

No. 66335-6-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

JESS RICHARD SMITH,

Appellant.

FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
2011 JUN 30 PM 4:46

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

APPELLANT'S OPENING BRIEF

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A. SUMMARY OF ARGUMENT

In 2001, Jess Smith pled guilty to second degree felony murder based on the predicate crime of assault. On appeal, this Court held Mr. Smith was entitled to withdraw his guilty plea in light of In re Personal Restraint of Andress, 147 Wn.2d 602, 56 P.3d 981 (2002), and In re Personal Restraint of Hinton, 152 Wn.2d 853, 100 P.3d 801 (2004). But on remand, Mr. Smith did not move to withdraw his plea. Nonetheless, the trial court granted the State's motions to vacate the conviction and file an amended information charging Mr. Smith with the greater crime of first degree murder. Mr. Smith was convicted as charged.

Andress and Hinton render a guilty plea to felony murder based on assault merely voidable, not void. Because Mr. Smith did not move to withdraw his guilty plea, his conviction was still valid and charging and prosecuting him for another crime based on the same offense violated his constitutional right to be free from double jeopardy. In addition, charging Mr. Smith with a greater crime after his conviction was vacated on the basis of a defective information violated article I, section 22.

B. ASSIGNMENTS OF ERROR

1. The trial court erred in transferring Mr. Smith's CrR 7.8 motion to the Court of Appeals for consideration as a personal restraint petition (PRP).

2. Charging and convicting Mr. Smith for the crime of first degree murder violated his constitutional right to be free from double jeopardy.

3. Charging Mr. Smith with the crime of first degree murder in the third amended information violated article I, section 22.

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. A trial court may not transfer a timely CrR 7.8 motion to the Court of Appeals for consideration as a PRP if the defendant makes a substantial showing he is entitled to relief. Here, Mr. Smith made a substantial showing that the State's decision to charge him with first degree murder after he had already pled guilty to second degree murder based on the same offense violated his constitutional right to be free from double jeopardy. Did the trial court err in transferring his CrR 7.8 motion to the Court of Appeals?

2. The Double Jeopardy Clause bars retrial where jeopardy has previously attached, and has terminated, and the defendant is in jeopardy a second time for the same offense. When a person

pleads guilty to a nonexistent crime but does not move to withdraw his plea, jeopardy has terminated and he may not be prosecuted a second time for the same offense. Here, Mr. Smith pled guilty to second degree felony murder, a nonexistent crime, but did not move to withdraw his plea. Was Mr. Smith's constitutional right to be free from double jeopardy violated where the State charged and convicted him a second time for the same offense?

3. When a defendant is convicted on the basis of a defective information, the well-established remedy under article I, section 22 is to reverse the conviction and dismiss the charge without prejudice to the State's ability to re-file the original charge or any lesser charge. The State may not re-file a greater charge. Mr. Smith was charged and convicted of second degree felony murder based on the predicate crime of assault, a nonexistent crime. After the trial court vacated the conviction, the State charged Mr. Smith with a greater crime—first degree murder—and he was convicted as charged. Did charging and convicting Mr. Smith of the greater crime violate article I, section 22?

D. STATEMENT OF THE CASE

On September 19, 2000, the State charged Mr. Smith with one count of murder in the second degree, felony murder, based on

the predicate crime of second degree assault, RCW 9A.32.050(1)(b).¹ Sub #1.² Mr. Smith pled guilty as charged. Sub #33 at 9. A judgment and sentence was entered on April 23, 2001. Sub #41. Mr. Smith received a standard-range sentence of 265 months plus a 60-month firearm enhancement, for a total sentence of 325 months. Sub #41 at 4.

Mr. Smith appealed. This Court issued an unpublished opinion on January 31, 2005. CP 38-39. The Court held that, in light of the Washington Supreme Court's decisions in In re Personal Restraint of Andress, 147 Wn.2d 602, 56 P.3d 981 (2002), and In re Personal Restraint of Hinton, 152 Wn.2d 853, 100 P.3d 801 (2004)³, Mr. Smith "pleaded guilty to a nonexistent crime." CP 39. But the Court did not reverse or vacate the conviction. Instead, the Court held Mr. Smith was "entitled to withdraw his plea." CP 39. The Court instructed, "if Smith withdraws his plea, the State may pursue such additional charges as are authorized by law." CP 39. The Court "remand[ed] this matter to the King County Superior

¹ The State also alleged Mr. Smith was armed with firearm at the time of the offense. Sub #1.

² A supplemental designation of clerk's papers has been filed for all documents cited in this brief that have not already been designated.

³ In Andress, 147 Wn.2d 602, the Supreme Court held that, under former RCW 9A.32.050 (1976), second degree assault may not serve as the predicate crime to convict a defendant of second degree felony murder. In Hinton, 152 Wn.2d 853, the Supreme Court clarified that Andress applies to anyone convicted of second degree felony murder under former RCW 9A.32.050 if assault was the predicate felony.

Court for further proceedings consistent with Andress, Hinton, and Ramos⁴." CP 39. A mandate was issued on March 28, 2005. Sub #59.

Immediately upon remand, the State filed a motion to amend the information and the trial court granted the motion. Sub #59A. Two days later, the court entered an order vacating the 2001 judgment and sentence "relating to the charge of murder in the second degree." Sub #61. The trial court entered the orders even though Mr. Smith never moved to withdraw his guilty plea.

An amended information was filed September 23, 2005. Sub #148. This time, the State filed two charges, including one for the greater offense of first degree felony murder, RCW 9A.32.030(1)(c). Id. Both charges were based on the same alleged criminal act of causing the death of Dale Bateman. Id. Count one alleged Mr. Smith and co-defendant Carl Wilson caused the death of Mr. Bateman while committing or attempting to commit the felonies of first degree robbery, second degree robbery, first degree kidnapping, or second degree kidnapping. Id. at 1. Count two charged Mr. Smith and Mr. Wilson with second degree

⁴ State v. Ramos, 124 Wn. App. 334, 101 P.3d 872 (2004).

intentional murder of Mr. Bateman, RCW 9A.32.050(1)(a). Id. at 2. The State alleged no new facts to support the new charges.

At a hearing in September 2006, Mr. Smith argued the amended information violated his constitutional right to be free from double jeopardy. CP 46-47. Mr. Smith complained the State was not authorized to file an amended information, and the court was not authorized to vacate his conviction, because he had never moved to withdraw his plea. CP 46. The court denied the motion, reasoning that the Supreme Court's decisions in Andress and Hinton rendered the guilty plea "void." CP 47.

A jury trial was held. The jury found Mr. Smith guilty of first degree felony murder as charged in count one and guilty of the lesser-included offense of first degree manslaughter for count two. Sub #361, 363. By special interrogatories, the jury found Mr. Smith caused the death of Mr. Bateman while committing or attempting to commit the crimes of first degree kidnapping and second degree robbery. Sub #365.

On September 1, 2006, a judgment and sentence was entered. CP 1-9. Mr. Smith was convicted of count one, murder in the first degree, RCW 9A.32.030(1)(c), and count two, manslaughter in the first degree, RCW 9A.32.060(1)(a), both with

firearm enhancements. CP 1-2. The court found the two offenses "merged" for purposes of sentencing. CP 4. The court imposed a standard-range sentence for count one of 324 months plus a 60-month firearm enhancement, and a standard-range sentence for count two of 147 months plus a 60-month firearm enhancement, to be served concurrently. CP 4. Thus, Mr. Smith received a total sentence of 384 months. Id.

Mr. Smith appealed again, raising several issues. In a January 26, 2009, unpublished decision, this Court accepted the State's concession that the two convictions violated the prohibition against double jeopardy and therefore struck the manslaughter conviction. CP 11. The Court affirmed the first degree murder conviction. Id. The Court "remand[ed] to the trial court for any further proceedings that are necessary." CP 26. A mandate was issued on April 14, 2010. CP 10.

On remand, Mr. Smith filed a CrR 7.8 motion to vacate the 2006 judgment and sentence. CP 27-48. Mr. Smith argued the charge and conviction for first degree murder violated his constitutional right to be free from double jeopardy, because the original conviction was still valid as he never withdrew his guilty plea. CP 29-36. The State moved to transfer the motion to the

Court of Appeals for consideration as a PRP under CrR 7.8(c)(2). 10/21/10RP 2. The trial court agreed and on October 21, 2010, entered an order transferring the motion to the Court of Appeals for consideration as a PRP.⁵ Sub #465. On the same date, the court also entered an order vacating count two on the basis of double jeopardy. CP 49.

E. ARGUMENT

1. THE TRIAL COURT ERRED IN TRANSFERRING MR. SMITH'S CrR 7.8 MOTION TO THE COURT OF APPEALS FOR CONSIDERATION AS A PRP

The trial court determined it had no choice but to transfer Mr. Smith's CrR 7.8 motion to the Court of Appeals for consideration as a PRP. 10/21/10RP 7. The court concluded the Court of Appeals opinion vacating Mr. Smith's conviction on count two "d[id] not change the sentence initially entered on the murder in the first degree," and therefore, the court did not have discretion to address the issues raised in Mr. Smith's post-conviction motion. Id. The trial court's reasoning is incorrect. Under CrR 7.8(c)(2), the trial court must retain a timely CrR 7.8 motion if the court determines the "defendant has made a substantial showing that he or she is entitled to relief." In other words, the court must address the merits

⁵ Mr. Smith's PRP, No. 66364-0, has been stayed pending the outcome of this appeal.

of the motion. Here, because the trial court did not address the merits of the motion, and because Mr. Smith made a substantial showing he was entitled to relief, the court erred in transferring the motion to the Court of Appeals.

CrR 7.8(c)(2) provides:

Transfer to Court of Appeals. The court shall transfer a motion filed by a defendant to the Court of Appeals for consideration as a personal restraint petition unless the court determines that the motion is not barred by RCW 10.73.090 and either (i) the defendant has made a substantial showing that he or she is entitled to relief or (ii) resolution of the motion will require a factual hearing.

The rule restricts a trial court's authority to transfer a CrR 7.8 motion to the Court of Appeals. See State v. Smith, 144 Wn. App. 860, 863-64, 184 P.3d 666 (2008). Under the rule, the superior court must retain a timely⁶ motion if (a) the defendant makes a substantial showing that he is entitled to relief or (b) the motion cannot be resolved without a factual hearing. Id. "Only when these prerequisites are absent may the superior court transfer a *timely* petition to this court for consideration as a personal restraint petition." Id. In other words, the rule requires the trial court to

⁶ Mr. Smith's CrR 7.8 motion was timely. See RCW 10.73.090(1), (3)(b) (CrR 7.8 motion is timely when filed within one year of "[t]he date that an appellate court issues its mandate disposing of a timely direct appeal from the conviction"). The Court of Appeals issued its mandate disposing of Mr. Smith's direct appeal on April 14, 2010. CP 10. Mr. Smith filed his CrR 7.8 motion on October 18, 2010, less than one year later.

address the merits of a timely motion. If the defendant makes a substantial showing he is entitled to relief, the court *must* render a decision on the motion. Id.

The reasons for the rule are salutary. Converting a wrongly-transferred CrR 7.8 motion into a PRP can infringe on a defendant's right to choose whether to pursue a PRP. Id. at 864. Once a CrR 7.8 motion is converted into a PRP, the defendant is subject to the successive petition rule in RCW 10.73.140,⁷ which severely limits his ability to file a subsequent petition. Id. By limiting a trial court's authority to transfer a CrR 7.8 motion to the Court of Appeals, the rule safeguards a defendant's right to choose whether to file a PRP and what issues to raise in the petition.⁸ Id.

⁷ RCW 10.73.140 provides, "[i]f a person has previously filed a petition for personal restraint, the court of appeals will not consider the petition unless the person certifies that he or she has not filed a previous petition on similar grounds, and shows good cause why the petitioner did not raise the new grounds in the previous petition."

⁸ Previously, trial courts had greater discretion to transfer CrR 7.8 motions to the Court of Appeals. The current version of CrR 7.8(c)(2) was enacted in 2007. Smith, 144 Wn. App. at 863. The former rule provided:

(2) *Initial Consideration*. The court may deny the motion without a hearing if the facts alleged in the affidavits do not establish grounds for relief. The court may transfer a motion to the Court of Appeals for consideration as a personal restraint petition if such transfer would serve the ends of justice. Otherwise, the court shall enter an order fixing a time and place for hearing and directing the adverse party to appear and show cause why the relief asked for should not be granted.

Former CrR 7.8(c)(2) (2003).

Here, the superior court did not comply with the requirements of CrR 7.8(c)(2), because the court did not address the merits of Mr. Smith's timely motion. In addition, for the reasons given below, Mr. Smith made a substantial showing he was entitled to relief. Where a superior court does not comply with the requirements of CrR 7.8(c)(2), the remedy is to remand with instructions to comply with the rule. Smith, 144 Wn. App. at 864. Thus, this Court should reverse the trial court's order transferring Mr. Smith's CrR 7.8 motion to this Court and remand with instructions to comply with the rule.

2. CHARGING AND CONVICTING MR. SMITH FOR THE CRIME OF FIRST DEGREE FELONY MURDER VIOLATED HIS CONSTITUTIONAL RIGHT TO BE FREE FROM DOUBLE JEOPARDY, WHERE HE WAS PREVIOUSLY CONVICTED OF THE SAME OFFENSE

a. The Double Jeopardy Clause bars retrial where the defendant was previously convicted of the same offense and that conviction is final. The Fifth Amendment to the United States Constitution guarantees, "[n]o person shall be . . . subject for the same offense to be twice put in jeopardy of life or limb." Article I, section 9 of the Washington Constitution states, "[n]o person shall . . . be twice put in jeopardy for the same offense." Both clauses

have consistent analytical interpretations. State v. Gocken, 127 Wn.2d 95, 102-03, 896 P.2d 1267 (1995).

The Double Jeopardy Clause "protects against a second prosecution for the same offense after acquittal. It protects against a second prosecution for the same offense after conviction. And it protects against multiple punishments for the same offense."

Brown v. Ohio, 432 U.S. 161, 165, 97 S. Ct. 2221, 53 L. Ed. 2d 187 (1977) (quoting North Carolina v. Pearce, 395 U.S. 711, 717, 89 S. Ct. 2072, 23 L. Ed. 2d 656 (1969)). "Where successive prosecutions are at stake, the guarantee serves a constitutional policy of finality for the defendant's benefit." Brown, 432 U.S. at 165. That policy protects the accused from attempts to secure additional punishment after a prior conviction and sentence. Id. at 165-66 (citing Green v. United States, 355 U.S. 184, 187-88, 78 S. Ct. 221, 2 L. Ed. 2d 199 (1957)).

The Double Jeopardy Clause applies where (1) jeopardy has previously attached, (2) that jeopardy has terminated, and (3) the defendant is in jeopardy a second time for the same offense in fact and law. State v. Ervin, 158 Wn.2d 746, 752, 147 P.3d 567 (2006). When these elements are met, the Double Jeopardy Clause bars the State from retrying a defendant. Id.

Jeopardy terminates when a defendant is convicted and the conviction is final. Id. at 752-53. A conviction is not final for double jeopardy purposes if an appellate court reverses the conviction and remands for a new trial, unless the court reverses based upon the insufficiency of the evidence. State v. Anderson, 96 Wn.2d 739, 742, 638 P.2d 1205 (1982). Generally, if the reversal is not for insufficiency of the evidence, the defendant may be retried. Id.

An exception exists, however, if the *State*—and not the defendant—successfully seeks to vacate the conviction. State v. Hall, 162 Wn.2d 901, 910-11, 177 P.3d 680 (2008). That is because the purpose of the Double Jeopardy Clause is to protect the "*individual's* right to be free from an overreaching government." Id. at 907 (emphasis added). "The double jeopardy clause is a protection for individuals from being subjected to multiple proceedings," and is not directed at government appeals. Id. Thus, "[w]here a *defendant* successfully challenges a conviction," double jeopardy principles do not preclude the State from subjecting him to a new trial. Id. at 910-11. But "where the State brings the motion, a different analysis is required." Id. at 911. A successful State motion to vacate a conviction does not affect the finality of the

conviction and the Double Jeopardy Clause precludes the State from retrying the defendant for the same offense. Id. at 911-12.

b. Mr. Smith's constitutional right to be free from double jeopardy was violated, because his original conviction was final when he was retried for the same offense. Mr. Smith appealed his 2001 conviction for second degree felony murder. But this Court did not reverse or vacate the conviction. Instead, the Court merely held Mr. Smith "was entitled to withdraw his plea." CP 39. The Court remanded to the trial court "for further proceedings consistent with Andress, Hinton, and Ramos." CP 39. The Court did not instruct the trial court to vacate the conviction.

On remand, Mr. Smith did not move to withdraw his plea. It was the *State*, not Mr. Smith, who moved to vacate the conviction. Sub #61. It was the *State* who moved to amend the information. Sub #59A. Therefore, Mr. Smith's conviction was final when the State charged and tried him for first degree murder. Hall, 162 Wn.2d at 910-11. Because Mr. Smith's conviction was final, the Double Jeopardy Clause precluded the State from retrying him for the same offense. Id.; Ervin, 158 Wn.2d at 752-53.

Contrary to the trial court's conclusion, see CP 47, the Washington Supreme Court held in Hall that convictions for felony

murder based on the predicate crime of assault are not "void" but merely voidable. Hall, 162 Wn.2d at 908-09. Thus, the defendant may choose whether to seek vacation of the conviction. Id. Here, Mr. Smith did not choose to seek vacation of his conviction. Therefore, he is entitled to seek protection from the Double Jeopardy Clause. Id. at 907-09. He is entitled to be free from the State's attempts to subject him again to trial and conviction for the same offense. Id.

In violation of the Double Jeopardy Clause, Mr. Smith was tried and convicted twice in successive proceedings for the same offense. The third amended information charged him with first degree felony murder for the killing of Dale Bateman, which was the "same offense" for double jeopardy purposes as the prior charge for second degree felony murder. Sub #1, 148. "[O]ne killing equals one homicide." State v. Womac, 160 Wn.2d 643, 160 P.3d 40 (2007) (quoting State v. Schwab, 98 Wn. App. 179, 188-89, 988 P.2d 1045 (1999)). The legislature did not intend to provide multiple punishments for a single homicide and thus a person may not be convicted of both first degree and second degree murder for killing a single individual. See Id. Here, Mr. Smith was tried and convicted in successive proceedings for both first degree and

second degree murder for the killing of Mr. Bateman. Because Mr. Smith was therefore tried and convicted twice for the same offense, his constitutional right to be free from double jeopardy was violated. Brown, 432 U.S. at 165; Ervin, 158 Wn.2d at 752.

c. The trial court's orders granting the State's motions to vacate the original conviction and file the amended information must be reversed. When a trial court grants the State's motion to vacate a conviction and file an amended information charging the same offense in violation of the Double Jeopardy Clause, the remedy is to reverse the court's order granting the motion. Hall, 162 Wn.2d at 911-12. Thus, this Court must reverse the trial court's orders vacating Mr. Smith's conviction for second degree felony murder and permitting the State to file an amended information charging first degree murder.

3. CHARGING MR. SMITH WITH FIRST
DEGREE MURDER IN THE THIRD
AMENDED INFORMATION VIOLATED
ARTICLE I, SECTION 22

The State originally charged Mr. Smith with one count of second degree murder. Sub #1. The trial court vacated the conviction on the basis that the information charged a nonexistent crime. See CP 39 (Court of Appeals opinion holding Mr. Smith "pleaded guilty to a nonexistent crime"). The State then filed an

amended information charging a greater crime—for first degree murder. Sub #148. Charging Mr. Smith with a greater crime after his conviction was vacated on the basis of a defective information violated article I, section 22.

a. When a conviction is vacated on the basis of a defective information, article I, section 22 precludes the State from re-filing an information charging a greater crime than the one in the original information. It is a fundamental principle of criminal procedure, embodied in article I, section 22 of the state constitution, that an accused person must be informed of the criminal charge he is to meet at trial and cannot be tried for an offense not charged. Const. art. I, § 22⁹; State v. Vangerpen, 125 Wn.2d 782, 787, 888 P.2d 1177 (1995) (citing Auburn v. Brooke, 119 Wn.2d 623, 627, 836 P.2d 212 (1992); State v. Irizarry, 111 Wn.2d 591, 592, 763 P.2d 432 (1988)).

The judicially approved means of ensuring constitutionally adequate notice is to require a charging document set forth the essential elements of the alleged crime. See State v. Taylor, 140 Wn.2d 229, 236, 996 P.2d 571 (2000). This "essential elements

⁹ Article I, section 22 provides: "In criminal prosecutions the accused shall have the right to . . . demand the nature and cause of the accusation against him [and] to have a copy thereof."

rule" has long been settled law in Washington and is constitutionally mandated. State v. Quismundo, 164 Wn.2d 499, 503, 192 P.3d 342 (2008) (citing Vangerpen, 125 Wn.2d at 788). All essential elements must appear on the face of the document regardless of whether the accused received actual notice of the charge. Quismundo, 164 Wn.2d at 504; Vangerpen, 125 Wn.2d at 790.

When a charging document misstates the elements of the crime, the remedy is to vacate the conviction and dismiss the charge without prejudice to the State's ability to re-file the original or any lesser charge. State v. Borrero, 147 Wn.2d 353, 359-60, 58 P.3d 245 (2002); Vangerpen, 125 Wn.2d at 791. "Dismissal without prejudice has been the consistent remedy imposed for reversible error based on an improper charging document." In re Pers. Restraint of Thompson, 141 Wn.2d 712, 730, 10 P.3d 380 (2000) (quoting Vangerpen, 125 Wn.2d at 793). "When a conviction is reversed due to an insufficient charging document, the result is a dismissal of charges without prejudice to the right of the State to recharge and retry the offense for which the defendant was convicted or for any lesser included offense." Vangerpen, 125 Wn.2d at 791.

b. Mr. Smith's conviction was vacated on the basis of a defective information. The original information charged Mr. Smith with the nonexistent crime of second degree felony murder based on the predicate crime of assault. See State v. Wright, 165 Wn.2d 783, 793, 203 P.3d 1027 (2009) ("Following Andress, second degree felony murder predicated on assault is a 'nonexistent crime.'") (quoting Hinton, 152 Wn.2d at 857). When an information charges a nonexistent crime it is defective in violation of the "essential elements" rule. See, e.g., Thompson, 141 Wn.2d at 730 (information charging crime of first degree rape of a child for conduct occurring before statute creating the offense was enacted was defective in violation of essential elements rule). An information charging the crime of second degree felony murder based on assault "misstate[s] the elements of second degree felony murder by impermissibly predicating the murder on an assault." State v. DeRosia, 124 Wn. App. 138, 150, 100 P.3d 331 (2004).

Thus, Mr. Smith's conviction for second degree felony murder based on assault was vacated on the basis of a defective information. The State was therefore permitted to re-file only the original charge or any lesser charge. Borrero, 147 Wn.2d at 359-60; Vangerpen, 125 Wn.2d at 791.

c. Charging first degree murder in the third amended information violated article I, section 22. The third amended information charged Mr. Smith with first degree murder, a greater charge than the charge of second degree murder contained in the original information. Sub #1, 148. Permitting the State to file a greater charge after the first information was dismissed violated article I, section 22. Borrero, 147 Wn.2d at 359-60; Vangerpen, 125 Wn.2d at 791. The conviction must be reversed and the charge dismissed without prejudice to the State's ability to re-file an information charging second degree murder or a lesser offense. Borrero, 147 Wn.2d at 359-60; Vangerpen, 125 Wn.2d at 791.

F. CONCLUSION

The trial court erred in transferring Mr. Smith's CrR 7.8 motion to the Court of Appeals for consideration as a PRP where the court did not address the merits of the motion and Mr. Smith made a substantial showing he was entitled to relief. Therefore, this Court should remand with instructions for the trial court to follow the rule. Mr. Smith's constitutional right to be free from double jeopardy was violated when he was convicted twice in successive prosecutions for the same offense. The trial court's orders vacating the original conviction and permitting the State to

file an amended information must be vacated. Finally, charging Mr. Smith with first degree murder after his conviction for second degree murder based on a defective information was vacated violated article I, section 22. The amended information must be dismissed without prejudice to the State's ability to re-file a charge of second degree murder or a lesser charge.

Respectfully submitted this 30th day of June 2011.


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

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	NO. 66335-6-I
v.)	
)	
JESS SMITH,)	
)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 30TH DAY OF JUNE, 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:

<input checked="" type="checkbox"/> KING COUNTY PROSECUTING ATTORNEY APPELLATE UNIT KING COUNTY COURTHOUSE 516 THIRD AVENUE, W-554 SEATTLE, WA 98104	(X) () ()	U.S. MAIL HAND DELIVERY _____
<input checked="" type="checkbox"/> JESS SMITH 739951 CLALLAM BAY CORRECTIONS CENTER 1830 EAGLE CREST WAY CLALLAM BAY, WA 98326	(X) () ()	U.S. MAIL HAND DELIVERY _____

SIGNED IN SEATTLE, WASHINGTON THIS 30TH DAY OF JUNE, 2011.


X _____

Washington Appellate Project
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1511 Third Avenue
Seattle, WA 98101
Phone (206) 587-2711
Fax (206) 587-2710