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Court of Appeals  
Division II  
State of Washington  
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NO. 52008-7-II

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

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STATE OF WASHINGTON,

Respondent,

v.

DANIEL SCHROEDER, SR.,

Appellant.

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

The Honorable James W. Lawler, Judge

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BRIEF OF APPELLANT

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**TABLE OF CONTENTS**

	Page
A. <u>ASSIGNMENTS OF ERROR</u> .....	1
<u>Issues Pertaining to Assignments of Error</u> .....	1
B. <u>STATEMENT OF THE CASE</u> .....	2
C. <u>ARGUMENT</u> .....	7
1. THE COURT ERRED WHEN IT DENIED THE DEFENSE MOTION TO SUPPRESS EVIDENCE BASED ON A CONSENT TO SEARCH.....	7
2. THE \$200 FILING FEE AND \$100 DNA FEE MUST BE STRICKEN BASED ON INDIGENCY.....	15
D. <u>CONCLUSION</u> .....	18

TABLE OF AUTHORITIES

	Page
<u>WASHINGTON CASES</u>	
<u>State v. Afana</u> 169 Wn.2d 169, 233 P.3d 879 (2010) .....	14
<u>State v. Apodaca</u> 67 Wn. App. 736, 839 P.2d 352 (1992).....	10
<u>State v. Bustamante-Davila</u> 138 Wn.2d 964, 983 P.2d 590 (1999).....	8
<u>State v. Duncan</u> 146 Wn.2d 166, 43 P.3d 513 (2002).....	9
<u>State v. Garvin</u> 166 Wn.2d 242, 207 P.3d 1266 (2009) .....	8, 9
<u>State v. Hendrickson</u> 129 Wn.2d 61, 917 P.2d 563 (1996) .....	8
<u>State v. Ladson</u> 138 Wn.2d 343, 979 P.2d 833 (1999) .....	14
<u>State v. Mierz</u> 127 Wn.2d 460, 901 P.2d 286 (1995).....	10
<u>State v. Niedergang</u> 43 Wn. App. 656, 719 P.2d 576 (1986).....	15
<u>State v. O'Neill</u> 148 Wn.2d 564, 62 P.3d 489 (2003).....	8
<u>State v. Ramirez</u> ___ Wn.2d ___, ___ P.2d ___, 2018 WL 4499761 (September 20, 2018). .....	2, 15, 16
<u>State v. Riley</u> 17 Wn. App. 732, 565 P.2d 105 (1977) <u>review denied</u> , 89 Wn.2d 1014 (1978) .....	11, 12, 14

**TABLE OF AUTHORITIES (CONT'D)**

	Page
<u>State v. Shoemaker</u> 85 Wn.2d 207, 533 P.2d 123 (1975).....	8

<u>State v. Smith</u> 115 Wn.2d 775, 801 P.2d 975 (1990).....	10
--	----

**OTHER JURISDICTIONS**

<u>Commonwealth v. Mack</u> 568 Pa. 329, 796 A.2d 967 (2002).....	10
--	----

**FEDERAL CASES**

<u>Arkansas v. Sanders</u> 442 U.S. 753, 61 L. Ed. 2d 235, 99 S. Ct. 2586 (1979) .....	8
---	---

<u>Bumper v. North Carolina</u> 391 U.S. 543, 88 S. Ct. 1788, 20 L. Ed. 2d 797 (1968).....	10, 11
---	--------

<u>Miranda v. Arizona</u> 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966)4, 8, 9, 11-12	
--	--

<u>Schneckloth v. Bustamonte</u> 412 U.S. 218, 93 S. Ct. 2041, 36 L. Ed. 2d 854 (1973)..	9-11, 13, 14
---	--------------

**RULES, STATUTES AND OTHER AUTHORITIES**

CrR 3.6 .....	1, 5
---------------	------

HB 1763 .....	16
---------------	----

HB 1783 .....	15, 16
---------------	--------

Laws of 2018, ch. 269, § 6 .....	15
----------------------------------	----

Laws of 2018, ch. 269, § 17 .....	16
-----------------------------------	----

**TABLE OF AUTHORITIES (CONT'D)**

	Page
Laws of 2018, ch. 269, § 18 .....	16
RCW 10.01.160.....	15, 17
RCW 10.101.010.....	15, 16
RCW 10.64.015 (2018) .....	15
RCW 36.18.020.....	16
RCW 43.43.754.....	16, 17
RCW 43.43.7541.....	16, 17
U.S. Const. Amend. IV .....	7
Const. Art. I, § 7 .....	7

A. ASSIGNMENTS OF ERROR

1. The trial court erred when it refused to suppress unlawfully seized evidence.

2. The trial court erred, in its written CrR 3.6 findings and conclusions, when it entered conclusions of law 2.1 – 2.4.<sup>1</sup>

3. The \$200 criminal filing fee and \$100 DNA fee should be stricken from appellant's judgment and sentence.

Issues Pertaining to Assignments of Error

1. Consent to a warrantless search is invalid unless freely and voluntarily given. Consent that is the product of explicit or implicit duress or coercion – including assertions by police that they have lawful authority to search even without consent – is invalid. Appellant is disabled and requires a wheelchair. A police detective told him he could avoid arrest (for which there was no probable cause) and therefore the complications associated with a disabled person in jail if he was honest about his drug possession. Appellant then consented to a search that led to evidence of methamphetamine possession. Did the trial court err when it found a valid consent to search?

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<sup>1</sup> The court's written findings of fact and conclusions of law are attached as an appendix to this brief.

2. Are several of the court's conclusions in support of its order denying the defense motion to suppress evidence contrary to controlling law?

3. Appellant is indigent. Under the Supreme Court's recent decision in State v. Ramirez,<sup>2</sup> must the filing fee and DNA fee be stricken?

B. STATEMENT OF THE CASE

The Lewis County Prosecutor's Office charged Daniel Schroeder with one count of possession of a controlled substance: methamphetamine. CP 1-3.

Schroeder moved to suppress all evidence of the methamphetamine, arguing it was the product of an unlawful warrantless search and premised on Schroeder's invalid consent to search a small leather case stored in his backpack. CP 4-7.

At a hearing on Schroeder's motion, Lewis County Detective Adam Haggerty testified he belongs to the Joint Narcotics Enforcement Team, is a deputized special agent with the Drug

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<sup>2</sup> State v. Ramirez, \_\_\_ Wn.2d \_\_\_, \_\_\_ P.2d \_\_\_, 2018 WL 4499761 (September 20, 2018).

Enforcement Administration, and has been involved in over 100 controlled buys. RP 4.

On August 30, 2017, in response to citizen complaints about drug activity near the Gather Church in Centralia, Detective Schroeder and other officers – some in undercover vehicles – surveilled the area. RP 5. Some earlier complaints pertained to Schroeder, whom a patrol officer had previously seen in the area, resulting in a warning from the officer concerning his activities. RP 6.

Schroeder was easily identified because he is missing a leg and uses a wheelchair. RP 6. On August 30, officers reported seeing an “exchange” between Schroeder and a second gentleman later identified as Lonny Clevenger, although the officers could not see what item was exchanged. RP 6, 14. Surveillance team members moved in to the area, which was adjacent to a grocery store. RP 6, 8.

Detective Haggerty approached Schroeder, who was sitting in his wheelchair, and told him they had witnessed the exchange and “we need to talk about it.” RP 8-9. Schroeder explained that he had merely given money to Clevenger to buy a beer. RP 9.

Schroeder's assertion was confirmed immediately thereafter when Clevenger exited the grocery with a beer. RP 9.

Detective Haggerty continued to speak with Schroeder, including a discussion about how both had served in the military, while other officers spoke to Clevenger nearby. RP 6-7, 18-19. Officers found methamphetamine on Clevenger and, from that point on, Schroeder was no longer free to leave, although he was not informed of this fact. RP 11, 14-15, 18.

Detective Haggerty knew he did not have legal cause to arrest Schroeder, had no legal basis to search Schroeder, and that Schroeder was not under any obligation to submit to a search, but he chose not to alert Schroeder to these circumstances or inform him of his right to refuse a search. RP 17, 19-21. He also did not inform Schroeder of his Miranda<sup>3</sup> rights. RP 14. And although there was no evidence Schroeder had drugs on him, Detective Haggerty felt it was highly likely that he did. RP 16, 21.

Detective Haggerty decided to offer Schroeder an "incentive" to simply hand over any drug evidence. RP 20-21. Haggerty told Schroeder that the officers believed "he had been doing drug deals." RP 16. He then said, "If you have drugs or if you have

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<sup>3</sup> Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

been selling drugs, be honest with us. . . . It's in my best interests that if you do that, I won't book - - bring you to jail, won't book you into custody: I can refer the charges." RP 10; see also RP 20 (quoting from police report: "I told Schroeder that if he had any drugs on him, I would not book him into jail if he was honest with me.")). According to Haggerty, because of Schroeder's need for a wheelchair, he probably also mentioned that avoiding jail would be better for Schroeder considering Schroeder's medical issues. RP 10.

In response, Schroeder reached into a backpack and pulled out a small leather case. RP 12, 27. Haggerty asked if he could open it, and Schroeder said "yeah." RP 12. Inside, Haggerty found a smoking device and a white crystalline substance he recognized as methamphetamine. RP 12. After officers arrested several others in the area, Detective Haggerty told Schroeder he was free to leave, he was going to refer charges, and Schroeder should check his mail for notification of the criminal case. RP 12-14.

Schroeder testified at the CrR 3.6 hearing. According to Schroeder, he told Haggerty he could search his physical body, and Haggerty merely checked one pocket that Haggerty had apparently seen him put some change in. RP 25-26, 28. Haggerty

then “told me he could take me downtown and search me and if he found anything I’d go to jail, but if you had anything and turned it over to him I won’t go to jail.” RP 23. Schroeder testified he then reached into his backpack and handed over the contents of his case because he feared he would otherwise be arrested and taken downtown. In the absence of Haggerty’s statement, he would not have provided that evidence. RP 23, 28-29.

The prosecution argued it had shown a knowing and voluntary consent to search. RP 29-37, 40-43. The defense argued there was no valid consent under the totality of circumstances, including the fact Detective Haggerty had employed an implied threat (that the failure to simply turn over the evidence would result in Schroeder’s arrest and the complications associated with that arrest). RP 37-40.

The Honorable James Lawler found the situation presented “a close case.” RP 43. Ultimately, however, he found that the detective’s offer to refer charges rather than arrest Schroeder “is not such a threat as to invalidate the consent which it appears was freely given.” RP 44. The motion to suppress was denied, and written findings and conclusions subsequently filed. RP 43-44; CP 24-27.

In light of this ruling, Schroeder waived his right to a jury trial and proceeded by way of a bench trial on stipulated facts. RP 48-49; CP 31. Judge Lawler found him guilty and imposed a standard range sentence of six months and a day. RP 50, 56; CP 28-30, 37. Judge Lawler also ordered Schroeder to pay a \$200 criminal filing fee and a \$100 DNA fee. CP 39.

As defense counsel explained at sentencing, because Schroeder is missing the lower portion of his left leg and requires a wheelchair, his ability to work is “severely compromised.” RP 55. He qualifies for Supplemental Security Income (SSI). RP 56. Moreover, in a motion to declare Schroeder indigent for purposes of appeal, Schroeder swore under penalty of perjury that he had no significant assets or income. CP 46-47. Judge Lawler entered an order of indigency. CP 50-52.

Schroeder timely filed a Notice of Appeal. CP 44.

C. ARGUMENT

1. THE COURT ERRED WHEN IT DENIED THE DEFENSE MOTION TO SUPPRESS EVIDENCE BASED ON A CONSENT TO SEARCH.

Under the Fourth Amendment to the United States Constitution and article 1, § 7 of the Washington Constitution, a warrantless search or seizure is per se unreasonable unless the

State demonstrates the search or seizure falls within one of the "jealously and carefully drawn exceptions" to the warrant requirement. State v. Garvin, 166 Wn.2d 242, 250, 207 P.3d 1266 (2009); State v. Hendrickson, 129 Wn.2d 61, 70, 917 P.2d 563 (1996) (quoting Arkansas v. Sanders, 442 U.S. 753, 759, 99 S. Ct. 2586, 61 L. Ed. 2d 235 (1979)).

Consent is one such narrow exception, and the State bears the burden of proving that it was freely and voluntarily given, under the totality of the circumstances, by clear and convincing evidence. State v. O'Neill, 148 Wn.2d 564, 588, 62 P.3d 489 (2003); Hendrickson, 129 Wn.2d at 70-72; State v. Bustamante-Davila, 138 Wn.2d 964, 981, 983 P.2d 590 (1999).

Relevant circumstances include (1) whether Miranda warnings had been given prior to obtaining consent; (2) the degree of education and intelligence of the consenting person; and (3) whether the consenting person had been advised of his right not to consent. Bustamante-Davila, 138 Wn.2d at 981-982 (citing State v. Shoemaker, 85 Wn.2d 207, 212, 533 P.2d 123 (1975)). No single factor is dispositive. Id. at 982.

However, consent that is "the product of duress or coercion, express or implied," is neither voluntary nor valid. Schneckloth v.

Bustamonte, 412 U.S. 218, 227, 93 S. Ct. 2041, 36 L. Ed. 2d 854 (1973); O'Neill, 148 Wn.2d at 588. Coercion may be “by explicit or implicit means, by implied threat or covert force” and it may be subtle. Schneckloth, 412 U.S. at 228. “[A]ccount must be taken of subtly coercive police questions, as well as the possibly vulnerable subjective state of the person who consents.” Id. at 229.

This Court reviews conclusions of law from an order denying a motion to suppress evidence de novo. State v. Garvin, 166 Wn.2d 242, 249, 207 P.3d 1266 (2009) (citing State v. Duncan, 146 Wn.2d 166, 171, 43 P.3d 513 (2002)).

Regarding factor (1), Schroeder had not been informed of his Miranda rights. RP 14. Regarding factor (2), the State presented no evidence concerning Schroeder’s degree of education and intelligence. Lastly, regarding factor (3), neither Detective Haggerty nor any other officer informed Schroeder that he could refuse consent. RP 17. Instead, Detective Haggerty said “he would not book him into jail if he was honest” about having drugs on him, implying that Schroeder would be booked (and certainly searched) otherwise.

A police officer’s advisement that he has the authority to search even absent the defendant’s consent may vitiate any

consent ultimately obtained. O'Neill, 148 Wn.2d at 590. Specifically, where an officer indicates he has authority to search without consent, this is akin to indicating the defendant has no right to refuse. Id. at 589-590 (citing Bumper v. North Carolina, 391 U.S. 543, 88 S. Ct. 1788, 20 L. Ed. 2d 797 (1968)); see also State v. Apodaca, 67 Wn. App. 736, 739-740, 839 P.2d 352 (1992) (police officers may not misrepresent the scope of their authority to search without consent in order to obtain consent), overruled on other grounds by State v. Mierz, 127 Wn.2d 460, 901 P.2d 286 (1995). “[C]onsent’ granted ‘only in submission to a claim of lawful authority’ is not given voluntarily.” O'Neill, 148 Wn.2d at 589 (quoting Schneckloth, 412 U.S. at 233.<sup>4</sup>

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<sup>4</sup> In contrast, merely informing the defendant that if he refuses consent the officer will have to get a warrant is simply a relevant factor in assessing voluntariness and does not automatically vitiate consent. O'Neill, 148 Wn.2d at 590 (citing Commonwealth v. Mack, 568 Pa. 329, 796 A.2d 967 (2002)); see also State v. Smith, 115 Wn.2d 775, 790, 801 P.2d 975 (1990) (merely informing suspect a warrant would be requested did not coerce consent).

Detective Haggerty's method for obtaining Schroeder's consent to search his leather case involved use of what the United States Supreme Court describes as "colorably lawful coercion." Schneckloth, 412 U.S. at 234 (quoting Bumper v. North Carolina, 391 U.S. at 550). Although Haggerty admittedly had no authority to arrest Schroeder (or even search him based on probable cause), his statement to Schroeder that he would not book him if he was honest about the drugs in his possession informed Schroeder in effect that he had no right to refuse a search because the search would occur in any event (at the jail) once he was booked, the threatened consequence for failing to consent.

Based on the totality of the circumstances – no Miranda warnings, no evidence establishing Schroeder's education level and intelligence, no advisement that he could refuse consent, and the use of coercion through implicit misrepresentation (that Schroeder would be booked if he did not provide evidence) – the State failed to prove a voluntary consent to search.

In upholding the warrantless search of Schroeder's case, Judge Lawler agreed with the State's reliance on State v. Riley, 17 Wn. App. 732, 565 P.2d 105 (1977), review denied, 89 Wn.2d 1014 (1978). RP 40-43; CP 26-27 (conclusions of law 2.1 – 2.3).

In Riley, officers went to the defendant's home with the authority to arrest him for burglary and the intention to do so. Riley, 17 Wn. App. at 733. A detective fully advised Riley of his rights under Miranda and told Riley he should cooperate and clear things up. Id. When Riley was told to put on his shoes and coat because he was being arrested, Riley (not one of the officers) asked what would happen if he told them about the burglary. Id. In response, the detective said that Riley could avoid arrest, stay at home, and the matter would be referred. Id. On appeal, this court affirmed the lower court's conclusion that the confession was voluntary where motivated by Riley's "own desire to avoid being physically arrested" and the detective "made no direct or implied promises or threats as a reward for confessing." Id. at 107.

In Riley, there was probable cause to arrest the defendant and officers actually intended to make an arrest. In Schroeder's case, both the authority and intent to arrest are missing. Instead, Detective Haggerty used the threat of an arrest as a bluff. In Riley, the defendant was fully advised of his rights. Schroeder was not. In Riley, it was the defendant that posed the possibility of avoiding arrest if he cooperated. Riley himself – with full knowledge of his rights -- instigated trading his cooperation for continued freedom.

Here, it was Detective Haggerty that offered freedom in exchange for evidence without a warrant. And, in Riley, there simply was no deception or implied threats on the part of law enforcement. Here, Detective Haggerty used Schroeder's' vulnerable state (the negative consequences of putting a disabled person in jail) as a carrot and a stick to induce cooperation and implied arrest was possible even without it. These are critical distinctions.

Judge Lawler also relied heavily on the discussion in Schneckloth indicating that Fifth Amendment rights receive greater protection than the Fourth Amendment rights at issue here. See CP 27 (conclusions of law 2.2 – 2.3). But the Schneckloth holding is quite narrow:

Our decision today is a narrow one. We hold only that when the subject of a search is not in custody and the State attempts to justify a search on the basis of his consent, the Fourth and Fourteenth Amendments require that it demonstrate that the consent was in fact voluntarily given, and not the result of duress or coercion, express or implied. Voluntariness is a question of fact to be determined from all the circumstances, and while the subject's knowledge of a right to refuse is a factor to be taken into account, the prosecution is not required to demonstrate such knowledge as a prerequisite to establishing a voluntary consent.

Schneckloth, 412 U.S. at 248.

The Schneckloth Court was quite clear that, even under the Fourth Amendment, law enforcement's use of improper tactics to obtain consent to search, including any suggestion that (cooperation or not) a search will occur, will not be tolerated. Yet, that is the tactic Detective Haggerty employed when he deceptively implied authority to arrest Schroeder, suggesting Schroeder could only avoid that outcome if he was "honest" and provided evidence of the controlled substances.

Riley is easily distinguished and Schneckloth supports Schroeder, not the State.

"When an unconstitutional search or seizure occurs, all subsequently uncovered evidence becomes fruit of the poisonous tree and must be suppressed." State v. Ladson, 138 Wn.2d 343, 359, 979 P.2d 833 (1999). That is the remedy here. All evidence of methamphetamine resulting from the warrantless search of Schroeder's leather case should have been suppressed and his conviction should be reversed and dismissed with prejudice. See State v. Afana, 169 Wn.2d 169, 175, 233 P.3d 879 (2010) (case dismissed where practical effect of suppression is termination of State's case); State v. Niedergang, 43 Wn. App. 656, 658, 663, 719

P.2d 576 (1986) (dismissal where remaining evidence could not support further prosecution).

2. THE \$200 FILING FEE AND \$100 DNA FEE MUST BE STRICKEN BASED ON INDIGENCY.

In State v. Ramirez, the Supreme Court discussed and applied Engrossed Second Substitute House Bill 1783, 65th Leg., Reg. Sess. (Wash. 2018) (HB 1783), which became effective June 7, 2018 and applies prospectively to cases currently on appeal. Ramirez, WL 4499761 at \*3, 6-8.

HB 1783 "amends the discretionary LFO statute, former RCW 10.01.160, to prohibit courts from imposing discretionary costs on a defendant who is indigent at the time of sentencing as defined in RCW 10.101.010(3)(a) through (c)." Ramirez, at \*6 (citing LAWS of 2018, ch. 269, § 6(3)); see also RCW 10.64.015 (2018) ("The court shall not order a defendant to pay costs, as described in RCW 10.01.160, if the court finds that the person at the time of sentencing is indigent as defined in RCW 10.101.010(3) (a) through (c)."). Under RCW 10.101.010(3)(a) through (c), a person is "indigent" if the person receives certain types of public assistance (including SSI), is involuntarily committed to a public mental health facility, or receives an annual income after taxes of

125 percent or less of the current federal poverty level.

HB 1783 also amends RCW 36.18.020(2)(h), which now states the \$200 criminal filing fee "shall not be imposed on a defendant who is indigent as defined in RCW 10.101.010(3)(a) through (c)." Laws of 2018, ch. 269, § 17. This amendment "conclusively establishes that courts do not have discretion" to impose the criminal filing fee against those who are indigent at the time of sentencing. Ramirez, at \*8. In Ramirez, the Supreme Court accordingly struck the criminal filing fee due to indigency. Id. Here, the record indicates Schroeder is indigent under RCW 10.101.010(3). RP 55-56; CP 45-52. Because HB 1783 applies prospectively to his case, the sentencing court lacked authority to impose the \$200 filing fee.

The \$100 DNA fee also must be stricken. HB 1783 amends RCW 43.43.7541 to read, "Every sentence imposed for a crime specified in RCW 43.43.754 must include a fee of one hundred dollars *unless the state has previously collected the offender's DNA as a result of a prior conviction.*" Laws of 2018, ch. 269, § 18 (emphasis added). HB 1783 "establishes that the DNA database fee is no longer mandatory if the offender's DNA has been collected because of a prior conviction." Ramirez, at \*6.

Prior to sentence being imposed in this case, Schroeder was convicted of a felony criminal offense as recently as 2015. CP 36. Therefore, he previously would have been required to provide a DNA sample. See RCW 43.43.754(1)(a) (a sample must be collected from every adult or juvenile convicted of a felony).

This Court should find that because Schroeder's DNA sample had to be collected as a consequence of his prior felony conviction, the DNA fee in this case is no longer mandatory under RCW 43.43.7541. The fee is discretionary. And, under the current version of RCW 10.01.160(3), discretionary fees may not be imposed on indigent defendants. Therefore, the \$100 DNA fee also should be stricken.

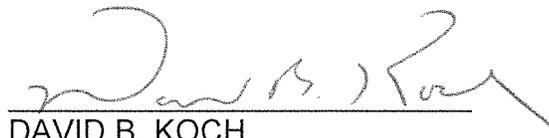
D. CONCLUSION

The State failed to prove a voluntary consent. All evidence of Schroeder's methamphetamine possession must be suppressed and his conviction dismissed with prejudice. The \$200 filing fee and \$100 DNA fee should be stricken.

DATED this 17<sup>th</sup> day of October, 2018.

Respectfully submitted,

NIELSEN, BROMAN & KOCH

A handwritten signature in black ink, appearing to read "David B. Koch", is written over a horizontal line.

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## **APPENDIX**

FILED  
Lewis County Superior Court  
Clerk's Office

APR 25 2018

Scott Tinney, Clerk

By \_\_\_\_\_, Deputy



IN THE SUPERIOR COURT OF WASHINGTON  
IN AND FOR LEWIS COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

DANIEL WILLIAM SCHROEDER, SR,

Defendant.

No. 17-1-00596-21

FINDINGS OF FACT, CONCLUSIONS OF  
LAW, AND ORDER FOR CRR 3.6.

On April 4, 2018, a motion to suppress evidence, made pursuant to CrR 3.6, was held in this Court before the Honorable James Lawler. In his motion to suppress evidence, the Defendant challenged the voluntariness of his consent when he provided Detective Adam Haggerty with controlled substances in his possession after Detective Haggerty promised the Defendant he would not arrest him, and instead refer charges if he cooperated. The Defendant was present with his attorney of record, Christopher Baum. The State was represented by Deputy Prosecuting Attorney Paul Masiello. The Court considered the testimony of Detective Haggerty. The Defendant testified as to his recollection of events. The Court made the following findings of fact, conclusions of law, and order:

**FINDINGS OF FACT**

- 1.1 On August 30, 2017, Detective Adam Haggerty was employed as a Detective with the Joint Narcotics Enforcement Team (JNET) and has extensive training and experience with controlled buys and how controlled substances are bought and sold.
- 1.2 Prior to August 30, law enforcement had received citizen complaints about drug activity – involving both usage and dealing – in the area of the Gather Church in Centralia

- 1 1.3 A few days prior to August 30, Officer Doug Lowrey had contacted a male in a  
2 wheelchair, known as Daniel Schroeder, in the area near the Gather Church and  
3 had discovered Schroeder was in possession of methamphetamine.
- 4 1.4 Through prior contacts with law enforcement, Detective Haggerty also knew  
5 Schroeder to be involved in drug activity and homeless, and would often see him  
6 panhandling for money.
- 7 1.5 When Detective Haggerty and other JNET detectives arrived in the area of the  
8 Gather Church, they saw a male they recognized as Schroeder engage in what  
9 appeared to be a hand-to-hand exchange (drug deal) with another male, later  
10 identified as Lonny Clevenger.
- 11 1.6 An item was observed being exchanged between Schroeder and Clevenger, but  
12 law enforcement was unsure what exactly the item was.
- 13 1.7 After seeing this exchange, Detective Haggerty and other JNET detectives  
14 walked to the area where Schroeder was. The area of contact with Schroeder  
15 was a public place with no confining areas.
- 16 1.8 Detective Haggerty initially contacted Schroeder by himself, and was wearing a  
17 vest that identified him as law enforcement, but was also wearing street clothes  
18 under the vest.
- 19 1.9 Upon contact, Detective Haggerty spoke with Schroeder about complaints of  
20 drug activity in the area and that Schroeder fit the description of the person  
21 involved and asked what he had given Clevenger. At no time during the entirety  
22 of their contact did Detective Haggerty command Schroeder to remain where he  
23 was or make any show of force with words or actions.
- 24 1.10 Schroeder stated that he had given Clevenger money to buy beer with, which  
25 was corroborated when Clevenger was contacted by other JNET detectives as  
26 he exited a nearby store with a beer.
- 27 1.11 Knowing of Schroeder's homeless status and that Schroeder would often  
28 panhandle for money, Detective Haggerty thought it strange that Schroeder  
29 would be giving money away.  
30

- 1 1.12 Shortly after Detective Haggerty made contact with Schroeder, Clevenger was  
2 found to have methamphetamine on his person.
- 3 1.13 During the time that Clevenger was being dealt with, Detective Haggerty was  
4 making small talk with Schroeder, discussing things such as prior military service.
- 5 1.14 After hearing that Clevenger had methamphetamine, Detective Haggerty  
6 informed Schroeder that if he (Schroeder) had any drugs on him, he (Detective  
7 Haggerty) would not book him (Schroeder) into jail if he was honest.
- 8 1.15 ~~Detective Haggerty testified that~~ The contact with the defendant was not a social  
9 contact and that the defendant was not free to leave during the contact. ~~He~~  
10 ~~further indicated that he had no legal basis to search the defendant and instead~~  
11 ~~implied that the defendant could be arrested knowing that he did not have~~ JML  
12 ~~probable cause to arrest the defendant in order to induce the defendant to agree~~  
13 ~~to allowing him to search.~~
- 14 1.16 After making this statement, Schroeder reached behind his wheelchair and  
15 grabbed his backpack. Schroeder then removed a black zip case from inside the  
16 backpack and handed the case to Detective Haggerty.
- 17 1.17 ~~Schroeder testified he believed he was going to be booked into jail if he did not~~ JML  
18 ~~provide the drugs he had in his backpack, which is why he gave the case to~~  
19 ~~Detective Haggerty.~~
- 20 1.18 Detective Haggerty asked for permission to go through the case, which was  
21 granted by Schroeder ~~because the defendant believed that he would be going to~~ JML  
22 ~~jail unless he cooperated.~~
- 23 1.19 Inside the case, Detective Haggerty discovered a baggie of white crystalline  
24 substance recognized as methamphetamine and a smoking device commonly  
25 used to ingest controlled substances.
- 26 1.20 After discovering these items, Schroeder was not placed under arrest, and was  
27 advised he was free to leave.

### CONCLUSIONS OF LAW

- 28 2.1 Based on *State v. Riley*, 17 Wn.App. 732, an officer who obtains a statement  
29 from a suspect by conditioning a waiver of the Fifth Amendment right to remain  
30

1 silent on not arresting the declarant and instead referring criminal charges does  
2 not make the subsequent statement involuntary.

3 2.2 Based on *Schneckloth v. Bustamonte*, 412 U.S. 218, a waiver of Fifth  
4 Amendment rights receives greater protection than other types of waivers not  
5 related to a fair trial, such as Fourth Amendment evidentiary rights. For waiver of  
6 Fourth Amendment rights, the totality of the circumstances is analyzed to  
7 determine if the defendant's consent was voluntary.

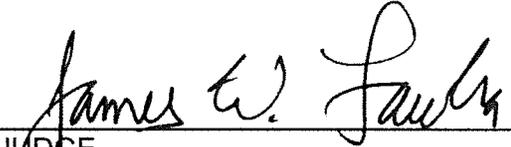
8 2.3 Because of the holdings in *Riley* and *Schneckloth*, Detective Haggerty obtaining  
9 Schroeder's consent to search items in Schroeder's possession conditioned on  
10 Det. Haggerty not arresting Schroeder for possessing whatever he may have, but  
11 instead referring charges, did not violate Schroeder's constitutional rights.

12 2.4 Under the totality of the circumstances, Schroeder's consent in providing the zip  
13 case and allowing Detective Haggerty to search it was voluntarily given.

14 **ORDER**

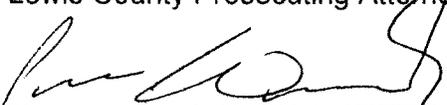
15 The defendant's motion to suppress evidence is denied.

16  
17 DATED this 25 day of April, 2018.

18  
19  
20   
21 JUDGE

22 Presented by:

23 JONATHAN L. MEYER  
24 Lewis County Prosecuting Attorney

25  
26   
27 Paul E. Masiello, WSBA #33039  
Deputy Prosecuting Attorney

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

30  
 As to form  
Christopher Baum, WSBA #32279  
Attorney for Defendant

**NIELSEN, BROMAN & KOCH P.L.L.C.**

**October 17, 2018 - 10:11 AM**

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**Appellate Court Case Number:** 52008-7  
**Appellate Court Case Title:** State of Washington, Respondent v. Daniel W. Schroeder Sr., Appellant  
**Superior Court Case Number:** 17-1-00596-1

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