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IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

DEJONE D. SIMPSON,

Appellant.

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

The Honorable Karena Kirkendoll, Judge

AMENDED BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. Appellant’s state and federal due process rights were violated when the State failed to have him evaluated for mental competency prior to sentencing in a timely fashion despite the mandates of the 2015 statutory changes and the federal court order in *Trueblood v. Wash. State Dep’t of Social & Health Svcs*, 822 F.3d 1037, 1038-39 (9th Cir. 2016) (*Trueblood II*), amended, 2016 No. C14–1178–MJP, 2016 WL 4268933 (W.D. Wash. Aug. 15, 2016).

2. Government mismanagement required dismissal under CrR 8.3(b).

3. The trial court erred in denying appellant’s motion to suppress evidence under CrR 3.6.¹

4. The trial court erroneously entered Finding of Fact 8 that the officer proceeded onto the property “to investigate whether or not a crime was being committed inside of the vehicle” insofar as the appellant challenges whether the officer had a basis to form a reasonable suspicion of criminal activity.

5. The trial court erroneously entered Finding of Fact 11 insofar as the appellant was “seized” by the officer at that time and not free to leave.

6. The trial court erred in entering Conclusion of Law 2 finding

¹The trial court’s written findings of fact and conclusions of law denying appellant’s CrR 3.6 motion to suppress are attached to this brief as Appendix A.

the officer was authorized to stop and contact the appellant.

7. The trial court erred in entering Conclusions of Law 3 and 4 that the “open view” exception applies.

8. The trial court erred in entering Conclusion of Law 5 that specific and articulable facts consistent with criminal activity were present.

9. The \$200.00 criminal filing fee and \$100.00 felony DNA fee should be stricken because Mr. Simpson was indigent at the time of sentencing, and *State v. Ramirez*² controls.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Where the accused is suspected of being incompetent at the time of sentencing and the State is under a federal court order and statutory mandate to provide timely competency evaluations, is dismissal without prejudice the correct remedy for violation of the appellant's substantive due process rights following a 69-day delay? Assignment of Error 1.

2. Did government mismanagement require dismissal of the conviction under CrR 8.3(b)? Assignment of Error 2.

3. Did the trial court err by denying the motion to suppress the fruits of the officer's contact with the appellant and entry onto the property where: (1) the officer did not have reasonable suspicion of criminal activity, and (2) and the subsequent investigation of the status of the vehicle occurred as a result of the illegal contact with the appellant? Assignments

² 191 Wash.2d 732, 426 P.3d 714 (2018).

of Error 3 and 4.

4. Under Washington Constitution, Article I, § 7, and United States Constitution, Fourth Amendment, is a person seized when a reasonably prudent person in the appellant's position would not have felt free to leave after being contacted and questioned by the officer, and where the officer called the license plate number of the vehicle in question into dispatch? Assignment of Error 5.

5. Did the trial court err in denying appellant's motion to suppress where the officer lacked reasonable suspicion to conduct a *Terry*³ stop. Assignment of Error 6.

6. Did the trial court err by concluding the “open view” doctrine applied where the officer’s entry onto the property was not based on a reasonable suspicion of criminal activity? Assignments of Error 7 and 8.

7. Recent changes to Washington's statutory scheme prohibit the imposition of discretionary costs and criminal filing fees on indigent defendants. The Supreme Court held in *State v. Ramirez* that these statutory changes apply retroactively to cases that were pending on direct appeal when the statutes were amended. Should the discretionary legal financial obligations, including the \$200 criminal filing fee and \$100 DNA fee be stricken? Assignment of Error 9.

C. STATEMENT OF THE CASE

³*Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).

1. **Procedural facts:**

Dejone Simpson was charged by information filed in Pierce County Superior Court on March 23, 2017, with one count of unlawful possession of stolen vehicle, contrary to RCW 9A.56.068. Clerk's Papers (CP) 3.

a. CrR 3.5/3.6 suppression hearing

Defense counsel filed a motion to suppress statements and evidence obtained by law enforcement on March 22, 2017. CP 59-67. Counsel moved to suppress evidence pertaining to a Nissan Sentra, specifically the vehicle's license plate observed by Lakewood Police Officer Michael Russell, who entered a driveway while contacting Mr. Simpson, as well as Mr. Simpson's statements to Officer Russell prior to and after his arrest on March 22, 2017. CP 60, 68. The motion was heard the morning of trial on July 17, 2017. 7Report of Proceedings (RP) at 75-125.⁴

Officer Russell was on patrol in a mobile home park in Lakewood, Washington at approximately 9:00 a.m. on March 22, 2017. 7RP at 78. As he approached what was designated as Trailer No. 22 in the park, he saw the legs of a man protruding from the open door on the driver's side of a Nissan Sentra that was parked in the driveway. 7RP at 78-79. The person in the

⁴This brief refers to the verbatim reports of proceedings as follows: RP (March 23, 2017, April 6, 2017); 1RP - April 27, 2017; 2RP - May 18, 2017; 3RP - May 22, 2017, 4RP - June 13, 2017; 5RP - June 15, 2017 (status conference); 6RP - June 26, 2017; 7RP - July 17, 2017 (CrR 3.5/3.6 motion, jury trial, day 1); 8RP - October 11, 2017 (motion re: contempt); 9RP - December 6, 2017; July 18, 2017 (jury trial, day 2); September 15, 2017 (RCW 10.77 motion hearing); and January 19, 2017 (sentencing).

vehicle appeared to be under the dashboard. 7RP at 79. Officer Russell testified that he did not believe that it was “normal” to be working on a car “at that time of day,” and stated that he thought the person could be attempting to take a car stereo or disassembling the vehicle’s ignition. 7RP at 79. He stated that there had been instances of “vehicle prowls” “in that area.” 7RP at 79. From his viewpoint on the road going through the trailer park, the officer was unable to see what the man was doing in the car, and the license plate of the vehicle was not visible from the road because it was blocked by another vehicle. 7RP at 92, 100, 101.

Officer Russell parked his vehicle approximately forty feet from the Nissan. 7RP at 111. He got out of his vehicle and walked up the driveway or parking strip of Trailer 22 toward the Nissan, and as he walked past another vehicle parked in the driveway he was able to see the license plate of the Nissan. 7RP at 93, 100, 111. Officer Russell contacted police dispatch with the license plate number. 7RP at 81.

After contacting dispatch, Officer Russell called out to the man in the car, who was subsequently identified as Dehone Simpson, to get his attention, and then asked him what he was doing. 7RP at 81, 82. Mr. Simpson backed out of the Nissan and stood near the driver’s side door of the vehicle. 7RP at 82. Officer Russell asked Mr. Simpson who owned the car, and Mr. Simpson responded that he owned the car had just bought it, and that he was changing a stereo in the car. 7RP at 84, 85. After Mr. Simpson’s response,

dispatch notified the officer that the car was reported stolen. 7RP at 85. Officer Russell placed Mr. Simpson under arrest. 7RP at 85. After being given his constitutional warnings, he stated that he bought it for \$100.00 and had lost the key. 7RP at 87.

Defense counsel argued in the pleading filed in support of the motion to suppress that the officer's entry onto the property and view of the license plate, which was obscured from the roadway, constituted an illegal warrantless search. CP 59-67. As a result, the fruits of the initial illegal search (including Mr. Simpson's statements) had to be suppressed. CP at 59-67.

After testimony, but without hearing argument, the court denied the motion to suppress the evidence and statements. 7RP at 124-25.

Findings and conclusions were entered January 19, 2018. CP 352-356. The court's findings largely reflect the officer's testimony as set forth above. The court concluded that the officer had a reasonable suspicion of criminal activity and that the officer was authorized to contact Mr. Simpson. CP 355 (Conclusion of Law 2). In addition, the court found that the activity occurred in "open view" and that the officer was authorized to enter the property surrounding the trailer to investigate without violating Mr. Simpson's Fourth Amendment rights. CP 355 (Conclusions of Law 3 and 4).

b. First competency evaluation

The court ordered a competency evaluation on April 11, 2017. CP 13-20. A mental health evaluation by Dr. Michael Stanfill was filed April 21, 2017. The evaluator stated that Mr. Simpson has the capacity to understand the proceedings and to assist his attorney in his own defense. Psychological Evaluation, April 20, 2017, at 5. CP 23-28. The court entered an order of competency on April 27, 2017. RP (3/27/17) at 3-4; CP 34-35.

c. Conviction, post-conviction competency evaluation, and sentencing

Following suppression hearing the morning of July 17, 2017, The matter came on for jury trial on July 17 and 18, 2017, the Honorable Karena Kirkendoll presiding. 7RP at 135-256, and RP (7/18/17) at 3-101.

The jury found Mr. Simpson guilty of possession of a stolen vehicle as charged. RP (7/18/17) at 96; CP 153.

Following conviction, the case was set for sentencing on August 4, 2017. RP at 101. Sentencing was rescheduled to take place on August 18, and then continued to September 15, 2017. RP (8/18/17) at 2-4. Defense counsel requested a second competency evaluation on September 15, 2017, which was granted. RP (9/15/17) at 2-4; CP 158-165. Dr. Stanfill met with Mr. Simpson on September 19, 2017 and prepared a second competency evaluation on September 22, 2017. CP 176-82. In his evaluation, Dr. Stanfill requested an inpatient competency evaluation of up to fifteen days to assess his ability to understand the court proceedings and ability to work

with defense counsel regarding sentencing. CP 176-82.

The court entered an order for an inpatient evaluation on September 28, ordering that Mr. Simpson be admitted to Western State Hospital (WSH) within seven days of the order for a commitment of up to fifteen days from the date of admission. CP 183-189. The court further ordered a competency evaluation be completed by October 19, 2017. CP 183-89. Mr. Simpson had not been admitted to WSH by October 5, and defense counsel filed a motion to show cause regarding contempt against WSH and for sanctions pursuant to *Trueblood v. Wash. State Dep't of Soc. & Health Servs.*, 101 F.Supp.3d 1010, 1022 (W.D.Wash. 2015), vacated and remanded, 822 F.3d 1037 (9th Cir. 2016) (*Trueblood II*).⁵ CP 192-93.

Following a hearing on October 11, 2017, the court found DSHS to be in contempt and found Mr. Simpson to be a class member as provided in *Trueblood* and ordered sanctions against DSHS. RP (10/11/17) at 261-63.

Mr. Simpson was admitted to WSH on December 6, 2017, and an evaluation was filed December 19, 2017 indicating that Mr. Simpson was

⁵In *Trueblood II*, the court ordered the Department of Social and Health Services (DSHS) to provide competency evaluations to pretrial detainees within 7 days of an order calling for an evaluation (amended to 14 days on remand) and to provide restoration services within 7 days of an order calling for treatment. *Trueblood v. Wash. State Dep't of Soc. & Health Servs.*, 101 F. Supp. 3d 1010 (W.D. Wash. 2015) (*Trueblood II*), vacated and remanded by *Trueblood v. Wash. State Dep't of Soc. & Health Servs.*, 822 F.3d 1037 (9th Cir. 2016). On remand, the court modified its injunction to 14 days. *Trueblood v. Wash. State Dep't of Soc. & Health Servs.*, No. C14-1178-MJP, 2016 WL 4268933, at *1 (W.D. Wash. Aug. 15, 2016).

competent to assist counsel at sentencing. CP 318.

The case came on for sentencing on January 19, 2018. The State argued that Mr. Simpson had an offender score of “8” and a standard range of 33 to 43 months. RP (1/19/18) at 10-11. The State recommended a sentence of 43 months. RP (1/19/18) at 11. Defense counsel requested a 33 month sentence. RP (1/19/18) at 11-13.

The court sentenced Mr. Simpson to 35 months. RP (1/19/18) at 24; CP 342. After inquiring about Mr. Simpson’s ability to pay, the court imposed legal financial obligations consisting of a \$500.00 crime victim penalty assessment, \$100.00 DNA collection fee, and a \$200.00 filing fee. RP (1/19/18) at 16; CP 340.

Timely notice of appeal was filed on January 25, 2018. CP 369. This appeal follows.

Appellant’s opening brief was filed August 9, 2018. Counsel was granted leave to file an amended brief.

2. Trial testimony:

Lakewood police officer Michael Russell responded to a report of a stolen car on the morning of March 18, 2017. RP (7/18/17) at 25. The report involved a 1994 Nissan Sentra belonging to Franciso Santiago that was missing from his apartment complex in Lakewood, located near Joint Base Lewis McChord. RP (7/18/17) at 14, 25, 26-27. Mr. Santiago bought the car eight months prior to the incident on Mach 18, 2017 for \$800.00. RP

(7/18/17) at 15. Mr. Santiago stated that he heard when the car was started and looked out the window at the parking space and “saw that they were taking it.” RP (7/18/17) at 17. He stated that the car was locked and the keys were not in the car when he parked it. RP (7/18/17) at 17. After the car was taken, he used another car to see if he could find the Nissan, but was unable to find it. RP (7/18/17) at 18. He returned to his apartment and called the police. RP (7/18/17) at 18. After it was recovered, the car was returned to Mr. Santiago about a week later. RP (7/18/17) at 20. He stated that when the car was returned, the ignition was damaged, the stereo was disconnected, and tools were missing from the car. RP (7/18/17) at 20.

Officer Russell’s testimony was essentially the same as his testimony at the suppression hearing. He stated that while driving through the Rancho Villa Mobile Home Park at approximately 9:00 a.m. on March 22, 2017, noticed a Nissan Sentra in the driveway of Trailer No. 22 with an open door, and in which a person appeared to be under the dashboard. RP (7/18/17) at 33, 43. Officer Russell stated that he had “[e]xtensive contact” with occupants of Trailer 22 and was familiar with the “regulars there.” RP (7/18/17) at 42. He stated that it “looked abnormal, like possibly they were maybe stealing the stereo or doing something to the ignition.” RP (7/18/17) at 33. The officer notified dispatch that he was checking on the car and then approached the Nissan and called out to the occupant of the car. RP (7/18/17) at 34. The man, identified as Dejone Simpson, backed out of the car and

stood up in the doorway of the car. RP (7/18/17) at 34-35.

Officer Russell stated that Mr. Simpson said that he was putting a stereo in the car. The officer stated that there was a stereo that was “hanging out of the dash” and the dashboard looked as it has been disassembled. RP (7/18/17) at 36. The officer learned from dispatch that the Nissan was reported stolen and he took Mr. Simpson into custody. RP (7/18/17) at 37. The officer stated that Mr. Simpson said that he had bought the car for \$100.00. RP (7/18/17) at 37.

Officer Russell gave Mr. Simpson his constitutional warnings. RP (7/18/17) at 38. He testified that Mr. Simpson said that he bought the car from a “Josh” but did not provide a last name, location of the sale or address, and that he had a key to the car but that he had lost it. RP (7/18/17) at 38, 53. The officer stated that the “ignition looked like it had been tampered with” by using “a shaved key or some sort of device,” that had been inserted into the ignition. RP (7/18/17) at 39.

The defense rested without calling witnesses. RP (7/18/17) at 56.

D. ARGUMENT

1. MR. SIMPSON'S DUE PROCESS RIGHTS WERE VIOLATED BY A 69 DAY DELAY BETWEEN THE ORDER FOR A COMPETENCY EVALUATION AND ADMISSION TO WESTERN STATE HOSPITAL

The Due Process Clause of the Fourteenth Amendment to the U.S. Constitution and Article I, §3 of the Washington State Constitution provide that

no person shall be deprived of life, liberty, or property without due process of law. The substantive component of the due process clause bars the government from infringing on fundamental liberty interests unless the infringement is narrowly tailored to serve a compelling state interest. *State v. Clinkenbeard*, 130 Wn. App. 552, 564, 123 P.3d 872 (2005). “No incompetent person may be tried, convicted, or sentenced for the commission of an offense so long as the individual remains incompetent.” *State v. Wicklund*, 96 Wn.2d 798, 800, 638 P.2d 1241 (1982); RCW 10.77.050.

Washington has statutory procedures for the identification and treatment of mentally incompetent criminal defendants. RCW 10.77 *et. seq.* In 1973, the Washington State Legislature adopted a comprehensive statutory scheme for addressing the competency of criminal defendants. *LAWS OF 1973, 1st Ex. Sess., ch. 117.*

In *In re Personal Restraint of Fleming*, 142 Wash.2d 853, 862, 16 P.3d 610 (2001), our Supreme Court held the statute afforded greater protection than the constitutional standard. Under RCW 10.77.050, “[n]o incompetent person shall be tried, convicted, or sentenced for the commission of an offense so long as such incapacity continues.” A person is incompetent if he or she “lacks the capacity to understand the nature of the proceedings against him or her or to assist in his or her own defense as a result of mental disease or defect.”

RCW 10.77.010(15). Whenever there is reason to doubt the competency of a defendant, the court is authorized to order an evaluation and a report on the mental condition of the defendant. RCW 10.77.060(1)(a).

Constitutional questions regarding confinement of incompetent pretrial criminal defendants are analyzed under the due process clause. *Oregon Advocacy Center v. Mink*, 322 F.3d 1101, 1120 (9th Cir. 2003). Whether the substantive due process rights of an incompetent criminal defendant have been violated is determined by balancing their liberty interests in freedom from incarceration and in restoration treatment against the legitimate interests of the State. *Id.* at 1121.

Mr. Simpson was arrested on March 22, 2017 and remained in custody during the proceedings. Defense counsel requested a competency evaluation for Mr. Simpson under RCW 10.77.060 and the trial court ordered that he be held in custody without bail pending the competency determination. CP 13-20. An evaluation report by Dr. Stanfill on April 21, 2017 concluded that Mr. Simpson had the capacity to understand the proceedings and assist his counsel in preparing his defense. CP 23-28. The court entered an order finding Mr. Simpson competent on April 27, 2017. 1RP at 3; CP 34-35.

Mr. Simpson was subsequently convicted of unlawful possession of a stolen vehicle on July 18, 2018.

Defense counsel requested a second competency evaluation on

September 15, 2017. RP (9/15/17) at 1-4. Dr. Stanfill prepared a forensic psychological evaluation on September 25, 2017, in which he recommended an in-patient competency evaluation at Western State Hospital (WSH), and that he be held at that facility for up to 15 days to complete the evaluation. CP 176, 181. The court ordered an in-patient competency evaluation at WSH on September 28, 2017. CP 183-89. The order provided that Mr. Simpson should be admitted to WSH within seven days of entry of the order. CP 187.

Following a contempt hearing on October 11, 2017, the court found DSHS to be in contempt and found Mr. Simpson to be a *Trueblood* class member and ordered sanctions against DSHS.

Despite the court's ruling, Mr. Simpson remained in the Pierce County Jail for 69 days following the September 28, 2017 order before being admitted to WSH on December 6, 2017. CP 192-93. He was evaluated by Dr. Eden Beesley at WSH and the forensic report was filed on December 19, 2017. CP 310-19. In the evaluation, Dr. Beesley stated that Mr. Simpson currently exhibits no indications of symptoms of a mental disease or defect that interfere in any significant manner, and that he has the capacity to understand the changes and court proceedings and has the ability to consult with an attorney with a reasonable degree of rational understanding. CP 318.

Mr. Simpson was not admitted to WSH until 69 days after the trial court's order of September 28, 2017. The case came on for sentencing on January 19, 2018, approximately four months after his conviction on July 18,

2017.

Mr. Simpson was determined to be a member of the *Trueblood* class. *Trueblood v. Wash. State Dep't of Social & Health Servs.*, 73 F. Supp. 3d 1311 (W.D. Wash. 2014) (*Trueblood I*), is a class action civil suit brought by pretrial detainees suspected of being mentally incompetent who waited in jail for an average of 29 days before receiving a competency evaluation and 15 days for restoration at WSH, and 50 days for evaluation and 17 days for restoration at Eastern State Hospital. *Trueblood*, 73 F. Supp. 3d at 1313. In the case, the court held that these delays violated the class members' due process rights. In *Trueblood II*, the court ordered the Department of Social and Health Services (DSHS) to provide competency evaluations to pretrial detainees within 7 days of an order calling for an evaluation (amended to 14 days on remand) and to provide restoration services within 7 days of an order calling for treatment. *Trueblood*, 101 F. Supp. 3d 1010, 1023–24. (W.D. Wash. 2015), vacated and remanded in *Trueblood*, 822 F.3d 1037 (9th Cir. 2016). Similar to the class members in the *Trueblood* cases, Mr. Simpson waited 69 days to receive services at WSH. Mr. Simpson respectfully asks this Court to find that his due process rights were violated and the remedy must be dismissal pursuant to CrR 8.3. CrR 8.3(b) provides in relevant part:

(b) On Motion of Court. The court, in the furtherance of justice, after notice and hearing, may dismiss any criminal prosecution due to arbitrary action or governmental misconduct when there has been prejudice to the rights of the accused which materially affect the accused's right to a fair trial.

The court shall set forth its reasons in a written order.

Dismissal under CrR 8.3 is an extraordinary remedy and appropriate in truly egregious cases. *State v. Flinn*, 119 Wn.App.232, 247, 80 P.3d 171 (2003), (aff'd, 154 Wn.2d 193, 110 P.3d 748 (2005)). The defendant must first demonstrate arbitrary action or governmental misconduct. The governmental misconduct need not be evil or dishonest, simple mismanagement is sufficient. *Id.* at 831. The second necessary element is prejudice affecting a defendant's right to a fair trial. *State v. Michielli*, 132 Wn.2d 229, 241, 937 P.2d 587 (1997).

Failure by DSHS and WSH to comply with the law and the court's order amount to government misconduct. In *Trueblood I*, the federal court found that Washington State DSHS violated the liberty rights of individuals who faced criminal charges and found to be mentally incompetent to proceed to trial, were left to wait for week or months in jails, until offered admission to a state hospital. *Trueblood*, 73 F.Supp.3d 1313. The federal court prohibited the State from delaying competency restoration services for these jailed defendants. *Id.*

Mr. Simpson was prejudiced by the failure of DSHS and WSH to comply with the statutory scheme, the trial court's order, and the federal court ruling of a seven day transport timeframe. Mr. Simpson's right to due process, guaranteed under the Fourteenth Amendment was violated by the lengthy and unnecessary delay in admission to WSH. He spent 69 days

waiting to be admitted to WSH, contrary to the court's order of September 28, and was kept in the county jail during that period.

Here the record established mismanagement and prejudice under *Trueblood. Trueblood*, 73 F.Supp 3d at 1313.

a. Pursuant to State v. Kidder, the substantive due process violation in Simpson's case merits dismissal without prejudice

After Simpson filed his initial brief on August 9, 2018, the Supreme Court addressed the issue of delay regarding competency evaluations in *State v. Hand* ___ Wn.2d ___, 429 P.3d 502 (November 08, 2018). In that case, Hand was held pursuant to a charge of unlawful possession of a controlled substance. *Hand*, 429 P.3d at 503. On December 24, 2014, the trial court ordered that Hand be held without bail pending a competency determination. *Id.* After review of the opinion of the mental health evaluator, the court found Hand not competent to stand trial and ordered a 45-day commitment to Western State Hospital for competency restoration to begin within 15 days of the order. *Id.* Hand had and still had not been admitted to WSH, and he filed a motion to dismiss based on a substantive due process violation or, alternatively, for WSH to show cause why it should not be held in contempt pursuant to *Trueblood. Id.* The motion was denied but the court ordered a show cause hearing. *Id.* Hand filed another motion to dismiss, alleging a due process violation and filed a third motion to dismiss or to release him

from custody. *Id.* at 503-04. The trial court found DSHS in contempt of the trial court's December 24, 2014 order and ordered that Hand be transported to WSH by February 26, 2015, and imposed sanctions of \$500 per day to be paid to the county jail for every day beyond the new deadline. *Id.* at 504. Hand was nevertheless not transferred to WSH on February 26, 2015. On March 4, 2015, finding no due process violation, the court denied the motions to dismiss. *Id.* On March 10, 2015, 61 days after the court's 15-day deadline expired, WSH finally admitted Hand for restoration treatment and he was later tried by the court and convicted as charged. *Id.*

In *Hand*, the Supreme Court affirmed this Court's opinion in *Hand*, 199 Wn.App. 887, 401 P.3d 367 (2017), and handed down a somewhat Pyrrhic victory by stating that although Hand may be able to bring a civil claim for damages, the remedy that he sought—dismissal with prejudice—is not available. *Hand*, 429 P.3d at 508.

The *Hand* decision confirms Mr. Simpson's argument that he should have had a much more prompt evaluation before sentencing, that restorative services should have commenced sooner, and that the delays violated *Trueblood II*. In *Trueblood II*, the court ordered the Department of Social and Health Services (DSHS) to provide competency evaluations to pretrial detainees within 7 days of an order calling for an evaluation (amended to 14

days on remand) and to provide restoration services within 7 days of an order calling for treatment. See also, *Hand*, 429 P.3d at 508. The Court held, however, that dismissal with prejudice is not an available remedy. *Hand*, 429 P.3d at 507-08.

The *Hand* Court noted that Washington currently has two statutory mechanisms by which incompetent defendants detained in jail can have their charges dismissed without prejudice—citing RCW 10.77.079 and RCW 10.77.084(l)(c) —and held that although dismissal with prejudice and is not an available remedy, the holding of *State v. Kidder*, 197 Wn. App. 292, 389 P.3d 664 (2016) allows a court or prosecuting attorney to dismiss an incompetent defendant's charges without prejudice. *Hand*, at 507-08. In *Kidder*, a defendant was committed for 90 days for competency restoration, which was unsuccessful. Division One held that the trial court acted within the applicable statutes by dismissing the criminal charge without prejudice and ordering an evaluation of the defendant for civil commitment. *Kidder*, 197 Wn.App. at 317.

The delays in this case are similar to the delay in *Hand*, where seventy-six days elapsed between the order of commitment and the commencement of restorative services. *Hand*, at 504. In this case, Mr. Simpson remained in the Pierce County Jail for 69 days following the

September 28, 2017 order before being admitted to WSH on December 6, 2017. CP 192-93. He was evaluated at WSH and the forensic report was filed on December 19, 2017. CP 310-19. This delay should be considered unduly long under *Trueblood*, 101 F. Supp. 3d 1010 (W.D. Wash. 2015) (W.D. Wash. 2015) (*Trueblood II*).

Although the case involved a post-conviction relay instead of a pretrial delay, the trial court nevertheless had the authority to dismiss without prejudice, until such time as the state got around to providing the ordered services. Accordingly, this Court should reverse and dismiss the conviction without prejudice. The State should not be allowed to ignore the mandatory rules and statutes. Aside from the statutory requirements, courts have ample authority to prevent serious violations of the Fourteenth Amendment's substantive due process guarantee. Under this guarantee, the State cannot constitutionally detain incompetent defendants for months before they receive restorative treatment. The case law supports Mr. Simpson's argument that the long delay violated his substantive due process rights. This Court should reverse and dismiss the case without prejudice. *Hand*, at 508, *Kidder* at 317.

2. THE TRIAL COURT ERRED IN DENYING THE MOTION TO SUPPRESS BECAUSE THE EVIDENCE WAS OBTAINED AS A RESULT OF AN UNCONSTITUTIONAL SEIZURE AND

SEARCH.

a. The court erred in denying the appellant's motion to suppress the evidence

Mr. Simpson moved to suppress all the evidence including certain incriminating statements on the basis that the investigative stop violated his Fourth Amendment right to protection against unreasonable search and seizure. Officer Russell conducted an intrusive warrantless search when, without a warrant, he walked onto the driveway of trailer 22 to contact Mr. Simpson, and viewed the license plate of the Nissan, which blocked by another vehicle and was not visible from the road going through the trailer park. As a result, the evidence, including Mr. Simpson's statements, must be suppressed as the fruits of the illegal search. Because this evidence supplied the only support for the charged crimes, Mr. Simpson's conviction must be reversed.

In reviewing a lower court's decision on a suppression motion, this Court determines whether substantial evidence supports the challenged findings of fact, and whether the findings support the conclusions of law. *State v. Garvin*, 166 Wn.2d 242, 249, 207 P.3d 1266 (2009). Evidence is substantial if it is enough "to persuade a fair-minded person of the truth of the stated premise." *Id.* (quoting *State v. Reid*, 98 Wn. App. 152, 156, 988 P.2d 1038 (1999)). This Court reviews de novo conclusions of law relating to the suppression of evidence. *Garvin*, 166 Wn.2d at 249.

The Fourth Amendment to the United States Constitution protects

against unlawful search and seizure. Article I, section 7 of the Washington Constitution protects against unwarranted government intrusions into private affairs. Under both the federal and state constitutions, warrantless searches and seizures are prohibited unless an exception applies. *State v. Doughty*, 170 Wn.2d 57, 61, 239 P.3d 573 (2010); *State v. Williams*, 102 Wash.2d 733, 736, 689 P.2d 1065 (1984). Exceptions authorizing seizure on less than probable cause are narrowly drawn and carefully circumscribed. *State v. White*, 97 Wn.2d 92, 640 P.2d 1061 (1982).

The *Terry* stop—a brief investigatory seizure—is one such exception to the warrant requirement. *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). A *Terry* stop requires a well-founded suspicion that the defendant engaged in criminal conduct. *Id.* at 21, 88 S.Ct. 1868; *State v. Garvin*, 166 Wash.2d 242, 250, 207 P.3d 1266 (2009). “[I]n justifying the particular intrusion the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.” *Terry*, 392 U.S. at 21, 88 S.Ct. 1868. “A *Terry* stop requires a well-founded suspicion that the defendant engaged in criminal conduct.” *Doughty*, 170 Wash.2d 57, 62, 239 P.3d 573 (2010). In determining the presence of such a suspicion, the court considers the totality of the circumstances. *Id.*

The *Terry* exception is more narrowly construed under our state constitution than under the Fourth Amendment. See *State v. Gatewood*, 163

Wn.2d 534, 539, 182 P.3d 426 (2008). The State bears the burden of proving the legality of a warrantless seizure by clear and convincing evidence. *Garvin*, 166 Wn.2d at 250.

b. Mr. Simpson was seized when the officer called out and then asked him who owned the car

Under the Fourth Amendment, 7 an officer making an investigatory stop must have reasonable suspicion, based on objective facts, that the individual is involved in criminal conduct. *State v. Thompson*, 93 Wn.2d 838, 840-41, 613 P.2d 525 (1980).

In this case, Officer Russell, While driving through the trailer park at approximately 9:00 a. m. on March 22, 2017, observed a car parked in the driveway of Trailer 22 with the driver's door partially open and a person's legs sticking out of the open door. 7RP at 82. The officer was unable to observe any illegal activity. The officer was unable to see the license number of the vehicle, but when he approached and was on the driveway itself, he was able to see the license plate. Officer Russell did not have sufficient facts to justify an investigatory detention.

The trial court implied in Finding of Fact 11 that Officer Russell had not seized Mr. Simpson because he "did no[t] instruct the defendant where to stand nor did he tell him he was not free to leave." Finding of Fact 11, CP 355. Officer Russell approached the car and asked Mr. Simpson asked who owned the car and also asked him what he was to know what he was doing. While walking to the car he also called the license plate number to dispatch.

7RP at 84, CP 354, Finding of Fact 10. These events constitute a seizure.

A seizure has occurred when, in view of all the circumstances surrounding the incident, a reasonable person in the individual's position would have believed that he was not free to leave. *State v. Harrington*, 167 Wn.2d 656, 663, 222 P.3d 92 (2009); *State v. Armenta*, 134 Wn.2d 1, 10, 948 P.2d 1280 (1997). A reasonable person in Mr. Simpson's position would not have felt free to leave after the officer approached him, asked what he was doing, and audibly called in the license plate number of the vehicle. Division Three's decision in *State v. Gantt*, 163 Wn. App. 133, 257 P.3d 682 (2011), is instructive. In that case, Gantt parked his van, got out, and walked toward a house. *Id.* at 136. A police officer was suspicious because he had just seen the same van parked in a different place. The officer activated his emergency lights, parked behind the van, and got out of his patrol car. When the man returned to his van, the officer asked him what he was doing. *Id.*

The officer described the interaction up to this point as a "social contact," and the trial court adopted that characterization. The trial court ruled that the interaction did not evolve into a seizure until the officer later noticed a traffic infraction. *Id.* at 138.

Division Three reversed, stating, "[w]e conclude that Mr. Gantt was seized when Officer Valencia activated his emergency lights and asked Mr. Gantt what he was doing." *Gantt*, 163 Wn. App. at 141. A reasonable person

in the defendant's position would not have believed he was free to leave, and therefore the interaction constituted a seizure. *Id.*

Here, Officer Russell did not activate the emergency light in his vehicle, but he engaged in a show of authority by getting out of his car and walking toward Mr. Simpson, calling in the license plate number of the vehicle, and questioning Mr. Simpson about what he was doing and who owned the car. 7RP at 84. A reasonable person would not have believed that he was free to leave at that point.

Because, as discussed in section 2(c) below, the officer did not have reasonable suspicion to believe that Mr. Simpson was committing a crime at the time he was seized him, the seizure was unconstitutional and the evidence thereby obtained should have been suppressed.

c. The seizure was unconstitutional because the officer merely saw a man working on a car in a driveway in a trailer park at 9:00 in the morning

An officer may briefly seize a person for questioning without a warrant only if the officer has a reasonable suspicion, based on specific articulable facts, that the individual is engaging in criminal activity. *Terry*, 392 U.S. at 21. A person's presence in a high-crime area does not, by itself, give rise to a reasonable suspicion to detain that person. *Doughty*, 170 Wn.2d at 62. There must be a "substantial possibility" that a crime has been committed; a hunch is insufficient. "Innocuous facts" do not justify a stop. *Armenta*, 134 Wn.2d at 13; *State v. Martinez*, 135 Wn. App. 174, 180, 143

P.3d 855 (2006). A person's presence in a high-crime area does not, by itself, give rise to a reasonable suspicion to detain that person. *State v. Ellwood*, 52 Wash.App. 70, 74, 757 P.2d 547 (1988) (citing *Terry*, 392 U.S. at 21–22, 88 S.Ct. 1868).

Here, the facts known to Officer Russell at the time he seized Mr. Simpson merely supported a hunch that he was engaged in criminal activity and did not rise to the “substantial possibility” required to justify the warrantless intrusion. This holds true whether the court agrees that Mr. Simpson was seized when questioned by the officer. The officer observed Mr. Simpson in the car during daylight at 9:00 a.m. Despite the officer’s contention that it was not “normal” for someone to work on a car at that time, it is reasonable to believe that 9:00 a.m. on a Wednesday morning is not particularly early in the morning, and is not an usual time to see someone working on a car or installing a stereo in a parked car.

The Supreme Court’s opinion in *Doughty, supra*, and Division Three’s opinion in *State v. Richardson*, 64 Wn. App. 693, 825 P.2d 754 (1992) are instructive.

In *Richardson*, a police officer observed Richardson walking at 2:50 a.m. with a person whom police suspected of dealing drugs. 64 Wash.App. at 694–95. The officer stopped both men. The court held the investigative detention to be unlawful. “At the time of the seizure, [the officer] knew only that Mr. Richardson was in a high crime area, late at night, walking near

someone the officer suspected of 'running drugs'." *Id.* at 697. In Richardson, then, consorting with a suspected drug dealer late at night in a high-crime area did not justify a *Terry* stop.

In *Doughty*, an officer saw Doughty park his car at 3:20 a.m., approach a suspected drug house, stay for only two minutes, and then drive away. 170 Wn.2d at 60. The officer could not see any of Doughty's actions inside the house or even if he interacted with anyone inside. *Id.* Nevertheless, the officer stopped Doughty on suspicion of drug-related activity and discovered Doughty's license was suspended. *Id.* The officer arrested Doughty and found methamphetamine in Doughty's car in a search incident to arrest. *Id.* The Supreme Court held the totality of the circumstances were insufficient to warrant intrusion into Doughty's private affairs. *Id.* at 64. The officer had no information specific to Doughty that he was involved in criminal activity. *Id.*

The officer's observation here created a mere hunch of criminal activity and did not rise to the level of a substantial possibility of criminal activity required to justify the intrusion upon Simpson's privacy. The remedy is reversal of the convictions, and remand for suppression of the evidence obtained as a result of the unlawful seizure.

d. The officer was not privileged to enter onto the property and he could not see the license plate in open view from the trailer park road

There being no exception to the warrant requirement that justified the

officer's initial intrusion onto the property, the conclusion that the officer was allowed to enter the area under the "open view" doctrine was in error. Conclusion of Law 3 and 4. Evidence discovered in "open view," as opposed to "plain view," is not the product of a "search" within the meaning of the Fourth Amendment. *State v. Perez*, 41 Wash.App. 481, 483, 704 P.2d 625 (1985) (citing *State v. Seagull*, 95 Wash.2d 898, 901–02, 632 P.2d 44 (1981)). In the "plain view" situation, the view takes place after an intrusion into activities or areas as to which there is a reasonable expectation of privacy. *Perez*, 41 Wash.App. at 483, 704 P.2d 625. The officer has already intruded and, if his intrusion is justified, the objects of obvious evidentiary value in plain view, sighted inadvertently, may be seized lawfully and will be admissible. *Perez*, 41 Wash.App. at 483, 704 P.2d 625 (quoting *Seagull*, 95 Wn.2d at 901-02).

In the "open view" situation, "the observation takes place from a non-intrusive vantage point. The governmental agent is either on the outside looking outside or on the outside looking inside to that which is knowingly exposed to the public." *Seagull*, 95 Wash.2d at 902, (quoting *State v. Kaaheena*, 59 Haw. at 28–29, 575 P.2d 462 (1978)). The object under observation is not subject to any reasonable expectation of privacy and the observation is not within the scope of the constitution. *Perez*, 41 Wash.App. at 483, 704 P.2d 625.

Here, entry onto the property by the officer resulted in violation of a

Mr. Simpson's constitutional rights. Certainly, it is possible for an officer on legitimate business to enter a portion of the curtilage impliedly open to the public, such as a driveway, walkway, or access route leading to the residence, without violating the resident's rights. *State v. Seagull*, 95 Wn.2d 898, 902, 632 P.2d 44 (1981); *State v. Petty*, 48 Wn. App. 615, 618, 740 P.2d 879 (1987). An officer is permitted the same license to intrude as a reasonably respectful citizen." *Seagull*, 95 Wn.2d at 902. This is so even if the purpose of the intrusion is investigative. *Petty*, 48 Wn. App. at 619. Here, however, the officer's initial entry on the property was not based on a reasonable suspicion of criminal activity; it was perfectly reasonable and unremarkable to see a person working on a car at 9:00 a.m. during daylight hours, despite the officer's contention that it was not "normal" to see that type of activity.

e. Reversal and remand for dismissal with prejudice is the appropriate remedy.

The exclusionary rule mandates the suppression of evidence gathered through unconstitutional means. *State v. Garvin*, 166 Wn.2d 242, 254, 207 P.3d 1266 (2009). Thus, if an initial stop is unlawful, evidence discovered during any subsequent search is inadmissible as fruit of the poisonous tree. *State v. Kennedy*, 107 Wn.2d 1, 4, 726 P.2d 445 (1986) (citing *Wong Sun v. United States*, 371 U.S. 471, 83 S. Ct. 407, 9 L. Ed. 2d 441 (1963)).

The same corollary applies to an arrest following an unlawful stop. *State v. Walker*, 129 Wn. App. 572, 575, 119 P.3d 399 (2005). If an officer finds grounds for an arrest during the unlawful stop, the arrest is tainted and

any evidence discovered during the unlawful stop must be suppressed. *Id.* See, e.g., *Doughty*, 170 Wn.2d at 60, 65 (suppressing all evidence obtained after the unlawful seizure, including Doughty’s identity); Here, the officer lacked sufficient specific and articulable facts to seize Mr. Simpson. No legal basis existed for the *Terry* stop. If a *Terry* stop is unlawful, the fruits obtained as a result must be suppressed. See *Garvin*, 166 Wash.2d at 254.

3. THIS COURT SHOULD REVERSE ALL DISCRETIONARY LEGAL FINANCIAL OBLIGATIONS, INCLUDING THE \$200.00 CRIMINAL FILING FEE AND \$100 DNA FEE

In late 2018, the legislature passed amendments to the state's legal financial obligation system to prohibit the imposition of discretionary costs and criminal filing fees on indigent defendants. See Laws of 2018, ch. 269, §§ 6(3), 17(2)(h). Further, the Bill eliminates the authority to impose a criminal filing fee of \$200 on an indigent defendant, eliminates “interest accrual” on all non-restitution LFOs, establishes that the DNA database fee is no longer mandatory in some situations and provided new limits to remedies for failure to pay.

In *State v. Ramirez*, 191 Wn.2d 732, 742, 426 P.3d 714 (2018), an appellant challenged discretionary LFOs, arguing the trial court had not engaged in an appropriate inquiry regarding his ability to pay under *State v. Blazina*, 182 Wn.2d 827, 344 P.3d 680 (2015).

In this case the trial court imposed a \$200 criminal filing fee pursuant to RCW 36.18.020(2)(h). RCW 36.18.020(2)(h) states that “this fee shall not be imposed on a defendant who is indigent.”

Sentencing courts are required to conduct an individualized inquiry into a defendant's ability to pay before imposing discretionary costs. *Ramirez*, 191 Wn.2d at 744; *Blazina*, 182 Wn.2d at 839. “State law requires that trial courts consider the financial resources of a defendant and the nature of the burden imposed by LFOs before ordering the defendant to pay discretionary costs.” *Ramirez*, 191 Wn.2d at 744 (citing former RCW 10.01.160 (3)(2015)); *Blazina*, *Id.*

Ramirez noted that the financial statement section of a motion for indigency asks defendants questions relating to five categories: (1) employment history, (2) income, (3) assets and other financial resources, (4) monthly living expenses, and (5) other debts. *Id.* at 744. The Court held that “[t]o satisfy *Blazina* and RCW 10.01.160(3)’s mandate that the State cannot collect costs from defendants who are unable to pay, the record must reflect that the trial court inquired into all five of these categories before deciding to impose discretionary costs.” *Id.* The Supreme Court held that these statutory changes apply retroactively to cases that were “pending on direct review and thus not final when the amendments were enacted.” *Ramirez*, 191 Wn.2d at

747.

Similarly, here, Mr. Simpson is entitled to relief from the statutory changes of the Bill. Like *Ramirez*, his case is still on direct appeal. He was subjected to the \$200 filing fee and ordered to pay interest, which is no longer authorized under the Bill (Laws of 2018, ch. 269, § 1). The record shows that Mr. Simpson is indigent and that he qualified for court appointed trial and appellate counsel. RP (1/19/18) at 16; CP 367.

The trial court also imposed a \$100.00 DNA collection fee. CP 339. Under RCW 43.43.754(1)(a), a DNA sample is collected whenever an individual is convicted of a felony. such a fee is no longer mandatory if the defendant's DNA has been taken before. See *Ramirez*. Mr. Simpson has felony convictions from 2007, 2009, 2012 and 2013. CP 338. Thus, his DNA would previously have been collected. See former RCW 43.43.754 (1999) (requiring collection of DNA for adult and juvenile felonies).

Under *Ramirez*, the DNA fee must be considered a discretionary LFO, which may not be imposed on an indigent defendant. *Ramirez*, 191 Wn.2d at 721-22.

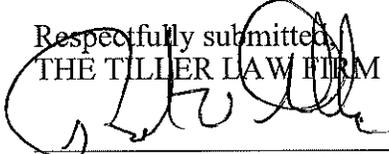
Even if he were not entitled to other relief, this Court should reverse the imposition of LFOs, including the filing fee and DNA fee, in accordance with *Ramirez*.

E. CONCLUSION

For the reasons set forth above, Mr. Simpson asks this Court to reverse his conviction and remand with instructions to suppress the evidence, or in the alternative, dismiss the charge without prejudice.

Last, the appellant respectfully requests this Court to strike the criminal filing fee and DNA collection fee.

DATED: March 21, 2019.

Respectfully submitted,
THE TILLER LAW FIRM

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CERTIFICATE OF SERVICE

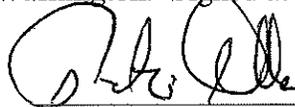
The undersigned certifies that on March 21, 2019, that this Appellant's Amended Opening Brief was sent by the JIS link to Mr. Derek M. Byrne Clerk of the Court, Court of Appeals, Division II, 950 Broadway, Ste. 300, Tacoma, WA 98402, and Ms. Michelle Hyer, Pierce County Prosecutor and copies were mailed by U.S. mail, postage prepaid, to the following Appellant:

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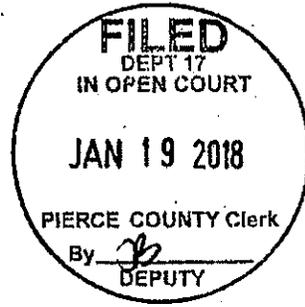
This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Centralia, Washington on March 21, 2019.



PETER B. TILLER

APPENDIX A

ORIGINAL



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 17-1-01174-8

vs.

DEJONE DEWAYNE MICHAEL
SIMPSON,

DEFENSE PROPOSED
FINDINGS AND CONCLUSIONS ON
ADMISSIBILITY OF EVIDENCE CrR
3.6

Defendant.

THIS MATTER having come on before the Honorable Karena Kirkendoll on the 17th day of July, 2017, and the court having rendered an oral ruling thereon, the court herewith makes the following Findings and Conclusions as required by CrR 3.6.

1. On March 22, 2017, Officer Mike Russell of the Lakewood Police Department was on routine patrol in the Rancho Villa Mobile Home Park in Lakewood at approximately 09:00 AM (Verbatim Transcript of Proceedings: p. 9, lines 9-14).
2. As Officer Russell approached trailer #22, he saw the legs of an unknown individual sticking out from the driver's side door of a beige Nissan Sentra parked in the driveway (Verbatim Transcript of Proceedings: p. 9, lines 18-21).
3. From his observations, Officer Russell could see that the person appeared to be under the dash of the vehicle (Verbatim Transcript of Proceedings: p. 9, line 20).

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4. Officer Russell believed that it was not normal to be working on a car at that time of day. Officer Russell concluded that the individual in the car was possibly attempting to remove the car stereo or disassembling the ignition (Verbatim Transcript of Proceedings: p. 9, lines 23-25; p. 21 lines 15-18; p. 22 lines 10-15).
 5. Officer Russell indicated that prior to proceeding down the parking strip he could not see what the defendant was doing inside of the car. From his initial vantage point, Officer Russell could not have determined whether the individual in the car was stealing or damaging the vehicle, or simply doing repair work (Verbatim Transcript of Proceedings: p. 7-15).
 6. There were no fences, gates, or other objects impeding Officer Russell's entry to the driveway or his ability to see the driver's door of the Nissan Sentra (Verbatim Transcript of Proceedings: p. 44, lines 10-18).
 7. Officer Russell could not see the license plate on the Nissan Sentra from the roadway in the mobile home park, ~~as it was obscured by a Cadillac Escalade which was parked behind the Nissan Sentra, closer to the roadway~~ ^(P) (Verbatim Transcript of Proceedings: p. 32 lines 1-7; p. 38 lines 10-13).
 8. When Officer Russell exited his patrol car and proceeded onto the property associated with trailer 22 towards the individual in the Nissan Sentra, he was doing so to investigate whether or not a crime was being committed inside of the vehicle (Verbatim Transcript of Proceedings: p. 27 lines 11-19).
 9. When Officer Russell exited his patrol car he proceeded down the parking strip or driveway past the Cadillac Escalade so that he could view the license plate on the Nissan Sentra and then radioed dispatch with the license plate for the beige Nissan

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Sentra, WA BBC9817 (Verbatim Transcript of Proceedings: p. 12 lines 15-16; p. 25-6 lines 3-22; p. 40- lines 4-11).

10. From exiting his patrol vehicle located approximately 40 feet from the Nissan Sentra until calling in the license plate to dispatch took Officer Russell approximately 2 minutes (Verbatim Transcript of Proceedings: p. 39 line 25; p. 40 lines 1-25).

11. Officer Russell called out to the individual in the car, later identified as the defendant. Officer Russell did no instruct the defendant where to stand nor did he tell him he was not free to leave. The defendant stood by the driver's side door of the vehicle (Verbatim Transcript of Proceedings: p. 12 lines 21-24; p. 13 lines 3-15; p. 29 lines 1-9; p. 37 lines 3-6).

12. Officer Russell asked the defendant whose car it was and what he was doing, to which the defendant responded that it was his car and he was working on it (Verbatim Transcript of Proceedings: p. 13 lines 11-13; p. 15 lines 9-12; p. 38 lines 3-9).

13. Following the defendant's statement that it was his car, dispatch returned a hit that the car was a confirmed stolen vehicle out of Pierce County (Verbatim Transcript of Proceedings: p. 15 lines 13-14; p. 16 lines 1-4).

14. Officer Russell subsequently arrested the defendant for possession of a stolen vehicle (Verbatim Transcript of Proceedings: p. 16 lines 3-6; p. 42 lines 23-25).

15. At no time was Officer Russell asked to leave the trailer or the driveway. He never went beyond the driveway when contacting the defendant. Officer Russell did not contact any resident or occupant of the trailer until after he had taken the defendant into custody (Verbatim Transcript of Proceedings: p. 29 lines 19-25; p. 30 lines 1-9).

CONCLUSIONS AS TO ADMISSIBILITY

1. The Court bases its opinion on the totality of the circumstances (Verbatim Transcript of Proceedings: p. 53 lines 11-12).
2. When Officer Russell approached the defendant, he had a reasonable suspicion that a crime was occurring as he saw an individual either altering the stereo or altering the ignition of the car. Because of that Officer Russell was authorized to stop and contact the defendant (Verbatim Transcript of Proceedings: p. 54 lines 11-17).
3. Officer Russell saw suspected criminal activity in open view. Open view allows for police to legitimately enter an area around a home that is open, impliedly, to the public without violating the Fourth Amendment (Verbatim Transcript of Proceedings: p. 53 lines 14-19).
4. The Driveway is an area around a home within the curtilage, to which open view doctrine applies. A second car in the driveway did not affect his view of the Nissan Sentra (Verbatim Transcript of Proceedings: p. 53 lines 20-25).
5. Since Officer Russell was able to point to specific and articulable facts that demonstrate the conduct of Mr. Simpson was, in the officer's opinion, consistent with criminal conduct, there is nothing wrong with what he did (Verbatim Transcript of Proceedings: p. 54 lines 18-21).
6. The Court denies the defendant's motion to suppress. All evidence obtained during Officer Russell's encounter with the defendant is admissible (Verbatim Transcript of Proceedings: p. 54 lines 22-24).

DONE IN OPEN COURT this 19 day of Jan 2018.

1/22/2018 4003

W. Kirkendoll

JUDGE

KARENA KIRKENDOLL

Presented by:

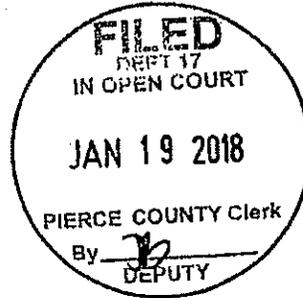
Sarah Tofflemire

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Brent Hyer

BRENT HYER
Deputy Prosecuting Attorney
WSB # 33338



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Appellate Court Case Title: State of Washington, Respondent v. Dejone D. Simpson, Appellant
Superior Court Case Number: 17-1-01174-8

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