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Court of Appeals
Division II
State of Washington
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No. 51488-5-II

IN THE COURT OF APPEALS - DIVISION TWO
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent

v.

RAFAEL MARTINEZ-LEDEZMA, Appellant

APPELLANT'S OPENING BRIEF

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TABLE OF CONTENTS

I. ASSIGNMENT OF ERROR AND ISSUES RELATED TO ASSIGNMENT OF ERROR.....1

II. STATEMENT OF FACTS.....2

III. ARGUMENT.....6

(a) UNLAWFUL INVESTIGATIVE STOP.....6

1. Mr. Martinez-Ledezma was a mere witness, and not subject to even a brief detention.....6

2. There was no reasonable suspicion that Mr. Martinez-Ledezma had committed a crime that would justify detaining him.....10

3. Even if there was a reasonable suspicion, the Deputies impermissibly extended the scope of the detention.....12

(b) IMPROPER JURY DEMAND FEE IMPOSED.....14

(c) ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS.....16

IV. CONCLUSION.....18

TABLE OF AUTHORITIES

United States Supreme Court Cases

Rodriguez v. United States, 135 S.Ct. 1609, 1615 (2015).....12

Washington State Supreme Court Cases

State v. Blazina, 182 Wn.2d 827, 344 P.3d 680 (2015).....16, 17, 18

State v. Glover, 116 Wn.2d 509, 806 P.2d 760 (1991).....7

State v. Lesnick, 84 Wn.2d 940, 530 P.2d 243 (1975).....10, 11

State v. Sieler, 95 Wn.2d 43, 621 P.2d 1272 (1980).....10, 12

State v. Z.U.E., 183 Wn.2d 610, 352 P.3d 796 (2015).....10, 11, 12

Washington Supreme Court of Appeals

State v. Butler, 2 Wn. App. 2d 549, 570, 411 P.3d 393 (2018).....13, 14

State v. Carney, 142 Wn. App. 197, 174 P.3d 142 (2007).....6, 7, 8, 9

State v. Creed, 179 Wn. App. 534, 545, 319 P.3d 80 (2014).....13

State v. Hathaway, 161 Wn. App. 634, 251 P.3d 253 (2011).....16

State v. Malone, 193 Wn. App. 762, 376 P.3d 443 (2016).....17

Washington State Statutes

Former RCW 10.10.160 (2015).....14, 17

Former RCW 10.46.190 (2005).....15

Former RCW 36.18.016(3)(b) (2016).....15, 1

I. ASSIGNMENT OF ERROR AND ISSUES RELATED TO

ASSIGNMENT OF ERROR

A. The trial court erred in denying Mr. Martinez-Ledezma's motion to suppress evidence obtained in an unlawful investigative stop.

1. Mr. Martinez-Ledezma was, at most, a witness, and could not lawfully be subjected to even a brief detention.
2. There was no reasonable suspicion that Mr. Martinez-Ledezma had committed a crime.
3. Even if there was a reasonable suspicion, Deputies Brown and Eastman impermissibly extended the duration of the detention.

B. The trial court erred in imposing a jury fee beyond what is authorized per statute.

C. The trial court erred by not conducting a proper individualized analysis into Mr. Martinez-Ledezma's ability to pay his legal financial obligations.

II. STATEMENT OF FACTS

On December 26, 2016, at approximately 10:30 PM, Deputies Tyson Brown and Skylar Eastman, both of the Lewis County Sheriff's Office, were dispatched to an address on Little Hanaford Road. CP 106; 1/3/2018 RP at 3. The initial call reported a dispute between people refusing to leave the caller's property. 1/3/2018 RP at 3. While enroute, Deputy Eastman was "slightly behind" Deputy Brown, close enough to see his emergency vehicle lights ahead. 2/7/2018 RP at 32.

Deputy Brown stated he received updates from dispatch that the dispute had become physical and that subjects associated with a pickup or truck were causing damage to the reporting party's property. *Id.* at 4. Deputy Eastman stated that "initial reports were that there was a group of people refusing to leave the property, that there had been drinking involved and possibly property damage," as well as "reports of an assault that occurred including a push." *Id.* at 13-14. Both deputies testified that they passed a pickup truck on the way to the Little Hanaford Road address. *Id.* at 4, 14.

Upon arriving at the address, Deputy Brown first inquired whether the truck he had passed was "involved with the dispute" and

was told “yes.” *Id.* at 4. Deputy Brown further testified, “At that point when I was told the subjects were involved, I requested Deputy Eastman to stop that vehicle while I inquired, investigated further.” *Id.* At the point when Deputy Brown requested Deputy Eastman stop the car, it was “still yet to be known” and was “still to be investigated” if there was any evidence of a crime that the truck was involved with. *Id.* at 10.

Deputy Eastman pulled the pickup over because Deputy Brown told him to—not because of muddy license plates or a white light emitted from the rear. *Id.* at 22-23. Deputy Eastman also testified that Deputy Brown did not report any property damage to him, nor did he report any assaultive behavior. *Id.* at 24. This was confirmed by Deputy Brown. *Id.* at 10. Deputy Eastman also did not receive any information from the reporting party directly. *Id.*

Deputy Brown reported that, after requesting Deputy Eastman detain the pickup truck, it took a few minutes for him to learn that no crime had occurred. *Id.* at 5. Deputy Brown spoke with the reporting party, who did not report any assaultive or harassing behavior, nor that anyone was too impaired to drive. *Id.* at 12. The reporting party did not

request anyone be trespassed, nor did she identify Mr. Martinez-Ledezma by name or report any behavior by him. *Id.*

After learning that no crime had occurred, Deputy Brown handed out paperwork and then joined Deputy Eastman with his detention of Mr. Martinez-Ledezma. *Id.* at 5. Deputy Brown did not appear to have informed Deputy Eastman that no crime took place. By the time Deputy Brown joined Deputy Eastman, Deputy Eastman was already placing Mr. Martinez-Ledezma in the back of his patrol car. *Id.*

Deputy Eastman reported that he stopped Mr. Martinez-Ledezma approximately two minutes after the request from Deputy Brown. *Id.* at 14. After contacting Mr. Martinez-Ledezma, Deputy Eastman investigated for Driving Under the Influence and ultimately arrested Mr. Martinez-Ledezma for Driving Under the Influence. *Id.* at 17-20. Approximately fourteen minutes passed from the time Deputy Brown requested the detention to Mr. Martinez-Ledezma's arrest. *Id.* at 20-21. A search incident to arrest revealed two bindles of a white powdery substance, which later tested positive for a controlled substance. *Id.* at 20-21.

Mr. Martinez-Ledezma was ultimately charged with one count of Possession of a Controlled Substance and one count of Driving While Under the Influence.¹ Mr. Martinez-Ledezma, through his attorney, filed a motion contesting the legality of the stop, which was argued and denied on January 3, 2018. 1/3/2018 RP at 31-32.

Mr. Martinez-Ledezma proceeded to a bench trial on February 7, 2018. 2/7/2018 RP at 10-11. Because Mr. Martinez-Ledezma's attorney had not informed the court of the request to waive jury trial prior to trial call, the trial court imposed a \$1,534.28 jury demand cost on Mr. Martinez-Ledezma. 2/7/2018 RP at 8; CP at 75. The trial court made it clear it would be imposing this cost even if Mr. Martinez-Ledezma was acquitted. *Id.* at 10.

The trial court ultimately found Mr. Martinez-Ledezma guilty of Possession of a Controlled Substance, to wit, Cocaine. *Id.* at 85. At sentencing, the trial court briefly inquired about Mr. Martinez-Ledezma's financial circumstances. 2/22/2018 RP at 7-8. The trial court

¹ The Clerk's Papers only show the originally filed information for the Possession charge, CP 1-2. The State filed an amended information adding the charge of Driving under the Influence, to which Mr. Martinez-Ledezma pled not guilty, on March 2, 2017. 3/2/2017 RP at 3-4. The State dismissed the DUI count without prejudice, 2/7/2018 RP at 77, and that charge is not at issue in this appeal.

ascertained that Mr. Martinez-Ledezma was employed, earns about \$2,000 a month, that his wife also works (without any specification as to her earnings), that Mr. Martinez-Ledezma supports himself, his wife, his mother, and two brothers, that he does not receive government assistance, and that he retained his attorney. *Id.* at 7-8. The trial court did not ask any further questions or collect further information, and found Mr. Martinez-Ledezma had “the ability to work and make payments on his legal financial obligations...” *Id.* at 8.

III. ARGUMENT

A. UNLAWFUL INVESTIGATIVE STOP

The trial court erred in ruling that Deputy Eastman’s stop of the vehicle was valid, and that there was reasonable suspicion the occupants of the vehicle were engaged in criminal activity.

1. Mr. Martinez-Ledezma was a mere witness, and not subject to even a brief detention.

Article 1, Section 7 of the Washington Constitution protects individuals who are “suspected of having information about a crime” from being detained by the police without a warrant. *State v. Carney*,

142 Wn. App. 197, 203-05, 174 P.3d 142 (2007). In order to detain an individual, “[t]he officer must have a well-founded suspicion that the individual is engaged in criminal activity and must be able to ‘point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.’” *Id.* at 202 (quoting *State v. Glover*, 116 Wn.2d 509, 514, 806 P.2d 760 (1991)).

The facts of *Carney* highlight this distinction: a deputy responded to an “identified citizen’s complaint” of a motorcycle driven recklessly. *Carney*, 142 Wn. App. at 200. A deputy encountered a motorcycle and motorcyclist, which matched the description from the citizen informant, speaking to the occupants of a parked vehicle; upon approaching the motorcyclist, the motorcyclist fled the area. *Id.* Rather than pursue the motorcyclist, the deputy pulled behind the parked car with his emergency lights still on, asked for identifying information, and ran their information through dispatch. *Id.*

While waiting for the records checks, the deputy questioned the two women about the motorcyclist, and was then notified of an outstanding warrant for *Carney*. *Id.* at 200-01. A search incident to

arrest of Carney revealed a small bag of a controlled substance. *Id.* at 201. Carney’s conviction was reversed by the Court of Appeals, Division II, which found that the controlled substance was the result of an unconstitutional seizure:

In conclusion, the deputy in this case had no articulable suspicion of criminal wrongdoing on Carney’s part. Therefore, Deputy Kendall’s seizure of Carney was unconstitutional and the trial court erroneously denied Carney’s motion to suppress the drug evidence.

Id. at 204. The Court of Appeals reversed the trial court and remanded for an order of dismissal. *Id.* at 205.

Just as in *Carney*, Deputies Brown and Eastman are unable to point to “specific and articulable facts” that would support a well-founded suspicion that the driver of the pickup truck was “engaged in criminal activity.” *Id.* at 202 (internal citations omitted). The only fact available was that the pickup truck was “involved” in whatever had happened—a generic-enough word that could have also been applied to the witnesses in *Carney*. Nothing prevented Deputy Eastman from following the pickup truck while waiting for Deputy Brown to develop an articulable suspicion of criminal wrongdoing regarding the occupants of the pickup truck. Deputy Eastman did not first inquire if

there were multiple vehicles, or if the occupants of the pickup truck had participated in the alleged (but ultimately non-existent) assault.

Deputy Brown testified that, at the time he instructed Deputy Eastman to detain the pickup truck, he was still inquiring and investigating to see if there was any evidence of criminal activity on the part of the pickup truck occupants. Nothing in his testimony indicates he inquired if other vehicles were “involved” with the incident as well, and, as no crime took place, it is clear Deputy Brown never acquired any specific and articulable facts that the pickup truck was engaged in criminal activity.

Without any “articulable suspicion of criminal wrongdoing” on the part of Mr. Martinez-Ledezma or the pickup truck’s occupants, Mr. Martinez-Ledezma’s status is that of a witness, as in *Carney*. Accordingly, his seizure was unconstitutional; as in *Carney*, where the only evidence sustaining a conviction for possession of a controlled substance is the evidence seized incident to an otherwise-lawful arrest stemming from an unconstitutional seizure, the appropriate remedy is to remand for an order of dismissal. *Id.* at 204-05.

2. There was no reasonable suspicion that Mr.

Martinez-Ledezma had committed a crime that would justify detaining him.

In addition to being a mere witness, the information provided by the citizen informant was insufficient to justify a warrantless seizure of Mr. Martinez-Ledezma. The officer must have facts which “connect the particular person to the *particular crime* that the officer seeks to investigate.” *State v. Z.U.E.*, 183 Wn.2d 610, 618, 352 P.3d 796 (2015) (emphasis in original) (internal citations omitted).

Where the officer is relying upon an informant’s tip (which includes calls made to 911 by citizens), there must be some “indicia of reliability under the totality of the circumstances.” *Id.* These indicia must be either “circumstances establishing the informant’s reliability” or “some corroborative observation, usually by the officers, that shows either the presence of criminal activity or that the informer’s information was obtained in a reliable fashion.” *Id.* (citing *State v. Sieler*, 95 Wn.2d 43, 47, 621 P.2d 1272 (1980); *State v. Lesnick*, 84 Wn.2d 940, 944, 530 P.2d 243 (1975)). These corroborative

observations “must corroborate more than just innocuous facts, such as an individual’s appearance or clothing.” *Z.U.E.*, 183 Wn.2d at 618.

Here, as in *Z.U.E.*, “the officer’s alleged suspicion hinged on a named, but otherwise unknown, 911 caller’s assertion that the subject was engaged in criminal activity.” *Id.* at 622. However, the informant never asserted that Mr. Martinez-Ledezma was engaged in criminal activity—and the officers must have facts that connect the *particular person to the particular crime*, not a particular vehicle to (what turns out to be) no crime. The officers never asked for a description of the individual who was engaged in the hypothetical criminal activity, and made no attempts to ascertain the informant’s veracity—the only information obtained was that the pickup truck was “involved” in what turned out to be no criminal activity whatsoever.

Similarly, the officers lacked any corroborative observations to support what was reported to them by dispatch. As no criminal activity occurred, the officers clearly did not independently corroborate any criminal activity. And as Officer Brown did not acquire any information regarding whether “the informer’s information was obtained in a reliable fashion,” there are no corroborative observations

here. Under the totality of the circumstances, the initial 911 call, and the identification of the pickup truck as being “involved,” is not sufficiently reliable information which could provide the officers “with any articulable reason to suspect any of the passengers in this particular car were engaged in criminal activity.” *Sieler*, 95 Wn.2d at 47.

Accordingly, the seizure of Mr. Martinez-Ledezma “was therefore unlawful, and any evidence obtained as a result of that seizure should have been suppressed at trial,” and the only appropriate remedy is dismissal. *Z.U.E.* 183 Wn.2d at 624-25.

3. Even if there was a reasonable suspicion, the Deputies impermissibly extended the scope of the detention.

Even if a seizure is initially justified by reasonable suspicion, the seizure may not be prolonged absent reasonable suspicion that would justify prolonging the scope or duration of the seizure. *Rodriguez v. United States*, 135 S.Ct. 1609, 1615 (2015). Once an officer realizes he lacks reasonable suspicion for a stop, he lacks lawful authority to proceed with additional investigatory actions, and the fruits of such action must be excluded. *State v. Creed*, 179 Wn. App. 534, 545, 319 P.3d 80 (2014).

Here, Deputy Eastman “act[ed] upon the direction” of Officer Brown, relying upon the fellow officer rule. *State v. Butler*, 2 Wn. App. 2d 549, 570, 411 P.3d 393 (2018) (internal citations omitted). The fellow officer rule analyzes whether “the police, as a whole” had specific and articulable facts to support a reasonable suspicion that Mr. Martinez-Ledezma was engaged in criminal activity. *Id.* The analysis thus focuses on what the officers, as a whole, knew or did not know.

Deputy Brown learned that no crime had taken place within a few minutes of directing Deputy Eastman to detain the pickup truck, and there is no evidence that Deputy Brown attempted to communicate to Deputy Eastman that the officers now lacked facts to support their reasonable suspicion. Deputy Eastman testified it took him a few minutes to turn around, catch up to the pickup truck, and detain it. Once Deputy Brown knew he did not have reasonable suspicion that Mr. Martinez-Ledezma had engaged in criminal activity, any detention by Deputy Eastman was unconstitutional, including any additional investigatory actions.

The fellow officer rule is a two-edged sword: “the police, as a whole” may have reasonable suspicion to support a brief detention; on

the same token, if “the police, as a whole” do not have a reasonable suspicion, then that lack of reasonable suspicion applies to all officers “acting in concert.” *Id.* at 571-72. To allow the fellow officer rule to only cut one way—against private citizens—impermissibly tramples upon Article 1, Section 7’s privacy protections: in essence, it would encourage officers to selectively convey only those facts that support the seizure, and incentivizes hiding those facts that do not support a seizure—in disregard for the privacy protections of Article 1, Section 7.

B. IMPROPER JURY DEMAND FEE IMPOSED

The second error Mr. Martinez-Ledezma raises is that the trial court erred in imposing a jury trial fee beyond its statutory authority. The trial court imposed jury costs of \$1,500 if Mr. Martinez-Ledezma wished to waive his right to jury trial and proceed with a bench trial. 2/7/2018 RP at 8. And it was the intention of the court to impose this cost even should Mr. Martinez-Ledezma be acquitted. *Id.* At 10, ln. 16-18. Former RCW 10.10.160(1) (2015) states:

Costs may be imposed only upon a convicted defendant, except for costs imposed upon a defendant's entry into a deferred prosecution program, costs imposed upon a defendant for pretrial supervision, or costs imposed upon

a defendant for preparing and serving a warrant for failure to appear.

Jury costs do not fall under the list of costs that may be imposed on a non-convicted defendant, and it was the court's intention to impose these costs at the time of waiving Mr. Martinez-Ledezma's right to jury trial—regardless of the outcome. The trial court was without authority to impose these costs on Mr. Martinez-Ledezma.

The trial court has authority to impose a jury demand fee upon conviction. Former RCW 10.46.190 (2005); Former RCW 36.18.016(3)(b) (2016). However, the trial court is limited to costs of \$125 for a six-person jury and \$250 for a twelve-person jury, as former RCW 36.18.016(3)(b) provides "Upon conviction in criminal cases a jury demand charge of one hundred twenty-five dollars for a jury of six, or two hundred fifty dollars for a jury of twelve may be imposed as costs under RCW 10.46.190." As Mr. Martinez was tried by a bench, neither cost could logically be prescribed to him.

Further, former RCW 10.46.190 (2005) limits the imposition of costs to those defendants tried by a jury: "Every person convicted of a crime...shall be liable to all costs of the proceedings against him or her,

including, *when tried by a jury* in the superior court or before a committing magistrate, a jury fee as provided in civil actions for which judgment shall be rendered and collected.” (emphasis added). The clear intent of the legislature was to impose strict limits upon a trial court’s ability to impose jury costs, and where the trial court exceeded that statutory authority, remand is appropriate. *State v. Hathaway*, 161 Wn. App. 634, 653, 251 P.3d 253 (2011) (“The trial court erred when it imposed a jury demand fee in excess of its statutory authority specified in RCW 36.18.016(3)(b). Accordingly, we remand to the trial court to impose fees based on the jury’s size consistent with its statutory authority.”). Since there was no jury trial that took place, the appropriate remedy is to remand to the trial court to strike the jury demand costs imposed.

**C. ABILITY TO PAY LEGAL FINANCIAL
OBLIGATIONS**

The third error Mr. Martinez-Ledezma alleges is that the trial court erred when it did not conduct a proper individualized inquiry into his ability to pay. *State v. Blazina*, 182 Wn.2d 827, 838, 344 P.3d 680 (2015). Though Mr. Martinez did not raise the issue at the trial court

level, appellate courts have discretion to address *Blazina* issues on appeal. *Blazina*, 182 Wn.2d at 835 (“each appellate court must make its own decision to accept discretionary review”). The Court of Appeals has previously “been persuaded by the policy concerns” that were outlined in *Blazina* to review the merits for an improper *Blazina* analysis. *State v. Malone*, 193 Wn. App. 762, 765, 376 P.3d 443 (2016) (citing *Blazina*, 182 Wn.2d at 835-38).

Under former RCW 10.10.160(3) (2015), “[t]he court shall not order a defendant to pay costs unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose.” The court must also look at factors such as “incarceration and defendant’s other debts, including restitution, when determining a defendant’s ability to pay.”

Here, the trial court limited its discussion to an inquiry into Mr. Martinez-Ledezma’s current income, which he stated to be \$2,000 a month. 2/22/2018 RP at 7. Mr. Martinez-Ledezma reported that he supported his wife, mother, and two brothers, and that his wife works,

though there was no discussion of her income. *Id.* Mr. Martinez-Ledezma stated he was not on government assistance, and that he retained his attorney. *Id.* At 7-8. Based on that limited inquiry, the court found that Mr. Martinez-Ledezma has the ability to work and pay his LFOs, and imposed fines and fees. *Id.* At 8-9.

The trial court should have conducted a more thorough inquiry regarding any debts Mr. Martinez-Ledezma had, his bills and costs for the family members he takes care of and the nature of the help he provides, and the amount of income his wife brings in, among the other criteria mentioned in *Blazina*. 182 Wn.2d at 838. Accordingly, this issue should be remanded to the trial court to conduct the proper analysis.

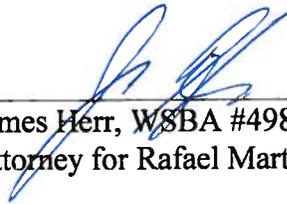
VI. CONCLUSION

For the reasons set forth above, Mr. Martinez-Ledezma requests the Court REVERSE the trial court's denial of Mr. Martinez-Ledezma's motion to suppress evidence obtained in an unlawful investigative stop, and, as that evidence was the only basis for Mr. Martinez-Ledezma's conviction, vacate his conviction and dismiss with prejudice. Mr. Martinez-Ledezma also requests the Court remand to the

Superior Court for a proper individualized analysis regarding Mr. Martinez-Ledezma's ability to pay his legal financial obligations. Finally, Mr. Martinez-Ledezma requests this Court reverse the trial court's assignment of jury costs to Mr. Martinez-Ledezma.

DATED this 30th day of August, 2018.

Respectfully submitted,



James Herr, WSBA #49811
Attorney for Rafael Martinez-Ledezma

CERTIFICATE OF SERVICE/PROOF OF FILING

I, Tammy Weisser, hereby certify that the following information is true and correct: That the original pleading of the foregoing document entitled "Appellant's Opening Brief" was filed Electronically, with the Court of Appeals, Division II, 950 Broadway #300, Tacoma, WA 98402 on This 30th Day of August, 2018. And further, that a true and correct copy of the foregoing pleading was served by U.S. Mail, correct postage paid, on the following parties on this 30th Day August, 2018

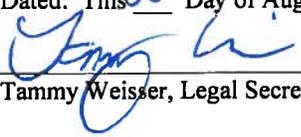
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