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

THE COURT OF APPEALS FOR THE STATE OF WASHINGTON  
DIVISION II

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**STATE OF WASHINGTON,**

Respondent,

vs.

**DANIEL W. SCHROEDER, SR.,**

Appellant.

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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 denied Schroeder's motion to suppress the evidence recovered from Detective Haggerty's warrantless search of Schroeder's person?
- B. Did the trial court err by imposing the filing fee and the DNA fee?

## II. STATEMENT OF THE CASE

On August 30, 2017, Detective Haggerty was a member of the Joint Narcotics Enforcement Team (JNET). RP 4; CP 24. Detective Haggerty has extensive training and experience with how controlled substances are bought and sold. RP 4-5; CP 24.

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. RP 5; CP 24. A few days prior to August 30, Officer Doug Lowrey contacted a man in a wheelchair, known as Daniel Schroeder, in the area near the Gather Church and discovered Schroeder was in possession of methamphetamine. RP 5-6; CP 25. Detective Haggerty, through prior contacts, also knew Schroeder to be involved in drug activity, homeless, and would often see Schroeder panhandling for money. RP 16; CP 25.

When Detective Haggerty and other JNET detectives arrive in the area of the Gather Church on August 30, they see Schroeder

engage in what appears to be a hand-to-hand exchange (drug deal) with another man. RP 5-6; CP 25. The other man is later identified as, Lonny Clevenger. RP 14; CP 25. The hand-to-hand exchange is commonly used in the dealing of drugs. CP 25. The officers can see an item being exchanged between Schroeder and Clevenger, but are unsure exactly the contents of the item. RP 6; CP 25.

After seeing the hand-to-hand exchange, Detective Haggerty and other JNET detectives walk to the area where Schroeder is located. RP 6-8; CP 25. The area of contact with Schroeder is a public place with no confining areas. RP 7-8; CP 25. Detective Haggerty, wearing street clothes and a vest identifying him as law enforcement, initially contacts Schroeder by himself. RP 7; CP 25.

Upon contact, Detective Haggerty speaks with Schroeder about complaints of drug activity in the area and if Schroeder fit the description of the person involved. RP 9-10; CP 25. Detective Haggerty also inquires what Schroeder gave Clevenger. RP 9; CP 25. Detective Haggerty did not command Schroeder to remain where Schroeder was nor did Detective Haggerty make any show of force with words or actions. RP 8-9; CP 25.

Schroeder explains he had given Clevenger money to buy beer, which is corroborated when Clevenger was contacted by

other JNET detectives as he exited a nearby store with a beer. RP 9-10; CP 25. Knowing Schroeder's homeless status and how he would often panhandle for money, Detective Haggerty thought it was strange Schroeder would be giving money away. RP 16; CP 25. Shortly after Detective Haggerty contacted Schroeder, Clevenger is found to have methamphetamine on his person. RP 11; CP 26. During the time Clevenger is being dealt with by other officers, Detective Haggerty is making small talk with Schroeder, discussing things such as their prior military service. RP 18-19; CP 26.

After hearing Clevenger had methamphetamine, Detective Haggerty informs Schroeder that if Schroeder has any drugs on him, Detective Haggerty would not book Schroeder into jail if he was honest. RP 10; CP 26. Schroeder then reaches behind his wheelchair and grabs his backpack. RP 12; CP 26. Schroeder removes a black zip case from inside the backpack and hands the case to Detective Haggerty. RP 12; CP 26.

Detective Haggerty asks Schroeder for permission to go through the case, which Schroeder grants. RP 12; CP 26. Inside the case, Detective Haggerty discovers a baggie of white crystalline substance he recognizes as methamphetamine and a smoking

device commonly used to ingest controlled substances. *Id.* After discovering these items, Detective Haggerty did not place Schroeder under arrest and advised Schroeder he was free to leave. *Id.*

The State charged Schroeder with one count of Possession of Methamphetamine. CP 1-2. Schroeder filed a motion to suppress pursuant to CrR 3.6, arguing the search by Detective Haggerty was unlawful. CP 7-18. After a hearing the trial court entered Findings of Fact and Conclusion of Law, ruling in favor of the State, and denying Schroeder's motion to suppress the evidence. CP 24-27. Schroeder had a stipulated facts bench trial, upon which he was found guilty. CP 28-30. Schroeder was sentenced to six plus months in jail. CP 35-43.

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

### **III. ARGUMENT**

#### **A. THE TRIAL COURT CORRECTLY DENIED SCHROEDER'S MOTION TO SUPPRESS THE EVIDENCE.**

Schroeder argues the trial court incorrectly denied his motion to suppress the methamphetamine discovered when Detective Haggerty searched the case handed over by Schroeder. Brief of Appellant 7-15. The trial court appropriately ruled Detective

Haggerty was permitted to search the case pursuant to Schroeder's consent of the search after voluntarily retrieving the case from his backpack.

### **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). Findings of fact not assigned error are considered verities on appeal. *State v. Stevenson*, 128 Wn. App. 179, 193, 114 P.3d 699 (2005). Schroeder does not assign errors to any of the trial court's findings of fact.

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). Schroeder assigns error to conclusions of law 2.1 through 2.4.

## **2. The Fourth Amendment And Article One, Section Seven, Protect Citizens From Warrantless Searches And Seizures By Police.**

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 that 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 that 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 that 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. Glover*, 116 Wn.2d 509, 514, 806 P.2d 60 (1991). The officer is not required to ignore that experience. *Id.* Reasonableness is measured not by exactitudes, but by probabilities. *Id.*

Subsequent evidence that 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).

Schroeder is not disputing the lawfulness of the initial contact between himself and law enforcement. Brief of Appellant. Therefore, the disagreement between the parties comes from what occurs after Detective Haggerty contacts Schroeder and engages him in conversation regarding the possible criminal activity Schroeder may be engaged in. Schroeder was conversational, pleasant, and agreeable with Detective Haggerty, agreeing to allow Detective Haggerty to search the case Schroeder retrieved from his backpack.

One exception to the warrant requirement is consent to search. *State v. Thompson*, 151 Wn.2d 793, 803, 92 P.3d 228 (2004). The State will have the burden to establish that a defendant's consent to search was lawfully obtained. *Thompson*, 151 Wn.2d at 803. "In order to meet this burden, three requirements must be met: (1) the consent must be voluntary, (2) the person consenting must have the authority to consent, and (3) the search must not exceed the scope of the consent." *Id.* The court must look at the totality of the circumstances to determine if

consent was freely and voluntarily given. *State v. Reichenbach*, 153 Wn.2d 126, 132, 101 P.3d 80 (2004). The determination whether consent is voluntarily given is a question of fact. *Reichenbach*, 153 Wn.2d at 132.

The court may consider a number of factors when determining if consent was voluntary. *O'Neill*, 148 Wn.2d at 588. These factors include, but are not limited to: the intelligence or degree of education of the person, were *Miranda*<sup>1</sup> warnings given and was the person advised of the right to refuse consent. *Id.* at 588. “While knowledge of the right to refuse consent is relevant, it is not a prerequisite to finding voluntary consent, however.” *Reichenbach*, 153 Wn.2d at 132 (citations omitted). The court may also weigh such factors as implied or express claims of police authority to search, a defendant’s cooperation, an officer’s deception as to identity or purpose and previous illegal actions of the police. *Id.*

In *O'Neill*, the officer had O’Neill step out of the car after O’Neill gave a false name and told the officer his driver’s license had been revoked. *O'Neill*, 148 Wn.2d at 572. The officer saw what he believed was a spoon used for cooking drugs when O’Neill

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<sup>1</sup> *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

stepped out of the vehicle. *Id.* The officer asked O'Neill for consent to search the vehicle. *Id.* at 573. O'Neill refused and told the officer he would need to get a warrant to search the car. *Id.* at 573. The officer responded he did not need a warrant and could arrest O'Neill for the drug paraphernalia and search the vehicle incident to O'Neill's arrest. *Id.* The conversation went back and forth. *Id.* The officer continued to ask for consent. *Id.* O'Neill continued to refuse. *Id.* Eventually, O'Neill consented to the search of the car. *Id.* The officer found drugs in the car. *Id.*

The Supreme Court held that consent can be given while a person is detained. *Id.* at 589. However, under the circumstances in *O'Neill*, where a defendant refused consent and only acquiesced after continued pressure by the police, consent cannot be valid because it was not freely and voluntarily given. *Id.* at 589-91.

Schroeder is correct, Detective Haggerty did not inform Schroeder of his *Miranda* warnings or the right to refuse consent. Brief of Appellant 9. Schroeder is incorrect in regards to there being no testimony about his education or intelligence. Brief of Appellant 9; RP 18-19, 26-27. Schroeder had previous contacts with police, understood procedures that are involved in contact with law enforcement, and in particular, what would happen if he told an

officer to go ahead and search an item. RP 26. Further, Schroeder had spent time in the military, was a veteran, something he spent time discussing with Detective Haggerty. RP 18-19.

Schroeder argues Detective Haggerty misrepresented his authority and coerced Schroeder to hand over the methamphetamine, thereby, invalidating the voluntariness and consent of the search. Brief of Appellant 11-14. Detective Haggerty spoke to Schroeder from approximately 15 feet away, in a public area, using a conversational tone. RP 7-8, 10, 23-24. Detective Haggerty told Schroeder,

...I'm out here, not on a whim, I'm out here with many citizen tips and also at direction of our administration because they're receiving the tips. I advised that, "If you have drugs or if you have been selling drugs, be honest with us." I said, "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," and pretty much played it low key.

RP 10.

Detective Haggerty was asking Schroeder to be honest with the detectives. RP 10. Detective Haggerty was honest with Schroeder about why the detectives had come out to the area, he was not playing some sort of ruse with Schroeder. Detective Haggerty said, "if you have drugs or if you have been selling drugs, be honest with us." RP 10 (emphasis added). Detective Haggerty

was not coercive in telling Schroeder it was in Detective Haggerty's best interest not to book Schroeder. Further, it is not coercive to ask someone to be honest, and give them the benefit of not going to jail that day if they comply.

Schroeder's case is not one of a person who merely acquiesced after continued pressure by police to consent to a search. Schroeder's actions, pulling the case out of his backpack, along with his verbal statements show he has consented to the search of the case. Detective Haggerty was not coercive. This is not a case like *O'Neill*, where Schroeder denied consent and then over time Detective Haggerty repeatedly badgered Schroeder until he agreed to allow Detective Haggerty to search Schroeder. Nor was Schroeder's consent invalidated by coercion or duress, implied or express. *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.

Detective Haggerty did not threaten force, raise his voice, or even mislead Schroeder that he had probable cause to arrest Schroeder. Detective Haggerty honestly informed Schroeder they were investigating drug activity, believed Schroeder was involved, and asked Schroeder to be honest about his involvement. Detective Haggerty told Schroeder it would be easier for Detective Haggerty

to not take Schroeder to jail, and if Schroeder chose to be honest with Detective Haggerty and hand over any drugs, Detective Haggerty would not book him into jail but refer the charges. This is when Schroeder voluntarily withdrew a case from his backpack, handed it to Detective Haggerty and gave Detective Haggerty consent to open the case. RP 10-12.

The evidence presented at the CrR 3.6 hearing support the trial court's conclusion of law 2.4. The totality of the circumstances support the conclusion Schroeder freely and voluntarily gave Detective Haggerty consent to open the case. Reichenbach, 153 Wn.2d at 132. The factors set forth above, regarding Schroeder's intelligence and prior experience with police and police procedure support the conclusion. *State v. Costich*, 152 Wn.2d 463, 477, 98 P.3d 795 (2004) (permitting an appellate court to affirm the trial court on any grounds supported in the record). This Court should affirm the trial court's ruling that Schroeder's consent to search was valid and Schroeder's conviction.

**B. THE RECORD SUPPORTS SCHROEDER'S ASSERTION HE IS INDIGENT PER SE, THEREFORE, THE STATE CONCEDES THE LEGAL FINANCIAL OBLIGATIONS WERE IMPPROPERLY IMPOSED.**

Schroeder asserts he was indigent at the time of sentencing and therefore this Court must, pursuant to the 2018 legislative

amendments to the legal financial obligation statutes enacted under Engrossed Second Substitute House Bill 1783, eliminate all discretionary legal financial obligations and the DNA fee. Brief of Appellant 15-17. While the legal financial obligation reforms eliminate interest, the DNA fee for previously convicted defendants who have had the sample already taken, and many other useful reforms in regards to eliminating fees for indigent defendants, all indigent defendants are not created equal. Laws of 2018, ch. 269 §§ 1, 2, 3, 4, 5, 17, 18, 20; RCW 10.01.160(3); RCW 10.101.010. Only indigent defendants who fall into the category of indigent “per se” status pursuant to RCW 10.01.160(3) and RCW 10.101.010(3)(a)-(c) qualify to eliminate all discretionary legal financial obligations. The record supports, and the State concedes, Schroeder meets the criteria of indigent “per se.”

The 2018 amendments apply to defendants whose appeals were pending — i.e., their cases were not yet final — when the amendment was enacted. *State v. Ramirez*, 191 Wn.2d 732, 747-49, 426 P.3d 714 (2018). Therefore, Schroeder receives the benefit of the amendments that apply to him.

Pursuant to RCW 43.43.7541, effective June 7, 2018, and retroactively applied to Schroeder, the imposition of the DNA-

collection fee is required “unless the state has previously collected the offender’s DNA as a result of a prior conviction.” The State’s records show Schroeder’s DNA was previously collected and is on file with the Washington State Patrol Crime Lab.<sup>2</sup> The State respectfully asks this Court to remand this case to the superior court to amend the judgment and sentence to strike the imposition of the \$100 DNA fee.

Schroeder is indigent because he receives Social Security Income. RP 56. Per the statutory amendments of 2018, the filing fee is no longer a nondiscretionary legal financial obligation if a defendant qualifies for indigency under RCW 10.101.010(3)(a)-(c). RCW 36.18.020(h). Further, only if a defendant is indigent “per se” under RCW 10.101.010(3)(a)-(c) shall the sentencing court not order a defendant to pay costs. RCW 10.01.160(3).

(3) "Indigent" means a person who, at any stage of a court proceeding, is:

(a) Receiving one of the following types of public assistance: Temporary assistance for needy families, aged, blind, or disabled assistance benefits, medical care services under RCW 74.09.035, pregnant women assistance benefits, poverty-related veterans' benefits, food stamps or food stamp benefits transferred electronically, refugee resettlement

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<sup>2</sup> The State acknowledges the record on appeal is lacking this information, but the undersigned deputy prosecutor can attest if this case is remanded to strike the fee, this information would be put into the trial record.

benefits, medicaid, or supplemental security income;  
or

(b) Involuntarily committed to a public mental health facility; or

(c) Receiving an annual income, after taxes, of one hundred twenty-five percent or less of the current federally established poverty level;

RCW 10.101.010(3)(a)-(c).

Therefore, the State concedes this Court should remand this matter back to the trial court to strike the DNA fee and the \$200 filing fee.

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#### IV. CONCLUSION

The trial court properly denied Schroeder's motion to suppress the methamphetamine located in the case. Schroeder voluntarily retrieved the case out of his backpack and consented to have Detective Haggerty search the case. The State concedes this matter should be remanded back to the trial court to strike the DNA fee and the filing fee.

RESPECTFULLY submitted this 11<sup>th</sup> day of December,  
2018.

JONATHAN L. MEYER  
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by: \_\_\_\_\_  
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Attorney for Plaintiff

# Appendix A

Findings of Fact and Conclusions of Law, CrR 3.6



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

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

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

#### CONCLUSIONS OF LAW

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

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.

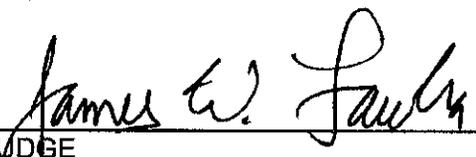
8 2.3 Because of the holdings in *Riley* and *Schneckloth*, Detective Haggerty obtaining  
9 Schroeder's consent to search items in Schroeder's possession conditioned on  
10 Det. Haggerty not arresting Schroeder for possessing whatever he may have, but  
11 instead referring charges, did not violate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

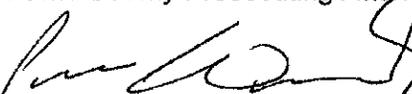
15 The defendant's motion to suppress evidence is denied.

16  
17 DATED this 25 day of April, 2018.

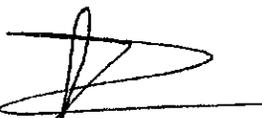
18  
19   
20 \_\_\_\_\_  
21 JUDGE

22 Presented by:

23 JONATHAN L. MEYER  
24 Lewis County Prosecuting Attorney

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

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

31  As to form  
32 \_\_\_\_\_  
33 Christopher Baum, WSBA #32279  
34 Attorney for Defendant

**LEWIS COUNTY PROSECUTING ATTORNEY'S OFFICE**

**December 11, 2018 - 10:24 AM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division II  
**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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