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SUPREME COURT OF THE STATE OF WASHINGTON

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Washington State Supreme Court  
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STATE OF WASHINGTON,

OCT 13 2015  
Ronald R. Carpenter  
Respondent, Clerk *RyH*

v.

CHAD EDWARD DUNCAN,

Petitioner.

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WASHINGTON STATE PATROL'S AMICUS CURIAE BRIEF

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## **I. IDENTITY AND INTEREST OF AMICUS CURIAE**

The Washington State Patrol is the largest law enforcement agency in the state of Washington. The Patrol's primary mission is keeping our roadways safe. To this end, troopers conduct scores of traffic stops and provide assistance to motorists every day. These stops occur on both major urban freeways and remote rural state roads. When a third party takes custody of or has access to a vehicle, the Patrol's officers have an interest in conducting a protective sweep of a vehicle for weapons, based on reasonable suspicion, to protect officer and public safety.

When an officer arrests a driver and passengers, the vehicle may or may not constitute (or contain) evidence of a crime. When a vehicle does not have evidentiary value, an officer must consider reasonable alternatives to impounding the vehicle - such as having another licensed driver take control of the vehicle. In situations where there is reasonable suspicion that the vehicle contains a firearm, Petitioner's proposed rule that the officer must obtain a warrant before conducting a protective sweep jeopardizes the safety of the officer, the driver taking control of the vehicle, any subsequent passengers, and the general public.

Another outcome, as shown in this case, is the officer ordering the vehicle impounded because it is evidence of a crime or because there are no reasonable alternatives to impound. While an inventory search of an

impounded vehicle is a recognized exception to the warrant requirement, a limited protective sweep to locate firearms that may discharge during the tow may also be necessary.

For these reasons, the Patrol respectfully requests this Court to acknowledge a rule that authorizes law enforcement officers to conduct a limited protective sweep for weapons in the passenger compartment of a vehicle when there is reasonable suspicion that the area contains a firearm or other dangerous item.

## **II. ISSUE ADDRESSED BY AMICUS**

Whether this Court should acknowledge a rule that permits law enforcement officers to conduct a protective sweep of a vehicle's passenger compartment when there is reasonable suspicion that the area contains a firearm or other dangerous item regardless of whether the vehicle's occupants will return to the vehicle or not.

## **III. STATEMENT OF THE CASE**

The Patrol adopts the statement of facts as set forth in the unpublished portion of the Court of Appeals opinion, *State v. Duncan*, 180 Wn. App. 245, 327 P.3d 699 (2014).

## **IV. ARGUMENT**

Both the United States Supreme Court and this Court have recognized the inherent dangers of traffic stops to law enforcement

officers. These dangers should authorize an officer to protect personal safety and public safety by conducting a protective sweep of a vehicle when there is reasonable suspicion that the vehicle contains a firearm.

The Fourth Amendment to the federal constitution guarantees “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures[.]” Article I, section 7 of our state constitution ensures that “[n]o person shall be disturbed in his private affairs, or his home invaded, without authority of law.” Our state constitution’s “privacy protections . . . are more extensive than those provided under the Fourth Amendment.” *State v. Valdez*, 167 Wn.2d 761, 772, 224 P.3d 751 (2009) (citations omitted). “Warrantless searches are per se unreasonable under our state constitution, subject to a limited set of carefully drawn exceptions.” *State v. Snapp*, 174 Wn.2d 177, 187-88, 275 P.3d 289 (2012) (citations omitted). “Recognized exceptions to the warrant constitute authority of law justifying a search in the absence of a warrant, but only as carefully drawn and narrowly applied.” *Id.* at 194.

A protective sweep is one of the recognized and jealously guarded exceptions to the warrant requirement under both the federal and state constitutions. The protective sweep exception to the warrant requirement derives from *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed.2d 889 (1968). It is axiomatic in both federal and state search and seizure

jurisprudence that when an “officer has made a valid stop supported by reasonable suspicion of criminal activity, a frisk may then be undertaken if the officer reasonably believes that the suspect is armed and presently dangerous.” Justice Charles W. Johnson and Justice Debra L. Stevens, *Survey of Washington Search and Seizure Law: 2013 Update*, 36 Seattle U.L. Rev. 1581, 1689 (2013) (quoting *State v. Xiong*, 164 Wn.2d 506, 513-14, 191 P.3d 1278 (2008)) (internal quotation marks omitted). Our state law “requires the following for a valid frisk: (1) the initial stop is legitimate; (2) there is a reasonable safety concern justifying a protective frisk for weapons; and (3) the scope of the frisk is limited to protective purposes.” *Id.* at 1690 (citation omitted). A *Terry* protective sweep is not limited to a suspect’s person, but also extends to a “search for weapons [in] the passenger compartment of a detained person’s vehicle if there is a reasonable suspicion that the suspect is dangerous and may gain access to a weapon in the vehicle.” *Id.* at 1693 (citations omitted) (internal quotation marks omitted). “A protective search for weapons must be objectively reasonable, though based on the officer’s subjective perception of events.” *State v. Larson*, 88 Wn. App. 849, 853-54, 946 P.2d 1212 (1997) (citation omitted).

This Court should acknowledge the authority of a *Terry* protective sweep to situations where an officer has reasonable suspicion that a

vehicle contains a firearm or other dangerous weapon and the vehicle will be moved by a third party for three reasons: (1) *Terry*'s progeny permits an officer to conduct a protective sweep when there is reasonable suspicion that there is a weapon that the suspect or another party could use against an officer (or unwittingly use against themselves); (2) Petitioner conflates the principles and limitations of the search incident to arrest and *Terry* protective sweep exceptions to the warrant requirement; and (3) the limited scope, and fact-dependent application, of the Patrol's proposed rule meets Article I, Section 7 muster.

**A. *Terry* Precedent Supports A Rule Authorizing An Officer To Conduct A Protective Sweep Of A Vehicle When There Is Reasonable Suspicion That The Vehicle Contains A Firearm**

The application of a *Terry* protective sweep is not set in stone. The United States Supreme Court has acknowledged that “[a]lthough *Terry* did involve the protective frisk of a person, we believe that the police action [involving the protective sweep of a vehicle] is justified by the principles that we have already established in *Terry* and other cases.” *Michigan v. Long*, 463 U.S. 1032, 1046, 103 S. Ct. 3469, 77 L. Ed.2d 1201 (1983). In *Terry*, the Court was “careful to note that [it] need not develop at length . . . the limitations which the Fourth Amendment places upon a protective search and seizure for weapons.” *Id.* at 1047 (internal quotation marks omitted) (citation omitted). Rather, those

“limitations will have to be developed in the concrete factual circumstances of individual cases.” *Id.* (internal quotation marks omitted) (citation omitted).

As a result, the United States Supreme Court found that *Terry* authorized an officer conducting a protective sweep of a vehicle’s passenger compartment when the officer had reasonable suspicion “that the vehicle contained weapons potentially dangerous to the officers.” *Id.* at 1035. Based on the same *Terry* principles this Court has held that article I, section 7 “allow[s] an officer to make a limited search of the passenger compartment to assure a suspect person in the car does not have access to a weapon within the suspect’s area of control.” *State v. Kennedy*, 107 Wn.2d 1, 13, 726 P.2d 445 (1986); *see also Larson*, 88 Wn. App. at 853 (“Under the Washington Constitution, a valid *Terry* stop may include a search of the interior of the suspect’s vehicle when the search is necessary to officer safety.”) (citations omitted).<sup>1</sup> As such, this Court should permit a *Terry* protective sweep of a vehicle when there is reasonable suspicion that the vehicle contains a firearm and the vehicle will be accessed by a

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<sup>1</sup> In part, *Kennedy* relied on the reasoning in *State v. Stroud*, 106 Wn.2d 144, 720 P.2d 436 (1986), which held that an officer may search the interior of a vehicle incident to the driver’s arrest. 107 Wn.2d at 11-13. This Court overruled *Stroud*’s search incident to arrest rule in *Valdez*, 167 Wn.2d at 777. *See also Snapp*, 174 Wn.2d at 189. However, *Valdez* does not explicitly or implicitly overrule *Kennedy* or call the opinion’s reasoning into question. *Kennedy* expressly noted that *Stroud* dealt with the search incident to arrest exception to the warrant requirement whereas *Kennedy* relied on the *Terry* protective sweep to authorize the officer’s actions in checking the vehicle’s passenger compartments for weapons. *Kennedy*, 107 Wn.2d at 11-12.

third party - such as a tow truck operator. That is the case before this Court.

In this case, the officer's motivation was to secure a firearm before impounding the vehicle. While the impound inventory exception to the warrant requirement applies to this situation, a *Terry* protective sweep also authorizes the officer's limited intrusion into the vehicle to secure the firearm before the tow. The intrusion was to preserve safety – the public's safety when the vehicle is towed to an impound lot. RP 72. The officer had reasonable suspicion that the vehicle contained a firearm based on the report of a shooting and the vehicle matched the description. *See* RP 66-68. Accordingly, this Court should affirm the Court of Appeals' holding that a protective sweep authorized the search and seizure of the firearm.

Allowing a protective sweep when there is a reasonable suspicion that a vehicle contains a firearm or other dangerous item will also protect officers and the public in other factual situations. For example, officers do not always impound vehicles. In fact, as discussed below, vehicles may be impounded only when there are no reasonable alternatives to impoundment or the vehicle is evidence of a felony. Far more commonly, a third party takes custody of the vehicle – a third party who can present a

danger to officers, the public, or even him or herself if a dangerous item is unwittingly left within the vehicle.<sup>2</sup>

When an officer arrests all of a vehicle's occupants, an officer cannot order the impoundment of the vehicle unless there is probable cause that it is (or contains) evidence of a crime, or there are no reasonable alternatives to impounding the vehicle. *See State v. Clark*, 143 Wn.2d 731, 755, 24 P.3d 1006 (2001) ("A motor vehicle may be impounded if there is probable cause to believe that it was used in the commission of a felony") (citation omitted); *In re Impoundment of Chevrolet Truck*, 148 Wn.2d 145, 163, 60 P.3d 53 (2002) (Chambers, J. concurring) (A licensed driver, who is reasonably available to move the vehicle, is an alternative to impoundment.) (citation omitted). If there is no probable cause that the vehicle is (or contains) evidence of a crime, then the officer should release the vehicle to a licensed driver. "Impoundment is not reasonably necessary when other drivers are available to move or take custody of the vehicle." *In re Impoundment of Chevrolet Truck*, 148 Wn.2d at 163 (Chambers, J. concurring) (citing *State v. Simpson*, 95 Wn.2d 170, 189, 622 P.2d 1199 (1980)). As such, a vehicle with a firearm presents a danger to both an

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<sup>2</sup> An officer may also lock and leave a vehicle on the side of the road. This situation arguably leaves the firearm accessible to vandals and thereby threatens public safety.

officer and the person taking custody of the vehicle, in addition to presenting a danger to the general public.

While this Court has not addressed the factual circumstance of officers conducting a protective sweep when all of the vehicle's occupants have been arrested, "*Terry* need not be read as restricting the preventative search to" previously adjudicated fact patterns. *Long*, 463 U.S. at 1047. "An officer conducting an investigative stop may be endangered not only by the suspect but by companions of the suspect as well." *Kennedy*, 107 Wn.2d at 11. By the same token, a licensed driver taking custody of the vehicle may also threaten the officer's safety.

The primary justification for a *Terry* protective sweep of a vehicle is the reality "that investigative detentions involving suspects in vehicles are especially fraught with danger to police officers." *Long*, 463 U.S. at 1047. Courts "have also expressly recognized that suspects may injure police officers and others by virtue of their access to weapons, even though they may not themselves be armed." *Id.* at 1048. These principles "indicate then that protection of police and others can justify protective searches when police have a reasonable belief that the suspect poses a danger, that roadside encounters between police and suspects are especially hazardous, and that danger may arise from the possible presence of weapons in the area surrounding a suspect." *Id.* at 1049.

Based on *Terry* principles, before an officer releases a vehicle to a third party, an officer may conduct a protective sweep for weapons when there is a reasonable suspicion that the passenger compartment contains a firearm. Admittedly, “[a]n arrestee in handcuffs in the backseat of a patrol car is hardly in the position to grab a weapon[.]” *Snapp*, 174 Wn.2d at 190. But, a licensed driver taking custody of a vehicle, or a tow operator conducting an inventory, is in the position to grab a weapon. Even if a licensed driver has no intention of harming an officer, the firearm presents a safety risk to the driver or any subsequent passengers. It is not beyond the realm of possibility that the licensed driver may have a young child in tow when picking up the vehicle from the side of the road.

It is also not beyond the realm of possibility that the firearm may discharge when the licensed driver moves the car or when a tow operator conducts an inventory. In this particular situation, the officer was concerned that the firearm could discharge during a tow - a scenario that could harm an innocent bystander. *See* RP 120 (trial court’s finding that “in order to tow the vehicle they had to check it to see if there were any weapons in it that might be - might create a danger; for example, a danger of a weapon accidentally firing while the car was being towed.”). This Court has acknowledged the “danger posed by firearms and other dangerous items left unsecured in an uninventoried vehicle where they

might be accessed.” *State v. Tyler*, 177 Wn.2d 690, 710, 302 P.3d 165 (2013) (citation omitted). As such, a third party accessing a vehicle that contains a firearm in the passenger compartment presents a hazard to the officer, the third party, and the general public.

Accordingly, *Terry*’s principles that permit an officer to conduct a limited protective sweep when there is reasonable suspicion of a weapon in a vehicle should apply when a third party - whether a tow company or a licensed driver - takes control of the vehicle to move it from the scene.

**B. This Court’s Search Incident To Arrest Precedent Does Not Apply To Situations Where A *Terry* Protective Sweep Is Necessary To Protect Officer And Public Safety**

A *Terry* protective sweep for weapons does not hinge on whether the vehicle’s occupants have been detained. Petitioner urges this Court to adopt a rule that requires police to obtain a warrant before conducting a protective sweep of a vehicle when the vehicle’s driver and passengers are in custody. Pet. for Review at 1. But, Petitioner’s proposed rule fails for two reasons: (1) Petitioner fails to recognize the distinction between the search incident to arrest exception and the *Terry* exception to the warrant requirement; and (2) an officer may be unable to obtain a warrant to search the vehicle and seize a firearm because a vehicle containing a firearm may not constitute evidence of a crime.

**1. A search incident to arrest is distinct from a *Terry* protective sweep to locate weapons in a vehicle's passenger compartment**

Petitioner conflates the search incident to arrest exception with the *Terry* exception to the warrant requirement. To justify this proposed rule, Petitioner relies on cases that addressed the scope of a vehicle *search incident to arrest*. Pet. for Review at 10-11. While both *Terry* and searches incident to arrest are based on officer safety, the search incident to arrest exception also focuses on evidence collection. *Arizona v. Gant*, 556 U.S. 332, 339, 129 S. Ct. 1710, 173 L. Ed.2d 485 (2009); *see also Valdez*, 167 Wn.2d at 769; *State v. Byrd*, 178 Wn.2d 611, 625, 310 P.3d 793 (2013). As a result, “[i]f there is no possibility that an arrestee could reach into the area that law enforcement officers seek to search, both justifications for the search-incident-to-arrest exception are absent and the rule does not apply.” *Gant*, 556 U.S. at 339 (citation omitted). Based on these principles, both the United States Supreme Court and this Court have limited the application and scope of the search incident to arrest doctrine relating to vehicles.

In 2009, the United States Supreme Court held that “[p]olice may search a vehicle incident to a recent occupant’s arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the

offense of arrest.” *Gant*, 556 U.S. at 351. This Court applied *Gant*’s precedent in *State v. Valdez*, 167 Wn.2d at 765, and held that searching a vehicle incident to arrest after “the arrestee was handcuffed and secured” violated both the federal and state constitutions. This Court subsequently limited the scope of a vehicle search incident to arrest to “when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search[.]” *Snapp*, 174 Wn.2d at 181-82.

However, *Gant* and its progeny did not limit the application of other exceptions to the warrant requirement. *Gant* noted that other exceptions to the warrant requirement may authorize an officer to search the interior of a vehicle. 556 U.S. at 346-47. *Gant* specifically cited *Long* as an example of an exception to the warrant requirement that “permits an officer to search a vehicle’s passenger compartment when he has reasonable suspicion that an individual, whether or not the arrestee, is dangerous and might access the vehicle to gain immediate control of weapons.” *Id.* (citations omitted) (internal quotation marks omitted); *see also id.* at 352 (Scalia, J. concurring) (“The rule of *Michigan v. Long* is not at issue here.”).

Unlike a search incident to arrest, a *Terry* protective sweep is solely concerned with officer and public safety. A court should evaluate a *Terry* protective sweep for weapons under the rubric of officer and public

safety - not inculpatory evidence gathering. “A *Terry* search, unlike a search without a warrant incident to a lawful arrest, is not justified by any need to prevent the disappearance or destruction of evidence of crime [-] [t]he sole justification of the search . . . is the protection of police officers and others nearby[.]” *Long*, 463 U.S. at 1049 n. 14; *see also Kennedy*, 107 Wn.2d at 12. “The scope of the search, therefore, is limited to the area of the vehicle defined by the suspicious movements [or other factual information] observed by officer [and] is not coterminous with a search incident to arrest.” *Larson*, 88 Wn. App. at 857 (citation omitted).

Neither *Gant*, *Valdez*, nor *Snapp* limited the *Terry* protective sweep exception to situations where the arrestee or suspect has not been placed in custody. Rather, the *Terry* exception and other exceptions to the warrant requirement “ensure that officers may search a vehicle when genuine safety or evidentiary concerns encountered during the arrest of a vehicle’s recent occupant justify a search.” *Gant*, 556 U.S. at 347. As such, this Court should not limit the *Terry* protective sweep of a vehicle to situations where the vehicle’s occupants are not detained.

**2. A firearm in a vehicle may not provide probable cause of a crime to support applying for a search warrant**

The fact that a vehicle may contain a firearm is not *prima facie* evidence of a crime that authorizes a judicial officer to issue a search

warrant for the vehicle. *Gant* and its progeny restricted the search incident to arrest exception to the warrant requirement, in part, by recognizing that an officer could obtain a search warrant for evidence of a crime in the vehicle. *See Valdez*, 167 Wn.2d at 777. Petitioner appears to premise his argument on the notion that there is no “necessity” to search a vehicle for a firearm after the occupants have been arrested because the officer could apply for a search warrant. Petitioner fails to recognize that there are a myriad of situations where a firearm in a vehicle is not evidence of a crime, but nonetheless presents real safety concerns to the officer, the licensed driver, any passengers, and the general public.

This Court’s rules have limited the issuance of search warrants to: “(1) evidence of a crime; or (2) contraband, the fruits of crime, or things otherwise criminally possessed; or (3) weapons or other things by means of which a crime has been committed or reasonably appears about to be committed; or (4) person for whose arrest there is probable cause, or who is unlawfully restrained.” CrR 2.3(b); CrRLJ 2.3(b). If a firearm is not evidence of a crime, is not contraband, and has not been used to commit a crime, then an officer does not have a legal basis to apply for a search warrant to search the vehicle and seize the firearm.

Under Washington state law, an adult may possess a firearm unless he or she has been disqualified based on certain criminal convictions or

civil commitment. *See* Wash. const. art. I, section 24; RCW 9.41.040. Washington state law also permits qualified adults to possess unloaded firearms in their vehicles. *See* RCW 9.41.050. A person who has a concealed pistol license may also carry a loaded firearm in his or her vehicle. RCW 9.41.050(2)(a).

Consequently, there are numerous situations where a firearm in a vehicle is not evidence of crime. For example, a driver with a concealed pistol license who is stopped and arrested for Driving Under the Influence may legally have a loaded firearm in the vehicle. In this situation, the loaded firearm is not evidence of crime. Nonetheless, the firearm presents a real hazard to the officer and others when a third party takes custody of the vehicle or when the vehicle is impounded. Without authority to conduct a limited protective sweep of the passenger compartment to locate and seize the firearm, the situation threatens the officer's safety and the safety of others. Accordingly, this Court should decline to adopt Petitioner's proposed rule that eliminates *Terry* protective sweeps of vehicles when the occupants have been detained.

**C. The Patrol's Proposed Rule Meets Article I, Section 7 Muster By Requiring Reasonable Suspicion Of A Firearm Before The Officer Conducts A Protective Sweep Of The Vehicle**

Both the federal and state constitutions support an exception to the warrant requirement that authorizes an officer to conduct a limited

protective sweep of a vehicle's interior based on reasonable suspicion that the area contains a firearm or other dangerous item. "[T]he central concern underlying the Fourth Amendment [is] the concern about giving police officers unbridled discretion to rummage at will among a person's private effects." *Gant*, 556 U.S. at 345 (citations omitted). Undoubtedly, the Washington constitution imposes more stringent standards when evaluating a warrantless search than the Fourth Amendment. Nonetheless, the Patrol's proposed rule satisfies this more stringent standard by limiting a protective sweep to: (1) those circumstances that the officer has reasonable suspicion that the vehicle contains a firearm; and (2) to those areas where a firearm presents the most danger to the officer, another driver, another passenger, or the public during a tow.

A *Terry* protective sweep is limited to address the potential threat to public safety. *See Long*, 463 U.S. at 1050. Before conducting a protective sweep, an officer must first point to "articulable facts which, taken together with the rational inferences from those facts, would warrant a reasonably prudent officer in believing that the area to be swept harbors an individual [or weapon] posing a danger to those on the arrest scene." *Maryland v. Buie*, 494 U.S. 325, 334, 110 S. Ct. 1093, 108 L. Ed.2d 276 (1990). "Officer protection will not justify any and every search [-] [o]nly the most legitimate of safety concerns will support this type of warrantless

protective sweep.” *South Dakota v. Ashbrook*, 586 N.W.2d 503, 509, 1998 S.D. 115 (1998) (internal quotation marks omitted).

After an officer identifies facts that provide a rational inference that the vehicle contains a firearm, an officer must then limit the search to those areas that reasonably would contain a weapon that a person could immediately use against the officer or could harm the driver or passenger. This Court’s precedent on searching a vehicle when the suspect made furtive gestures and the suspect (or passenger) may return to the vehicle provides guidance on the scope of a *Terry* protective sweep when the vehicle will be impounded or picked up by another driver:

The scope of the search should be sufficient to assure the officer’s safety. This means that the officer may search for weapons within the [suspect’s] immediate control. We also recognize that such a limited search applies to any companion in the car because that person presents a similar danger to the approaching officer. The front seat of the car is in the immediate control of a passenger seated next to the driver. Consequently, a search in that area to discover whether the suspect’s furtive gesture hid a weapon under the front seat is similar to a *Terry* frisk where an officer may frisk a suspect to protect himself from danger.

*Kennedy*, 107 Wn.2d at 12. In other words, the protective sweep should be limited to the areas where another licensed driver may easily access a weapon to use against the officer – such as the floorboard.

Washington courts and other jurisdictions have required officers to justify a *Terry* protective sweep for weapons based on articulable facts and

not mere hunches. *See State v. Terrazas*, 71 Wn. App. 873, 879, 863 P.2d 75 (1993) (law enforcement officer lacked reasonable suspicion to conduct a protective frisk of vehicle based on a passenger who had his hands under a blanket on a cold evening); *Commonwealth v. Mubdi*, 456 Mass. 385, 398, 923 N.E.2d 1004 (2010) (officer lacked reasonable suspicion to conduct protective sweep of parked vehicle based on a person standing by the vehicle walking away as the officer advanced to the vehicle).

As such, a protective sweep of a vehicle in these factual circumstances will not result in “law enforcement entitlement.” *Gant*, 556 U.S. at 349. An officer that performs a *Terry* protective sweep before releasing a vehicle to a tow company or another licensed driver cannot justify the search by saying “Because that law says we can do it.” *Id.* at 337. Nor will this rule provide law enforcement officers “carte blanche” authority “to search the passenger compartment of an automobile any time” a third party will take control of an arrestee’s vehicle. *See contra Valdez*, 167 Wn.2d at 770.

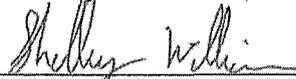
Accordingly, a rule that requires an officer to have reasonable suspicion of a firearm in a vehicle, and limits the scope of the search to the areas of the passenger compartment that might contain the firearm, protects both privacy and public safety.

V. CONCLUSION

For these reasons, the Patrol respectfully requests this Court to acknowledge a rule that a law enforcement officer may conduct a protective sweep of a vehicle when there is reasonable suspicion that the vehicle contains a firearm or other dangerous item.

RESPECTFULLY SUBMITTED this 5<sup>th</sup> day of October, 2015.

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NO. 90188-1

**SUPREME COURT OF THE STATE OF WASHINGTON**

STATE OF WASHINGTON,

Petitioner,

v.

CHAD EDWARD DUNCAN,

Respondent.

DECLARATION OF  
SERVICE

I, Daisy Logo, declare as follows:

On the 5th day of October, 2015, pursuant to the agreement for electronic service, I sent via electronic mail a true and correct copy of the Motion for Leave to File Amicus Curiae Brief; Washington State Patrol's Amicus Curiae Brief; and Declaration of Service addressed as follows:

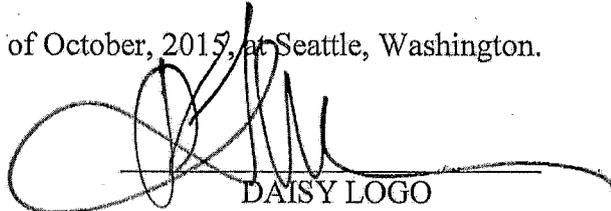
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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 5th day of October, 2015, at Seattle, Washington.

  
DAISY LOGO

## OFFICE RECEPTIONIST, CLERK

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**To:** Logo, Daisy (ATG)  
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Received on 10-05-2015

Supreme Court Clerk's Office

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**From:** Logo, Daisy (ATG) [mailto:DaisyJ@ATG.WA.GOV]  
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**Cc:** Williams, Shelley (ATG) <ShelleyW1@ATG.WA.GOV>  
**Subject:** State v. Chad Edward Duncan-90188-1  
**Importance:** High

Attached for filing for the case referenced above, please find the following documents:

- 1) Motion for Leave to File Amicus Curiae Brief
- 2) Washington State Patrol's Amicus Curiae Brief
- 3) Declaration of Service

On behalf of:

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Thank you,

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