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THE SUPREME COURT OF THE STATE OF WASHINGTON RECEIVED BY E-MAIL

STATE OF WASHINGTON, RESPONDENT

v.

NAKIA L. OTTON, PETITIONER

BRIEF OF AMICUS CURIAE

WASHINGTON ASSOCIATION OF PROSECUTING ATTORNEYS

Filed *E*
Washington State Supreme Court
JAN 13 2016
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 ORIGINAL

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I. INTEREST OF AMICUS CURIAE

The Washington Association of Prosecuting Attorneys (“WAPA”) represents the elected prosecuting attorneys of Washington State. Those persons are responsible by law for the prosecution of all felony cases in this state and of all gross misdemeanors and misdemeanors charged under state statutes. Those persons are also responsible for providing advice to the duly elected sheriff of their respective counties. RCW 36.27.020.

WAPA is interested in cases, such as this, that bear on the introduction of evidence in criminal trials where victims or witnesses recant earlier statements or provide testimony at trial that differs from earlier statements to law enforcement, due to memory difficulties or fear.

II. ISSUES PRESENTED

- A. Whether the “*Smith*¹ affidavit” violates the Confrontation clause where the declarant testifies at trial and is subject to cross-examination?
- B. Whether *Smith* incorrectly required that a prior inconsistent statement must be “reliable” in order to be admissible or incorrectly interpreted ER 801’s “other proceedings” language, where this Court is the final authority as to the interpretation of Washington’s evidence rules and *Smith*’s interpretation is significantly supported by legal authority?
- C. Whether the use of the “*Smith* affidavit” is harmful to defendants who are able to fully cross-examine the declarant regarding the prior inconsistent statement, or to victims, who, due to fear or memory loss, give testimony that differs from their original statements to police?

¹ *State v. Smith*, 97 Wn.2d 856, 651 P.2d 207 (1982).

III. STATEMENT OF THE CASE

The facts of this case are discussed in detail in the briefs of the parties. In short, the defendant assaulted and threatened his girlfriend, a woman who had previously suffered a brain hemorrhage requiring surgical intervention, which ultimately left her with memory and speech difficulties. Immediately after the incident, the victim made a statement under penalty of perjury that the defendant had assaulted and threatened her. At trial, however, she denied that the defendant had assaulted or threatened her, and testified about her continuing blackouts. The written statement was admitted at trial as a prior inconsistent statement under ER 801(d)(1)(i), the defendant was able to cross-examine the victim, and the defendant was subsequently convicted.²

IV. ARGUMENT

Summary

No Confrontation Clause violation occurs by the introduction of a prior inconsistent statement made under oath by a witness who testifies at trial. This Court's longstanding interpretation of ER 801 ensures that the prior inconsistent statement was *actually* made by the declarant and has

² These facts have been taken from *State v. Otton*, 187 Wn. App. 1001 (2015) (unpublished opinion). Additional evidence of the assault was presented at trial, including photographs of the victim's injuries, and defendant was fully able to cross-examine the victim as to her earlier statement, by asking her about her memory of the incident and her own alcohol and drug use at the time. *See* RP 150-157, 165.

minimal guarantees of truthfulness. This interpretation is neither incorrect nor harmful. The Court should, therefore, decline to alter its interpretation of ER 801 as it is supported by the United States Supreme Court, legal scholars, and Washington's policy to construe evidence rules such that the truth may be ascertained.

Argument

A. NO CONFRONTATION CLAUSE VIOLATION OCCURS WHERE THE COURT ADMITS A PRIOR INCONSISTENT STATEMENT OF A TESTIFYING WITNESS UNDER ER 801.

In *State v. Smith*, this Court held that an out-of-court statement of a testifying witness may be introduced under ER 801 as a prior inconsistent statement and as substantive evidence where the earlier statement is deemed by the court to be reliable. *State v. Smith*, 97 Wn.2d 856, 651 P.2d 207 (1982). *Crawford v. Washington*, 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004), does not affect the *Smith* decision. *Crawford* addressed whether a defendant's Sixth Amendment right to confrontation was violated by the introduction of testimonial statements of a non-testifying witness who the defendant had no ability to cross-examine. *Crawford*, 541 U.S. at 68.

"There is no confrontation clause problem when the witness testifies at trial, concedes making the prior statement, and is subject to an unrestricted cross examination." *State v. McComas*, 186 Wn. App. 307,

316, 345 P.3d 36 (2015) (citing *United States v. Owens*, 484 U.S. 554, 560, 108 S.Ct. 838, 98 L.Ed.2d 951 (1988)). *Owens* involved a declarant who suffered memory loss after making statements to law enforcement. The U.S. Supreme Court held that cross-examination of the declarant at trial was sufficient to satisfy Confrontation Clause requirements. In light of *Owens*, there are no Confrontation Clause issues in admitting prior statements of a witness who is subject to cross-examination at trial. “*Crawford* has no bearing on the admissibility of prior inconsistent statements under ER 801(d)(1)(i) and does not compel abandonment of the *Smith* test.” *McComas*, 186 Wn. App. at 316.

Additionally, the Supreme Court’s holding in *Crawford* did nothing to disturb its earlier decision in *California v. Green*, 399 U.S. 149, 90 S.Ct. 1930, 26 L.Ed.2d 489 (1970), which held constitutional California’s rule of evidence allowing for the introduction of a prior inconsistent statement by a declarant who testified at trial and was subject to cross-examination. The *Crawford* court reflected on its holding in *Green*, observing that the *Green* decision was consistent with its prior jurisprudence, in which the Court held that “prior trial or preliminary hearing testimony is admissible only if the defendant had an adequate opportunity to cross-examine.” *Crawford*, 541 U.S. at 57.

No Sixth Amendment violation occurs when a court admits a prior inconsistent statement of a testifying witness as substantive evidence, where the defendant has the opportunity to test the reliability of that earlier statement “in the crucible of cross-examination.” *Green*, 399 U.S. at 168; *Crawford*, 541 U.S. at 61-62.

B. THIS COURT’S LONG ESTABLISHED INTERPRETATION OF ER 801 SHOULD REMAIN UNDISTURBED AS IT IS SUPPORTED BY THE UNITED STATES SUPREME COURT, OTHER LEGAL AUTHORITY, AND PUBLIC POLICY.

Because no constitutional violation occurs by the admission of prior inconsistent statements where the declarant is present for cross-examination, the question presented here is simply one requiring an interpretation of an evidentiary rule. This Court decided *Smith* over thirty years ago; there is no reason for the Court to now abandon its long-standing interpretation of ER 801. While this Court has interpreted the “other proceedings” language of ER 801 more broadly than federal courts and other state courts that have adopted the federal rules, there is no harm in its interpretation. As discussed below, Washington’s broader interpretation of the rule is not only consistent with United States Supreme Court jurisprudence, but also with other decisions and scholarly writings, and with Washington’s public policy that favors construing evidence rules

such that the “truth may be ascertained” in court and “proceedings justly determined.” *See* ER 102.

1. This Court’s interpretation of ER 801 is consistent with United States Supreme Court jurisprudence and scholarly writings.

Although ER 801 was taken verbatim from the corresponding federal rule, Fed. R. Crim. Evid. 801(d)(1)(A), the federal interpretation of that rule is not binding on this Court. *Smith*, 97 Wn.2d at 859; *State v. Brown*, 113 Wn.2d 520, 547, 782 P.2d 1013 (1989).

Washington’s rules of evidence are “construed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of the growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.” ER 102. Hearsay rules are premised on the rationale that out-of-court statements are unreliable. *See Williamson v. United States*, 512 U.S. 594, 114 S.Ct. 2431, 129 L.Ed.2d 476 (1994). However, that concern is significantly lessened where the declarant is present in court and is subject to cross-examination as to both in-court testimony as well as the prior inconsistent statement. *See, e.g., Green*, 399 U.S. at 158-159.

In *Smith*, this Court examined the admissibility of a sworn affidavit as substantive evidence under the “other proceeding” requirement of

ER 801(d)(1)(i). The rule provides a court may admit an earlier statement of a witness when:

[t]he 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.

ER 801(d)(1).

This Court and lower courts have interpreted this rule to be “open ended and not restricted.” *Smith*, 97 Wn.2d at 859.

The United States Supreme Court approved an earlier unrestricted version of the federal rule in 1972.³ This earlier version of the rule

³ An earlier draft of the federal rule would have allowed the admission of a prior inconsistent statement where the declarant testifies at trial, is subject to cross-examination concerning the statement, and the earlier statement is inconsistent with his trial testimony. The Advisory Committee for the development of the Federal rules relied on the comments to California's rule of evidence:

[California's Rule] Section 1235 admits inconsistent statements of witnesses because the dangers against which the hearsay rule is designed to protect are largely nonexistent. The declarant is in court and may be examined and cross-examined in regard to his statements and their subject matter. In many cases, the inconsistent statement is more likely to be true than the testimony of the witness at the trial because it was made nearer in time to the matter to which it relates and is less likely to be influenced by the controversy that gave rise to the litigation. The trier of fact has the declarant before it and can observe his demeanor and the nature of his testimony as he denies or tries to explain away the inconsistency. Hence, it is in as good a position to determine the truth or falsity of the prior statement as it is to determine the truth or falsity of the inconsistent testimony given in court. Moreover, Section 1235 will provide a party with desirable protection against the “turncoat” witness who changes his story on the stand and deprives the party calling him of evidence essential to his case.

Andrew King-Ries, *An Argument for Original Intent: Restoring Rule 801(d)(1)(A) to Protect Domestic Violence Victims in a Post-Crawford World*, 27 Pace L. Rev. 199, 213-

“ultimately failed to survive Congressional scrutiny,” largely due to Congress’ concerns over whether the prior statement had actually been made, and whether it was reliable. *See*, Andrew King-Ries, *An Argument for Original Intent: Restoring Rule 801(d)(1)(A) to Protect Domestic Violence Victims in a Post-Crawford World*, 27 Pace L. Rev. 199, 218 (2007). However, the Supreme Court’s approval of the earlier rule demonstrates its support of the liberal introduction of prior inconsistent statements under ER 801 so long as the declarant is in court and subject to full cross-examination.

In interpreting Washington’s rule of evidence, this Court considered the Federal Committee’s concerns with whether the prior statement had actually been made and whether the statement had minimal guarantees of truthfulness. *Smith*, 97 Wn.2d at 862. This Court was satisfied that both of those concerns were met by the introduction of a prior inconsistent statement that was notarized and subject to penalty of perjury. *Id.* However, the Court held that it would not interpret ER 801 to *always* admit or *always* exclude such written affidavits:

The purposes of the rule and the facts of each case must be analyzed. In determining whether evidence should be admitted, *reliability is the key*. In many cases, the inconsistent statement is more likely to be true than the

214 (2007) (citing Preliminary Draft of Proposed Rules of Evidence for the United States District Courts and Magistrates, 46 F.R.D. 161, 331 (1969)).

testimony at trial as it was made nearer in time to the matter to which it relates and is less likely to be influenced by factors such as fear or forgetfulness.

...

Inquiry into what other statements are encompassed by the Rule should be informed by the two purposes Congress had in mind in narrowing the provision originally proposed by the Court. *The first was to remove doubt as to the making of the prior statement... The second purpose was to provide at least the minimal guarantees of truthfulness which an oath and the circumstance of a formalized proceeding tend to assure.* Clearly, however, the prior statement need not have been subject to cross examination at the time made, for Congress was satisfied to rely upon delayed cross examination of the declarant at trial to expose error or falsehood in the statement.

Smith, 97 Wn.2d at 861-862 (emphasis added).

Ultimately, the *Smith* court held that four factors are to be considered in determining the admissibility of a prior inconsistent statement under ER 801: (1) whether the witness voluntarily made the statement; (2) whether there were minimal guaranties of truthfulness; (3) whether the statement was taken as standard procedure in one of the four legally permissible methods for determining the existence of probable cause; and (4) whether the witness was subject to cross-examination when giving the subsequent inconsistent statement. *Smith*, 97 Wn.2d at 861-63.

Lower courts have slightly expanded the breadth of the “*Smith* affidavit” to cover other statements made under oath and subject to penalty of perjury, but all decisions have remained faithful to *Smith*’s four

criteria listed above, and its ultimate requirement of reliability. *See, McComas*, 186 Wn. App. at 345 (prior statement did not satisfy *Smith*'s reliability test because the declarant did not review, sign, or date law enforcement's transcription of her oral statement); *State v. Thach*, 126 Wn. App. 297, 106 P.3d 782 (2005), *review denied*, 155 Wn.2d 1005 (statement written by domestic violence victim in the back of an ambulance that was signed by the declarant under penalty of perjury and taken as part of routine crime investigation was admissible as substantive evidence when declarant changed her testimony on the stand); *State v. Nieto*, 119 Wn. App. 157, 79 P.3d 473 (2003) (boilerplate oath language on victim's prior inconsistent statement was ambiguous and no evidence existed that anyone told the victim her statement was made under penalty of perjury; the court could not, therefore, conclude that the oath requirement of *Smith* was met); *State v. Sua*, 115 Wn. App. 29, 49, 60 P.3d 1234 (2003) (court would not ignore ER 801's requirement that statements must be given under oath subject to penalty of perjury and would not transform ER 801(d)(1)(i) into a catchall provision that would require only a showing of particularized guarantees of trustworthiness for the out-of-court statements of an in-court witness); *State v. Nelson*, 74 Wn. App. 380, 874 P.2d 170 (1994), *review denied*, 125 Wn.2d 1002 (unnotarized statement, made pursuant to RCW 9A.72.085, signed under

penalty of perjury, may be a sworn statement within the meaning of ER 801, and a police interrogation, as a standard method of determining probable cause constitutes an “other proceeding”).⁴

Regardless of where a “*Smith* affidavit” is written, it is certainly more formal than an ordinary jailhouse interview or an offhand remark (as would be admissible under California’s rule, *supra* n. 3). The fact that a “*Smith* affidavit” must be signed under penalty of perjury, in accordance with RCW 9A.72.085, gives it the “minimal guarantees of truthfulness” that Washington’s legislature desired in adopting the rule. A person who makes a false statement under RCW 9A.72.085 is subject to prosecution for perjury or false swearing. *See* RCW 9A.72.010-080. The oath and the potential consequence for an untruthful statement are sufficient to make most declarants careful as to the accuracy of their written statements. The unsworn statement procedure found in RCW 9A.72.085 is used in and relied upon in most legal proceedings including affidavits in support of search warrants, certificates of service, driver’s license revocations, and the filing of tort claims and summary judgment motions. *See, e.g., State v.*

⁴ Just as Washington courts have expanded the “other proceedings” language of ER 801 to include affidavits signed under penalty of perjury, federal courts have also expanded the meaning of the rule to include proceedings not listed in its plain language. The Federal rule has been interpreted to include grand jury hearings. *United States v. Hemmer*, 729 F.2d 10, 17 (1st Cir. 1984). The Ninth Circuit has interpreted the Federal rule to encompass tape-recorded statements made under oath in immigration investigations. *United States v. Castro-Ayon*, 537 F.2d 1055, 1058 (1975) (“the choice of the open-ended term ‘other proceedings’ [by Congress] was intentional”), *cert. denied*, 429 U.S. 983, 97 S.Ct. 501, 50 L.Ed.2d 594 (1976).

Nordlund, 113 Wn. App. 171, 53 P.3d 520 (2002); *Manius v. Boyd*, 111 Wn. App. 764, 47 P.3d 145 (2002); *Johnson v. Department of Licensing*, 71 Wn. App. 326, 858 P.2d 1112 (1993); *Scott v. Petett*, 63 Wn. App. 50, 816 P.2d 1229 (1991). It is for this reason that documents must include this oath in order to be considered “reliable” under the *Smith* factors, *supra*.

As discussed above, the United States’ Supreme Court recommended the promulgation of a more liberal evidence rule to the Federal Advisory Committee. In *Green, supra*, the Supreme Court reviewed the constitutionality of a provision of the California Evidence Code that allowed admission of all prior inconsistent statements of witnesses who were present for trial and subject to cross-examination. *Green*, 399 U.S. 149. Although the Court declined to endorse a specific rule of evidence as the most legally sound, it noted that California’s rule, and similar rules followed in the minority of jurisdictions that allow for liberal admission of prior inconsistent statements, is the view “supported by most legal commentators and by recent proposals to codify the law of evidence.” *Id.* at 154-155.

We find little reason to distinguish among prior inconsistent statements on the basis of the circumstances under which the prior statements were given. The subsequent opportunity for cross-examination at trial with respect to both present and past versions of the event, is

adequate to make equally admissible, as far as the Confrontation Clause is concerned, both the casual, off-hand remark to a stranger, and the carefully recorded testimony at a prior hearing.

Green, 399 U.S. at 168.⁵

Other jurists have likewise criticized the traditional rule still adhered to by some states strictly limiting the admissibility of prior inconsistent statements as substantive evidence:

The latitude to be allowed in the examination of a witness, who has been called and proves recalcitrant, is wholly within the discretion of the trial judge. Nothing is more unfair than to confine a party under such circumstances to neutral questions. Not only may the questions extend to cross examination, but, if necessary, to bring out the truth, it is entirely proper to inquire of such a witness whether he has not made contradictory statements at other times. He is present before the jury, and they may gather the truth from his whole conduct and bearing, even if it be in respect of contradictory answers he may have made at other times.

...

The possibility that the jury may accept as the truth the earlier statements in preference to those made upon the stand is indeed real, but we find no difficulty in it. If, from all that the jury see of the witness, they conclude that what he says now is not the truth, but what he said before, they are none the less deciding from what they see and hear of that person in court. There is no mythical necessity that the

⁵ In his concurrence in *Green*, Chief Justice Burger emphasized his opinion that “the California Supreme Court, in striking down the California statute, seems to have done so in the mistaken belief that this Court, through the Confrontation Clause, has imposed rigid limits on the States in this area. As the Court’s opinion indicates, that conclusion is erroneous ... *Federal authority was never intended to be a ‘ramrod’ to compel conformity to nonconstitutional standards.*” *Green*, 399 U.S. at 170 (emphasis added.)

case must be decided only in accordance with the truth of words uttered under oath in court.

Di Carlo v. U.S., 6 F.2d 364, 368 (2nd Cir. 1925) (Hand, J.).

The *Smith* decision and the “*Smith* affidavit” strike an appropriate balance between the approaches followed in other jurisdictions. Some states, such as California, allow the nearly unfettered admission of any prior inconsistent statement of a witness so long as the witness is subject to cross-examination (which would include hyperbolic or false statements that the witness would never believe would be introduced at trial). Other states, such as Florida, construe the rule so narrowly as to prevent highly probative and reliable evidence from ever reaching the jury. *See Delgado-Santo v. State*, 471 So.2d 74 (Fla. Ct. App. 1985). (Florida is the only state cited to by Petitioner as critical of this Court’s interpretation of ER 801). *Smith* avoids both of these extremes. Its reliability rule ensures that “minimal guarantees of truthfulness” exist in the introduction of the inconsistent statement. This Court’s interpretation of the “other proceedings” language, while different from the Federal interpretation, provides assurances that the statement was actually made by the declarant and is likely truthful.

Under this Court’s interpretation of ER 801, the test of the inconsistent statement’s reliability is two-fold: the trial court makes a

threshold determination of the statement's reliability under *Smith*, and then the statement is again tested through the cross-examination of the declarant. Petitioner's argument that "*Smith* affidavits" are not reliable, and his request for this Court to abandon its interpretation of ER 801 is not supported in law or in logic. This Court should decline to revise its long-standing and legally sound jurisprudence.

2. This Court's interpretation of ER 801 protects crime victims who are unwilling or unable to recall earlier statements to law enforcement and allows the jury to evaluate the case with full knowledge of all relevant facts.

Intimate partner violence accounts for twenty percent of crimes against women. King-Ries, *supra*, at 199. However, prosecutions of domestic violence cases are problematic for prosecutors due to the overwhelming number of victims who refuse to testify or recant their testimony prior to trial. *Id.* Victims of domestic violence are nine times more likely than victims of non-domestic assault to request that the cases be dropped and estimates of the attrition rate of victim-initiated cases reach as high as eighty percent. *Id.* at n. 3. The attrition rate is largely due to domestic violence victims' fear of physical retribution, threatened harm to their children, or the financial hardship the loss of their significant other may pose to their family. *Id.* at 200, citing Douglas E. Beloof and Joel Shapiro, *Let the Truth Be Told: Proposed Hearsay Exceptions to Admit*

Domestic Violence Victims' Out of Court Statements as Substantive Evidence, 11 Colum. J. Gender & L. 1 (2002).

Washington's legislature has recognized the importance of investigating and prosecuting domestic violence as a serious crime against society, and Washington's domestic violence laws, codified in RCW 10.99, serve to assure the victim of domestic violence the maximum protection from abuse which the law and those who enforce the law can provide. RCW 10.99.010.

If the Court alters its long established *Smith*-rule, it could effectively eviscerate the State's ability to secure convictions in the numerous cases where victims recant otherwise reliable and highly probative statements made under oath to law enforcement, due to their fear of physical, psychological, or financial harm. This could occur not only in domestic violence cases, but other cases as well, such as gang prosecutions. A change to the established *Smith*-rule could also prevent effective prosecution in cases where legitimate crime victims or witnesses can no longer recall their earlier testimony due to memory loss because of a medical issue, age, or a delay in the proceedings. The case here presents both concerns, as the victim was a domestic violence victim who suffered from medical memory loss.

Defendant claims that the *Smith*-rule is harmful, and yet has provided no authority or argument in support, other than to echo *Crawford*'s holding that, in the context of unfronted out-of-court statements, "reliability is an amorphous, if not entirely subjective concept." Pet. Supp. Br. at 12, citing *Crawford*, 541 U.S. at 63.

The difference between the clearly problematic judicial determination of the reliability of unfronted out-of-court statements as addressed in *Crawford*, and the judicial determination of the reliability of a prior inconsistent statement as allowed by ER 801, is the very fact that the declarant in the latter instance is available for full cross-examination as to both the in-court testimony and the earlier statement. Thus, both statements are "tested in the crucible of cross-examination" as required by *Crawford*, and the earlier statement is admissible only if the trial court first makes the threshold determination of reliability as required by *Smith*. As discussed by Judge Learned Hand, in *Di Carlo, supra*, it is then up to the jury to decide which statement is the truth and which is not.

The admission of prior inconsistent statements may actually work to a defendant's advantage in many situations, as a jury may tend to be cautious in relying upon the testimony of an individual who has given conflicting statements. Just as the rule could be advantageous to the defendant, the current interpretation of the rule allowing the admission of

affidavits complying with *Smith*, furthers the policy goals enumerated in ER 102 as it allows the truth to be ascertained by the jury and the proceedings to be justly determined.

3. Stare decisis principles require a clear showing that an established rule is incorrect and harmful before it is abandoned; no such showing has been made by Petitioner.

In Washington, the principle of stare decisis requires a “clear showing that an established rule is incorrect and harmful before it is abandoned.” *State v. Devin*, 158 Wn.2d 157, 168, 142 P.3d 599 (2006). Courts do not overrule prior precedent lightly. *Keene v. Edie*, 131 Wn.2d 822, 831, 935 P.2d 588 (1997).

The principles of stare decisis require a showing that this Court’s interpretation of ER 801 is both incorrect and harmful before the Court abandons its prior interpretation of the rule. *See, e.g., Devin*, 158 Wn.2d at 168. Defendant has failed to demonstrate either requirement in his request for this court to abandon the *Smith*-rule. Because Washington’s interpretation of ER 801 is more conservative than California’s evidentiary rule, which has been approved by the Supreme Court, it cannot be an “incorrect” interpretation. The interpretation of the rule cannot be harmful, when, as discussed above, it works to fully inform the jury of reliable, yet inconsistent statements made by crime victims and witnesses, and may ultimately work to a defendant’s advantage. Because defendant

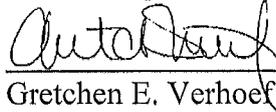
has failed to demonstrate that the rule is both incorrect and harmful, this Court should decline to its ER 801 jurisprudence.

V. CONCLUSION

This Court should decline to alter its long established evidentiary rule announced in *Smith*. No Constitutional issue has been presented by Petitioner. The *Smith* decision is consistent with United States Supreme Court jurisprudence, and with Washington's public policy to construe the rules of evidence so that the truth may be ascertained in Court. The Court's interpretation of the rule is neither incorrect nor harmful. WAPA respectfully requests that this Court continue to permit the use of the "*Smith* affidavit" so that juries in criminal prosecutions may be fully informed of all relevant facts when deliberating, especially in domestic violence cases.

Dated this 4 day of January, 2016.

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

NAKIA L. OTTON,

Petitioner,

NO. 91669-1
COA 45296-1-II

CERTIFICATE OF MAILING

I certify that on the 4th day of January, 2016, I caused a true and correct copy of this Brief of Amicus Curiae Washington Association of Prosecuting Attorneys to be served on the following in the manner indicated below:

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Subject: 91669-1, State v. Nakia L. Otton

Attached for filing in the above case, please find Washington Association of Prosecuting Attorneys Motion for Leave to File Amicus Curiae Brief and Brief of Amicus Curiae.

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