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Division II
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No. 51488-5-II

THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

RAFAEL MARTINEZ-LEDESMA,

Appellant.

Appeal from the Superior Court of Washington for Lewis County

Respondent's Brief

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I. ISSUES

- A. Did the trial court err when it found there was sufficient information to provide officers with an articulable suspicion to justify an investigatory stop on Martinez-Ledesma's vehicle?
- B. Did the trial court err when it prefaced accepting a waiver of a right to a jury trial upon Martinez-Ledesma paying jury cost?
- C. Did the trial court fail to conduct a full inquiry of Martinez-Ledesma's ability to pay prior to imposing discretionary legal financial obligations?

II. STATEMENT OF THE CASE

Lewis County Sheriff's Department Deputies Brown and Eastman were dispatched to an incident in progress on Little Hanaford Road. CP 106. Dispatch informed the deputies that Fatima Jaimes Rodriguez was advising there was a group of people on her property refusing to leave. RP¹ 3; CP 106. Dispatch further informed the deputies there was now a reported physical dispute, property was being damaged, and the people involved had been consuming alcohol. RP 4; CP 106.

While en route Deputy Brown observed a green truck pass him heading the opposite direction. RP 4; CP 107. Shortly after the truck passed, Deputy Brown arrived at the location of the incident.

¹ There are multiple verbatim report of proceedings in this matter. The majority of the briefing will cite to the Suppression Hearing which took place on 1/3/18 and the State will cite as RP. All other hearings will be cited to as RP and the date of the hearing.

RP 2; CP 107. Immediately upon exiting his vehicle, Deputy Brown inquired if the green truck was involved in the incident. *Id.* Ms. Jaimes Rodriguez indicated the green truck was involved. RP 3-4; CP 107.

Deputy Brown requested Deputy Eastman, who was still on his way to the location, stop the truck based on the reported involvement in the incident. RP 4; CP 107. Deputy Brown continued his investigation into the call while Deputy Eastman stopped the truck. *Id.*

Shortly after being requested to stop the truck, Deputy Eastman was able to catch up to the truck, observe the truck had a white light emitting from the back, which is a moving violation Deputy Eastman has previously stopped vehicles for in the past. RP 14-16; CP 107. Upon contacting the truck, Deputy Eastman noticed a smell of intoxicants coming from the vehicle, which was occupied by Martinez-Ledesma, the driver, and a passenger. RP 17; CP 107. Martinez-Ledesma also had bloodshot, watery eyes. *Id.* Martinez-Ledesma was advised of why his vehicle was stopped. CP 107.

Martinez-Ledesma was asked to perform field sobriety tests, but was only able to complete the horizontal gaze nystagmus,

which returned with six of six clues being present. RP 17-18; CP 107. Martinez-Ledesma was placed under arrest for driving under the influence and searched incident to the arrest. RP 18-20; CP 107. During the search of Martinez-Ledesma, Deputy Eastman located two plastic bindles containing a white, powdery substance, which later tested positive for cocaine. RP 20-21; CP 108.

The State charged Martinez-Ledesma with Possession of a Controlled Substance – Cocaine. CP 1-2. Martinez-Ledesma filed a motion to suppress, alleging the initial stop of his vehicle was not lawful. CP 95-101. The trial court found the stop lawful and denied the motion to suppress. CP 106-08.

Martinez-Ledesma decided to exercise his right to a trial. See RP (2/7/18). The morning of trial Martinez-Ledesma requested to execute a waiver of his right to a jury trial. RP (2/7/18) 3. The trial court informed Martinez-Ledesma's counsel if Martinez-Ledesma wished to waive jury trial at this late of date he must incur the cost of bringing in the entire panel, an estimated \$1,500. *Id.* at 4. Martinez-Ledesma's counsel objected, indicated his client wished to waive the constitutional right to a jury trial, and forcing the defendant to pay for it was creating a Hobson's choice. *Id.* at 5-7.

Ultimately Martinez-Ledesma accepted the cost, waived jury trial, and proceeded with a trial to the bench. *Id.*

Martinez-Ledesma was found guilty as charged. Supp. CP FFCL BT.² The trial court sentenced Martinez-Ledesma to 30 days in custody, stayed pending this appeal. CP 73-74. Martinez-Ledesma timely appeals his conviction. CP 80-94.

The State will further supplement the facts in the argument section below.

III. ARGUMENT

A. THE INVESTIGATORY STOP OF MARTINEZ-LEDESMA WAS PERMISSIBLE BECAUSE THE OFFICERS POSSESSED THE REQUISITE REASONABLE SUSPICION THAT MARTINEZ-LEDESMA WAS INVOLVED IN CRIMINAL ACTIVITY.

The deputy in this matter had sufficient articulable suspicion to stop the vehicle Martinez-Ledesma was driving to perform an investigatory stop. Given the information available to Deputy Eastman and the deputy on the scene of the 911 call, Martinez-Ledesma's argument to the contrary is incorrect. Brief of Appellant 6-14. Further, once the deputy contacted Martinez-Ledesma and observed signs of intoxication the deputy was permitted to

² The Findings of Fact, Conclusion of Law, and Order from Bench Trial was not designated in the Clerk's papers by Martinez-Ledesma. The State will file a supplemental designation of Clerk's papers to include this document.

investigate the driving under the influence matter. This Court should affirm the trial court's ruling and Martinez-Ledesma's conviction.

1. Standard Of Review Regarding Finding Of Facts And Conclusions Of Law.

Findings of fact entered by a trial court after a suppression hearing will be reviewed by the appellate court only if the appellant has assigned error to the fact. *State v. Hill*, 123 Wn.2d 641, 647, 870 P.2d 313 (1994). "Where there is substantial evidence in the record supporting the challenged facts, those facts will be binding on appeal." *Id.* Substantial evidence exists when the evidence is sufficient to persuade a rational, fair-minded person of the truth of the finding based upon the evidence in the record. *State v. Lohr*, 164 Wn. App. 414, 418, 263 P.3d 1287 (2011) (citation omitted).

The appellate court defers to the fact finder regarding the credibility of witnesses and the weight to be given reasonable but competing inferences. *State ex. rel. Lige v. County of Pierce*, 65 Wn. App. 614, 618, 829 P.2d 217 (1992), *review denied* 120 Wn.2d 1008 (1992). Findings of fact not assigned error are considered verities on appeal. *State v. Stevenson*, 128 Wn. App. 179, 193, 114 P.3d 699 (2005). A trial court's conclusions of law are reviewed de novo, with deference to the trial court on issues of weight and

credibility. *Sate v. Sadler*, 147 Wn. App. 97, 123, 193 P.3d 1108 (2008).

In the present case Martinez-Ledesma does not assign error to any of the findings of fact, they are therefore verities on appeal. Martinez-Ledesma also fails to assign error to the conclusions of law. Given Martinez-Ledesma's arguments on appeal, the State will assume this was an oversight.

2. The Vehicle Martinez-Ledesma Was Driving Had Just Left The Residence Of A Named Citizen Informant, The Property Owner, Who Was Reporting Possible Crimes In Progress That The Deputies Were Responding To, Therefore, The Terry Stop Was Lawful Because The Deputies Had Articulate Suspicion To Stop The Truck To Conduct A Brief Further Investigation.

Citizens have the right to not be disturbed in their private affairs except under authority of the law. U.S. Const. amend IV; Const. art. I, § 7. The right to privacy in Washington State is broader than the right under the Fourth Amendment of the United States Constitution. Const. art. I, § 7; *State v. Byrd*, 178 Wn.2d 611, 616, 310 P.3d 793 (2013). Washington State places a greater emphasis on privacy and recognizes individuals have a right to privacy with no express limitations. Const. art. I, § 7; *State v. Ladson*, 138 Wn.2d 343, 348, 979 P.2d 833 (1999).

A person is seized within the meaning of the Fourth Amendment when, “in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave.” *United States v. Mendenhall*, 446 U.S. 544, 554, 100 S.Ct. 1870, 1877, 64 L. Ed.2d 497 (1980). Not every encounter between an officer and an individual amount to a seizure. *Mendenhall*, 446 U.S. at 551-55.

Generally, a search is not reasonable unless it is based on a warrant issued upon probable cause. *Skinner v. Ry Labor Executives’ Ass’n*, 489 U.S. 602, 619, 109 S. Ct. 1402, 103 L. Ed.2d 639 (1989). “Under article 1, section 7, a warrantless search is per se unreasonable unless the State proves that one of the few carefully drawn and jealously guarded exceptions applies.” *Byrd*, 178 Wn.2d at 616 (internal quotations and citations omitted). The remedy for an unconstitutional search or seizure is exclusion of the evidence that was uncovered and obtained. *State v. Monaghan*, 165 Wn. App. 782, 789, 266 P.3d 222 (2012).

In evaluating investigative stops, the court must determine: (1) whether the initial interference with the suspect’s freedom of movement was justified at its inception, and (2) whether it was reasonably related in scope to the circumstances that justified the

interference in the first place. *Terry v. Ohio*, 392 U.S. 1, 19-20, 88 S. Ct. 1868, 20 L.Ed.2d 889 (1968); *State v. Williams*, 102 Wn.2d 733, 739, 689 P.2d 1065 (1984). In evaluating the proper scope of a contact to determine whether the intrusion on a suspect's liberty is so substantial its reasonableness is dependent upon probable cause, the court considers (1) the purpose of the stop, (2) the amount of physical intrusion, and (3) the length of time the suspect is detained. *Williams*, 102 Wn.2d at 740. Courts have not adopted any specific outside time limitation for a permissible *Terry* stop. *Id.*

Courts generally recognize crime prevention and crime detection are legitimate purposes for investigative stops or detentions. See, e.g., *Terry v. Ohio*, 392 U.S. at 22. Thus, exceptions to the warrant requirement exist to provide for those cases where the societal costs of obtaining a warrant outweigh the reasons for prior recourse to a neutral magistrate. *State v. Duncan*, 146 Wn.2d 166, 171, 43 P.3d 513 (2002). These exceptions include consent, exigent circumstances, searches incident to a valid arrest, inventory searches, plain view searches, and *Terry* investigative stops. *Id.* at 171-2. The State must show the particular search or seizure in question falls within one of these exceptions. *Id.* at 172.

To justify a seizure on less than probable cause, *Terry* requires a reasonable suspicion based on the totality of the circumstances that the person seized has committed or is about to commit a crime. *Duncan*, 146 Wn.2d at 172. An officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the detention. *State v. O'Neill*, 148 Wn.2d 564, 576, 62 P.3d 489 (2003).

Accordingly, the court determines the existence of reasonable suspicion for a *Terry* seizure based upon an objective view of the facts known to the officer. *State v. Mitchell*, 80 Wn. App. 143, 147, 906 P.2d 1013 (1995). Additionally, the court takes into account and gives deference to an officer's training and experience when determining the reasonableness of a *Terry* stop. *State v. Glover*, 116 Wn.2d 509, 514, 806 P.2d 60 (1991). While an inchoate hunch is insufficient to justify a stop, circumstances that appear innocuous to the average person may appear incriminating to a police officer in light of past experience. *State v. Samsel*, 39 Wn. App. 564, 570-71, 694 P.2d 670 (1985). The officer is not required to ignore his or her experience. *Id.* Reasonableness is measured not by exactitudes, but by probabilities. *Id.*

Subsequent evidence the officer was in error regarding some of the facts will not render a *Terry* stop unreasonable. *State v. Seagull*, 95 Wn.2d 898, 908, 632 P.2d 44 (1981) (“The Fourth Amendment does not proscribe ‘inaccurate’ searches only ‘unreasonable’ ones”). Also, before initiating a *Terry* stop, the officer need not rule out all possibilities of innocent behavior. *State v. Anderson*, 51 Wn. App. 775, 780, 755 P.2d 191 (1988). The means of investigation need not be the least intrusive available, but police must reasonably try to identify and pursue less intrusive alternatives. *State v. Mackey*, 117 Wn. App. 135, 139, 69 P.3d 375, 377 (2003).

When an officer bases their suspicion from an informant’s tip the State is required to show, under the totality of the circumstances, the tip bears some indicia of reliability. *State v. Z.U.E.*, 183 Wn.2d 610, 618, 352 P.3d 796 (2015). There must be “(1) circumstances establishing the informant’s reliability or (2) some corroborative observation, usually by the officers, that shows either (a) the presence of criminal activity or (b) that the informer’s information was obtained in a reliable fashion.” *Z.U.E.*, 183 Wn.2d at 618. The corroborative observations do not have to be of blatant

criminal activity but do have to be of more than just innocuous facts. *Id.*

A citizen informant who is known to the police is presumptively reliable. *State v. Howerton*, 187 Wn. App. 357, 366, 348 P.3d 781 (2015). This is in part because the known citizen informant is acting with the intent to aid police out of concern either for his or her own safety or concern for society and therefore is presumed to be more reliable than a compensated criminal informant. *Howerton*, 187 Wn. App. at 366-67.

Investigatory stops of vehicles are not limited to crimes in progress, the particularized suspicion includes criminal conduct about to occur or that has previously occurred. *Sate v. Muhammad*, 4 Wn. App. 2d 31, 419 P.3d 419 (2018), *rev accepted* Sup. Ct. No. 96090-9 (Oct. 30, 2018). In *Muhammad* the Court held it was permissible to stop the vehicle later in time when Muhammad was driving it, even though police did not have sufficient evidence to place Muhammad as the driver of the vehicle at the earlier time of the suspicious activity. *Muhammad*, 4 Wn. App. 2d at 49. The distinct vehicle had been seen on video in the area during the time of the victim's disappearance and presumed murder. *Id.* at 46-50. The Court stated, "the government may temporarily seize property

based on a reasonable and articulable suspicion of criminal activity and the object's connection to the activity." *Id.* at 49.

The call into 911 in this matter came from a named informant, the home owner, Fatima Jaimes Rodriguez. RP 3. Ms. Jaimes Rodriguez informed dispatch there was a dispute on her property, people were refusing to leave, the dispute then became physical, and there was an allegation someone was pushed. RP 3-4, 13-14. The deputies were also informed Ms. Jaimes Rodriguez was reporting people associated with a truck were causing damage to her property. RP 4, 13.

While responding, Deputy Brown saw a dark-colored pickup truck on the road, approximately a half of a mile from Ms. Jaimes Rodriguez's property. RP 4. Deputy Brown arrived and immediately contacted Ms. Jaimes Rodriguez and inquired if the truck he had just observed was involved in the reported dispute. RP 4. Ms. Jaimes Rodriguez confirmed the vehicle had been involved in the dispute. *Id.* Deputy Brown requested Deputy Eastman stop the vehicle while Deputy Brown further investigated the incident. RP 4.

It took Deputy Eastman a short time to catch up to the truck. RP 14. Deputy Eastman stopped the truck. *Id.* Deputy Eastman contacted the occupants, Martinez-Ledesma was driving and there

was a passenger. *Id.* at 17. Deputy Eastman immediately noticed a strong odor of intoxicants coming from inside the truck. *Id.* Martinez-Ledesma's eyes were watery and bloodshot. *Id.* Deputy Eastman believed Martinez-Ledesma to be under the influence and possibly impaired by alcohol. *Id.*

Martinez-Ledesma argues the only fact the deputies had was the truck was "involved" in whatever had happened. Brief of Appellant 8. Martinez-Ledesma likens his situation to the defendant in *State v. Carney*, 142 Wn. App. 197, 174 P.3d 142 (2007). Carney was seen speaking to a suspect in a reckless driving incident, was merely a witness, was unlawfully detained by the police, had her identification ran through dispatch, a warrant showed up for her arrest, and when arrested, Carney had two small bags of methamphetamine. *Carney*, 142 Wn. App. at 200-05. Martinez-Ledesma minimizes the evidence, ignores the findings of fact which are verities on this appeal, and the information gathered by Deputy Brown which pulled together gave Deputy Brown an articulable suspicion that whoever was in the truck had just engaged in criminal activity.

Finding of Fact 1.2 states, "Dispatch advised that there was a group of people at the location of the call refusing to leave, there

was a physical dispute, property was being damaged, and the people involved had been drinking alcohol.” CP 106. The caller was named and identified as the property owner. RP 3. Deputy Brown further indicated he had information that “subjects associated with a pickup or truck were causing damage to her property.” RP 4. Deputy Brown immediately asked if the truck was “involved in the dispute” and was told “yes.” RP 4. The information Deputy Brown had at that point was a truck fleeing the property, driving down a county road, was involved in a reported dispute where someone had been assaulted, the subjects in the truck were causing Ms. Jaimes Rodriguez property damage, and there was an allegation alcohol was also involved, therefore the driver may be driving after consuming alcohol. Pursuant to fellow officer rule, Deputy Eastman is able to rely upon the information possessed by Deputy Brown as the deputies were acting in concert. *State v. Butler*, 2 Wn. App. 549, 570-71, 411 P.3d 393 (2018). The information possessed by Deputy Eastman at the time of the initial stop and detention was sufficient to meet the requirement that there was articulable suspicion the occupants of the truck were involved in criminal activity that had just occurred at Ms. Jaimes Rodriguez’s residence.

Martinez-Ledesma's argument there was no corroborative evidence he was engaged in a crime is without merit. There was direct information given to the officers at the time the truck was part of an incident, an incident where multiple crimes had been reported. Ultimately, the investigation back at Ms. Jaimes Rodriguez's property yielded no criminal charges being levied against anyone, but that was not the information deputies had when Deputy Brown arrived on the scene and began investigating. Nor was it the information he had when he was told no assault had occurred. RP 5. While Deputy Brown found out no assault occurred on the property a couple minutes after asking Deputy Eastman to stop the truck, Deputy Brown still had an investigation to complete, because the assault was not the only crime alleged to dispatch. RP 5. Deputy Brown took several minutes with Ms. Jaimes Rodriguez to sort out what took place and what had led her to call for police assistance. *Id.* Deputy Eastman had already stopped Martinez-Ledesma when Deputy Brown was concluding his investigation. RP 5.

The moment Deputy Eastman walked up to Martinez-Ledesma's truck and observed signs of intoxication and or impairment by alcohol he was permitted to investigate the crime of

driving under the influence. *State v. Santacruz*, 132 Wn. App. 615, 619, 133 P.3d 484 (2006). The *Terry* stop Deputy Eastman conducted on Martinez-Ledesma was a lawful investigative stop. Therefore, [t]he lawful scope of a *Terry* stop may be enlarged or prolonged as needed to investigate unrelated suspicions that crop up during the stop.” *Santacruz*, 132 Wn. App. at 619. Deputy Brown was not finished with his investigation prior to Deputy Eastman contacting Martinez-Ledesma, once contacted, Deputy Eastman had an articulable suspicion to investigate Martinez-Ledesma for driving under the influence. The fact that, after investigation by Deputy Brown, no criminal charges were levied from the originally reported crimes is of no consequence to the lawfulness of the original *Terry* stop. *Seagull*, 95 Wn.2d at 908; *Anderson*, 51 Wn. App. at 780.

The initial detention of Martinez-Ledesma by Deputy Eastman and further detention for investigation for driving under the influence were lawful. The trial court correctly concluded the stop of Martinez-Ledesma’s vehicle was valid and denied the motion to suppress. CP 108. This Court should affirm the trial court’s ruling and Ledesma-Martinez’s conviction.

B. THE STATE CONCEDES THE TRIAL COURT'S IMPOSITION OF JURY COSTS IN THIS MATTER WAS IMPERMISSIBLE.

Martinez-Ledesma argues the trial court imposed a jury fee in excess of the statutorily allowed fee for jury costs. Brief of Appellant 14-16. The trial court imposed the costs as a sanction for failing to timely waive jury trial. RP (2/7/18) 3-4, 7-8; CP 75. The trial court made it clear Martinez-Ledesma would not incur the costs if he chose to exercise his constitutional right to a jury trial. RP (2/7/18) 8-9. Martinez-Ledesma objected to the cost but ultimately accepted the costs due to wishing to proceed with a bench trial. *Id.* at 4-11. The total jury fee imposed by the trial court at the time of sentencing was \$1,534.28. CP 75.

The State acknowledges RCW 36.18.016(3)(b) governs the collection of jury demand fees in criminal cases, and sets the maximum amount for a 12 person jury at \$250. A jury fee in excess of that amount is impermissible. *State v. Hathaway*, 161 Wn. App. 634, 653, 251 P.3d 253 (2011). While the trial court could impose jury fees in accordance to RCW 10.46.190, a jury demand fee is limited to the \$250 set forth by RCW 36.18.016(3)(b).

In this matter, the trial court was not simply imposing a jury fee, but a sanction for failing to notify the court in a timely fashion

that a jury panel would no longer be required. RP (2/7/18) 4, 7-8.

Well, unfortunately, because we had no idea whether or not there was going to be a waiver, because we have to have a written waiver from your client. That was not done. We attempted to contact you yesterday and were unsuccessful. So unfortunately we have an entire jury panel here. They have taken off work; they have made arrangements for their children. It's very costly to the court to do that. Judge Lawler in a couple minutes is going to begin orientation, so you see the dilemma this puts us in. So I'm willing to accept a jury waiver, but only if you are willing to take the costs of that.

Id. at 4. After further discussion the trial court made it clear, it did not matter if it was Martinez-Ledesma or his trial counsel who paid for the cost of the jury, but someone would be responsible for the cost if the jury was going to be dismissed without a jury trial.

This court is not putting your client in this position. We have policies, we have court rules, and those were not followed. We now have a courtroom full of, oh, probably 100 people, like I said, that have taken their day off, that have made arrangements to be here and that the court is paying to be here. So if you -- like I said, if your client wants to waive jury, I'm happy to accept that waiver, but he is going to have to incur those costs or you or whoever, but someone is going to have to incur those costs.

Id. 8.

A trial court has the inherent authority to manage and control its proceedings, calendars, and parties. *State v. Gassman*, 175 Wn.2d 208, 211, 283 P.3d 1113 (2012) (internal citation omitted).

This authority includes the ability to impose sanctions. *Gassman*, 175 Wn.2d at 210-11; *State v. Merrill*, 183 Wn. App. 749, 755, 335 P.3d 444 (2014). Further, under CR 11, sanctions can be imposed on both the lawyer and the client. See *In re Marriage of Wixom*, 190 Wn. App. 719, 360 P.3d 960 (2015).

A sanction by the trial court is reviewed by this court under an abuse of discretion standard. *Gassman*, 175 Wn.2d at 210. A trial court abuses its discretion when its decision is based on untenable grounds or is manifestly unreasonable. *Id.* A trial court could, upon the proper record, impose the cost of bringing in the jury for a defendant to then execute an untimely waiver of jury trial. In this matter, the State concedes the record does not support sanctioning the defendant in such a manner.

At trial confirmation, on February 1, 2018, Martinez-Ledesma's attorney was not present. RP (2/1/18) 80-81.³ Martinez-Ledesma was present. *Id.* The State confirmed for trial. *Id.* at 80. The trial court indicated it had received an email from Martinez-Ledesma's attorney, who indicated he was in another trial and unable to be present and was under the impression there was a

³ The State would like this Court to understand the judge who conducted the trial confirmation hearing was not the same judge who tried the case. Supp. CP Trial Conf. Therefore, it appears from the record the trial judge was may not have been aware Martinez-Ledesma's attorney was not present during the trial confirmation hearing.

conflict in trial dates. *Id.* The trial court stated it did not know what conflict the email was referring to, other than Martinez-Ledesma's attorney may have a trial in another court in another jurisdiction next week. *Id.* The trial court confirmed the trial. *Id.*

Without having his attorney present at trial confirmation, Martinez-Ledesma did not have the opportunity to waive his right to a jury trial prior to the morning of trial. The State acknowledges Martinez-Ledesma's attorney technically could have attempted to get in front of a judge in the intervening days before trial, but to sanction Martinez-Ledesma, who did not even have his counsel present at trial confirmation to confirm he wanted a jury trial, is an abuse of discretion. Further, there was no finding of bad faith by the trial court. Therefore, this Court should remand this matter back to the trial court to vacate the \$1,534.28 jury costs.

C. THE STATE CONCEDES THE TRIAL COURT'S INQUIRY REGARDING MARTINEZ-LEDESMA'S ABILITY TO PAY HIS LEGAL FINANCIAL OBLIGATIONS WAS NOT SUFFICIENT.

Martinez-Ledesma argues the trial court imposed legal financial obligations without conducting a proper individualized inquiry of his ability to pay. Brief of Appellant 16-18. While the trial court did inquire about Martinez-Ledesma's current work, who he supports, if his spouse was employed, and if he was on public

assistance, the inquiry ended there. RP (2/22/18) 6-8.⁴ The State concedes the inquiry was not sufficient. This Court should remand for a full inquiry regarding Martinez-Ledesma's ability to pay legal financial obligations.

In *Blazina* the Washington State Supreme Court determined the Legislature intended that prior to the trial court imposing discretionary legal financial obligations there must be an individualized determination of a defendant's ability to pay. *State v. Blazina*, 182 Wn.2d 827, 834, 344 P.3d 680 (2015). The Supreme Court based its reasoning on its reading of former RCW 10.01.160(3), which states,

The 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.

Blazina, 182 Wn.2d at 837-38.

Therefore, to comply with *Blazina*, a trial court must engage in an inquiry with a defendant regarding his or her individual financial circumstances and make an individualized determination about not only the present but future ability of that defendant to pay the requested discretionary legal financial obligations before the

⁴ Martinez-Ledesma had retained counsel.

trial court imposes them. *Id.* The Supreme Court also suggested trial courts look to GR 34 for guidance when evaluating whether a defendant has the means available to pay discretionary legal financial obligations. *Id.* at 838.

The Supreme Court in *State v. Ramirez*, Slip. Op. No. 95249-3 (Sept. 20, 2018) at 7 states “[w]e granted review in this case to articulate specific inquiries trial courts should make in determining whether an individual has the current and future ability to pay discretionary costs.” The Supreme Court noted trial courts often impose legal financial obligations with “very little discussion.” *Id.* The Supreme Court reiterated its instructions from *Blazina*, that trial courts should use GR 34. *Id.* at 14. Further,

In determining a defendant’s indigency status, the financial statement section of the motion for indigency asks the defendant to answer questions relating to five broad categories: (1) employment history, (2) income, (3) assets and other financial resources, (4) monthly living expenses, and (5) other debts. These categories are equally relevant to determining a defendant’s ability to pay discretionary LFOs.

Id. (internal citation omitted).

The trial court here did not inquire about Martinez-Ledesma’s monthly living expenses, employment history, assets, and debts. RP (2/22/18) 6-9. Therefore, pursuant to *Blazina* and *Ramirez* the trial court’s inquiry was not satisfactory prior to

imposing legal financial obligations. This Court should remand with instructions for the trial court to conduct a full inquiry.

IV. CONCLUSION

The deputies had sufficient information from the named citizen informant, the property owner, to form an articulable suspicion to support the investigatory stop of Martinez-Ledesma's vehicle. Therefore, the subsequent investigation for driving under the influence and search incident to arrest was lawful. This Court should affirm the trial court's denial of the CrR 3.6 motion to suppress and Martinez-Ledesma's conviction. The State concedes the jury cost imposed was an abuse of discretion as the sanction was manifestly unreasonable under these circumstances. Further, the trial court's inquiry of Martinez-Ledesma's ability to pay his legal financial obligations were not sufficient. Therefore, this Court

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should remand the case back to the trial court to vacate the jury fee imposed and conduct a full inquiry of Martinez-Ledesma's ability to pay legal financial obligations.

RESPECTFULLY submitted this 6th day of November, 2018.

JONATHAN L. MEYER
Lewis County Prosecuting Attorney

A handwritten signature in blue ink, appearing to be 'SIB', written over a horizontal line.

by: _____
SARA I. BEIGH, WSBA 35564
Attorney for Plaintiff

Appendix A

Findings of Fact and Conclusions of Law from CrR 3.6



FILED
Lewis County Superior Court
Clerk's Office

JAN 18 2018

Scott Tinney, Clerk

By _____, Deputy

IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR LEWIS COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

RAFAEL MARTINEZ-LEDESMA,

Defendant.

No. 16-1-00772-21

**FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND ORDER FROM CRR 3.6
MOTION TO SUPPRESS EVIDENCE.**

On January 3, 2018, a motion to suppress evidence made pursuant to CrR 3.6 was held in this Court before the Honorable James Lawler. The Defendant was present with his attorney of record, Arturo Menendez. The State was represented by Deputy Prosecuting Attorney Paul Masiello. The Court considered the testimony of Deputy Tyson Brown and Deputy Skylar Eastman, as well as photographs admitted into evidence by the State. The Defendant did not testify or present any evidence or other witnesses. The Court made the following findings of fact, conclusions of law, and order:

FINDINGS OF FACT

- 1.1 On December 26, 2016, Deputy Tyson Brown and Deputy Skylar Eastman of the Lewis County Sheriff's Office were dispatched to a call regarding an incident taking place on Little Hanaford Road.
- 1.2 Dispatch advised that there was a group of people at the location of the call refusing to leave, there was a physical dispute, property was being damaged, and the people involved had been drinking alcohol.

- 1 1.3 While traveling to that location, Deputy Brown observed a green truck
2 pass him heading in the opposite direction.
- 3 1.4 Shortly after seeing the truck pass him, Deputy Brown arrived at the
4 location of the incident.
- 5 1.5 Immediately upon exiting his vehicle, Deputy Brown asked if the green
6 truck was involved in the incident, which the complainant indicated it was.
- 7 1.6 Deputy Brown requested that Deputy Eastman, who was still on his way to
8 the location, stop the truck based on the reported involvement in the
9 incident.
- 10 1.7 While Deputy Eastman stopped the truck, Deputy Brown continued his
11 investigation into the call.
- 12 1.8 Shortly after being requested to stop the truck, Deputy Eastman was able
13 to catch up to the truck and observe that it had a white light emitting from
14 the back, which is a moving violation he has stopped vehicles for in the
15 past.
- 16 1.9 Upon contacting the truck, Deputy Eastman identified the driver as Rafael
17 Martinez-Ledesma by his driver's license.
- 18 1.10 Martinez-Ledesma was advised of why his vehicle was stopped.
- 19 1.11 While with Martinez-Ledesma, Deputy Eastman noted that there was an
20 odor of intoxicants coming from the vehicle, that Martinez-Ledesma would
21 not maintain eye contact with him, and that his eyes appeared to be
22 bloodshot and watery.
- 23 1.12 Martinez-Ledesma was asked to perform field sobriety tests, but was only
24 able to complete the horizontal gaze nystagmus, which returned with six of
25 six clues being present.
- 26 1.13 Martinez-Ledesma was placed under arrest for DUI and searched incident
27 to that arrest.
- 28
29
30

1 1.14 During that search, Deputy Eastman located two plastic bindles containing
2 a white, powdery substance.

3 **CONCLUSIONS OF LAW**

4 2.1 Deputy Eastman's stop of the vehicle was valid.

5 2.2 There was reasonable suspicion the occupant(s) of the vehicle were
6 involved in criminal activity from the information that was relayed to
7 dispatch by the complainant.

8 2.3 Deputy Eastman developed an independent basis to detain Martinez-
9 Ledesma based on his observations of Martinez-Ledesma driving a
10 vehicle and showing signs of having consumed alcohol.

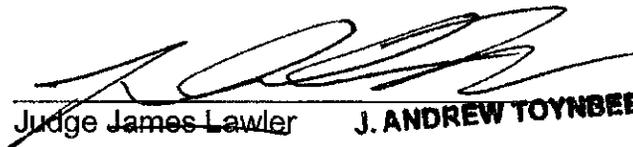
11 2.4 The arrest of Martinez-Ledesma for DUI was valid.

12 2.5 The white, powdery substance on Martinez-Ledesma was discovered
13 pursuant to a valid search incident to arrest.
14

15 **ORDER**

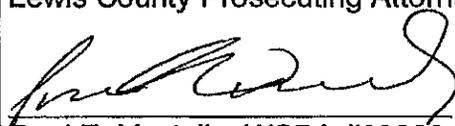
16 The defendant's motion to suppress evidence pursuant to CrR 3.6 is denied.

17
18 DATED this 18 day of January, 2018.

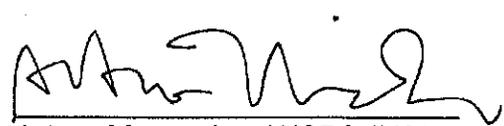
19
20
21 
22 Judge James Lawler J. ANDREW TOYNBEE

23 Presented by:

24 JONATHAN L. MEYER
25 Lewis County Prosecuting Attorney

26
27 
28 Paul E. Masiello, WSBA #33039
29 Deputy Prosecuting Attorney

Copy received; Approved as to form
Notice of Presentation waived:

30

Arturo Menendez, WSBA #43880
Attorney for Defendant

LEWIS COUNTY PROSECUTING ATTORNEY'S OFFICE

November 06, 2018 - 3:27 PM

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Appellate Court Case Title: State of Washington, Respondent v. Rafael Martinez-Ledesma, Appellant
Superior Court Case Number: 16-1-00772-9

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