

COURT OF APPEALS  
DIVISION TWO  
OF THE STATE OF WASHINGTON

COURT OF APPEALS  
DIVISION II

STATE OF WASHINGTON )  
)  
Respondent, )  
)  
v. )  
)  
CARL LEE SMITH )  
(your name) )  
)  
Appellant. )

10 DEC -6 AM 9:23

No. 39598-3 STATE OF WASHINGTON  
BY [Signature]  
DEPUTY

STATEMENT OF ADDITIONAL  
GROUNDS FOR REVIEW

I, CARL LEE SMITH, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

Additional Ground 1

ATTACHED

Additional Ground 2

ATTACHED

If there are additional grounds, a brief summary is attached to this statement.

Date: 12-<sup>2</sup>-2010

Signature: [Signature]



SOCIAL SECURITY

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CLERK OF COURT OF APPEALS DIV II  
STATE OF WASHINGTON

Social Security Administration  
402 Yauger Way SW  
Olympia, WA 98502

November 29, 2010  
~~June 8, 2010~~

Carl Lee Smith  
293917-CBCC-BH6  
1830 Eagle Crest Way  
Clallam Bay, WA 98326

Dear Mr. Smith

This letter is in response to your request for proof that you received SSI benefits between 2000 and 2008 based on mental illness. Our records show that you began receiving SSI in 10/2000 and that your benefits stop effective 05/2008 based on your incarceration.

The only way to determine what your disability was based on is through your medical records. You can request copies of your medical records but there is a fee associated with that request. The fee includes the price for shipping your folder to and from the records holding facility, 10 cents per sheet and the wages for the employee that copies the folder. I have enclosed another form (SSA-3288) for you to complete if you wish to order your records.

Rich Vandebrook  
Operations Supervisor

8/8/08

Michael Schwartz

Dear Michael, My name is Tommy Randall. My wife and I have known Carl Smith for almost ten years. I would like an opportunity to tell you about my friend and of my opinion of his issues. Carl is a social drinker but he does not do hard drugs (I have been clean since 1991). I am aware of his mental health issue and the fact that he needs to be medicated. I realize that Carl has been dealing with mental health issues through out his entire life. Carl was diagnosed with adult A.D.H.D. and Schyco Paranoia and suffers from major depression. Carl experience these issues from child hood, neglect, abuse and abandonment. Carl has had a hard time adjusting. In 1989 Carl married a woman named Leslie and in June of that year (three months after marriage) Leslie was unfortunately killed. Again Carl had more suffering and worse feelings about life and about himself. There was a situation two years ago when Carl was hit in the head with something (maybe a club or maglight). He did not return our calls for days and when my wife and I went to his house, Carl was a mess. There was dried blood down one side of his head and he had no recollection of what happened or when. Carl refused to get medical help and felt safer secluded in his own home. Loreena and I have seen several of these types of incidences and would make it a priority to check on Carl often. Over the past year Carl's demeanor has gotten worse. He has become very paranoid and his condition is not improving. I think that it was about six months ago that Carl asked that his roommate move out, just move out. Carl cold not handle the feeling that someone was living in his home and it made him nervous. When we met Carl he was living in his van and had no body helping him. Loreena has obtained power of attorney for Carl because he could not take care of his finances. We have helped Carl with the housing authority and also got him some state assistance with food stamps. In closing I am trying to point out that Carl has had an extremely difficult life and that he has several issues that he needs help with. I do not believe that he can or will ever get the attention that is required if he is to remain in jail. I believe that an institution would better be able to accommodate Carl's needs. Thank you for allowing me to give you my opinion.

THANK YOU  
TOMMY AND LOREENA RANDALL

Carl don't forget to take these two pieces of paper to the hospital with you and give them to the doctor. He can call me or Loreena in the evening for information. We also contacted your doctor at BTHR and informed her of the situation. Tommy and Loreena's # (360) 486-4713 or (360) 556-2177

To whom it may concern:

9-22-2009

This letter is intended to voice my concern for what I believe was injustice and failure to properly represent Carl Lee Smith. My wife and I have power of attorney for Carl and have been his care givers and his closest friend's for the last few years. Carl was represented by Michael Schwartz in a murder trial. Carl has several mental health issues that are documented and he has been receiving treatment for several years. Mr. Schwartz did in fact request the documentation of this issue's and chose not to inform the court of their content. In these document's it is clearly defined that Carl suffers from a multitude of disorders and needs to be medicated and supervise. Carl has massive delusions and is a very paranoid. During the trial Carl had ask Mr. Schwartz on numerous occasion what something meant or to explain something to him about the case. Carl told me he was not sure what was going on but "my attorney said everything is good" and "not to worry". The first time that I went to Carl's hearings, Mr. Schwartz asked that I not return. Mr. Schwartz informed me that "I was on the list of potential witnesses and could be called to testify (I was never called). My wife and I called his office trying to reach him and gather information and we were unsuccessful. We were able to contact Mr. Schwartz via e-mail through facebook.com. Mr. Schwartz assured us that trial was going well and that he would keep my wife and myself update on the trail. The things that are very apparent and frustrating to me are these facts. (One) Carl has mental health problems that were known to his attorney, but were NOT given to the court. (Two) Carl did not understand the trial – nor does Carl have the capacity too. BUT he still has the right to be informed. (Three) The people that Carl trusted to help him (Loreena and Myself) were denied access to him and to the court proceedings by his attorney. In summery I would believe that a person with mental health problems needs to be properly informed as well as represented. This did not happen. Carl Lee Smith should be properly evaluated by a mental health specialist. Then Carl should be given a new trial with proper counsel for his needs and the support of his love one's (Loreena and I). When these things happen the legal system will then be serving justice and a fair trial.

Thomas a. Randall 360 – 486 - 4713

7128 44<sup>th</sup>. Ave. N.E.

Olympia Wash.

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COURT OF APPEALS DIVISION II STATE OF WASHINGTON  
STATEMENT OF ADDITIONAL GROUNDS – MENTAL HEALTH BRIEF  
CASE NO. 39598-3

COURT OF APPEALS  
DIVISION II  
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STATE OF WASHINGTON  
BY \_\_\_\_\_  
DEPUTY

MENTAL HEALTH BRIEF

At arraignment, Smith explained to his court appointed attorney, Michael Schwartz, that he was currently on SSI Disability for mental health; and had been since 2000. Smith further explained to his attorney that he questioned his mental irresponsibility on the night in question. Smith requested a Psychiatrist and felt he might be incompetent to stand trial, or incompetent to understand the proceeding; and unable to aid in his defense.

Smith's attorney obtained necessary documents and sent them to Olympia Mental Health requesting his (Smith's) file. The defense attorney, Michael Schwartz, did in fact receive Smith's mental health records and did not introduce the records to the court; nor did the defense attorney have a capacity hearing for Smith.

While in Pierce County Jail, the Mental Health staff had inmate Smith heavily medicated due to his unstable mental health (all documented through Pierce County Jail/Mental Health). All through the trial, Smith was confused; asked numerous questions to his attorney, only to be told "shut up" and "sit still". At the end of the trial, Smith was found guilty of Murder II.

A jail house lawyer for Smith presented Smith with the idea of "Arrest of Judgment", a legal brief to mainly terminate the court appointed attorney due to ineffective sense of counsel. Defense Attorney, Michael Schwartz, was in fact terminated from Smith's case. New counsel was appointed. Upon interview with Smith, new Defense Attorney, Robert Quillian, determined Smith had mental health issues and extensive mental health records on file. Counsel motioned the court for a hearing.

Western State interviewed Smith at the Pierce County Jail in a small interview room. Defense Attorney Quillian requested the court that Smith be transported to Western State Hospital for a 15 day observation. The court denied, and the interview in the small room lasted less than ten minutes.

Western State asked Smith, "Do you know what you are in jail for? Do you know what a Judge is, and what he does? Do you know what a Defense Attorney is? Do you know what a Prosecuting Attorney is?" Smith applied yes. Western State said Smith is competent to stand trial. \*A clear deviation from a defendant due processing rights.\* RCW A.10.77.060; A defendant is entitled to equal protection of the law and due process under the fourteenth amendment.

Chapter 10, Insanity, 1017, Form 10.2; Order to enter not guilty plea and commit defendant for evaluation. Unfortunately, Defense Attorney Schwartz did not motion the court at arraignment for this, nor did he within ten days thereafter. CrR 4.2(c), counsel received Smith's mental health records; counsel received letters from Smith's family about his mental health. Counsel could have introduced at any time before the submission of the case to the jury, RCW A 10.77030 (1) about Smith's insanity or mental irresponsibility. Upon new counsel, Robert Quillian motioned the court for a 15 day observation/evaluation. Western State did find Smith competent; but 17 months after arraignment, and 3 months after trial, no follow up evaluation was ever performed; and RCW A 10.77.060 (3) more examination is required.

Chapter 10 1006 Initiation of Sanity Determination, the defense of insanity at the time of commission of an alleged unlawful act must be raised by a special plea of not guilty by reason of insanity. CrR 4.2(c) requires that when pleading insanity or mental irresponsibility, defense counsel must, at the time of pleading to the information or indictment; or within ten days thereafter, file a written notice which declares the defendant's intent to rely upon the insanity defense. If the defendant's insanity or mental responsibility at the time of the crime was not known when the plea was entered, the plea may be interposed at any time before the submission of the case to the jury.

After arraignment, defendant Smith tried to explain to his court appointed attorney, Michael Schwartz, that the night of the fight that occurred April 5, 2008, was an accident and self defense; and the victim tried to stab Smith. Smith tried, and wanted to tell the truth to his attorney.

Smith also tried explaining to his attorney that when the victim tried to stab Smith, he lost mental irresponsibility in fear of being killed. Further explaining to counsel, "there was no right or wrong, there was only survival", Defense Attorney Schwartz told Smith not to talk to anybody about the case. Don't talk to inmates, jail staff, or talk on the phone about what happened. Schwartz told Smith, "I'll try to get you out of this."

Smith didn't understand from then on, nor did he understand the court procedures. But most of all, why didn't counsel want Smith on the witness stand during trial. After all, it was a self defense trial. Schwartz deterred Smith in giving testimony about his participation in the fight. Schwartz told Smith that his testimony would jeopardize the case, and Schwartz never put on any kind of defense what so ever.

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I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAW OF THE STATE OF  
WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

CARL SMITH

X   

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STATE OF WASHINGTON

STATEMENT OF FACTS

On April 5, 2008 in Pierce County Washington, Carl Smith and 3 friends, all members of a small motorcycle club, were in a tavern on Pacific Avenue in the Spanaway area.

Later in the evening, Beaudine and his girlfriend; and another couple with them, came into the tavern. Beaudine immediately noticed the four defendants and approached them. Beaudine began making disparaging remarks to the four defendants. Beaudine went on to say that he (Beaudine) was the “Real Deal”; that he (Beaudine) was a member of the “Hells Angels” motorcycle gang.

Beaudine went on with his verbal assault on the four defendants, suggesting that the four Hidalgos were a joke and the patches on their jackets were just a bulls-eye for bullets; and that the four defendants were all just bullet magnets. When Beaudine returned to his table, the four defendants suggested that they leave. “It’s late and if this guy (Beaudine) is a “Hells Angel” we don’t need this kind of trouble.”

As the four defendants left the tavern, and congregated just outside the front door of the tavern, and said their good-by’s to each other and embraced, Beaudine broke through the crowd of people and the four defendants just outside the front door, stating, “Fuck your colors, I’m going to get a gun”.

Beaudine went to the passenger door of his truck. In defense, defendant Smith approached Beaudine at the rear of Beaudine’s truck, stating, “You are not taking a gun into the bar”. Almost immediately, Beaudine reached under the passenger seat and retrieved an unknown weapon. In fear of serious assault, Smith wrestled Beaudine to protect himself. The next thing Smith realized, was that Beaudine had a knife and was attempting to stab Smith. In fear of being stabbed or killed by Beaudine, Smith began to fight Beaudine over the knife.

Smith did in fact succeed in getting the knife from Beaudine, but fell short of exhaustion. Beaudine then regained control of the fight. Smith fell back to the ground, hitting the back of his head, almost losing consciousness; and Beaudine continued the assault. In a state of panic, Smith retrieved the knife off the ground and unknowing, stabbed Beaudine.

Vince James (a friend of Beaudine) jumped into the fight and was kicking Smith in the face. One of the defendants struck James in the head with a “SAP” to stop James from kicking Smith. Another defendant pulled Smith out from under Beaudine. James tried to regain into the fight but was stopped by one of the defendants.

The tavern manager appeared and told Beaudine and Smith to stop. Beaudine went to his truck and Smith left in his car alone.

#### 9A.16.110 Defending Against Violent Crime

9A.16.110(1) No person in the state shall be placed in legal jeopardy of any kind whatsoever for protecting by any reasonable means necessary, himself or herself, his or her family, or his or her real or personal property, OR, for coming to the aid of another who is in imminent danger of or the victim of assault, robbery, arson, kidnapping, burglary, rape, murder, or any other violent crime as defined in RCW 9.94A.030.

Before Beaudine came to the tavern on the evening of April 5<sup>th</sup>, Vince James testified in trial that he (James) and Beaudine had been drinking all evening before coming to the tavern and that they, James and Beaudine, were in fact intoxicated. James admitted to being so intoxicated that he couldn't drive.

Hutt said that Beaudine is a menace every time he comes to the tavern. Joy Hutt went on to testify that on the night of April 5<sup>th</sup>, Beaudine and others came in late in the evening and as usual, Beaudine was a menace looking for a fight.

In Joy Hutt's testimony to detective's late April 5<sup>th</sup> after the fight, she stated to police that she (Hutt) could not believe that the four "Hidalgos" were not doing anything about Beaudine's verbal assault on them in the bar. The Chief Medical Examiner testified that Beaudine's blood count was twice the legal limit.

Beaudine's threats, verbal assault, and aggressive manner toward Smith and the other defendants are no doubt that Beaudine was the aggressor from the start. Beaudine's aggressive behavior continued outside the tavern as the four defendants were leaving. Witnesses testified in trial that Beaudine made a threat to the four defendants concerning a gun, and that Beaudine threatened to go to his truck and retrieve a firearm.

#### 9A.16.060 Duress

- (1) In any prosecution for a crime, it is a defense that:
  - (A) (Smith) the actor participated in the crime under compulsion by another, who by threat or use of force, created an apprehension in the mind of the actor that in case of refusal he or she or another would be liable to immediate death or immediate grievous bodily injury; and
  - (B) That such apprehension was reasonable upon the part of the actor; and
  - (C) That the actor would not have participated in the crime except for the duress involved.

Here Beaudine not only threatened the four defendants, but put everyone in jeopardy of serious assault, that was outside the tavern; with his (Beaudine) threat to "get a gun". In self-defense, Smith approached Beaudine at Beaudine's truck. Smith stated to Beaudine, "I can't allow you to

## Statement of Facts

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take a gun into the bar". [Since self-defense is not a crime, the court reasoned that a person, who acts in self-defense, does not act with "intent" or "knowledge". Likewise, since self-defense is not wrongful, a person who acts in self-defense has not deviated from a reasonable mans standard of care.]

Witnesses' testified in trial that Smith never had a weapon. Smith never had intent or knowledge of committing murder. Smith was not the aggressor, nor did Smith threaten Beaudine in any way.

CH.33 Defenses: There is no duty to retreat before using force, so long as the defendant is in a place where he or she has a legal right to be. This applies even when deadly force is used and here, Beaudine pulls a knife on Smith and is attempting to stab Smith. Smith fights Beaudine for the knife; Smith succeeds; knife falls to the ground; Beaudine continues the attack on Smith; Smith losing. Smith in "panic" picks the knife off the ground and without consciousness of "right" or "wrong", but in survival mode, Smith stabs Beaudine.

### 9A.16.030 Homicide – When Excusable

Homicide is excusable when committed by accident or misfortune in doing any lawful act by lawful means, without criminal negligence, or without any unlawful intent. Smith's only intention was to protect innocent bystanders, himself, and his co-defendants.

In Chapter 33 Use of Force 3304, A Person acting in self-defense may use the degree of force that a reasonably prudent person would use under the circumstances appearing to him or her at the time. To justify the use of force in self-defense, four elements must exist: (1) there was appearance of danger; (2) the danger appeared to be imminent; (3) the degree of force used was reasonable; and (4) the defendant was not the aggressor. If these elements are established, self-defense is a complete defense. Otherwise, it is no defense at all. A claim of self-defense cannot mitigate the degree of a crime. There is no such thing as "imperfect self-defense" in Washington. Here, Beaudine attempted to stab Smith, capable of causing death or substantial bodily harm.

### RCW 9A.36.021(1) Assault – Second Degree

Pierce County Chief Medical Examiner (Forensic) testified in trial:

Smith's court appointed attorney, Michael Schwartz, questions the M.E. about the murder weapon (the knife). The Medical Examiner (M.E.) explains to counsel that evidence of a sufficient amount of hand skin tissue was imbedded in the crevice of the knife. The M.E. went on to testify that DNA was extracted from the knife and was a positive match to Beaudine. The M.E. went on to explain to Smith's attorney, "Beaudine was killed with his own knife", and only Beaudine handled that knife over a long period of time to produce that much hand skin tissue imbedded in the knife.

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CARL SMITH

X   

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