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STATE OF WASHINGTON
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No. 95707-0

SUPREME COURT
THE STATE OF WASHINGTON

SOLOMON MCLEMORE,

Petitioner,

v.

CITY OF SHORELINE

Respondent.

RESPONSE TO PETITIONER'S MOTION FOR
DISCRETIONARY REVIEW OF THE COURT OF APPEALS DENIAL OF REVIEW

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1 **1. IDENTITY OF MOVING PARTY**

2 Respondent, the CITY OF SHORELINE, seeks the relief
3 designated in part 2.
4

5 **2. STATEMENT OF RELIEF SOUGHT**

6 Respondent, the CITY OF SHORELINE, respectfully asks this
7 Court to deny Petitioner McLemore's Motion for Discretionary Review of
8 the Court of Appeals decision denying discretionary review because the
9 case presented dos not satisfy the requirements of RAP 13.5(b).
10

11 **3. ISSUES PRESENTED**

- 12 **A. WHETHER THE COURT OF APPEALS ERRED IN**
13 **UPHOLDING THE TRIAL COURT'S DENIAL OF**
14 **MCLEMORE'S MOTION TO DISMISS PERSUANT**
15 **TO STATE V. KNAPSTAD.**
16 **B. WHETHER THE COURT OF APPEALS ERRED IN**
17 **ITS DETERMINATION THAT THERE WAS**
18 **SUFFICIENT EVIDENCE TO SUPPORT**
19 **MCLEMORE'S CONVICTION FOR OBSTRUCTING.**
20 **C. WHETHER THE COURT OF APPEALS ERRED IN**
21 **HOLDING THAT THE TRIAL COURT DID NOT**
22 **ABUSE ITS DISCRETION IN ITS RULINGS ON THE**
23 **ADMISSIBILITY OF EVIDENCE**

24 **4. FACTS RELEVANT TO MOTION**

25 On March 1, 2016, at approximately 2 a.m., Deputy Boyer, Deputy
Dallon and Deputy Emmons all responded to a disturbance at 17721 15th
Ave NE, in Shoreline, Washington. (RP 32-33, 56-57, 94). When they
arrived on scene, the reporting party approached them and advised them

1 that he had heard a loud verbal argument coming from just south of the
2 Deputies' location. *Id.* He further advised that he had called 911 to report
3 a bunch of screaming and directed the Deputies to the area it was coming
4 from. (RP 33)
5

6 Deputy Boyer located the source of the shouting at the second story
7 balcony on the west side of the building. (RP 35, 36, 96). The Deputy
8 could hear a woman screaming and sounding as if she was under duress.
9 (RP 33) He heard her yelling things such as, "you can't leave me out
10 here," "I'm going to call the police," and "let me go." *Id.* Deputy Boyer
11 also heard her say something along the lines of "I'm reconsidering our
12 relationship." (RP 33, 59, 96). Deputy
13

14 Emmons also heard her yelling and say that "she wanted to leave."
15 (RP 96) While the Deputies could hear the screams, they could not
16 visually see up onto the second floor balcony where they were coming
17 from. (RP 36)
18

19 The Deputies immediately began knocking on the door, ringing the
20 doorbell, and announcing their presence. (RP 38, 39, 60, 63, 97). The
21 argument quickly ceased and no one responded. *Id.* Deputies became
22 concerned that the female may be hurt. (RP 38) After eight minutes of
23 repeated knocking on the door, ringing the doorbell, and announcing,
24 Deputy Emmons aimed the patrol vehicle's spotlight at the balcony in an
25

1 attempt to make contact. (RP 98-100). Deputy Emmons announced his
2 presence as Shoreline Police for approximately eight minutes using the
3 vehicle's public address system. *Id.* Deputy Emmons advised through the
4 PA system that they needed to speak with the occupants to make sure
5 everything was okay. *Id.* There was still no response. *Id.* The Deputies
6 attempted to run the license plate of a vehicle parked outside the
7 residence, but dispatch was unable to locate a phone number. (RP 100).

8
9 Shortly thereafter, the Deputies heard the distinct sound of glass
10 breaking from the area of the balcony. (RP 41, 42, 101). About forty
11 seconds later, the Deputies heard glass shatter again. *Id.* Concerned for the
12 safety and wellbeing of the female and any other occupants of the
13 residence, the Deputies called the Shoreline Fire Department to request
14 tools to breach the door. (RP 44, 49, 107, 116).

15
16
17 As the Deputies began their efforts to make entry, Mr. McLemore
18 finally established contact and began speaking to the Deputies through the
19 door; however, he still refused to open the door and allow officers to
20 visually confirm the female's safety. (RP 66-68, 105, 149). Deputy
21 Emmons then heard McLemore instruct the female to tell the police that
22 she was okay. (RP 106-107). The female followed McLemore's command
23 and stated that she was okay, but McLemore would not allow visual
24 confirmation. *Id.* She also informed them that she had a baby in her
25

1 arms. *Id.* Despite their pleas and efforts to determine the actual safety of
2 the female, McLemore continued to be uncooperative and walked away
3 from the door. *Id.*

4
5 After entry was made, McLemore was immediately arrested for
6 obstructing law enforcement. *Id.* Deputy Boyer then spoke with the female
7 occupant, Lisa Janson, to confirm her safety and wellbeing. (RP 44, 49,
8 107-108, 116). Ms. Janson informed the Deputy that McLemore broke the
9 glass out of anger. *Id.* Officer Boyer noted that the suspect appeared
10 angry, irrational, upset, crying, hysterical, and under the influence of
11 alcohol. (RP 108-109).

12
13 During the investigation, it was discovered that McLemore had video
14 recorded the incident and his interaction with police. (RP 172, 181-182).
15 During the trial, the jury heard audio recordings from this video. (RP 171,
16 174). On the recording, McLemore admitted to hearing the police asking
17 him to open the door so that they could verify that the occupants were all
18 OK. (RP 164-165). However, Mr. McLemore continued to deny the
19 officer's clear and audible requests to open the door. (RP 179).

20
21 The jury declared a verdict of guilty on September 29, 2016. On
22 RALJ appeal, the Superior Court affirmed the conviction. Commissioner
23 Neal concurred with the Superior Court and denied McLemore's motion
24 for discretionary review. Upon further review of Commissioner Neal's
25

1 ruling, The Court of Appeals again denied discretionary review.

2 McLemore now moves this court to grant discretionary review of the
3 Court of Appeals denial of review.

4
5 **5. ARGUMENT**

6 The matter comes before the Court on McLemore's motion for
7 discretionary review of the Washington State Court of Appeals denial of
8 discretionary review of the order of the Superior Court. The Superior
9 Court affirmed McLemore's conviction for the charge of Obstructing a
10 Law Enforcement Officer. (See Appendix A) The Washington Court
11 Rules, Rules of Appellate Procedure, 13.5 (hereinafter "RAP"), sets forth
12 the criteria in which a decision will be accepted for discretionary review of
13 appellate decisions denying review. The criterion is as follows:
14

- 15 (1) If the Court of Appeals has committed an obvious error
16 that would render further proceedings useless; or
17 (2) If the Court of Appeals has committed probable error
18 and the decision of the Court of Appeals substantially alters
19 the status quo or substantially limits the freedom of a party
20 to act; or
21 (3) The Court of Appeals has so far departed from the
22 accepted and usual course of judicial proceedings, or so far
23 sanctioned such a departure by a trial court or
24 administrative agency, as to call for the exercise of revisory
25 jurisdiction by the Supreme Court.

RAP 13.5(b).

24 In his original motion, McLemore challenged the Superior Court's
25 rulings as an alleged conflict with existing Washington State Law. The

1 subsequent Court of Appeals decisions were then challenged under RAP
2 13.5(b) when McLmore moved for discretionary review by the Supreme
3 Court. In its ruling, the Division I Court o Appeals commissioner
4 determined that McLemore was unable to show that further review of his
5 claims were warranted under the criterion of RAP 13.5(b).
6

7 The lineage of case law given to us by both the Court of Appeals
8 as well as the Washington State Supreme Court on all of the issues
9 presented by McLemore provides a clear and concise description of the
10 law and the boundaries therein. The law followed by the Superior Court
11 and Court of Appeals and their respective decisions thereon, do not reveal
12 an obvious or probable error or that those decisions so far departed from
13 the accepted and usual course of judicial proceedings so as to call for
14 review by the Supreme Court. Therefore, this court must deny the motion
15 for discretionary review.
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17

18 **A. THE COURT OF APPEALS DID NOT ERR IN ITS**
19 **DECISION UPHOLDING THE TRIAL COURT'S**
20 **DENIAL OF MCLEMORE'S MOTION TO DISMISS**
21 **PERSUANT TO STATE V. KNAPSTAD.**

22 The Court of Appeals, after a thorough review of the Superior
23 Court record, denied discretionary review due to McLemore's failure to
24 demonstrate that (1) the Superior Court ruling was in conflict with any
25 Washington precedent, (2) that an issue of public interest was implicated,

1 or (3) that the Superior Court so far departed from the accepted and usual
2 course of judicial proceedings. (See Appendix B). Because there is no
3 obvious or probable error, this Court should likewise deny his motion for
4 discretionary review.
5

6 When reviewing a trial court's ruling on a motion to dismiss
7 pursuant to *State v. Knapstad*, 107 Wn.2d 346, 349, 729 P.2d 48 (1986),
8 the standard of review is de novo. *State v. Newcomb*, 160 Wn. App. 184,
9 246 P.3d 1286 (Div. 2 2011); *State v. Knapstad*, 107 Wn.2d at 357. In
10 *Knapstad*, the Supreme Court held that a trial court has inherent power to
11 dismiss a criminal prosecution for insufficiency of the charge. *Id.* In
12 recognition of that power, the *Knapstad* court held that a trial court may
13 entertain a pretrial motion to dismiss if there are no material disputed facts
14 and the undisputed facts do not establish a prima facie case of guilt. *Id.*
15 *State v. Johnson*, 66 Wn.App. 297, 298, 831 P.2d 1137 (1992); *State v.*
16 *Brown*, 64 Wn.App. 606, 610 n. 4, 825 P.2d 350, review denied, 119
17 Wash.2d 1009, 833 P.2d 387 (1992). Furthermore, when making these
18 determinations the trial court must draw all reasonable inferences from the
19 undisputed facts in favor of the City. *State. Knapstad*, 107 Wn.2d at 357.
20
21
22

23 McLemore was charged with one count of Obstructing a Law
24 Enforcement Officer pursuant to RCW 9A.76.020. For purposes of a
25 *Knapstad* motion, the City had to establish a prima facie case that (1) the

1 defendant willfully hindered, delayed, or obstructed a law enforcement
2 officer in the discharge of the law enforcement officer's official powers or
3 duties; (2) that the defendant knew that the law enforcement officer was
4 discharging official duties at the time; and (3) that the acts occurred in the
5 City of Shoreline, Washington. RCW 9A.76.020; WPIC 120.02.
6

7 In the case at hand, the Trial Court and Appellate Courts
8 correctly determined that the undisputed facts established a prima facie
9 case of guilt. Deputies responded to a 911 emergency call where the
10 reporting party reported a disturbance and that he could hear shouting. As
11 the Deputies approached the building they heard a woman's voice,
12 seemingly under duress, shouting statements such as "you can't leave me
13 out here," "I'm going to call the police," "I'm reconsidering our
14 relationship." Deputy Emmons furthermore heard the female voice say
15 that she "wanted to leave." Deputies were concerned for the wellbeing
16 and safety of the female and attempted to make contact with the occupants
17 of the residence. However, they did not receive a response even after
18 repeated knocks on the door, announcing themselves as police officers,
19 and using the PA system to ask the occupants to come out and speak with
20 them in effort to make sure they were alright. Shortly thereafter, the
21 officers heard the sound of breaking glass. Although the defendant
22 eventually did begin to speak to Deputies through the door, they were not
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1 able to establish visual contact of the female. While trying to convince
2 McLemore to peaceably open the door to allow them to determine the
3 wellbeing of the occupants, Deputies heard the defendant command the
4 female to tell the police that everything was okay. A female voice then
5 followed that command and also informed the Deputies that she had her
6 baby in her arms. The defendant would not allow her to open the door or
7 be presented visually to police in order to confirm or dispel their concerns.
8 He repeatedly told the officers to leave and refused to open the door.
9
10 Based on these circumstances, the Deputies feared for the safety of the
11 female as well as the child and that exigent circumstances warranted entry
12 into the residence to fulfill their official duty of community caretaking.
13
14 The Trial Court agreed that exigent circumstances existed and no warrant
15 was required to enter the residence.

16
17 When reviewing this case, the Court should consider that it is
18 critical to establish actual contact with the victim when responding to a
19 domestic violence incident. It is necessary to establish that the victim is
20 safe, to discharge the officer's statutory obligations, and to obtain a
21 complete report. See, e.g., *State v. Raines*, 55 Wn. App. 459, 778 P.2d
22 538 (1989), review denied, 113 Wn.2d 1036 ("police officers responding
23 to a domestic violence report have a duty to ensure the present and
24 continued safety and well-being of the occupants" of a home). *Id.*

1 This Court considered the legality of a warrantless emergency
2 entry in a domestic violence incident in *State v. Schultz*, 170 Wn.2d 746,
3 248 P.3d 484 (2011). The Court “recognize[d] that domestic violence
4 presents unique challenges to law enforcement and courts,” and stated
5 “that the likelihood of domestic violence may be considered by courts
6 when evaluating whether the requirements of the emergency aid exception
7 to the warrant requirement have been satisfied.” *Schultz*, 170 Wn.2d at
8 750.

9
10 In *State v. Jacobs*, 101 Wn. App. 80, 2 P.3d 974 (2000), officers
11 responded to a residence that had been the scene of prior domestic
12 violence incidents involving an individual who made several 911 calls. *Id.*
13 The individual who made the calls indicated he had been beaten up. *Id.*
14 This individual displayed suspicious behavior, constantly changing his
15 story regarding who had assaulted him and who was currently in the
16 house. *Id.* The responding officer had extensive experience dealing with
17 domestic violence situations and knew that it was not uncommon for
18 domestic violence victims to protect the perpetrator, either out of fear or
19 misguided loyalty. *Id.* The responding officer could not ensure that the
20 residence did not contain additional victims or a person who might pose a
21 threat to the already contacted victim without conducting a quick sweep.
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24
25 *Id.*

1 In *State v. Lynd*, 54 Wn. App. 18, 771 P.2d 770 (1989), an officer
2 responded to a 911 hang-up call at the defendant's residence. *Id.* The line
3 was busy when the officer returned the call. *Id.* Upon arriving at the
4 residence, defendant was loading things into a car and the officer noticed a
5 cut on his face. *Id.* Defendant said he had pushed and slapped his wife
6 who went to her mother's home down the street. *Id.* The officer requested
7 permission to enter, but the defendant refused. *Id.* Officer entered without
8 consent and noticed evidence of a struggle. *Id.* Officer did not locate
9 victim. *Id.* The officer testified that she was concerned about the victim's
10 safety based upon defendant's injuries, statement and his reluctance to
11 allow entry. *Id.* The Court held that entry was permitted under the
12 emergency exception to the warrant requirement. *Id.* The Court rejected
13 the argument that the officer should have pursued other less intrusive
14 means to check on the victim's safety such as calling to her from the door,
15 looking in the windows or checking the victim's mother's residence. *Id.*

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19 In *State v. Menz*, 75 Wn. App. 351, 353, 880 P.2d 48 (1994),
20 review denied, 125 Wn.2d 1021 (1995), an anonymous caller reported
21 domestic violence at a specific address. The caller said that he thought the
22 participants were Debbie and Dale and that a ten-year-old also resided in
23 the house. *Id.* The caller was unsure about the presence of weapons. *Id.*
24 Upon arrival at the residence, the officers noticed that the front door was
25

1 open, the TV and lights were on, however there were no cars in the
2 driveway. *Id.* There was no response when the officers knocked and
3 announced their presence three times so the officers entered out of concern
4 for the occupants. *Id.* The Court held that entry was permitted under the
5 emergency exception. *Id.*

7 In *State v. Johnson*, 104 Wn. App. 409, 16 P.3d 680 (2001),
8 officers responded to a DV call. The call came from a relative outside the
9 house who reported that the victim had locked herself in the bathroom. *Id.*
10 As the first officer approached the house, a man stepped outside. *Id.* This
11 man was extremely slow to respond to an inquiry of whether anyone was
12 in the house. *Id.* Eventually the man, who had a bloody cut on his wrist,
13 smelled of marijuana, and appeared to be under the influence of marijuana
14 indicated that his girlfriend was in the bathroom. *Id.* In the meantime,
15 another officer's knock on the door was answered by a woman who was
16 shaking and had blood on her lip. *Id.* The woman started to exit the house,
17 but the officer told her to stay and he walked inside. *Id.* The officer was
18 found to have entered the house to protect the woman and other potential
19 victims, to keep the man and woman separate for safety, and to ensure an
20 orderly investigation. *Id.* The Court indicated that an officer does not have
21 to question the one known victim before entering to search for other
22 victims. *Id.*

1 In *United States v. Black*, 482 F.3d 1035 (9th Cir.), cert. denied,
2 128 S. Ct. 612 (2007), the police were dispatched to the defendant's
3 apartment after they received a 911 call from the defendant's girlfriend
4 who reported the defendant had beaten her up that morning in the
5 apartment and had a gun. Toward the end of her 911 call, the defendant's
6 girlfriend told the dispatcher that she intended to return to the apartment
7 with her mother so that she could retrieve her clothing. *Id.* She told
8 dispatch that they would wait outside the apartment, in a white Ford
9 pickup truck, for police to arrive. *Id.* When the first officer arrived at the
10 apartment a few minutes later there were no signs of the defendant's
11 girlfriend, her mother, or the truck. *Id.* When the second officer arrived,
12 they knocked on the front door but received no response. *Id.* The officers'
13 discover an individual who matched the defendant's physical description
14 in the backyard. *Id.* The individual identified himself and admitted that he
15 knew the police were investigating a domestic violence call. *Id.* He denied
16 knowing the whereabouts of his girlfriend and denied that he lived in the
17 apartment. *Id.* When the defendant became agitated, one of the police
18 officers patted him down for weapons and searched his pockets with the
19 defendant's consent, which yielded the key to the apartment. *Id.* Using the
20 key, the officer entered and made a quick sweep of the apartment to see if
21 anyone was there. *Id.* No one was present, but the officer noticed a gun on
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1 the bed. *Id.* The court found that the entry into the apartment was justified
2 because the officers feared that the defendant's girlfriend could have been
3 inside the apartment, badly injured and in need of medical attention. *Id.*
4 This was a lawful "welfare search" where rescue was the objective, rather
5 than a search for a crime. *Id.*
6

7 And finally, in *State v. Steen*, 164 Wn.App. 789, 800-802, 265
8 P.3d 901, 908 (2011), officers responded to a disturbance allegedly
9 involving three people. Upon arrival, officers observed a woman who was
10 visibly upset and had mascara running down her cheeks. *Id.* The officers
11 began looking around the property for other two individuals and saw the
12 defendant's trailer. *Id.* Officers began knocking very loudly on the trailer's
13 door and announced that they were the from the Pierce County Sheriff's
14 department. *Id.* The Officers entered the trailer through a window, and
15 upon entry found the defendant who claimed that he was "just sleeping."
16 *Id.* The State charged Steen with obstructing a law enforcement officer. *Id.*
17 A jury convicted, and the defendant appealed. *Id.*
18

19 On appeal, Steen argued that the State failed to present sufficient
20 evidence at trial that he obstructed a law enforcement officer. *Id.* More
21 specifically, he alleged that there was insufficient evidence that (1) he
22 knew the officers were discharging their official duties, and (2) the mere
23 act of remaining silent, without more, was insufficient to establish that he
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1 hindered, delayed, or obstructed the officers. *Id.* The Court of Appeals
2 held that a jury could have reasonably inferred from the facts, viewed in
3 the light most favorable to the State, that Steen knew the officers were
4 discharging their official duties. In making this determination, the court
5 relied on the inference that Steen had heard the officers' identification and
6 commands but decided not to comply, and knew that the officers wanted
7 to look inside the trailer to investigate a recent disturbance involving a
8 woman. *Id.* Secondly, the Court found that Steen's action of not opening
9 the door, not just his silence, provided sufficient evidence that he willfully
10 hindered, delayed, or obstructed the officers in their discharge of official
11 duties. *Id.* The court explained that "any rational fact finder could have
12 reasonably inferred that Steen ignored the officers' commands." *Id.* The
13 court noted that the legislature's intent in the plain language of RCW
14 9A.76.020 was to criminalize an individual's willful failure to obey a
15 lawful police order where the failure to obey willfully hinders, delays, or
16 obstructs the officer in the discharge of his or her community caretaking
17 functions. *Id.*

21 Our case is similar to *Steen* because both cases involves reports of
22 a disturbance involving more than one person, officers repeatedly knocked
23 and announced themselves as law enforcement, and the defendant did not
24 open the door despite multiple requests. *Id.* Our case is perhaps even more
25

1 persuasive than *Steen*, as the defendant did not remain silent but verbally
2 refused to comply with the police and commanded the woman to tell
3 police that she was alright.
4

5 When employing a de novo standard of review, this Court must
6 recognize and further find that the officers had a duty to ensure the safety
7 of the occupants of the residence. This Court must also find that the
8 defendant's action of refusing to open the door and commanding the
9 victim to say she was ok impeded the Deputies' ability to ensure the
10 female and infant child's safety. Given what the Deputies observed and
11 heard, when viewed in a light most favorable to the City, the evidence
12 more than establishes a prima facie case for Obstructing a Law
13 Enforcement Officer.
14

15 McLemore has thus failed to demonstrate a basis to warrant
16 discretionary review and, as such, the motion for discretionary review by
17 this Court must be denied.
18

19
20 **B. THE APPELLATE COURT DID NOT ERR IN ITS**
21 **DETERMINATION THAT THERE WAS SUFFICIENT**
22 **EVIDENCE TO SUPPORT MCLEMORE'S**
23 **CONVICTION FOR OBSTRUCTING.**

24 There was sufficient evidence to support a finding of guilt for the
25 same reasons articulated above. When reviewing a sufficiency of the
evidence challenge, the Court must view the evidence in the light most

1 favorable to the State in order to determine whether any rational trier of
2 fact could have found the essential elements of the crime beyond a
3 reasonable doubt. *State v. Hosier*, 157 Wn.2d 1, 8, 133 P.3d 936 (2006).
4 Thereby, this Court must interpret all reasonable inferences in the [City's]
5 favor. *Hosier*, 157 Wn.2d at 8, 133 P.3d 936.
6

7 In *State v. Steen*, as described above, the issue before the court was
8 whether the State presented sufficient evidence to support a conviction of
9 Obstructing a Law Enforcement Officer. *State v. Steen*, 164 Wn.App. 789,
10 800-802, 265 P.3d 901, 908 (2011). The *Steen* Court ultimately found that
11 the evidence, when viewed in a light most favorable to the State, was
12 sufficient to support a conviction. *Id.* The Court relied on the following
13 facts to determine that the defendant knew that the deputies were
14 discharging their official duties: (1) the officers arrived in patrol cars and
15 uniforms, (2) the officers knocked “very loudly” on the trailer’s door and
16 yelled “Sheriff’s department” and asked any occupant to exit the trailer;
17 (3) the trailer was small and had open windows making it easier to hear
18 the officers’ commands, (4) a woman had recently exited the trailer and
19 was visibly upset. *Id.* Based on these facts the *Steen* Court found that a
20 jury could reasonably infer that Steen heard the officers’ identification and
21 commands yet decided not to comply, and knew they were trying to
22 investigate a disturbance involving a woman. *Id.*
23
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1 Our case is similar to *Steen* because both cases involved domestic
2 disturbances; both involve a distressed female; both had law enforcement
3 arrive in patrol cars and uniforms; both include deputies knocking very
4 loudly and identifying themselves; and both have defendants that did not
5 open the door. However, the facts here are perhaps even more persuasive
6 than *Steen* in terms of proving that the defendant knew that the deputies
7 were discharging their official duties and his willful impediment of their
8 duties. Not only did the deputies in our case identify themselves
9 repeatedly, use the public address system and spotlight, knock and rang
10 the doorbell multiple times, and actually speak to the defendant as why
11 they needed to contact all the parties, the fact that the defendant directed
12 the victim as to what to say to police, and how to say it, and not allow her
13 to open the door, makes it clear that there is sufficient evidence to show
14 his actions in addition to his words thwarted the officer's duties.
15
16 Furthermore, the sounds of a woman under duress upon arrival; the
17 defendant commanded the woman to tell law enforcement that she was
18 okay; glass within the home broken twice, and the presence of an infant
19 child in the home all increase the need to ensure the wellbeing and safety
20 of all the occupants.
21
22

23
24 The Defense references Supreme Court Case *State v. Williams*
25 which held that "some conduct in addition to making false statements is

1 required to support an obstruction conviction.” *State v. Williams*, 171
2 Wn.2d 474, 485, 251 P.3d 877 (2011). The Court of Appeals in *Steen*
3 directly acknowledged the Supreme Court’s decision in *Williams*, but held
4 that Steen’s conduct met *William’s* requirements, as Steen’s refusal to
5 open the trailer door and exit the trailer with his hands up amounted to
6 “conduct” that was punishable under the obstruction statute. *State v. Steen*,
7 164 Wn.App. 789, 800-802, 265 P.3d 901, 908 (2011). Similarly, in our
8 case, McLemore verbally and physically refused to open the door, did not
9 exit the apartment when asked to do so, and commanded the female
10 occupant to tell the officers that she was alright. Commissioner Neal
11 applied the same analysis announced in *Steen* as well as *Williams* and
12 concluded that McLemore’s actions were more than speech alone, or more
13 than a mere passive refusal to assist in the investigation. As such, there
14 was sufficient evidence to support his conviction beyond a reasonable
15 doubt.
16
17
18

19 This Court is bound by the same body of law as previously applied
20 and in doing so, must find that there was sufficient evidence for any
21 rational trier of fact to convict McLemore of Obstructing a Law
22 Enforcement Officer. In viewing the facts in the light most favorable to
23 the City, it is clear that overwhelming evidence was presented to prove
24 each of the essential elements of the crime beyond a reasonable doubt.
25

1 The rulings of both the Superior Court, as well as the Court of
2 Appeals denying review, all fall squarely in line with the prevailing state
3 of the law. McLemore fails to establish error in the denial of discretionary
4 review. Therefore, this Court must also deny the motion for discretionary
5 review.
6

7 **C. THE APPELLATE COURT DID NOT ERR IN**
8 **UPHOLDING THE TRIAL COURTS RULINGS ON THE**
9 **ADMISSIBILITY OF EVIDENCE.**

10 Evidentiary rulings will not be disturbed on appeal absent an abuse
11 of discretion. *State v. Bourgeois*, 133 Wn.2d 389, 399, 945 P.2d 1120
12 (1997); *State v. Brett*, 126 Wn.2d 136, 174, 892 P.2d 29 (1995). In order
13 to find an abuse of discretion by the Trial Court, it must be shown “that
14 the Trial Court's ruling is based on untenable grounds or was made for
15 untenable reasons.” *State v. Cronin* 142 Wn.2d 568, 585, 14 P.3d 752
16 (2000). When reviewing under the abuse of discretion standard, the Court
17 must give deference to the Trial Court and will not disturb the Trial
18 Court’s ruling absent a determination that no rational trier of fact could
19 have reached the same conclusion. *State v. Luvene*, 127 Wn.2d 690, 701,
20 903 P.2d 960 (1995). Unchallenged findings of fact are verities on
21 appeal. *State v. Hill*, 123 Wn.2d 641, 644, 870 P.2d 313(1994).
22
23
24
25

1 The legislature has condemned searches of a dwelling without a
2 warrant as unlawful. RCW 10.79.040. Exceptions to the warrant
3 requirement are narrowly tailored. *State v. Ladson*, 138 Wash.2d 343, 356,
4 979 P.2d 833 (1999).

6 At issue here is the "community caretaking function" exception the
7 U.S. Supreme Court first announced in *Cady v. Dombrowski*, 413 U.S.
8 433, 93 S.Ct. 2523, 37 L.Ed.2d 706 (1973). *Cady* involved a vehicle
9 accident investigation where the officers searched the car trunk after the
10 vehicle was towed to a garage. *Cady*, 93 S.Ct. at 2526. Washington Courts
11 have also recognized and applied the community caretaking exception to
12 search and seizure of automobiles, emergency aid situations, and routine
13 checks on health and safety. *State v. Kinzy*, 141 Wash.2d 373, 386, 5 P.3d
14 668 (2000), *cert. denied*, 531 U.S. 1104, 121 S.Ct. 843, 148 L.Ed.2d 723
15 (2001).

18 The emergency aid exception recognizes the community
19 caretaking function of the police to "assist citizens and protect property."
20 *State v. Johnson*, 104 Wash.App. 409, 414, 16 P.3d 680 (2001). This
21 exception applies when
22

24 "(1) The officer subjectively believed that someone
25 likely needed assistance for health or safety reasons;

1 (2) a reasonable person in the same situation would
2 similarly believe that there was a need for
3 assistance; and (3) there was a reasonable basis to
4 associate the need for assistance with the place
5 searched." *Kinzy*, 141 Wash.2d at 386-87, 5 P.3d
6 668 (quoting *State v. Menz*, 75 Wash.App. 351, 354,
7 880 P.2d 48 (1994), *review denied*, 125 Wash.2d
8 1021, 890 P.2d 463 (1995)).

9 The emergency aid exception applies in this case for reasons
10 articulated above. The Washington Supreme Court considered the legality
11 of a warrantless emergency entry in a domestic violence incident in *State*
12 *v. Schultz*, 170 Wn.2d 746, 248 P.3d 484 (2011). The Court "recognize[d]
13 that domestic violence presents unique challenges to law enforcement and
14 courts," and stated "that the likelihood of domestic violence may be
15 considered by courts when evaluating whether the requirements of the
16 emergency aid exception to the warrant requirement have been satisfied."
17 *Schultz*, 170 Wn.2d at 750. The emergency aid exception applied in this
18 case because of statements heard by law enforcement, concerns by a 911
19 phone caller, the defendant's refusal to open the door, the sound of
20 breaking glass, hearing the defendant command the female occupant what
21 to say to the police, and discovering that there was an infant in the home.

22 This Court must not disturb the Trial Court's decision absent an
23 abuse of discretion. McLemore has not and cannot establish that the Trial
24 Court acted on untenable grounds or for untenable reasons when it found
25

1 that the emergency aid exception to the warrant requirement applied here.
2 And because such exception applied, it was not error for the Trial Court to
3 exclude any argument to the contrary by the defense. McLemore
4 therefore cannot argue that no rational trier of fact could have reached the
5 same conclusion and thus, no abuse of discretion has been or can be
6 established.
7

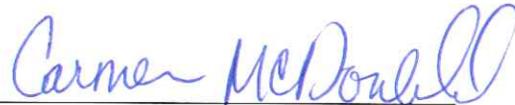
8 Under the application of *Burgeois* and *Cronin*, McLemore has
9 not and cannot show that the trial court abused its discretion in allowing
10 the witnesses to testify as to the basis for the 911 call or subsequent
11 investigation. He has not established that the trial court's ruling was based
12 on untenable grounds or for untenable reasons. The Superior Court
13 recognized the relevance of such evidence in light of the charges and held
14 that the Trial Court did not abuse its discretion. The Court of Appeals also
15 recognized McLemore's failure to demonstrate a basis for review pursuant
16 to RAP 2.3(d). McLemore, in this motion for discretionary review, still
17 fails to establish that these ruling were in error. Therefore, his motion for
18 discretionary review by the Supreme Court must be denied.
19
20

21 **6. CONCLUSION**
22

23 Although McLemore disagrees with the Court of Appeals'
24 decision denying discretionary review, he has failed to demonstrate that
25 the decisions violated any of the criteria set forth in RAP 13.5(b).

1 Therefore, this Court must deny McLemore's motion for discretionary
2 review and affirm his conviction for Obstructing a Law Enforcement
3 Officer.
4

5
6
7 Respectfully submitted this 9th Day of May 2018,
8

9 

10 Carmen McDonald #32561
11 Attorney for the Respondent
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APPENDIX A

SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF KING

STATE OF WASHINGTON

vs.

Appellant,

NO. 16-1-01811-3 SEA
DECISION ON RALJ APPEAL

Solomon McLemore

Respondent

CLERK'S ACTION REQUIRED

This appeal came on regularly for oral argument on June 2, 2017 pursuant to RALJ §.3, before the undersigned Judge of the above entitled court and after reviewing the record on appeal and considering the written and oral argument of the parties, the court holds the following:

Reasoning Regarding Assignment of Error: 1) Defendant has not established that the court erred in denying the Knapstad motion. The evidence was sufficient to support a prima facie showing that the Defendant committed the crime of obstructing pursuant to State v. Steen. 149 Wn App 789 (2011) 2) Further the evidence was sufficient to find beyond a reasonable doubt the Defendant's guilt. 3) The trial court did not abuse its discretion in suppressing evidence of the Defendant's belief he was exercising a const. right as it was irrelevant evidence and not impactful on the elements of the crime.

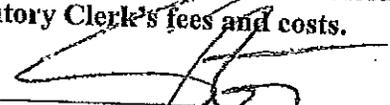
IT IS HEREBY ORDERED that the above cause is:

AFFIRMED; REVERSED; MODIFIED;

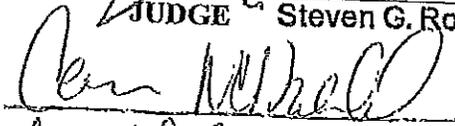
COSTS Waived

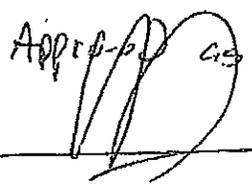
REMANDED to King County District Court for further proceedings, in accordance with the above decision and that the Superior Court Clerk is directed to release any bonds to the Lower Court after assessing statutory Clerk's fees and costs.

DATED: 6/2/17


JUDGE Steven G. Rosen

Counsel for Appellant


Counsel for Respondent

 as to form: 37572

APPENDIX B

RICHARD D. JOHNSON,
Court Administrator/Clerk

The Court of Appeals
of the
State of Washington

DIVISION I
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600 University Street
Seattle, WA
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November 29, 2017

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CASE #: 77094-2-I
City of Shoreline, Respondent v. Solomon McLemore, Petitioner

Counsel:

The following notation ruling by Commissioner Mary Neel of the Court was entered on November 28, 2017, regarding petitioner's motion for discretionary review (RALJ):

"Solomon McLemore seeks discretionary review of the superior court decision on RALJ appeal affirming his conviction for obstructing a law enforcement officer. Review is denied.

Mr. McLemore was charged with obstruction based on an incident in the early morning hours of March 1, 2017. Three police officers responded to a report of a disturbance at an apartment building. When the officers arrived, the person who called 911 met them and said that he had heard a loud verbal argument and screaming coming from a nearby area. The officers heard a woman yelling things like, "You can't leave me out here," "I'm going to call 911 or call the police," "Let me go," and "I'm reconsidering our relationship." The officers located the apartment where the sound was coming from. They began knocking on the door, ringing the doorbell, and announcing they were Shoreline Police. The argument stopped, and no one responded. After eight minutes of knocking, ringing, and announcing, one officer shined a spotlight on the apartment balcony. For the next eight minutes or so, the officer spoke through a public address system, repeating that he was with Shoreline Police and that he needed to speak with the occupants to make sure everything was okay.

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The officers were unsuccessful in obtaining a phone number for the apartment. The officers twice heard breaking/shattering glass in the space of less than a minute. The officers contacted the fire department to bring tools to break down the door. As the officers began working on the door, they continued saying that they needed to visually confirm the woman's safety. Mr. McLemore spoke to the officers through the closed door, repeatedly saying that he did not have to let them in, they were violating his civil rights, and they needed a warrant. The officers heard Mr. McLemore instruct the woman to tell the police she was okay. She did so, and also said she was holding a baby. Once the door was breached, the officers went in and arrested Mr. McLemore for obstruction. Mr. McLemore's girlfriend confirmed that she was fine, stating that Mr. McLemore broke the glass out of anger. After interviewing Mr. McLemore and his girlfriend, the officers determined that no other crimes had been committed.

Mr. McLemore was charged with obstructing in violation of RCW 9A.76.020:

A person is guilty of obstructing a law enforcement officer if the person willfully hinders, delays, or obstructs any law enforcement officer in the discharge of his or her official powers or duties.

Mr. McLemore filed a motion to dismiss, arguing that he could not be convicted for exercising his right to be free of a warrantless search. He argued there was no evidence he did anything beyond not unlocking the door, i.e., there was no evidence he barricaded the door, locked additional doors, hid from the officers, or the like. See State v. Knapstad, 107 Wn.2d 346, 251-53, 729 P.2d 48 (1986) (trial court may dismiss the charge if the State's pleadings are insufficient to raise a jury issue on all elements of the charge; the defense is entitled to dismissal if, viewing the evidence and reasonable inferences in the light most favorable to the State, there is insufficient evidence to prove every element).

The trial court denied the motion under the authority of State v. Steen, 164 Wn. App. 789, 265 P.3d 901 (2011). The court applied the community caretaking exception to the warrant requirement, relying on the residential nature of the call, the time of night (2:00 a.m.), the time of year (cold weather), the woman yelling she was locked out and would call the police, and hearing glass breaking.

The case was tried to a jury. The trial court granted the City's motion to exclude any reference to the fact that the officers did not have a warrant. The court did not allow Mr. McLemore to play a video of the incident because it included Mr. McLemore demanding a search warrant. The jury did hear the part of an audio recording in which Mr. McLemore apparently acknowledged hearing the police tell him to open the door so they could check on the occupants. The jury returned a verdict of guilty.

Mr. McLemore appealed to the superior court, which affirmed:

- (1) Defendant has not established that the court erred in denying the Knapstad motion. The evidence was sufficient to support a prima facie showing that the defendant committed the crime of obstructing pursuant to State v. Steen, 164 Wn. App. 789 (2011).
- (2) Further the evidence was sufficient to find beyond a reasonable doubt the defendant's guilt.
- (3) The trial court did not abuse its discretion in suppressing evidence of the defendant's belief he was exercising a const[ituional] right as it was irrelevant evidence and not impactful on the elements of the crime.

Discretionary review of a superior court decision entered in a proceeding to review a decision of a court of limited jurisdiction will be accepted only:

- (1) If the decision of the superior court is in conflict with an [appellate] decision; or
- (2) If a significant question of [constitutional] law is involved; or
- (3) If the decision involves an issue of public interest which should be determined by an appellate court; or
- (4) If the superior court has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by the court of limited jurisdiction, as to call for review by the appellate court.

Mr. McLemore seeks discretionary review under RAP 2.3(d)(2), (3), and (4). He argues that he is raising an issue of first impression under Washington law, which he characterizes as: whether a person exercising his rights under the 4th Amendment and Article I, section 7 can be found guilty of obstructing for not opening a door to his home for a warrantless search. He argues that there are federal and out of state cases that support his argument that a person's passive refusal to consent to a warrantless search is privileged conduct that cannot be considered evidence of obstruction. See Motion for Discretionary Review at 9-13. He argues that Washington law requires evidence of some *conduct* in order to establish obstruction.

Washington courts require some conduct in addition to pure speech in order to establish obstruction of an officer. The requirement addresses the concern that police could use the obstruction statute to detain and arrest a person based solely on his speech. State v. E.J.J., 183 Wn.2d 497, 502-04, 354 P.3d 815 (2015); State v. Williams, 171 Wn.2d 474, 478, 251 P.3d 877 (2011). The present case is not one in which Mr. McLemore was charged and convicted of obstruction based solely on speech.

Nor is this a case in which police made a warrantless entry into the defendant's home in the absence of exigent circumstances. See State v. Bessette, 105 Wn. App. 793, 21 P.3d 318 (2001) (officer saw juvenile holding a beer bottle, chased him to Bessette's home, who refused the officer entry without a warrant; there were no exigent circumstances; superior court properly reversed district court judgment and sentence convicting Bessette of obstruction).

The trial court and superior court reasoned that this case is more like State v. Steen, 164 Wn. App. 789, 265 P.3e 01 (2011), rev. denied, 173 Wn.2d 1024 (2012). In Steen, police responded to a report of a disturbance involving a woman and possibly two men. Upon arriving, officers saw a woman exit a trailer on the property; she looked visibly upset. Officers looked around the property for other persons, finding no one. The woman did not have a key to the trailer. The officers knocked loudly on the trailer door for several minutes, identified themselves, and told the occupants to come out. Because the officers were concerned that someone in the trailer might need emergency assistance, one of them entered through an open window and unlocked the door. Steen came out of a bedroom and said he was sleeping. Officers handcuffed Steen and put him in the back of the patrol car. Steen refused to provide his name and date of birth. He was eventually identified and arrested on an outstanding warrant, and was charged with obstruction. The trial court concluded that the community caretaking exception to the warrant requirement justified the police warrantless entry, and Steen did not challenge this ruling. See State v. Smith, 165 Wn.2d 511, 522, 199 P.3d 386 (2009) (community caretaking exception allows for the limited invasion of constitutionally protected privacy rights when it is necessary for police to render aid or assistance or when making routine checks on health and safety); Steen, 164 Wn. App. at 796, n.1. Steen was convicted of obstruction. The superior court affirmed, and Steen sought further review, challenging the sufficiency of the evidence. Among other things, Steen argued that his refusal to provide his name and birthdate was insufficient to establish obstruction. The court agreed, but the majority of the court further reasoned that Steen's refusal to open the trailer door and exit, when commanded to do so by officers lawfully entering pursuant to their community care function, amounted to conduct punishable under the obstruction statute. Steen, 164 Wn. App. at 801-02.

Here, Mr. McLemore argues that he did nothing other than refuse the officers entry into his home and that this passive refusal cannot constitute obstruction. Phrased as such, Mr. McLemore arguably raises a significant issue of constitutional law and/or an issue of public interest. But as in Steen, the officers had ample reason to be concerned about the welfare of individuals inside the home; they heard screaming and yelling when they arrived and twice heard breaking glass. The woman inside said she was holding a baby. Mr. McLemore refused to open the door to allow the officers to check on the wellbeing of the occupants, and he instructed the woman to say she was ok. Mr. McLemore does not argue that the officers warrantless entry under the community caretaking function was improper.

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Case No. 77094-2-I, Shoreline v. McLemore
November 29, 2017

A person commits obstruction by willfully hindering, delaying, or obstructing a law enforcement officer in the discharge of his or her official powers or duties. RCW 9A.76.020. Steen, 164 Wn. App. at 798. It is undisputed that Mr. McLemore's refusal to open the door was willful. And there was evidence from which a rational trier of fact could find beyond a reasonable doubt that he hindered, delayed or obstructed the officers in performance of their community caretaking function. Steen, 164 Wn. App. at 800.

To the extent Mr. McLemore argues that the trial court erred in not allowing him to present evidence of his belief and understanding of the situation – i.e. that he did not have to open the door to the officers absent a warrant – he has not demonstrated a basis for review under RAP 2.3(d).

Therefore, it is

ORDERED that discretionary review is denied.”

Sincerely,



Richard D. Johnson
Court Administrator/Clerk

Emp

c: The Honorable Steven G. Rosen

SHORELINE PROSECUTOR'S OFFICE

May 09, 2018 - 12:31 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 95707-0
Appellate Court Case Title: State of Washington v. Solomon McLemore
Superior Court Case Number: 16-1-07811-3

The following documents have been uploaded:

- 957070_Answer_Reply_20180509122815SC370816_6220.pdf
This File Contains:
Answer/Reply - Answer to Motion for Discretionary Review
The Original File Name was McLemore Response to Motion.pdf
- 957070_Cert_of_Service_20180509122815SC370816_6284.pdf
This File Contains:
Certificate of Service
The Original File Name was Affidavit of Mailing McLemore.pdf

A copy of the uploaded files will be sent to:

- david@sbmhlaw.com

Comments:

Sender Name: Vanessa Ahrstrom - Email: prosecutor@shorelinewa.gov

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