

No. 74061-0-I

FILED
October 3, 2016
Court of Appeals
Division I
State of Washington

THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

KEVIN G. ,

Appellant.

REPLY BRIEF OF APPELLANT

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

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A. ARGUMENT

In light of the Supreme Court’s disavowal of the *Gunwall* analysis it employed in *Schaaf* this court must revisit the question of the scope of the jury trial right provided by Article 1, sections 21. and 22

As is made clear in Kevin’s initial brief, the Supreme Court has repudiated the *Gunwall*¹ analysis it employed in *State v. Schaaf*, 109 Wn.2d 1, 14, 743 P.2d 240 (1987); when it concluded Article I, §sections 21 and 22 did not require a jury juveniles charged with crimes. *State v. Smith*, 150 Wn.2d 135, 156, 75 P.3d 934 (2003).

Kevin acknowledges that despite that repudiation, cases have continued to rely on *Schaaf*’s holding. Thus, two parallel, but wholly incongruous, lines of analysis have emerged with respect to the scope of jury trial right. As set forth in Kevin’s initial brief, *Smith* provides the proper analysis and gives substance to the text of the constitutional provisions. The State in response simply cites to the parallel line of cases, offering no effort to reconcile those cases with *Smith*, nor addressing why their analysis should prevail. It strains logic to contend the intent of the formers can be informed or altered by legislative acts 50 years later. Kevin maintains his position is correct.

¹ *State v. Gunwall*, 106 Wn.2d 54, 720 P.2d 808 (1986).

However, in the end, the more prudent course may be to transfer the case to the Supreme Court under RAP 4.4 because the question presented ultimately requires resolution of inherent conflicts in that court's caselaw.

B. CONCLUSION

Because it was obtained in violation of his right to a jury trial, Kevin's conviction must be reversed.

Respectfully submitted this 3rd day of October, 2016.

s/ Gregory C. Link
GREGORY C. LINK – 25228
Washington Appellate Project – 91052
Attorneys for Appellant

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

STATE OF WASHINGTON,)	
)	
RESPONDENT,)	
)	
v.)	NO. 74061-0-I
)	
KEVIN G.,)	
)	
JUVENILE APPELLANT.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 3RD DAY OF OCTOBER, 2016, I CAUSED THE ORIGINAL **REPLY 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"/>	EVAN JONES, DPA	()	U.S. MAIL
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SIGNED IN SEATTLE, WASHINGTON THIS 3RD DAY OF OCTOBER, 2016.

X _____ 