

66143-4

66143-4

No. 66143-4-I

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

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STATE OF WASHINGTON,

Respondent,

v.

MICHAEL ROOSEVELT SMITH,

Appellant.

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

The Honorable Charles R. Snyder  
The Honorable Steven J. Mura

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APPELLANT'S REPLY BRIEF

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Susan F. Wilk  
Attorney for Appellant

WASHINGTON APPELLATE PROJECT  
1511 Third Avenue, Suite 701  
Seattle, Washington 98101  
(206) 587-2711

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A. SUMMARY OF ARGUMENT IN REPLY

Appellant Michael Roosevelt Smith contests the constitutionality of a warrantless “sweep” of his apartment that resulted in the discovery and seizure of a lockbox in a closet. He further contends that the admission of the unlawfully seized evidence prejudiced his ability to receive a fair trial on the remaining counts with which he was charged. The State asserts that neither probable cause nor reasonable suspicion were necessary for a sweep to be conducted. While this may be true under the Fourth Amendment, article I, section 7’s authority of law requirement demands more. The State’s other efforts to defend the seizure, the scope of the search warrant, and the fairness of the trial are meritless. Smith’s convictions should be reversed.

B. ARGUMENT

1. THE PROTECTIVE SWEEP WAS DONE WITHOUT THE AUTHORITY OF LAW REQUIRED BY ARTICLE I, SECTION 7 AND THUS VIOLATED SMITH’S RIGHTS UNDER THE WASHINGTON STATE CONSTITUTION.

Article I, section 7 provides: “[n]o person shall be disturbed in his private affairs, or his home invaded, without authority of law.” Const. art. I, § 7. “This language prohibits not only unreasonable searches, but also provides no quarter for ones which, in the

context of the Fourth Amendment, would be deemed reasonable searches and thus constitutional.” State v. Valdez, 167 Wn.2d 761, 772, 224 P.3d 751 (2009). Article I, section 7 thus creates “an almost absolute bar to warrantless arrests, searches, and seizures, with only limited exceptions....” Id. (quoting State v. Ringer, 100 Wn.2d 686, 690, 674 P.2d 1240 (1983)).

In this case, the police conducted a “protective sweep” of Smith’s apartment in which they broke open the door of a locked closet at the back of his bedroom and seized a lockbox they found inside.<sup>1</sup> Smith argues that this search violated article I, section 7’s requirement of “authority of law.” “When a party claims both state and federal constitutional violations, [the court] turn[s] first to our state constitution.” State v. Patton, 167 Wn.2d 379, 385, 219 P.3d 651 (2009). Nevertheless, the State engages in a lengthy and irrelevant discussion of the Fourth Amendment analysis enunciated in Maryland v. Buie, 494 U.S. 325, 110 S.Ct. 1093, 108 L.Ed.2d 276 (1990) before alleging this Court should not consider Smith’s claims under article I, section 7. The State’s claims are unavailing.

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<sup>1</sup> This lockbox contained heroin and buprenorphine, a narcotic. 2RP 72. A notation in the brief of appellant that the buprenorphine was found in a shoebox, see Br. App. at 12, is incorrect.

The evidence was unlawfully seized in violation of article I, section 7.

a. The State concedes the sweep was conducted under the Fourth Amendment's 'automatic' sweep rule, and therefore lacked probable cause. The State does not attempt to argue that the sweep conducted in this case was justified by probable cause. Indeed, the State expressly disavows this theory:

Reasonable suspicion is only required . . . if the place that was searched was not immediately adjacent to the place of arrest. The State is asserting that the protective sweep conducted here was incident to Smith's arrest in an adjacent area and therefore justified without requiring any articulable reasonable suspicion.

Br. Resp. at 12.

While such a "sweep" may be permissible under the Fourth Amendment, under article I, section 7, it lacks authority of law.

b. No *Gunwall* analysis is necessary of privacy violations under article I, section 7. The State asserts that this Court should not consider Smith's argument that the Fourth Amendment's "protective sweep" doctrine violates article I section 7 because Smith has not analyzed the six *Gunwall*<sup>2</sup> factors. Br. Resp. at 16-17. In so contending, the State disregards the many

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<sup>2</sup> State v. *Gunwall*, 106 Wn.2d 54, 720 P.2d 808 (1986).

recent decisions in which our Supreme Court has dispensed with the necessity for a Gunwall analysis where a party advocates that a Fourth Amendment exception to the warrant requirement is invalid under article I, section 7. See e.g. McNabb v. Department of Corrections, 163 Wn.2d 393, 180 P.3d 1257 (2008) (concluding it is unnecessary to engage in a Gunwall analysis where prior caselaw establishes a state constitutional provision has an independent meaning from the corresponding federal provision, and reaffirming that no Gunwall analysis is therefore required under article I, section 7); State v. Athan, 160 Wn.2d 354, 365, 158 P.3d 27 (2007) (noting it is “well-settled” that article I, section 7 “qualitatively differs” from the Fourth Amendment and in some areas provides greater protection than the federal provision, and therefore “a Gunwall analysis is unnecessary” to establish the Court should undertake an independent constitutional analysis); State v. Jackson, 150 Wn.2d 251, 259, 76 P.3d 217 (2003) (same). In short, the State’s contention that a Gunwall analysis is necessary is entirely without merit.

c. Contrary to the State’s contention, no Washington court has considered whether the Fourth Amendment “protective sweep” rule violates article I, section 7. The State contends that

“the protective sweep doctrine . . . provides the ‘authority of law’ recognized by article I, section 7.” Br. Resp. at 16. The State also alleges that Washington courts have found “protective sweeps” lawful if incident to an arrest.<sup>3</sup> Id. at 18. But none of the cases cited by the State have evaluated the doctrine with reference to article I, section 7. As the State admits, in State v. Hopkins, 113 Wn. App. 954, 55 P.3d 691 (2002), the Court expressly limited its analysis to the Fourth Amendment because the defendants had not briefed the issue under article I, section 7. 113 Wn. App. at 698 n. 2; Br. Resp. at 18 n. 9. In State v. Boyer, 124 Wn. App. 593, 102 P.3d 833 (2004), the Court likewise applied a strictly Fourth Amendment analysis. See id. at 601-03. In State v. Sadler, 147 Wn. App. 97, 193 P.3d 1108 (2008), the Court cited only Buie and Hopkins before upholding the search.

In State v. Smith, 137 Wn. App. 262, 153 P.3d 199 (2007), the Court generally noted that warrantless searches are prohibited by article I, section 7 unless the State can show an exception to the warrant requirement applies. 137 Wn. App. at 267-68. The Court,

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<sup>3</sup> The State acknowledges that in Washington a search warrant does not provide the authority of law for a protective sweep. Br. Resp. at 12-13. The State attempts to characterize the warrant in this case as “the functional equivalent” of an arrest warrant. Br. Resp. at 13. This thinly-veiled effort to create a good faith exception to article I, section 7’s exclusionary rule should be rejected. See Br. App. at 23-25.

however, did not appear to have been presented with a challenge to the constitutionality of a “protective sweep” – rather, the defense only contended that the scope of the search exceeded that of a protective sweep. Id. at 268.

In short, no Washington case appears to have evaluated whether a protective sweep satisfies article I, section 7’s “authority of law” requirement. Thus, the State’s contention that this exception to the Fourth Amendment’s warrant requirement is valid in Washington is not well taken.

d. A protective sweep requires neither probable cause nor reasonable suspicion, and thus lacks authority of law. In Washington, privacy protections are at their apex in the home. State v. Schultz, 170 Wn.2d 746, 753, 248 P.3d 484 (2011). “[T]he closer officers come to intrusion into a dwelling, the greater the constitutional protection.” Id. (quoting State v. Ferrier, 136 Wn.2d 103, 112, 960 P.2d 928 (1998)). Indeed, our Supreme Court has characterized the right not to be disturbed in one’s home without authority of law as “the bedrock principle upon which our search and seizure jurisprudence is grounded.” Schultz, 170 Wn.2d at 757.

The “protective sweep” exception to the Fourth Amendment’s warrant requirement provides that “as an incident to [an arrest in a home] the officers could, as a precautionary matter and without probable cause or reasonable suspicion, look in closets and other spaces immediately adjoining the place of arrest from which an attack could be immediately launched.” Buie, 494 U.S. at 334. While recognizing that the intrusion into privacy occasioned by such a search is substantial, the Court determined it is nevertheless reasonable in order to ensure officer safety. Id.

In contrast, “[a]rticle I, section 7 does not use the words ‘reasonable’ or ‘unreasonable.’ Instead, it requires ‘authority of law’ before the State may pry into the private affairs of individuals.” Schultz, 170 Wn.2d at 758 (quoting State v. Day, 161 Wn.2d 889, 896, 168 P.3d 1265 (2007)). The State fails to explain why a search done without a warrant, probable cause, or reasonable suspicion is done with authority of law except by making the circular and thus unsustainable argument that the “protective sweep” exception itself provides authority of law. Br. Resp. at 16. This Court should conclude it does not, and hold that the evidence acquired during the illegal search of Smith’s home must be suppressed.

2. FINDINGS OF FACT 5, 6, AND 7 WERE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE IN THE RECORD.

The State contends, in a footnote, that Smith did not contest Findings of Fact 5, 6, and 7 “in the context” of his challenge to the protective sweep and “does not brief whether those findings are supported by substantial evidence.” Br. Resp. at 14 n. 6; see also Br. Resp. at 25 (contending that Smith has not challenged the evidence adduced to support Finding of Fact 6. These contentions are patently false.

Finding of Fact 5 reads:

The closet in the bedroom was in close proximity to the area the detectives were going to search and to the location where defendant was arrested. Since the officers could easily defeat the lock on the closet, a person hiding inside could also easily exit the closet and surprise the officers. The closet was therefore a location reasonably searched in the course of a protective sweep of the premises.

CP 5.

Smith in fact (1) noted the distance of the closet in relation to where he was arrested, Br. App. at 12, (2) observed that no other person had been seen entering Smith’s apartment during the four-hour surveillance preceding the police entry, thus undermining any claim of a reasonable suspicion of dangerousness, Br. App. at 12,

26; (3) pointed out that the officers testified that they conduct a protective sweep whenever they execute a warrant, Br. App. at 26; and (4) challenged the reasonableness of the court's post-hoc rationale that a person hiding inside the closet could have defeated the lock easily, because the police were able to easily break the lock. Br. App. at 26 n. 9. Smith challenged the evidence adduced to support Finding of Fact 5.

Finding of Fact 6 reads:

Inside the closet, Detective Laughlin observed a lockbox on a shelf. He knew, at that time, that a witness had reported to Sergeant Murphy that Mr. Smith possessed such a lockbox and that he kept drugs and money inside. He was also aware that other details provided by the witness concerning Mr. Smith's heroin dealing had been corroborated during the investigation. Thus, it was reasonable for Detective Laughlin to immediately recognize the lockbox as evidence relevant to the case.

CP 5.

Again, Smith discussed the lapse of time between the witness's observations and the instant search (a fact not mentioned in the trial court's finding) as well as the nature of the source. See Br. App. 31. He also contended it was not reasonable for Laughlin to assume that the lockbox – not in and of itself an illegal item – would contain contraband. Br. App. at 31-32.

Finding of Fact 7 states,

The lockbox is also a logical location for a person to store documents of dominion and control. Its seizure is also reasonable and justifiable under the authority of the search warrant to search for such items.

CP 5.

Smith devoted extensive attention to the absence of evidence adduced to support this Finding of Fact. See Br. App. at 31-33. In short, it is surprising that the State claims Assignments of Error 2, 3 and 4 were not briefed when they plainly were. This Court should disregard the State's false claims.

3. THE SEIZURE OF THE LOCKBOX WAS NOT WITHIN THE SCOPE OF "THE ORIGINAL WARRANT."

a. The police entered the closet by the expedient of the "protective sweep," not under the authority of the warrant. The State contends that the lockbox was lawfully seized from Smith's home "either under a plain view theory or as a likely receptacle for documents of dominion and control." Br. Resp. at 19. The State further alleges, "Smith does not contend that the entry into the closet was not within the scope of the warrant but asserts that the officers could not seize the lockbox." Id. at 19-20. The State's

allegation is difficult to understand given the undisputed facts of the case.

The officers broke down the locked door of the closet in Smith's bedroom, following Smith's arrest, as part of a "protective sweep." 3RP 11-12. Both below and on appeal, Smith vigorously litigated the propriety of the "protective sweep." The officers did not testify, the State did not argue below, and the court did not find that the search warrant somehow would have authorized the police to breach the closet door if the protective sweep had not occurred. There is no inference from which this Court may conclude that if the police had not broken into the closet pursuant to their "protective sweep," they would have entered it under the authority of the warrant.

"[L]ack of an essential finding is presumed equivalent to a finding against the party with the burden of proof[.]" In re the Welfare of A.B., 168 Wn.2d 908, 927, 232 P.3d 1104 (2010); State v. Armenta, 134 Wn.2d 1, 14, 948 P.2d 1280 (1997) ("In the absence of a finding on a factual issue we must indulge the presumption that the party with the burden of proof failed sustain their burden on this issue.") Neither the trial court's findings nor the record provide a basis for this Court to conclude the officers would

have effected an entry into the closet if they had not broken the door down during the sweep.

b. The requirements of the independent source exception to the exclusionary rule are not met, and the inevitable discovery exception does not apply in Washington. Even assuming that the State's new argument had been made below, this claim does not meet the elements of the independent source exception to the exclusionary rule, and the inevitable discovery exception is inapplicable under article I, section 7.

Under the independent source exception, "evidence tainted by unlawful governmental action is not subject to suppression under the exclusionary rule, provided that it ultimately is obtained pursuant to a valid warrant or other lawful means independent of the unlawful action." State v. Gaines, 154 Wn.2d 711, 718, 116 P.3d 993 (2005) (emphasis added). The lawful seizure must be "genuinely independent" of the earlier tainted one. State v. Miles, 159 Wn. App. 282, 295, 244 P.3d 1030 (2011). Even assuming the validity of the warrant, the police did not enter the closet because they believed it was authorized by the warrant. Nor can the State show that the police would have broken into Smith's closet during the execution of the warrant. Finally, the State cannot establish

that such a search, if it had occurred, would not have violated the particularly requirement of the warrant rule.

In reality, although the State is careful not to mention “inevitable discovery,” the State hopes to have the illegal search validated under this rule, which has been rejected as contrary to article I, section 7. State v. Winterstein, 167 Wn.2d 620, 636, 220 P.3d 1226 (2009). The State’s untimely effort to claim the warrant would have authorized the entry into the lockbox is unsupported by the trial court’s findings or any exception to the exclusionary rule and should be rejected.

**4. THE SEIZURE OF THE LOCKBOX WAS NOT JUSTIFIED UNDER THE PLAIN VIEW EXCEPTION TO THE WARRANT REQUIREMENT.**

The State alternatively claims that the lockbox was in plain view, and thus could be seized, but fails to understand this exception to the warrant requirement. The plain view exception “requires that the officer had a prior justification for the intrusion and immediately recognized what is found as incriminating evidence such as contraband, stolen property, or other item useful as evidence of a crime.” State v. O’Neill, 148 Wn.2d 564, 583, 62 P.3d 489 (2003). The exception is premised on the notion that

when an officer who is in a place he has a right to be recognizes an item as contraband or incriminating evidence of a crime, he has not conducted a search. There are thus three key components to this exception to the warrant requirement: (1) prior lawful justification; (2) immediate recognition; and (3) incriminating evidence. The State bypasses the last two of these requirements.

The State asserts probable cause to believe that an item is connected with criminal activity is all that is required to seize the item, but again fails to recognize that under article I, section 7, “probable cause is not a recognized exception to the warrant requirement, but rather the necessary basis for obtaining a warrant.” State v. Tibbles, 169 Wn.2d 364, 369, 236 P.3d 885 (2010).<sup>4</sup> Thus, unless the item is immediately identified as something it is illegal for the defendant to possess, under article I, section 7, plain view does not supply the authority for a seizure.

The State cannot claim that the lockbox seized here was contraband. Nor can the State establish that the lockbox was the same lockbox seen by the teenaged heroin addict six months

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<sup>4</sup> State v. Gibson, 152 Wn. App. 945, 219 P.3d 964 (2009), cited by the State for the proposition that probable cause to believe an item may be contraband is all that is necessary to seize it if it is in plain view, evaluated this question under the Fourth Amendment only. Id. at 954. The case also predates Tibbles, and thus its continued validity is questionable.

before the search. It is true that an item such as a lockbox may be used to store valuable or irreplaceable items, but this innocuous fact does not make it probable that the lockbox would contain evidence of a crime. This Court should conclude that the trial court improperly invoked the “plain view” exception to the warrant requirement to justify the seizure of the lockbox, and reverse the order admitting the evidence.

5. NO EVIDENCE SUPPORTED THE INFERENCE THAT DOCUMENTS OF DOMINION AND CONTROL WOULD BE FOUND IN THE LOCKBOX.

The State attempts to defend the trial court’s finding of fact that documents of dominion and control would necessarily be found in the lockbox. The State can point to no testimony to support this finding of fact, however, because there was none. See Br. Resp. at 25-26. Indeed, the State claims that “there did not need to be testimony” to support the finding. Br. Resp. at 29. This is an incorrect statement of Washington law. In Washington, a trial court is obligated to enter findings of fact following a suppression motion. CrR 3.6. On appeal the Court reviews whether substantial evidence in the record supports challenged findings. State v. Garvin, 166 Wn.2d 242, 249, 207 P.3d 1266 (2009). “Substantial

evidence” is defined as “evidence in sufficient quantum to persuade a fair-minded person of the truth of the declared premises.” State v. Bluehorse, 159 Wn. App. 410, 423-24, 248 P.3d 537 (2011) (emphasis added, citation omitted).

In lieu of pointing to evidence in the record, the State cites to a couple of federal cases. See Br. Resp. at 28. But the State fails to correctly explain the citations. In United States v. Robles, 45 F.3d 1 (1st Cir.), cert. denied, 514 U.S. 1043 (1995), the trial court did not make findings of fact. 45 F.3d at 5. For this reason, the Court was not bound by the district court’s reasoning, and was free to review the record de novo and make its own factual findings.

The State also misrepresents what the Court in Robles held. In its brief, the State provides a parenthetical: “[tool]box was a possible repository for items mentioned in the warrant, such as papers, documents, and photographs, of which seizure was authorized.” Br. Resp. at 28. In fact, the Court found the police were entitled to look inside a utility closet for this reason. Robles, 45 F.3d at 6. Based on information the police had about the defendants’ narcotics trafficking operation, the police were then entitled to seize a toolbox in the closet as a likely repository for cocaine. Id. at 6-7.

United States v. Gonzalez, 940 F.2d 1413 (11th Cir. 1991)  
the other case cited by the State, involved a search of a briefcase,  
an item whose sole use was the transportation of money and  
documents (which were the items sought in the search warrant).  
Id. at 1420. Gonzalez thus is not persuasive.

The State last asserts that it is Smith's burden to show that  
the search was unreasonable. Br. Resp. at 29. This is incorrect;  
Smith merely must establish that substantial evidence in the record  
did not support the trial court's finding. Garvin, 166 Wn.2d at 249.  
Smith has argued that in the absence of evidence in the record, it  
was improper for the court to assume documents might be found in  
the lockbox. Br. App. at 33-34. The State has not responded to  
this argument. This Court should reject any contention that the  
search of the lockbox fell within the scope of the original warrant.

6. THE STATE'S CONTENTION THAT SMITH'S  
CHALLENGE TO THE WARRANT IS WAIVED IS  
BASED UPON A MISREADING OF *ROBINSON*.

Smith argues that the crime under investigation when the  
warrant was issued – delivery of a controlled substance – did not  
supply probable cause to search Smith's home for documents of  
dominion and control, as such documents were not probative  
towards any element of that offense. In reviewing this error, this

Court has before it all of the evidence that was presented to Commissioner Parise and thus can fairly decide the question.

The State nevertheless contends that the issue is not preserved for appeal, claiming there is a “new four factor test exception [sic] to the preservation requirement” under State v. Robinson, 171 Wn.2d 292, 253 P.3d 84 (2011). The State’s claim is based upon a misreading of Robinson.

The Court in Robinson in fact outlined two standards for issue preservation where a claim of error was not raised below. First, the Court discussed the now-familiar RAP 2.5(a) standard, in which a party may raise a claim of error where it is a “manifest error affecting a constitutional right.” Robinson, 253 P.3d at 89.<sup>5</sup> The Court noted,

While RAP 2.5(a) embodies the principle that errors not raised in the trial court may generally not be raised for the first time on appeal, RAP 1.2(a) mitigates the stringency of the rule, providing that the RAPs are to “be liberally interpreted to promote justice and facilitate the decision of cases on the merits.”

Id.

In addition to the provisions of RAP 2.5(a), the Court noted:

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<sup>5</sup> At the time of this writing, pin citations to the Washington Supreme Court reporter were not available on Westlaw.

[I]n a narrow class of cases, insistence on issue preservation would be counterproductive to the goal of judicial efficiency. Accordingly, we hold that principles of issue preservation do not apply where the following four conditions are met: (1) a court issues a new controlling constitutional interpretation material to the defendant's case, (2) that interpretation overrules an existing controlling interpretation, (3) the new interpretation applies retroactively to the defendant, and (4) the defendant's trial was completed prior to the new interpretation.

Id.

It is plain from the Court's discussion that the Court did not limit or supplant RAP 2.5(a), nor did it overrule cases in which this and other appellate courts have recognized that the interests of justice are served by deciding a suppression issue on an adequate record for the first time on appeal. See e.g. State v. Abuan, 161 Wn. App. 135, 146, 257 P.3d 1 (2011); State v. Contreras, 92 Wn. App. 307, 312, 966 P.2d 915 (1998).

If the State's interpretation of Robinson were correct, then numerous cases permitting manifest constitutional errors to be raised for the first time on appeal would no longer be good law. Such a rule could extend to lack of jury unanimity, to-convict instructions that omit an essential element, and denial of confrontation rights, to name just a few of the errors that may be litigated for the first time on appeal. It is neither reasonable nor

correct to infer that, the provisions of RAP 2.5(a) notwithstanding, the Court in Robinson intended to so severely limit review of manifest constitutional errors. This Court should reject the State's claim that the error in the search warrant may not be reviewed on appeal.

With regard to the merits of Smith's argument, the State first contends that "Mike" was dealing drugs from the apartment and it was reasonable for the Commissioner to infer that documents would exist inside the apartment that would show his dominion and control over the premises. Br. Resp. at 34. But the State never pursued or even believed this theory. In fact, during his closing argument the trial prosecutor stated, "[Smith] doesn't do any dealing directly out of his apartment as far as we know." 2RP 155. Further, whether or not the documents might be found in the apartment is a non sequitur to the question whether they were relevant to the crime under investigation, i.e., delivery of a controlled substance.

The State also attempts to argue that documents of dominion and control were relevant to the charge because "[i]n order to convict Smith, the State had to prove that Smith, not some other 'Mike,' was the one involved in delivering the drugs and proof

that the apartment was Smith's residence was evidence that Smith was that 'Mike' where some of the activities related to the drug deals occurred at that apartment [sic]." Br. Resp. at 35. Curiously, on the very next page the State declares, "the evidence was overwhelming that Smith was the one who delivered heroin on Aug. 28<sup>th</sup> and was a principal or accomplice to the Sept. 4<sup>th</sup> delivery." Br. Resp. at 36. Further, assuming the jury believed the truth of the State's evidence, the documents of dominion and control were in no way relevant to proving Smith's identity, which appears to be the argument made by the State on appeal. The State's convoluted argument is wholly unpersuasive.

**7. SMITH'S REMAINING CONVICTIONS MUST BE REVERSED.**

The State contends that the trial on the remaining counts was not rendered unfair by the admission of the evidence obtained during the illegal search, but this assertion depends on several mischaracterizations of the record. For example, the State claims that Smith admitted the number called by Crapser was his. Br. Resp. at 39. In fact, Crapser testified that the number she dialed was 360-220-1673. 4RP 48. Smith testified that his number had always been 820-5684. 2RP 122; 4RP 95-96. The State claims

that Crapser's actions were corroborated by investigating officers, but the State's witnesses testified that they had not positively identified Smith by the time of his arrest. 2RP 84-86. Again, the trial prosecutor even conceded that there was no evidence Smith was dealing drugs from his apartment. 4RP 155.

In short, (a) Crapser stood to gain the dismissal of two felony cases and avoid a prison sentence by cooperating with law enforcement; (b) other individuals besides Smith actually delivered the controlled substances; and (c) by the State's witnesses' own testimony, the police were not certain of Smith's identity until he was arrested. There thus is ample reason to believe Smith would not have been convicted of delivering a controlled substance but for the prejudicial admission of the evidence of heroin seized in his apartment. Smith's convictions should be reversed.

C. CONCLUSION

This Court should hold that the Fourth Amendment's "protective sweep" exception to the warrant requirement violates article I, section 7's mandate that there be authority of law for any intrusion into private affairs. This Court should reverse the order denying Smith's suppression motion. This Court should further hold that Smith was denied a fair trial on the remaining counts by the admission of the illegally seized evidence, and reverse those convictions as well.

DATED this 27<sup>th</sup> day of September, 2011.

Respectfully submitted:

Susan F. Wilk by Paul (#7780)  
SUSAN F. WILK (WSBA 28250)  
Washington Appellate Project (91052)  
Attorneys for Appellant