284 U.S. at 304; In re Personal Restraint of Strandy, ___ Wn.2d ___, 2011 WL 2409664 (No. 82308-1, 6/16/11); Hughes, 166 Wn.2d at 686 n.13.

3. THE SENTENCE IMPOSED FOR RESISTING ARREST EXCEEDED THE STATUTORY MAXIMUM

The superior court has the power to sentence only as authorized by the legislature. In re Postsentence Review of Leach, 161 Wn.2d 180, 184, 163 P.3d 782 (2007). Thus, the court may not order a sentence that exceeds the statutory maximum. In re Personal Restraint of Tobin, 165 Wn.2d 172, 175, 196 P.3d 670 (2008). “A court may not order a sentence beyond that authorized by law. Any such order is invalid on its face.” Id.

Resisting arrest is a simple misdemeanor. RCW 9A.76.040(2). The maximum term for a misdemeanor is 90 days in jail and/or a \$1,000 fine. RCW 9A.20.021(3). The trial court gave Mr. Smith a twelve-month suspended sentence for resisting arrest, but suspended the sentence on the condition that he serve four months in jail. CP 59.

A defendant may challenge an illegal sentence for the first time on appeal. State v. Ford, 137 Wn.2d 472, 477-78, 973 P.2d 452 (1999); State v. Moen, 129 Wn.2d 535, 545-47, 919 P.2d 69 (2001). Here, the trial court exceeded its statutory authority by imposing a jail term that exceeded the statutory maximum. Mr. Smith's sentence must be vacated and remanded for the imposition of a sentence authorized by statute. Tobin, 165 Wn.2d at 176; In re Personal Restraint of Stoudmire, 141 Wn.2d 342, 355-56, 5 P.3d 1240 (2000).

4. THE ADMISSION OF EVIDENCE THAT MR. SMITH MADE OBSCENE GESTURES AND STATEMENTS VIOLATED ER 404(B) AND HIS RIGHT TO A FAIR TRIAL

Prior to trial, the court granted Mr. Smith's motion to exclude evidence that, after he was booked into jail, he simulated masturbation and called a female jail guard "sweetie." The court nonetheless permitted the State to elicit testimony that Mr. Smith made obscene gestures and comments throughout his encounter with the arresting trooper. The evidence was inadmissible because it was irrelevant and demonstrated Mr. Smith's bad character.

a. The trial court admitted evidence that Mr. Smith made obscene comments and gestures. Mr. Smith moved in limine to

exclude evidence of other misconduct, specifically that he allegedly called jail staff “sweetie” and simulated masturbation while in the jail holding cell. CP 16-17; 1RP 71-72. The court agreed with Mr. Smith that the evidence was more prejudicial than probative and excluded it. 1RP 73.

During trial, however, Trooper Stracke testified three times that Mr. Smith made obscene gestures, not only after he was booked into jail but throughout their entire encounter. 2RP 13, 16, 53-54. First, the trooper testified that after Mr. Smith was cleared by Harborview Hospital, he was placed in a holding cell in the King County Jail where “he was talking to the other individuals that were in the cell and making obscene gestures and comments.” 2RP 13. Defense counsel immediately objected and requested a sidebar. 2RP 13. The sidebar conference was not reported, let the testimony stand, indicating that the court overruled Mr. Smith’s objection. 2RP 13-14. Shortly thereafter Trooper Stracke again stated that Mr. Smith was “making statements and gestures towards me and trying to aggravate me” while at Harborview Hospital. 2RP 16.

Later in the case Trooper Stracke again volunteered that Mr. Smith was making obscene gestures and comments. This time the

trooper claimed that Mr. Smith made these gestures and comments throughout his entire encounter with the officer. 1RP 53-54.

Q: How would you describe his mood during this entire encounter with him?

A: Erratic, evasive, or questioning. He was very evasive in answering questions regarding the implied consent warning for breath. He was laughing a lot, he was smiling, he was joking. He was making obscene gestures and comments to both me, the hospital staff, the jail staff. It was continuous – from the time he was arrested to the time he was booked, it was all continuous.

2RP 53-54.

b. The evidence of obscene gestures and comments was not relevant or admissible under ER 404(b). Washington's evidence rules prohibit the introduction of evidence of a defendant's character or character traits, and a defendant's other misconduct is not admissible to prove the defendant's character or show that he acted in conformity with that character. ER 404; State v. Everybodytalksabout, 145 Wn.2d 456, 464, 39 P.3d 294 (2002); State v. Smith, 106 Wn.2d 772, 775, 725 P.2d 951 (1986). Evidence of a defendant's misconduct may not be used to demonstrate the defendant is the type of person who would commit the charged offense. State v. Fisher, 165 Wn.2d 727, 744, 202 P.3d 937 (2009); Everybodytalksabout, 145 Wn.2d at 466.

The rule, however, permits evidence of other misconduct when logically relevant to prove an ingredient of the offense charged. The rule reads:

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of the person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

ER 404(b).

In determining if evidence of prior misconduct is admissible under ER 404(b), the trial court must

(1) find by a preponderance of the evidence the misconduct actually occurred, (2) identify the purpose of admitting the evidence, (3) determine the relevance of the evidence to prove an element of the crime, and (4) weigh the probative value against the prejudicial effect of the evidence.

Fisher, 165 Wn.2d at 745. In addition, the court must evaluate the proposed evidence in light of ER 403 and exclude evidence that is unfairly prejudicial. Id. In doubtful cases, the evidence should be excluded. State v. Thang, 145 Wn.2d 630, 642, 41 P.3d 1159 (2002); Smith, 106 Wn.2d at 776. The trial court in Mr. Smith's case determined that evidence that Mr. Smith simulated masturbation and called jail guards "sweetie" was inadmissible

under ER 403, but then permitted the officers to testify that Mr. Smith made obscene gestures and comments. The change in the court's ruling was incorrect.

A review of the ER 404(b) factors demonstrates that evidence that Mr. Smith made obscene gestures and comments was not admissible. The prosecutor had argued the evidence was relevant to show Mr. Smith's "frame of mind." 1RP 72. She also argued that "all" of Mr. Smith's conduct was prejudicial; and that is why he was charged. 1RP 72. Assuming the conduct occurred, Mr. Smith's frame of mind hours after he was arrested is clearly not relevant. And even if Mr. Smith made such comments throughout his interaction with Trooper Stracke, as the trooper claimed, the comments do not establish the mental states for any of the charged crimes. Nor did the evidence provide evidentiary support for any other elements of the crime charged.

Instead, the evidence of obscene gestures and comments showed Mr. Smith's bad character, thus demonstrating that its prejudicial nature outweighed any probative value.

c. Mr. Smith's convictions must be reversed and remanded for a new trial. This Court reviews the trial court's interpretation of ER 404(b) de novo as a matter of law. Fisher, 165 Wn.2d at 745.

If the trial court's interpretation of ER 404(b) is correct, the ruling is reviewed for abuse of discretion, which is violated if the court does not follow the rule's requirements. Id. An evidentiary error requires reversal of a criminal conviction if the appellate court determines that it is reasonably possible that the error contributed to the jury verdict. Everybodytalksabout, 145 Wn.2d at 468-69.

The trial court earlier excluded evidence that Mr. Smith simulated masturbation and called a jail guard "sweetie." The evidence that Mr. Smith made obscene comments and gestures during his interaction with the arresting trooper was no more relevant to any of the charged crimes. It was also just as prejudicial, as it showed Mr. Smith as a man of poor character, especially in light of the trooper's belief that Mr. Smith was trying to harass him. Evidence of defendant's character, however, is not admissible. Mr. Smith's convictions must be reversed and remanded for a new trial. Everybodytalksabout, 145 Wn.2d at 480-82.

E. CONCLUSION

Mr. Smith's conviction for resisting arrest must be dismissed because (1) the State did not prove beyond a reasonable doubt that he intentionally resisted arrest when he was never informed he was

under arrest, and (2) the conviction violated double jeopardy because it is a lesser-included offense of third degree assault. In the alternative, the case must be remanded for a new sentence because the sentence imposed exceeded the statutory maximum term.

In addition, Mr. Smith's convictions for attempting to elude a pursuing police vehicle, assault in the third degree, and resisting arrest must all be reversed because the court admitted irrelevant evidence showing Mr. Smith's bad character.

DATED this ²⁴ day of August 2010.

Respectfully submitted,



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Washington Appellate Project
Attorneys for Appellant

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

STATE OF WASHINGTON,)

Respondent,)

v.)

DAMON SMITH,)

Appellant.)

NO. 66634-7-I

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 5TH DAY OF AUGUST, 2011, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X] KING COUNTY PROSECUTING ATTORNEY
APPELLATE UNIT
KING COUNTY COURTHOUSE
516 THIRD AVENUE, W-554
SEATTLE, WA 98104

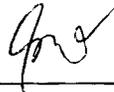
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[X] DAMON SMITH
21801 31ST AVE S
SEATTLE, WA 98198

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SIGNED IN SEATTLE, WASHINGTON THIS 5TH DAY OF AUGUST, 2011.

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