

NO. 42535-1-II

COURT OF APPEALS OF THE STATE OF WASHINGTON,

DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

BRENT CURTIS MOORE,

Appellant.

BRIEF OF APPELLANT

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ASSIGNMENT OF ERROR

Assignment of Error

1. There is no substantive evidence within the record at trial that the defendant moved his residence from his mother's home where he was duly registered.

2. The evidence at trial conclusively proves that the officer who arrested the defendant acted unlawfully when he entered a house other than the defendant's without a search warrant in order to arrest the defendant on an outstanding warrant.

Issues Pertaining to Assignment of Error

1. Does substantial evidence support the conclusion that a defendant moved from his registered address when the only witness with knowledge on this issue testifies that the defendant was living at his registered address even though the state calls police officers who impeach that witness with her prior inconsistent statements?

2. The evidence at trial conclusively proves that the officer who arrested the defendant acted unlawfully when he entered a house other than the defendant's without a search warrant in order to arrest the defendant on an outstanding warrant.

STATEMENT OF THE CASE

The defendant, a Clark County resident, has a conviction for a sex offense that required him to register as a sex offender with the Clark County Sheriff from June 11, 1998, continuously to the present date. CP 44; RP 37-38. Between August 14, 2010, and February 28, 2011, the defendant was registered as living with his mother at 7201 N.E. 109th Avenue, in Vancouver. RP 39-42. This is three bedroom house with a two car garage. *Id.* By May or June of 2010, the defendant's mother stated that she no longer saw him at her house although she was frequently gone working and believed he was sleeping in the house during the daytime while she was gone. RP 42-48, 52-55. During this time, she communicated with him through e-mail. RP 45-48.

At trial, the defendant's mother admitted that she told the police that the defendant didn't live at the house anymore and that she did not know where he was. RP 48-51, 60-62. She also admitted signing a sworn statement for the police acknowledging these facts. *Id.* However, she testified that she felt compelled to make these statements. RP 60-62. On cross-examination at trial, the defendant's mother admitted that during the relevant times the defendant had a key to the residence, he was free to come and go as he pleased, he had his clothes at the house, he had his toiletries in one of the bathrooms, and he washed his clothes at the house. RP 57-60.

In February of 2011, Department of Corrections Officer Fili Matua was working on a task force with a number of other officers from various local police agencies attempting to locate and apprehend sex offenders with outstanding arrest warrants. RP 104-109. The defendant was one of the people on their list. *Id.* On February 28, 2011, these officers, including Officer Matua, went to 6007 N.E. 205th Street in Vancouver based upon information that they might find the defendant at that location. *Id.* This is the residence of Roy Pennington. RP 105-109, 133-139. Mr. Pennington testified that the defendant did not live at his house. RP 133-139.

According to Officer Matua, he was one of the officers who approached the front door of Mr. Pennington's residence and knocked. RP 104-109. Although Officer Matua had a warrant authorizing the defendant's arrest, he did not claim to have a warrant that allowed him to enter Mr. Pennington's house. *Id.* Shortly after Officer Matua knocked, the defendant answered by opening the door and asking the officers what they wanted. *Id.* When the defendant opened the door, he was standing inside the threshold and the officers were standing outside the threshold. RP 109-110. Once the defendant admitted who he was, Officer Matua told him he was under arrest. RP 104-109. Officer Matua then tried to cross the threshold to grab the defendant, who responded by trying to shut the door on the officer. RP 104-109. In so doing, the defendant physically struck the officer with the door.

Id. Although Officer Matua did not sustain any injuries, a few small panes of glass in the door broke during the altercation. *Id.* After attempting to close the door, the defendant retreated further into the house. *Id.* As he did, the officers followed. *Id.* The defendant then stopped and allowed the officers to arrest him. *Id.*

Following the defendant's arrest, the state charged the defendant with one count of failure to register as a sex offender under an allegation that in August of 2010, the defendant moved out of his mother's residence and failed to inform the county sheriff of his new location. CP 1-2. The state later twice amended this information to add charges of third degree assault and resisting arrest under allegations that the defendant assaulted Officer Matua as he resisted Officer Matua's efforts to place him under arrest. CP 34-35. The case later came on for trial before a jury, during which the state called the defendant's mother and three officers to testify in its case-in-chief. RP 38, 68, 92, 103. The defense then called Roy Pennington as its only witness. RP 133.

Following the reception of evidence in this case, the court instructed the jury on the elements of each of the offenses, with neither party voicing objection for the "to convict" instructions. CP 146-172, 173-188. The "to convict" instruction for the charge of third degree assault stated as follows:

INSTRUCTION NO. 17

To convict the defendant of the crime of assault in the third degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about February 25, 2011, the defendant assaulted Fili Matua;

(2) That the assault was committed with intent to prevent or resist the execution of a lawful process or mandate of a court officer or the lawful apprehension or detention of the defendant; and

(3) That any of these acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

CP 84.

The “to convict” instruction for the third count of resisting arrest used similar language and stated as follows:

INSTRUCTION NO. 21

To convict the defendant of the crime of resisting arrest, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about February 25, 2011, the defendant prevented or attempted to prevent a peace officer from arresting him;

(2) That the defendant acted intentionally;

(3) That the arrest or attempt to arrest was lawful; and

(4) That any of these acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

CP 88.

After listening to argument from counsel, the jury deliberated and then returned verdicts of “guilty” on all three counts. CP 93-95. The court later sentenced the defendant within the standard range of Counts I and II, ordered that the defendant serve 90 days on Count III, and further ordered that all sentences run concurrently. RP 230-238; CP 101-116. Since the sentences on Count I and II were close to or at the statutory maximum, the court included a statement in the judgement and sentence that “[t]he total time of incarceration and community supervision shall not exceed the statutory maximum for the crime[s].” CP 104. Following imposition of sentence, the defendant filed timely notice of appeal. CP 122.

ARGUMENT

THE TRIAL COURT ERRED WHEN IT ENTERED JUDGEMENT AGAINST THE DEFENDANT FOR FAILURE TO REGISTER, THIRD DEGREE ASSAULT AND RESISTING ARREST BECAUSE SUBSTANTIAL EVIDENCE DOES NOT SUPPORT A FINDING THAT THE DEFENDANT COMMITTED THESE OFFENSES.

As a part of the due process rights guaranteed under both the Washington Constitution, Article 1, § 3 and United States Constitution, Fourteenth Amendment, the state must prove every element of a crime charged beyond a reasonable doubt. *State v. Baeza*, 100 Wn.2d 487, 488, 670 P.2d 646 (1983); *In re Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068, 1073, 25 L.Ed.2d 368 (1970). As the United States Supreme Court explained in *Winship*: “[The] use of the reasonable-doubt standard is indispensable to command the respect and confidence of the community in applications of the criminal law.” *In re Winship*, 397 U.S. at 364.

Mere possibility, suspicion, speculation, conjecture, or even a scintilla of evidence, is not substantial evidence, and does not meet the minimum requirements of due process. *State v. Moore*, 7 Wn.App. 1, 499 P.2d 16 (1972). As a result, any conviction not supported by substantial evidence may be attacked for the first time on appeal as a due process violation. *Id.* In addition, evidence that is equally consistent with innocence as it is with guilt is not sufficient to support a conviction; it is not substantial evidence.

State v. Aten, 130 Wn.2d 640, 927 P.2d 210 (1996).

“Substantial evidence” in the context of a criminal case means evidence sufficient to persuade “an unprejudiced thinking mind of the truth of the fact to which the evidence is directed.” *State v. Taplin*, 9 Wn.App. 545, 513 P.2d 549 (1973) (quoting *State v. Collins*, 2 Wn.App. 757, 759, 470 P.2d 227, 228 (1970)). The test for determining the sufficiency of the evidence is whether “after viewing the evidence in the light most favorable to the prosecution any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Jackson v. Virginia*, 443 U.S. 307, 334, 99 S.Ct. 2781, 2797, 61 L.Ed.2d 560 (1979).

In this case, the defendant argues that the record does not contain substantial evidence to support conclusions that (1) the defendant had moved from his mother’s residence, and (2) that the officer was acting lawfully when the defendant assaulted him and resisted arrest. The following presents these arguments.

(1) There Is No Substantive Evidence Within the Record at Trial That the Defendant Moved His Residence from His Mother’s Home.

In the case at bar, the only witness the state called with any personal knowledge about the defendant’s living arrangements from August of 2010 to February of 2011 was the defendant’s mother. She testified that during this time period, she was frequently gone working and believed that the

defendant was sleeping in the house during the daytime while she was gone. RP 42-48, 52-55. On cross-examination at trial, the defendant's mother admitted that during the relevant times the defendant had a key to the residence, he was free to come and go as he pleased, he had his clothes at the house, he had his toiletries in one of the bathrooms, and he washed his clothes at the house when she was gone. RP 57-60. Thus, she did not claim that he had moved. She only stated that she did not see him and communicated with him with e-mail. This evidence is insufficient to prove that the defendant had moved.

It is true that the state elicited evidence from the defendant's mother that she had told the police and given them a written statement that the defendant had moved and that she did not know where he was. The problem with this evidence was that it was inadmissible hearsay substantively and only admitted for the purpose of rebutting her inconsistent claims at trial. As the following explains, these contrary statements do not constitute substantive evidence on the issue of where the defendant was living.

Under ER 802, hearsay "is not admissible except as provided by these rules, by other court rules, or by statute." Under ER 801(c) hearsay is defined as follows:

(c) Hearsay. "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

ER 801(c).

The phrase “other than one made by the declarant while testifying at the trial or hearing” also excludes an out-of-court statement made by an in-court witness. *State v. Sua*, 115 Wn.App. 29, 60 P.3d 1234 (2003). Thus, in the case at bar, all statements the defendant’s mother made on prior occasions to a police officer or to a probation officer were inadmissible hearsay and could not be admitted as substantive evidence unless some exception to the hearsay rule applies.

Evidence Rule 801(d)(1) provides an exception under which prior inconsistent statements may be admitted as substantive evidence. This rule states:

(d) Statements Which Are Not Hearsay. A statement is not hearsay if –

(1) Prior Statement by Witness. The declarant testifies at the trial or hearing and is subject to cross examination concerning the statement, and the statement is (i) inconsistent with the declarant’s testimony, and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition, or (ii) consistent with the declarant’s testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive, or (iii) one of identification of a person made after perceiving the person;

ER 801(d)(1)(i).

In order for a statement to qualify under ER 801(d)(1)(i), it must be “given under oath subject to the penalty of perjury at a trial, hearing, or other

proceeding.” In the case at bar the state did not argue that the prior statements had been “given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding.” Indeed, there was no “proceeding” in effect at the time she filled out the statement at the request of the police. Thus, neither her prior oral statements nor prior written statements were admissible as substantive evidence.

The fact that the prior statements were not admissible substantively does not mean that they were not admissible at all. On the contrary, they were admissible to impeach her trial testimony. Under ER 607 “the credibility of a witness may be attacked by any party, including the party calling the witness.” However, “a prosecutor may not use impeachment as a guise for submitting to the jury substantive evidence that is otherwise unavailable.” *State v. Babich*, 68 Wn.App. 438, 444, 842 P.2d 1053 (quoting *United States v. Silverstein*, 737 F.2d 864, 868 (10th Cir.1984)), *review denied*, 121 Wn.2d 1015, 854 P.2d 42 (1993). This principle is discussed in detail in *State v. Lavaris*, 106 Wash.2d 340, 721 P.2d 515 (1986).

In *Lavaris* the defendant’s confession to murder was admitted at his first trial. On appeal the Supreme Court reversed, holding that the trial court erred when it failed to exclude that confession, which had been obtained unlawfully. On retrial, the state called a witness named Castro who testified to the circumstances leading up to the killing. However, he also testified that

he was not at the scene of the crime the night before the murder; that he did not remember seeing anyone at the scene of the killing, and that he had not been present when anyone was killed. The trial court then allowed the state to impeach him with his own prior inconsistent statements which incriminated the defendant. Following his second conviction, the defendant appealed, arguing that the trial court had erred when it allowed the state to impeach as a guise for introducing otherwise inadmissible evidence.

However, the Supreme Court affirmed, finding that (1) the substantive evidence of the witness was essential in many areas of the State's case, and (2) the State did not call the witness for the primary purpose of impeaching him with testimony that would have been otherwise inadmissible. Thus, the evidence was admissible as proper impeachment, although not as substantive evidence.

Similarly, in the case at bar, the prior inconsistent statements of the defendant's mother were properly admitted to impeach her trial testimony. However, they were just that: impeachment evidence only. They were not substantive evidence of the facts claimed in them. Thus, there was no substantive evidence in the record at trial to prove that the defendant had, in fact, moved out of his mother's house. As a result, the trial court erred when it entered judgment against the defendant on the charge of failure to register as a sex offender because substantial evidence does not support this

conviction.

(2) The Evidence at Trial Conclusively Proves That the Officer Who Arrested the Defendant Acted Unlawfully When He Entered a House Other than the Defendant's Without a Search Warrant in Order to Arrest the Defendant on an Outstanding Warrant.

In Count II of the second amended information in this case, the state charged the defendant with third degree assault, alleging that he assaulted Officer Matua in an attempt to prevent the officer from exercising his lawful duties. Similarly, in Count II of the second amended information, the state charged the defendant with resisting arrest, alleging that the defendant attempted to resist Officer Matua's attempts to legally arrest him. As is reflected in the "to convict" instructions for both offenses, cited above, in order to sustain a conviction, the state had the burden of proving that the officer was acting legally in both instances. As the following explains, the evidence presented at trial does not support this conclusion. Rather, it only supports the conclusion that the officer was acting illegally when he attempted to enter and arrest the defendant in spite of the existence of the arrest warrant.

In *Payton v. New York*, 445 U.S. 573, 63 L.Ed.2d 639, 100 S.Ct. 1371 (1980), the United States Supreme Court ruled that the Fourth Amendment prohibits the police from entering a person's home in order to make a routine,

warrantless arrest. In this case, the court stated: “[T]he Fourth Amendment . . . prohibits the police from making a warrantless and nonconsensual entry into a suspect’s house in order to make a routine felony arrest.” In explaining this interpretation, the court notes that “the Fourth Amendment has drawn a firm line at the entrance to the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant.” *Payton v. New York*, 445 U.S. at 590.

The Washington State Supreme Court subsequently refined this principle under Washington Constitution, Article 1, § 7, and held that the police may not call a person to the door and then make an arrest without a warrant. In this case, *State v. Holeman*, 103 Wn.2d 426, 693 P.2d 89 (1985), the police went to Defendant’s father’s house in order to question him about a theft. The defendant’s father answered, and then called the defendant to the door at the officer's request. Once the defendant came to the doorway, one of the police officers read him his Miranda rights, after which the officer reached in the door, and took the defendant by the arm. At this point, the defendant’s father grabbed a crow bar and raised it above his head, whereupon the officers arrested the father for obstructing. When the defendant tried to prevent his father’s arrest, the police arrested him also. Once at the police station, the defendant confessed to a theft.

The defendant later moved to suppress his confession as the fruit of

an illegal arrest, and the trial court denied the motion. Following conviction, the defendant sought review, and the Court of Appeals affirmed. The Washington Supreme Court then accepted the case. The court stated the following concerning the point at which the defendant was “under arrest.”

[The defendant] was arrested twice. The first arrest took place while [the defendant] was standing in the doorway of his house. The State does not contest that [the defendant] was under arrest at this point in time despite the fact that the officer never told [him] that he was under arrest. A person is under arrest for constitutional purposes when, by a show of authority, his freedom of movement is restrained. *United State v. Mendenhall*, 446 U.S. 544, 64 L.Ed.2d 497, 100 S. Ct. 3051 (1980). Here, when the police began reading [the defendant] his Miranda rights, he was not free to leave and, as such, was under arrest for Fourth Amendment purposes.

State v. Holeman, 103 Wn.2d at 428.

The court then went on to hold that the first arrest was illegal. In so holding, the court first cited to the Supreme Court’s decision in *Payton*, then went on to state as follows:

It is no argument to say that the police never crossed the threshold of [the defendant’s] house. It is not the location of the arresting officer that is important in determining whether an arrest occurred in the home for Fourth Amendment purposes. Instead, the important consideration is the location of the arrestee. A person does not forfeit his Fourth Amendment privacy interest by opening his door to police officers. A person’s home can be invaded to the same extent when the police remain outside the house and call a person to the door as when the police physically enter the house hold itself. Our state constitution guarantees that

No person shall be disturbed in his private affairs, or his home invaded, without authority of law.

Const. Art. 1, § 7. Here the police did not have the proper authority of law, *i.e.*, a warrant. Consequently, this first arrest of [the defendant] was unlawful.

State v. Holeman, 103 Wn.2d at 429. (Citations omitted; emphasis added).

Although the court held that the first arrest was unlawful, it held that the second arrest for assault of a police officer was lawful. Based upon the legality of this second arrest, the court held that the trial court did not err when it denied the defendant's motion to suppress his confession. *Cf. State v. White*, 97 Wn.2d 92, 640 P.2d 1061 (1982) (citing *Wong Sun v. United States*, 371 U.S. 471, 9 L.Ed.2d 441, 83 S.Ct. 407 (1963)) (confession that flows as the direct result of the defendant's illegal arrest is fruit of the poisonous tree and should be suppressed).

In the case of an arrest warrant, this rule is modified to allow the police to make a warrantless entry into the home of the person named in the arrest warrant, but not the home of third parties. *Hocker v. Woody*, 95 Wn.2d 822, 631 P.2d 372 (1981). The Washington Supreme court has noted the following on this:

An arrest warrant for a suspect only suffices to allow entry into the suspect's own residence, not the residence of a third person. *Steagald v. United States*, [451] U.S. [204], 101 S.Ct. 1642, 68 L.Ed.2d 38 (1981). *Payton v. New York*, 445 U.S. 573, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980). Absent consent or exigent circumstances, which may include hot pursuit, entry into the home of a third party to conduct a search or make an arrest is unreasonable unless done pursuant to a warrant. *Steagald, supra*; *Payton, supra*.

Hocker v. Woody, 95 Wn.2d at 374-375 (quoting *Steagald*, 68 L.Ed.2d at 46).

In the case at bar, the evidence presented at trial supports the conclusion that Officer Matua had a judicially mandated warrant authorizing him to arrest the defendant. By contrast, the officer did not claim, and the evidence does not support the conclusion, that the officer had a judicially authorized warrant that allowed him to enter Mr. Pennington's residence to effect that arrest. Neither is there any evidence that the officer believed that the defendant was living at Mr. Pennington's residence. As Mr. Pennington himself testified, the defendant did not live with him, although he was a frequent guest.

The legal conclusion that flows from these facts is that Officer Matua acted illegally when he entered Mr. Pennington's home in order to make a routine arrest of the defendant. Indeed, the assault itself occurred when Officer Matua stepped over the threshold of Mr. Pennington's house and illegally entered. The defendant's attempts to bar the officer by closing the door followed the Officer's illegal actions, which illegal actions continued until after the defendant's arrest, when Officer Matua exited the house in which he had no legal right to be situated. Consequently, during both the assault and the resisting, Officer Matua was not acting "legally" as is required under both statutes here at issue. As a result, the trial court erred when it entered judgment against the defendant on the assault charge and the

resisting charge because substantial evidence does not support the conclusion that the officer acted legally.

CONCLUSION

This court should vacate the defendant's convictions and remand with instructions to dismiss with prejudice because substantial evidence does not support any of the charges.

DATED this 5th day of March, 2012.

Respectfully submitted,



John A. Hays, No. 16654
Attorney for Appellant

APPENDIX

**WASHINGTON CONSTITUTION
ARTICLE 1, § 3**

No person shall be deprived of life, liberty, or property, without due process of law.

**UNITED STATES CONSTITUTION,
FOURTEENTH AMENDMENT**

All persons born or naturalized in the United State, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

RCW 9A.36.031
Assault in the Third Degree

(1) A person is guilty of assault in the third degree if he or she, under circumstances not amounting to assault in the first or second degree:

(a) 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, herself, or another person, assaults another; or

(b) Assaults a person employed as a transit operator or driver, the immediate supervisor of a transit operator or driver, a mechanic, or a security officer, by a public or private transit company or a contracted transit service provider, while that person is performing his or her official duties at the time of the assault; or

(c) Assaults a school bus driver, the immediate supervisor of a driver, a mechanic, or a security officer, employed by a school district transportation service or a private company under contract for transportation services with a school district, while the person is performing his or her official duties at the time of the assault; or

(d) With criminal negligence, causes bodily harm to another person by means of a weapon or other instrument or thing likely to produce bodily harm; or

(e) Assaults a firefighter or other employee of a fire department, county fire marshal's office, county fire prevention bureau, or fire protection district who was performing his or her official duties at the time of the assault; or

(f) With criminal negligence, causes bodily harm accompanied by substantial pain that extends for a period sufficient to cause considerable suffering; or

(g) Assaults 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; or

(h) Assaults a peace officer with a projectile stun gun; or

(i) Assaults a nurse, physician, or health care provider who was performing his or her nursing or health care duties at the time of the assault. For purposes of this subsection: “Nurse” means a person licensed under chapter 18.79 RCW; “physician” means a person licensed under chapter 18.57 or 18.71 RCW; and “health care provider” means a person certified under chapter 18.71 or 18.73 RCW who performs emergency medical services or a person regulated under Title 18 RCW and employed by, or contracting with, a hospital licensed under chapter 70.41 RCW; or

(j) Assaults a judicial officer, court-related employee, county clerk, or county clerk’s employee, while that person is performing his or her official duties at the time of the assault or as a result of that person’s employment within the judicial system. For purposes of this subsection, “court-related employee” includes bailiffs, court reporters, judicial assistants, court managers, court managers’ employees, and any other employee, regardless of title, who is engaged in equivalent functions.

(2) Assault in the third degree is a class C felony.

RCW 9A.76.040
Resisting Arrest

(1) A person is guilty of resisting arrest if he or she intentionally prevents or attempts to prevent a peace officer from lawfully arresting him or her.

(2) Resisting arrest is a misdemeanor.

INSTRUCTION NO. 17

To convict the defendant of the crime of assault in the third degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about February 25, 2011, the defendant assaulted Fili Matua;

(2) That the assault was committed with intent to prevent or resist the execution of a lawful process or mandate of a court officer or the lawful apprehension or detention of the defendant; and

(3) That any of these acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 21

To convict the defendant of the crime of resisting arrest, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about February 25, 2011, the defendant prevented or attempted to prevent a peace officer from arresting him;
- (2) That the defendant acted intentionally;
- (3) That the arrest or attempt to arrest was lawful; and
- (4) That any of these acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

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/S/

Cathy Russell
Legal Assistant to John A. Hays

HAYS LAW OFFICE

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