

NO. 70398-6-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

JOEL C. HOLMES,

Appellant.

FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
2011 SEP -3 PM 4:33

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE GEORGE N. BOWDEN
JUDGE PRO TEMPORE

**SUPPLEMENTAL BRIEF OF RESPONDENT RE:
COMMUNITY CUSTODY**

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A. ISSUE PRESENTED

Because intimidating a public servant is defined as a crime against person pursuant to RCW 9.94A.411(2) and the term public servant includes judges pursuant to RCW 9A.04.110(23), a person convicted of the crime of intimidating a judge is subject to one year of community custody pursuant to RCW 9.94A.701(3)(a).

B. PROCEDURAL FACTS

Mr. Holmes was charged with one count of Intimidating a Judge and one count of Felony Harassment stemming from a 911 phone call he made on November 18, 2012, in which he threatened to kill King County Superior Court Judge Julie Spector. CP 1-2. A jury trial was held in May 2013 before Snohomish County Superior Court Judge George N. Bowden appointed Judge Pro Tempore. On May 13, 2013, a jury convicted Holmes as charged of one count of Intimidating a Judge and one count of Felony Harassment. CP 237-38. Mr. Holmes was sentenced to 36 months confinement for intimidating a judge and one year of community custody.

C. **ARGUMENT**

Intimidating a Judge is a crime against person and subject to one year of community custody pursuant to RCW 9.94A.701(3)(a) which provides in pertinent part:

(3) A court shall, in addition to the other terms of the sentence, sentence an offender to community custody for one year when the court sentences the person to the custody of the department for:

(a) Any crime against persons under RCW 9.94A.411(2);

RCW 9.94A.411(2) does not expressly list the crime of intimidating a judge, but rather list, without statutory citation, the more general crime of intimidating a public servant as a crime against persons.

Significantly, RCW 9A.04.110(23) defines public servant as:

(23) "Public servant" means any person other than a witness who presently occupies the position of or has been elected, appointed, or designated to become any officer or employee of government, including a legislator, **judge**, judicial officer, juror, and any person participating as an advisor, consultant, or otherwise in performing a governmental function; (emphasis added)

A Judge is specifically included in the definition of public servant.

It is therefore logical to conclude that the more specific crime of intimidating a judge is also included in the definition of a crime against a person. Accordingly, Mr. Holmes was properly sentenced to one year of community custody.

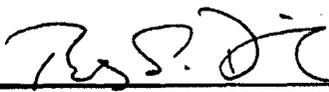
D. CONCLUSION

For all of the foregoing reasons, the portion of the defendant's judgment and sentence imposing one year of community custody should be affirmed.

DATED this 3rd day of September, 2014.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

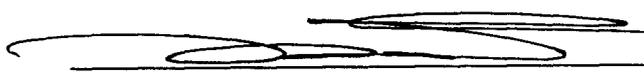
By: 

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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Sarah McNeel Hrobsky, the attorney for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the **SUPPLEMENTAL BRIEF OF RESPONDENT RE: COMMUNITY CUSTODY**, in STATE V. JOEL C. HOLMES, Cause No. 70398-6-I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.



Name
Done in Seattle, Washington

Date

09-03-14