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No. 51886-4-II

THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

STEPHEN M. SHELLABARGER,

Appellant.

Appeal from the Superior Court of Washington for Lewis County

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Respondent's Brief

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I. ISSUES

A. Did the trial court err when it found Trooper Farkas had reasonable suspicion to enlarge the scope of the investigatory stop and there was no delay in conducting the K-9 sniff because it began while Trooper Farkas was still processing the traffic infraction?

B. Did the trial court err when it found Shellabarger gave voluntary consent to search his vehicle and Trooper Farkas did not exceed the scope of the consent proffered when he searched a McDonald's bag that was subsequently removed from the vehicle?

C. House Bill 1783 applies prospectively to Shellabarger's case, and the $200 criminal filing fee and $100 DNA collection fee should be stricken from Shellabarger's legal financial obligations. This Court should stay decision on the issue of whether the $500 victim assessment should be stricken.

II. STATEMENT OF THE CASE

On September 28th, 2017, Trooper Farkas was on duty when he observed a vehicle making lane changes without signaling and driving over 80 miles per hour in a 70 mile per hour zone. RP (4/9/18) 15-16. Trooper Farkas stopped the vehicle, contacted the driver – Stephen Shellabarger – and asked for his license, registration, and proof of insurance. RP (4/9/18) 17. Trooper Farkas observed Shellabarger had difficulty finding certain documents in the vehicle. RP (4/9/18) 17. Trooper Farkas also observed Shellabarger to have bloodshot watery eyes, rapid speech, and very quick body movements, which he believed indicated stimulant use. RP (4/9/18)

18-19. Trooper Farkas, a trained Drug Recognition Expert with the Washington State Patrol, suspected Shellabarger was driving under the influence. RP (4/9/18) 14, 20.

When Trooper Farkas returned to his patrol vehicle to run Shellabarger's information through dispatch, Trooper Farkas also requested additional officers report to the scene. RP (4/9/18) 19. This request was due to concerns about Shellabarger's relative size, and the furtive movements Shellabarger had been making in the vehicle along with observing a large metal pipe in the vehicle. RP (4/9/18) 19-20, 34. Trooper Farkas had also observed an odor of marijuana and several containers he associated with storing drug paraphernalia. RP (4/9/18) 19-20. Trooper Farkas also requested a K-9 unit. RP (4/9/18) 21-22.

Trooper Farkas recontacted Shellabarger and asked a couple of times if he would consent to a search of the vehicle. RP (4/9/18) 22. Shellabarger would not give an answer in the affirmative or negative, but would continue to ask questions after Trooper Farkas gave him Ferrier warnings. RP (4/9/18) 22. At one time after Trooper Farkas gave Ferrier warnings and asked for consent to search, Shellabarger stated, "Then if I do, I get arrested, right?" RP (4/9/18) 23, 37. Two troopers arrived approximately 10 minutes after being

requested, and Trooper Farkas had Shellabarger perform field sobriety tests. RP (4/9/18) 20.

Trooper Farkas conducted a standard battery of field sobriety tests, which took about five minutes. RP (4/9/18) 21, 37. Trooper Farkas concluded that Shellabarger had consumed a foreign substance but was not impaired enough to arrest him for DUI. RP (4/9/18) 22.

Trooper Farkas proceeded to cite Shellabarger with a traffic ticket for the poor driving he had observed. RP (4/9/18) 23. Trooper Farkas had difficulties with printing the ticket on his patrol vehicle's printer, and he had to email it to one of the other troopers. RP (4/9/18) 23-24. Trooper Farkas then issued the ticket to Shellabarger, went over the ticket, and explained to Shellabarger what his options were for responding to the ticket. RP (4/9/18) 24-25.

While Trooper Farkas was going over the ticket and answering Shellabarger's questions, Deputy VanWyck arrived and conducted a K-9 sniff, which took approximately five minutes. RP (4/9/18) 25-26. Deputy VanWyck advised Trooper Farkas that the dog did alert on the vehicle. RP (4/9/18) 26. Trooper Farkas gave Shellabarger Ferrier warnings again and asked for consent to search the vehicle. RP (4/9/18) 26, 45. Trooper Farkas explained that

Shellabarger could refuse to consent, revoke consent, and could limit his consent as to what they would be allowed to search. RP (4/9/18) 45. One of the other troopers explained to Shellabarger that the officers had multiple options to allow them to search the vehicle, including obtaining Shellabarger's consent and obtaining a search warrant. RP (4/9/18) 47. Shellabarger consented to a search of the vehicle, saying, "Well, go ahead and search then. I knew this was coming." RP (4/9/18) 26, 47.

Deputy VanWyck had also noted the dog, in addition to the alert, may have been trying to obtain food in the vehicle. RP (4/9/18) 27. Trooper Farkas walked Shellabarger to the passenger side of the vehicle, where he observed Shellabarger move items around inside of the vehicle. RP (4/9/18) 27-28. Trooper Farkas told Shellabarger, "Go ahead and grab the McDonald's bag." RP (4/9/18) 48. When Shellabarger removed the McDonald's bag from the vehicle, Trooper Farkas told Shellabarger "Here, I'll take your garbage." RP (4/9/18) 28, 48. Shellabarger handed Trooper Farkas the bag without reluctance. RP (4/9/18) 28.

Trooper Farkas walked to his patrol vehicle with the fast food bag and away from the vehicle the K-9 was about to enter. RP (4/9/18) 28-29. Trooper Farkas opened the bag and observed an

Altoids tin on top of other garbage in the bag. RP (4/9/18) 29, 34. Trooper Farkas removed and opened the tin and found methamphetamine inside. RP (4/9/18) 29.

Shellabarger was charged by information with Possession of Methamphetamine. CP 3-4. Shellabarger filed a 3.6 motion to suppress. CP 5-7. At the suppression hearing, Shellabarger argued Trooper Farkas exceeded the scope of the investigatory stop, the K-9 sniff was unlawful, the consent to search the vehicle was invalid, and if the consent to search the vehicle *was* valid, it did not extend to a search of the bag removed from the vehicle. RP (4/9/18) 59-70.

The trial court heard testimony from Trooper Farkas and, prior to the hearing, reviewed the dash cam footage of the contact. RP (4/9/18) 12-13, 13-52. The trial court found that Trooper Farkas's observations – bloodshot watery eyes, quick speech and body movement – permitted him to enlarge the scope of his investigatory stop from only traffic infractions to a DUI investigation. RP (4/9/18) 72-73. The trial court found the length of the stop to be reasonable with no undue delay, noting the troopers did not waste time in processing the case, and it was Shellabarger's talkativeness that extended the length of the contact. RP (4/9/18) 73. The trial court found that when Shellabarger did give consent, he had been given

his Ferrier warnings and placed no limits on the search. RP (4/9/18) 74. The trial court found that removing the McDonald's bag from the vehicle after consent to search the vehicle did not eliminate the consent as to the bag – noting Shellabarger did not limit the search and the bag was not akin to a locked container. RP (4/9/18) 74. Finally, the trial court found no delay in conducting the K-9 sniff, noting the sniff began before Trooper Farkas completed the process of issuing Shellabarger his traffic citation and answering his questions. RP (4/9/18) 75. The trial court denied Shellabarger's motion to suppress, entering written findings of fact and conclusions of law. RP (4/9/18) 75; CP 28-32.

Shellabarger proceeded with a stipulated facts bench trial, with the intent to appeal the trial court's ruling on the motion to suppress. RP (4/25/18) 82-83. The trial court reviewed the stipulated facts and found Shellabarger guilty of Possession of Methamphetamine. RP (4/25/18) 83; CP 33-35. At sentencing, the trial court found Shellabarger did not have the ability to pay his legal financial obligations and imposed only those financial obligations that were mandatory at the time of his sentencing. RP (5/9/18) 90; CP 41-42. The legal financial obligations imposed were a $500 victim

assessment, $200 criminal filing fee, and $100 DNA collection fee. CP 41-42. This appeal follows. CP 47.

The State will supplement the facts as necessary throughout its argument below.

III. ARGUMENT

A. THE INVESTIGATORY STOP OF SHELLABARGER WAS LAWFUL BECAUSE THE TROOPER HAD REASONABLE SUSPICION TO ENLARGE THE SCOPE OF THE STOP.

Shellabarger argues the trial court incorrectly denied his motion to suppress the evidence found in a McDonald's bag that had been removed from his vehicle after he had consented to a search of the vehicle. The trial court correctly ruled that Trooper Farkas did not exceed the scope of the investigatory when the scope was enlarged based on reasonable suspicion of DUI and when the K-9 unit began to investigate while Trooper Farkas was still finishing the process of citing Shellabarger for a traffic infraction. The trial court correctly found there was no undue delay on the part of the officers. The trial court correctly found that Shellabarger gave voluntary consent to search the vehicle and that the consent extended to the McDonald's bag removed from the vehicle after Shellabarger consented. This Court should find that the motion to suppress the evidence obtained was correctly denied.

1. Standard Of Review.

When an appellant challenges a trial court's denial of a motion to suppress, the reviewing court determines whether there is substantial evidence to support the challenged findings of fact and whether those findings support the trial court's conclusions of law. *State v. Campbell*, 166 Wn. App. 464, 469, 272 P.3d 859 (2011). 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. *State v. Sadler*, 147 Wn. App. 97, 123, 193 P.3d 1108 (2008).

Shellabarger assigns error to findings of fact 1.6, 1.7, 1.10, 1.13, 1.14, 1.16, 1.19, 1.22, and 1.25. The remainder are verities on appeal.

2. Trooper Farkas Did Not Exceed The Scope Of The *Terry* Stop Because When The K-9 Sniff Began, Trooper Farkas Was Still Processing The Traffic Infraction Following A DUI Investigation.

The Washington State Constitution guarantees its citizens the right to not be disturbed in their private affairs except under the authority of the law. Const. art. I, § 7. People have a right to not have government unreasonably intrude on one's private affairs. U.S. Const. amend IV. Article One, section seven, of the Washington State Constitution protects the privacy rights of the citizens of Washington State. 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. Eisfeldt*, 163 Wn.2d 628, 634-35, 185 P.3d 580 (2008). 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 warrantless

"seizure is considered per se unconstitutional unless it falls within one of the exceptions to the warrant requirement." *State v. Rankin*, 151 Wn.2d 689, 695, 92 P.3d 202 (2004) (citation omitted).

Officers may conduct *Terry* stops upon reasonable suspicion that a traffic infraction has been committed. *See, e.g., United States v. Hensley*, 469 U.S. 221, 229 (1985); *Berkemer v. McCarty*, 468 U.S. 420 (1984); *State v. Ladson*, 138 Wn.2d 343, 350-51 (1999). RCW 46.61.400 provides the basic rule on speed limits. It is a traffic infraction to violate this provision. RCW 46.64.050. When an officer stops a person for a traffic infraction, he may detain that person for a reasonable period of time to investigate and process the infraction. RCW 46.61.021(2). However, the scope of an investigatory stop may be enlarged or prolonged if the stop confirms or arouses further suspicions. *State v. Smith*, 115 Wn.2d 775, 785, 801 P.2d 975 (1990).

Authority for a seizure ends when tasks tied to the purpose of the stop are, or reasonably should have been, completed. *Rodriguez v. United States*, 135 S. Ct. 1609, 1614, 191 L.Ed.2d 492 (2015) (citations omitted). A dog sniff conducted during a lawful traffic stop does not violate the Fourth Amendment's proscription of unreasonable seizures. *Illinois* v. *Caballes*, 543 U.S. 405, 125 S. Ct.

834, 160 L.Ed.2d 842 (2005). However, a dog sniff conducted after completion of a traffic stop, which prolongs the stop beyond the time reasonably required to complete tasks tied to the traffic infraction, violates the Fourth Amendment's shield against unreasonable seizures. *Rodriguez*, at 1612.

Shellabarger argues his case is comparable to *Rodriguez*, however, *Rodriguez* can be distinguished. In *Rodriguez*, a K-9 officer stopped the defendant for a traffic infraction. *Id*. After attending to everything related to the stop – driver's license check, issuing a warning, explaining the warning, etc. – the officer asked the defendant for permission to walk his dog around the vehicle. *Id*. at 1613. When the defendant refused, the officer detained the defendant, waited for a second officer to arrive, and then conducted the K-9 sniff around the defendant's vehicle. *Id*. This process took seven or eight minutes from the time the written warning was issued to the time the dog alerted. *Id*.

The Supreme Court held this was an unreasonable seizure as it occurred after the completion of the traffic stop and prolonged the stop beyond the time required to complete the tasks tied to the infraction. *Id*. at 1612. The Court distinguished this from its previous decision in *Caballes*, where the sniff was conducted during the stop

and did not prolong the duration of the seizure. *Id*. at 1614-15. The facts in Shellabarger's case are more similar to *Caballes* than *Rodriguez*.

Here, the K-9 sniff did not prolong the stop beyond the time reasonably required to investigate a possible DUI and issue a traffic citation. The K-9 sniff began while Trooper Farkas was still answering Shellabarger's questions about his traffic citation, and Shellabarger paused the process of issuing the citation to watch the K-9 sniff. RP (4/9/18) 25-26, 42. This is supported by substantial evidence in the record. Trooper Farkas testified that Deputy VanWyck arrived and conducted the K-9 sniff while he was going over the ticket with Shellabarger. RP (4/9/18) 25. Shellabarger had not attempted to leave the area and had still been actively asking questions about the ticket. RP (4/9/18) 25.

The K-9 sniff took approximately five minutes and occurred while Trooper Farkas still had authority to seize Shellabarger to issue the traffic citation. 26. The K-9 sniff did not exceed the scope of the investigatory stop. This Court should affirm the trial court's ruling and Shellabarger's conviction.

B. THE SEARCH OF SHELLABARGER'S VEHICLE WAS CONDUCTED PURSUANT TO A VOLUNTARY CONSENT TO SEARCH, AND SEARCHING THE MCDONALD'S BAG THAT WAS REMOVED FROM THE VEHICLE DID NOT EXCEED THE SCOPE OF THE CONSENT PROFFERED.

Consent to a search is one of the few recognized exceptions to the warrant requirement. *State v. Blockman*, 190 Wn.2d 651, 658, 416 P.3d 1194 (2018) (citations omitted). The Washington State Supreme Court has set out three requirements for a valid consensual search: (1) the consent must be voluntary, (2) the consent must be granted by someone with authority to consent, and (3) the search must be limited to the scope of the proffered consent. *Id*.

Ferrier warnings are required when officers use the "knock and talk" procedure in an attempt to obtain consent to enter a home to conduct a warrantless search. *State v. Ferrier*, 136 Wn.2d 103, 106, 960 P.2d 927 (1998). Prior to entering the home, the officers must first inform the person that they are allowed to refuse to consent, can revoke consent at any time, and can limit the scope of the consent to certain areas. *Id*. at 118. Failure to give these warnings prior to entering the home vitiates any consent obtained. *Id*. at 118-19. *Ferrier* warnings are not required when seeking consent to search a vehicle. *State v. Witherrite*, 184 Wn. App. 859,

864, 339 P.3d 992 (2014) (noting that it is nonetheless best practice to give full *Ferrier* warnings before any consent search.)

1. In Consideration Of All Of The Factors Available, Shellabarger's Consent To Search Was Voluntarily Given Under The Totality Of The Circumstances.

Outside of the *Ferrier* context, the court employs a totality of the circumstances test to determine whether consent to search has been given voluntarily. *State v. Ruem*, 179 Wn.2d 195, 207, 313 P.3d 1156 (2013); *State v. Thang*, 145 Wn.2d 630, 637, 41 P.3d 1159, 1162 (2002). The factors to be considered are the education and intelligence of the consenting person; whether *Miranda* warnings, if applicable, were given prior to consent; and whether the person was advised of their right not to consent. *Id*. No single factor is dispositive. *Id*. Additionally, the court may weigh any express or implied claims of police authority to search, previous illegal actions of the police, the defendant's cooperation, and police deception as to identity or purpose. *State v. Reichenbach*, 153 Wn.2d 126, 132, 101 P.3d 80, 85 (2004) (*citing State v. Flowers*, 57 Wn. App. 636, 645, 789 P.2d 333 (1990)).

In *Flowers*, the defendant was ordered out of his room at gunpoint by several officers, was ordered to kneel with his hands behind his head, and had an officer place a knee on his spine and a

foot between his knees. 57 Wn. App. at 645. Shortly after being "contained," the defendant was asked for permission to search his room and car. *Id*. He was not given *Miranda* warnings nor advised of his right to refuse to consent. *Id*.

The Court of Appeals found the defendant's consent to be free and voluntary, with no indication the consent was coerced, the product of duress, or that the defendant's "will was overborne." *Id*. at 646-47. The Court took into account that the defendant was informed of the nature of the investigation, that he knew what "legal consent to search" meant, that no one had threatened to get a warrant if he did not consent, that he was not of low intelligence nor totally naive in criminal matters, and that he made no contention in his testimony that he had felt coerced or did not understand he could refuse to consent. *Id*. at 646, 647.

Consent is not given voluntarily if it is granted "*only* in submission to a claim of lawful authority." *State v. O'Neill*, 148 Wn.2d 564, 589, 62 P.3d 489 (2003) (citations omitted). However, "not every advisement of authority to search in the absence of consent vitiates any consent given." *Id*. at 590. Where officers truthfully advise the defendant of the consequences refusing to consent – that they would have to get a search warrant – the statement may be considered

informative rather than coercive. *Id*. (*citing Commonwealth v. Mack*, 568 Pa. 329, 796 A.2d 967, 970-71 (2002)).

In *O'Neill*, the defendant explicitly denied consent to search and stated the officer needed a warrant. *Id*. at 589. In response, the officer said he did not need a warrant but rather could arrest the defendant for drug paraphernalia and search him incident to arrest. *Id*. The defendant continued to deny consent and only relented after the officer repeatedly pressed the issue. *Id*. The Court found that the officer's conduct showed he had no intention of arresting the defendant and simply claimed he would do so to obtain consent. *Id*. The Court distinguished this case from *Mack*, finding the officer was not merely advising the defendant of the consequences of refusal, but using the statement to pressure the defendant to consent, "i.e., to give in because it was futile not to." *Id*. at 590-91. The Court found this to be coercive rather than just informative, moreover because the officer repeated the statement several times. *Id*. at 91. The Court agreed with other courts that had found repeated requests for consent and initial refusals to consent, especially where consent is clearly and definitively denied, are factors to consider in determining whether consent is voluntary. *Id*.

Here, while there were four officers on the scene, the officers did not draw their firearms or restrain Shellabarger. While the officers did not give Shellabarger *Miranda* warnings, Trooper Farkas did give *Ferrier* warnings, informing Shellabarger of his right to refuse, revoke, or limit the scope of his consent. RP (4/9/18) 45, 74.

Although Trooper Farkas asked Shellabarger for consent multiple times, and the other trooper told Shellabarger they had the option of obtaining a warrant, this is not the coerciveness that was present in *O'Neill*. Here, Trooper Farkas asked Shellabarger whether he would consent to a search two times prior to the K-9 unit arriving. RP (4/9/18) 22. Shellabarger never explicitly refused consent or made any remarks about the officers not being allowed to search his vehicle but instead asked multiple questions. RP (4/9/18) 22. Trooper Farkas testified that Shellabarger kept asking, "What if I refuse?" to which Trooper Farkas would reply, "Then you refuse," and Shellabarger would respond with, "Oh, okay." RP (4/9/18) 38.

After the K-9 alerted on the vehicle, Trooper Farkas again asked Shellabarger whether he would consent to a search. RP (4/9/18) 46. In response to Shellabarger's questions, one of the other troopers told him that because the dog alerted on the vehicle, the officers were going to want to find out what was in the vehicle and

they could achieve that in multiple ways including by consent or by applying for a search warrant. RP (4/9/18) 47. The trooper only once explained to Shellabarger that they had the option of obtaining a warrant. This truthful information was not repeatedly stated in an attempt to wear Shellabarger down or coerce consent. Trooper Farkas testified that when he is informed of a K-9 alert on a vehicle, he believes he has probable cause to obtain a search warrant. RP (4/9/18) 50. Trooper Farkas testified that when this occurs, he first tries to obtain consent to search and then applies for a search warrant if content is denied. RP (4/9/18) 50.

Additionally, Shellabarger's previous VUCSA history and his stated experience with taking a lie detector test indicate that he was not naive regarding criminal matters. RP (4/9/18) 31-32, 48.

The above factors considered as a whole show that Shellabarger's consent to search was voluntary and this Court should affirm his conviction.

2. Searching The McDonald's Bag Did Not Exceed The Scope Of The Proffered Consent.

A search based on consent will not be valid if it exceeds the scope of the proffered consent. *Blockman*, at 659. Any express or implied limitations or qualifications may reduce the scope of consent

in duration, area, or intensity. *Reichenbach*, at 133 (*citing State v. Cotten*, 75 Wn. App. 669, 679, 879 P.2d 971 (1994)). Locked containers or compartments within a vehicle denote a greater reasonable expectation of privacy than open areas or unlocked containers. *See State v. Stroud*, 106 Wn.2d 144, 152-53, 720 P.2d 436 (1986) (an unlocked glovebox carries a lesser expectation of privacy than a locked glovebox); *State v. Fladebo*, 113 Wn.2d 388, 395, 779 P.2d 707 (1989) (a woman's purse carries a lesser expectation of privacy than a locked container).

Here, Shellabarger gave the officers permission to search his vehicle. RP (4/9/18) 26, 47. He did not give any express or implied limitations or qualifications to the scope of the vehicle search. RP (4/9/18) 26, 47. The McDonald's bag was in Shellabarger's vehicle when he gave consent and does not have the same expectation of privacy as a locked container. RP (4/9/18) 26, 28, 47-48. When Trooper Farkas offered to take the McDonald's bag, Shellabarger gave it to him without hesitation. RP (4/9/18) 28, 48. The Altoids tin that was found in the McDonald's bag also does not have the same expectation of privacy as a locked container.

When Shellabarger gave consent to search his vehicle, he did not limit the scope of the search. Searching the McDonald's bag that

had been in the vehicle and opening the Altoids tin found in the bag did not exceed the scope of Shellabarger's proffered consent. The search was based on voluntarily given consent and did not exceed the scope of the consent given. Therefore, this Court should affirm Shellabarger's conviction.

C. THE STATE CONCEDES THAT HOUSE BILL 1783 APPLIES PROSPECTIVELY TO SHELLABARGER'S CASE. THIS COURT SHOULD STAY ITS DECISION REGARDING THE IMPOSITION OF THE $500 VICTIM ASSESSMENT PENDING THE SUPREME COURT'S DECISION IN *STATE V. CATLING*.

Shellabarger argues the amendments enacted by House Bill 1783 apply prospectively to his case, and this Court should strike the trial court's imposition of a $200 criminal filing fee and $100 DNA collection fee. Brief of Appellant 38-39. Shellabarger also argues this Court should strike the mandatory $500 victim assessment or alternatively stay its decision on this issue pending the Washington State Supreme Court's decision in *State v. Catling*, No. 95794-I. Brief of Appellant 40-42.

On June 7, 2018, House Bill 1783 went into effect, amending multiple statutes pertaining to the imposition of legal financial obligations. Laws of 2018, ch. 269 § 6. These amendments prohibit a sentencing court from imposing discretionary legal financial obligations, as well as some otherwise mandatory legal financial

obligations, on defendants who are indigent as defined in RCW 10.101.010(3)(a)-(c). Laws of 2018, ch. 269 § 6.

In *State v. Ramirez*, 191 Wn.2d 732, 744, 426 P.3d 714 (2018), the Washington State Supreme Court held that House Bill 1783 applied prospectively to cases that were pending on direct review, and thus not final, when the amendments were enacted. *Id*. at 747.

The State concedes that Shellabarger's case falls under the holding in *Ramirez*, and the amendments enacted in House Bill 1783 apply prospectively in determining what legal financial obligations may be imposed.

At sentencing, Shellabarger told the trial court he received $740 per month for Social Security Disability and that he made minimal supplemental income from woodworking. RP (5/9/18) 89-90. The trial court found Shellabarger did not have the ability to pay his legal financial obligations and imposed only those obligations that were mandatory at the time he was sentenced. RP (5/9/18) 90; CP 41-42. The State concedes Shellabarger would qualify as indigent under either RCW 10.101.010(3)(a) or RCW 10.101.010(3)(c), and therefore, the trial court now cannot impose the $200 criminal filing fee. See RCW 36.18.020.

Counsel and the trial court also discussed that Shellabarger had a prior felony conviction from 2001, which washed out and did not count toward his offender score. RP (5/9/18) 86-87. RCW 43.43.7541 requires a $100 DNA fee "unless the state has previously collected the offender's DNA as a result of a prior conviction." Although the record before this Court appears to be silent on whether Shellabarger's 2001 felony conviction is out of Washington State, the State has confirmed the conviction was in Clark County, Washington, and the State concedes that "the state has previously collected" Shellabarger's DNA. Therefore, the trial court is now not required to impose the $100 DNA fee.

As the law currently stands, RCW 9.94A.760 explicitly states that an offender being indigent "is not grounds for failing to impose restitution or the crime victim penalty assessment under RCW 7.68.035." Because of this, the State's position is that this Court should stay any decision regarding the imposition of the $500 victim assessment until the Washington State Supreme Court's decision in *Catling*.

IV. CONCLUSION

Trooper Farkas was still completing the tasks tied to the traffic stop when the K-9 sniff occurred and the stop was not prolonged due

to the sniff. Under the totality of the circumstances, Shellabarger's consent to search his vehicle was voluntary. Shellabarger did not qualify the scope of the vehicle search, and Trooper Farkas did not exceed the scope of Shellabarger's consent when he searched the McDonald's bag and Altoids tin that were subsequently removed from the vehicle. This Court should affirm the trial court's conclusions of law from the CrR 3.6 Hearing and Shellabarger's conviction for Possession of Methamphetamine. The State concedes the $200 criminal filing fee and $100 DNA collection fee should be stricken from Shellabarger's legal financial obligations but recommends staying any decision regarding the $500 victim assessment.

RESPECTFULLY submitted this 11th day of January, 2019.

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