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State of Washington  
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No. 51488-5-II

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

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STATE OF WASHINGTON, Respondent

v.

RAFAEL MARTINEZ-LEDEZMA, Appellant

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**APPELLANT'S REPLY BRIEF**

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MAZZONE LAW FIRM, PLLC  
James Herr, WSBA 49811  
Attorney for Appellant  
3002 Colby Avenue, Suite 302  
(425) 259-4989 -phone  
(425) 259-5994 - fax

**TABLE OF CONTENTS**

**I. INTRODUCTION.....1**

**II. MR. MARTINEZ-LEDEZMA WAS UNLAWFULLY SEIZED BY TROOPER EASTMAN.....1**

**A. THERE WAS NO EVIDENCE PRESENTED THAT MR. MARTINEZ-LEDEZMA WAS ENGAGED IN CRIMINAL ACTIVITY.....1**

**B. THE STATE’S ARGUMENT CREATES A ONE-WAY OFFICER RULE .....3**

**III. CONCLUSION.....4**

## TABLE OF AUTHORITIES

### **Washington Supreme Court of Appeals**

<i>State v. Gillenwater</i> , 96 Wn. App. 667, 669, 980 P.2d 318 (1999) (citing <i>State v. Franco</i> , 96 Wn.2d 816, 825, 639 P.2d 1320 (1982)).....	2
<i>State v. Carney</i> , 142 Wn. App. 197, 174 P.3d 142 (2007).....	3
<i>State v. Butler</i> , 2 Wn. App. 2d 549, 570, 411 P.3d 393 (2018).....	4

## **I. INTRODUCTION**

The State concedes the second and third assignments of error in Mr. Martinez-Ledesma's appeal—that the trial court's imposition of jury costs was impermissible, and that the trial court's inquiry regarding Mr. Martinez-Ledesma's ability to pay his legal financial obligations was insufficient. Brief of Respondent at 17, 20. Accordingly, only the first assignment of error remains in dispute. For the following reasons, as well as the arguments outlined in Appellant's opening brief, the Court should reverse the trial court's denial of Mr. Martinez-Ledesma's Motion to Suppress, vacate his conviction, and dismiss with prejudice.

## **II. MR. MARTINEZ-LEDEZMA WAS UNLAWFULLY SEIZED BY TROOPER EASTMAN**

### **A. THERE WAS NO EVIDENCE PRESENTED THAT MR. MARTINEZ-LEDEZMA WAS ENGAGED IN CRIMINAL ACTIVITY**

The State contends that Deputy Brown had “an articulable suspicion that whoever was in the truck had just engaged in criminal activity.” Brief of Respondent at 13. The record reflects that this was not the case: Deputy Brown had some information from dispatch that some possible criminal activity had been occurring at the property—

and his investigation revealed that no criminal activity took place. While the State appears to argue that an allegation of alcohol involvement would justify a *Terry* stop to investigate, Brief of Respondent at 14, such argument disregards long-standing Washington caselaw that “one can legally drink and drive” as long as the two activities are not “mixed to the extent that the drinking affects the driving.” *State v. Gillenwater*, 96 Wn. App. 667, 669, 980 P.2d 318 (1999) (citing *State v. Franco*, 96 Wn.2d 816, 825, 639 P.2d 1320 (1982)).

The only evidence that Deputy Brown sought in order to tie Mr. Martinez-Ledesma’s truck to the incident was asking whether the truck was “involved in the dispute.” RP 1/3/2018 at 4. Deputy Brown could have asked specific questions that would have tied the occupants of the truck to criminal activity, such as “Did anyone in the truck assault you?” or “Did anyone in the truck damage your property?” Instead of asking questions with sufficient specificity that could have justified a *Terry* stop, Deputy Brown chose to ask a generic, vague question, with no follow-up to the one-word answer he received, as the sole basis for detaining Mr. Martinez-Ledesma’s truck. Deputy Brown testified it was

“still yet to be known” if there was “any evidence of any crime that that truck has been involved in or is about to commit.” RP 1/3/2018 at 10.

A ruling in favor of the State only encourages officers to keep their initial investigations as vague and over-broad as possible, as demonstrated here. Had Deputy Brown asked specific questions about Mr. Martinez-Ledesma’s involvement in criminal activity, he would have found no such involvement (as no criminal activity took place). Instead, by asking if individuals or vehicles are “involved” in an incident (without further clarification), an officer can create articulable suspicion through vague questions and detain people who would otherwise be classified as “witnesses.” Under the State’s reasoning, the unlawfully-seized witness in *Carney* would have lawfully been detained if the officer had first asked an observer if Carney was “involved” with the reckless driving incident—despite the Constitutional protections a witness has from being detained. *State v. Carney*, 142 Wn. App. 197, 174 P.3d 142 (2007).

**B. THE STATE’S ARGUMENT CREATES A ONE-WAY FELLOW OFFICER RULE**

The State’s interpretation of the fellow officer rule would allow the

communicating officer control over what information could be relayed to the detaining officer. This would allow the communicating officer to report facts that might give rise to some suspicion, and decline to report facts that would dispel any suspicion that come up later. The fellow officer rule looks at whether “the police, as a whole” had facts to support a reasonable suspicion, and where one part of the whole has information that no crime occurred, that knowledge must be imputed upon the whole. *State v. Butler*, 2 Wn. App. 2d 549, 570, 411 P.3d 393 (2018) (internal citations omitted). Where one part of the police force at the scene (Deputy Brown) fails to communicate to the other part (Deputy Eastman) that there was no longer a reasonable suspicion, the State should not be able to gain the benefit of this practice.

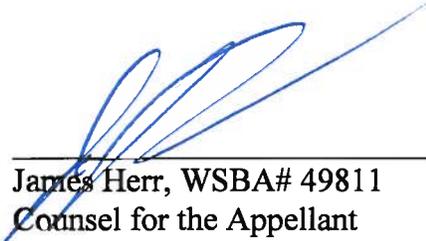
### **III. CONCLUSION**

For the foregoing reasons, and those articulated in Appellant’s opening brief, the Court should reverse the trial court’s denial of Mr. Martinez-Ledesma’s Motion to Suppress, vacate his conviction, and dismiss with prejudice.

DATED AND SUBMITTED: This 6<sup>th</sup> day of December, 2018.

Appellant’s Reply Brief

Mazzone Law Firm  
3002 Colby Ave., Suite 302  
Everett, WA 98201  
(425) 259-4989



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James Herr, WSBA# 49811  
Counsel for the Appellant  
Mazzone Law Firm, PLLC  
3002 Colby Avenue, Suite 302  
Everett, WA 98201  
Tel: 425-259-4989

**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 Reply Brief" was filed Electronically, with the Court of Appeals, Division II, 950 Broadway #300, Tacoma, WA 98402 on This 6th Day of December, 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 6th Day December, 2018

**(Electronically)**

Sara I Beigh  
Lewis County Prosecutors Office  
345 W. Main St. FL @  
Chehalis, WA 98532-4802  
Sara.beigh@lewiscountywa.gov

**(VIA US MAIL)**

Rafael Martinez-Ledezma  
918 Rotary Lane #7  
Centralia, WA 98531

Dated: This 6th Day of December 2018.



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Tammy Weisser, Legal Secretary

Appellant's Reply Brief

Mazzone Law Firm  
3002 Colby Ave., Suite 302  
Everett, WA 98201  
(425) 259-4989

**MAZZONE LAW FIRM**

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Sender Name: Aleshia Johnson - Email: aleshiac@mazzonelaw.com

**Filing on Behalf of:** James Wayne Herr - Email: jamesh@mazzonelaw.com (Alternate Email: aleshij@mazzonelaw.com)

Address:  
3002 Colby Avenue  
Everett, WA, 98201  
Phone: (425) 259-4989

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